

1 Laralei S. Paras, State Bar No. 203319  
2 THE CHANLER GROUP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
4 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118  
laralei@chanler.com

5 Attorneys for Plaintiff  
6 JOHN MOORE

FILED  
Superior Court Of California,  
Sacramento  
04/27/2018  
aseagle  
By \_\_\_\_\_, Deputy  
Case Number:  
34-2018-00231933

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SACRAMENTO

10 UNLIMITED CIVIL JURISDICTION

11  
12 JOHN MOORE,

13 Plaintiff,

14 v.

15 PILOT CORPORATION, PILOT TRAVEL  
16 CENTERS LLC, SACRAMENTO 49ER  
TRAVEL PLAZA, and DOES 1-150,  
17 inclusive,

18 Defendants.

Case No. \_\_\_\_\_

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

(Health & Safety Code § 25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by Plaintiff John Moore in the  
3 public interest of the citizens of the State of California to enforce the People's right to be informed  
4 of the health hazards caused by exposures to Lead, a toxic chemical found in and on fidget spinners  
5 sold by defendant in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn  
7 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq.,  
8 who purchase, use or handle defendants' products, about the risks of exposure to Lead present in  
9 and on the fidget spinners manufactured, imported, distributed, sold and offered for sale or use  
10 throughout the State of California. Individuals not covered by California's Occupational Safety  
11 Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendants' products, are  
12 referred to hereinafter as "consumers."

13 3. Detectable levels of Lead are found in and on the fidget spinners that defendants  
14 manufacture, import, distribute, sell, and offer for sale, directly and indirectly, to consumers  
15 throughout the State of California.

16 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
17 Health and Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of doing  
18 business shall knowingly and intentionally expose any individual to a chemical known to the state  
19 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
20 individual . . . ." Health & Safety Code § 25249.6.

21 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed  
22 Lead as a chemical known to cause birth defects (and other reproductive harm). Lead became  
23 subject to the warning requirement one year later and was therefore subject to the "clear and  
24 reasonable warning" requirements of Proposition 65, beginning on February 27, 1988. Cal. Code  
25 Regs. tit. 27, § 27001 (c); Health & Safety Code §§ 25249.8 & 25249.10(b).

26 6. Defendants manufacture, import, distribute, import, sell, and offer for sale without  
27 health hazard warnings in California fidget spinners containing Lead including, but not limited to,  
28

1 *Fidget Spinner, Brass, 00000004897,UPC# 8 61093 00017 5.* All such fidget spinners are referred  
2 to collectively hereinafter as “PRODUCTS.”

3 7. Defendants’ failure to warn consumers in the State of California of the health hazards  
4 associated with exposures to Lead in conjunction with defendants’ sales of the PRODUCTS are  
5 violations of Proposition 65, and subject defendants, and each of them, to enjoinder of such  
6 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

7 8. For defendants’ violations of Proposition 65, Plaintiff seeks preliminary and  
8 permanent injunctive relief to compel defendants, and each of them, to provide consumers of the  
9 PRODUCTS with the required warning regarding the health hazards associated with exposures to  
10 Lead. Health & Safety Code § 25249.7(a).

11 9. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties  
12 against defendants for their violations of Proposition 65.

13 **PARTIES**

14 10. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to  
15 protecting the health of California citizens through the elimination or reduction of toxic exposures  
16 from consumer products; and he brings this action in the public interest pursuant to Health and  
17 Safety Code § 25249.7(d).

18 11. Defendant PILOT CORPORATION (“PILOT”) is a person in the course of doing  
19 business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

20 12. PILOT manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale  
21 or use in the State of California, or implies by its conduct that it manufactures, imports, distributes,  
22 sells, and/or offers the PRODUCTS for sale or use in the State of California.

23 13. Defendant PILOT TRAVEL CENTERS LLC (“PILOT TRAVEL”) is a person in the  
24 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

25 14. PILOT TRAVEL manufactures, imports, distributes, sells, and/or offers the  
26 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,  
27 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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1           15. Defendant SACRAMENTO 49ER TRAVEL is a person in the course of doing  
2 business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

3           16. SACRAMENTO 49ER TRAVEL imports, distributes, sells, and/or offers the  
4 PRODUCTS for sale or use in the State of California, or implies by its conduct that it imports,  
5 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

6           17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person  
7 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

8           18. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate, and  
9 manufacture, or imply by their conduct that they research, test, design, assemble, fabricate, and  
10 manufacture one or more of the PRODUCTS offered for sale or use in the state of California.

11           19. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in  
12 the course of doing business within the meaning of Health and Safety Code section 25249.11.

13           20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
14 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in  
15 the state of California.

16           21. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the  
17 course of doing business within the meaning of Health and Safety Code section 25249.11.

18           22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the state  
19 of California.

20           23. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
21 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
22 Code of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that  
23 each of the fictitiously named defendants is responsible for the acts and occurrences alleged herein.  
24 When ascertained, their true names shall be reflected in an amended complaint.

25           24. PILOT, PILOT TRAVEL, SACRAMENTO 49ER TRAVEL, MANUFACTURER  
26 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall  
27 hereinafter, where appropriate, be referred to as the “DEFENDANTS.”

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1 **VENUE AND JURISDICTION**

2 25. Venue is proper in the Superior Court in and for the County of Sacramento pursuant  
3 to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent  
4 jurisdiction, because Plaintiff seeks civil penalties against DEFENDANTS, because one or more  
5 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because  
6 DEFENDANTS conducted, and continues to conduct, business in Sacramento with respect to the  
7 PRODUCTS.

8 26. The California Superior Court has jurisdiction over this action pursuant to California  
9 Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all  
10 causes except those given by statute to other trial courts.” The statute under which this action is  
11 brought does not specify any other basis of subject matter jurisdiction.

12 27. The California Superior Court has jurisdiction over DEFENDANTS based on  
13 Plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
14 association that is a citizen of the State of California, has sufficient minimum contacts in the State  
15 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS’  
16 purposeful availment renders the exercise of personal jurisdiction by California courts consistent  
17 with traditional notions of fair play and substantial justice.

18 **FIRST CAUSE OF ACTION**

19 **(Violation of Proposition 65 - Against All Defendants)**

20 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
21 Paragraphs 1 through 27, inclusive.

22 29. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
23 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed  
24 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

25 30. Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
26 and intentionally expose any individual to a chemical known to the state to cause cancer or  
27 reproductive toxicity without first giving clear and reasonable warning to such individual . . . .”  
28 Health & Safety Code § 25249.6.

1           31. On February 14, 2018, Plaintiff served a sixty-day notice of violation, together with  
2 the accompanying certificate of merit, on Pilot Corporation, Pilot Travel Centers LLC, Sacramento  
3 49er Travel Plaza, the California Attorney General's Office, and the requisite public enforcement  
4 agencies alleging that, as a result of DEFENDANTS' sales of the PRODUCTS, consumers in the  
5 State of California are being exposed to Lead resulting from their reasonably foreseeable use of the  
6 PRODUCTS, without the consumers first receiving a "clear and reasonable warning" regarding the  
7 harms associated with exposures to Lead as required by Proposition 65.

8           32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for  
9 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have  
10 continued beyond its receipt of Plaintiff's sixty-day notice of violation. As such, DEFENDANTS'  
11 violations are ongoing and continuous in nature and, unless enjoined, will continue in the future.

12           33. After receiving Plaintiff's sixty-day notice of violation, no public enforcement agency  
13 has commenced and diligently prosecuted a cause of action against DEFENDANTS under  
14 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of violation.

15           34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer  
16 for sale or use in California cause exposures to Lead as a result of the reasonably foreseeable use of  
17 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in  
18 California are not exempt from the "clear and reasonable" warning requirements of Proposition 65,  
19 yet DEFENDANTS provide no clear & reasonable warning.

20           35. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,  
21 import, distribute, sell, and offer for sale in California contain Lead.

22           36. Lead is present in or on the PRODUCTS in such a way as to expose consumers  
23 through dermal contact and/or ingestion during reasonably foreseeable use.

24           37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
25 continues to cause, consumer exposures to Lead, as defined by title 27 of the California Code of  
26 Regulations, section 25602(b).

27           38. DEFENDANTS know that the normal and reasonably foreseeable use of the  
28 PRODUCTS exposes individuals to Lead through dermal contact and/or ingestion.

1           39. DEFENDANTS intend that exposures to Lead from the reasonably foreseeable use of  
2 the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture,  
3 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in  
4 California.

5           40. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
6 consumers in California who have been, or who will be, exposed to Lead through dermal contact  
7 and/or ingestion resulting from their use of the PRODUCTS.

8           41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
9 directly by California voters, consumers exposed to Lead through dermal contact and/or ingestion  
10 as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear and  
11 reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for  
12 which they have no plain, speedy, or adequate remedy at law.

13           42. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-  
14 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each  
15 violation.

16           43. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)  
17 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

18                                   **PRAYER FOR RELIEF**

19           Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

20           1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil  
21 penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each  
22 violation;

23           2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and  
24 permanently enjoin DEFENDANTS, and each of them, from manufacturing, distributing,  
25 importing, selling or offering the PRODUCTS for sale or use in California without first providing a  
26 “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations,  
27 section 25601 *et seq.*, regarding the harms associated with exposures to Lead;

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1           3.     That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary  
2 and permanent injunctions mandating that DEFENDANTS, and each of them, recall all  
3 PRODUCTS currently in the chain of commerce in California without a “clear and reasonable  
4 warning” as defined by California Code of Regulations title 27, section 25601 et seq.;


5           4.     That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

6           5.     That the Court grant such other and further relief as may be just and proper.

7 Dated: April 26, 2018

Respectfully submitted,

8 THE CHANLER GROUP

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11 By:   
12 Laralei Paras  
13 Attorneys for Plaintiff  
14 JOHN MOORE  
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