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**FILED**  
San Francisco County Superior Court  
AUG 16 2018  
CLERK OF THE COURT  
BY:   
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

CGC-18-568974

JOHN MOORE

Plaintiff,

v.

DICK'S SPORTING GOODS, INC.; GOLF  
GALAXY, LLC; GOLF TIME, L.L.C.; and  
DOES 1-150, inclusive,

Defendants.

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

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health and 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  
4 informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate (DEHP), a  
5 toxic chemical found in and on the vinyl/PVC golf club headcovers sold by defendants in  
6 California.

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

14 3. Detectable levels of DEHP are found in and on the vinyl/PVC golf club  
15 headcovers that defendants manufacture, import, sell or distribute for sale to consumers  
16 throughout the State of California.

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

22 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
23 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became  
24 subject to the "clear and reasonable warning" requirements of the act one year later, on October  
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health and Safety Code §§ 25249.8 and  
26 25249.10(b).



1           14. GOLF GALAXY manufactures, imports, distributes, sells, and/or offers the  
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
4 State of California.

5           15. Defendant GOLF TIME, L.L.C. (GOLF TIME) is a person in the course of doing  
6 business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

7           16. GOLF TIME manufactures, imports, distributes, sells, and/or offers the  
8 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
9 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
10 State of California.

11           17. Defendants DOES 1-50 (MANUFACTURER DEFENDANTS) are each a person  
12 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
13 25249.11.

14           18. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
15 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,  
16 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for  
17 sale or use in California.

18           19. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each a person  
19 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
20 25249.11.

21           20. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,  
22 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or  
23 retailers for sale or use in the State of California, or each implies by its conduct that it  
24 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to  
25 individuals, businesses, or retailers for sale or use in the State of California.

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1 contacts in the State of California, and/or otherwise purposefully avails itself of the California  
2 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

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

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

12 30. Proposition 65 states, "[n]o person in the course of doing business shall  
13 knowingly and intentionally expose any individual to a chemical known to the state to cause  
14 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
15 individual . . ." Health and Safety Code § 25249.6.

16 31. On April 26, 2018, Plaintiff served a sixty-day notice of violation, together with  
17 the accompanying certificate of merit, on DSG, GOLF GALAXY, GOLF TIME, the California  
18 Attorney General's Office, and the requisite public enforcement agencies alleging that, as a  
19 result of DEFENDANTS' sales of the PRODUCTS, consumers in the State of California are  
20 being exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS,  
21 without consumers first receiving a "clear and reasonable warning" regarding the harms  
22 associated with exposures to DEHP, as required by Proposition 65.

23 32. DEFENDANTS manufacture, import, sell and distribute the PRODUCTS for sale  
24 or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have  
25 continued beyond their receipt of plaintiff's sixty-day notice of violation. As such,  
26 DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined, will  
27 continue in the future.

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

5           34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
6 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
7 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
8 consumers in California are not exempt from the "clear and reasonable" warning requirements  
9 of Proposition 65, yet DEFENDANTS provide no clear and reasonable warning.

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

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

14           37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
15 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code  
16 of Regulations, § 25602(b).

17           38. DEFENDANTS know that the normal and reasonably foreseeable use of the  
18 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

19           39. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
20 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
21 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
22 consumers in California.

23           40. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
24 consumers in California who have been, or who will be, exposed to DEHP through dermal  
25 contact and/or ingestion resulting from their use of the PRODUCTS.

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

4 42. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-  
5 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of  
6 \$2,500 per day for each violation.

7 43. As a consequence of the above-described acts, Health and Safety Code  
8 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
9 DEFENDANTS

10 **PRAYER FOR RELIEF**

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

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

15 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily  
16 and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the  
17 PRODUCTS for sale or use in California without first providing a “clear and reasonable  
18 warning” in accordance with title 27 of the California Code of Regulations, section 25601 *et*  
19 *seq.*, regarding the harms associated with exposures to DEHP;

20 3. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue  
21 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
22 currently in the chain of commerce in California without a “clear and reasonable warning” as  
23 defined by California Code of Regulations title 27, § 25601 *et seq.*;




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- 4. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and
- 5. That the Court grant such other and further relief as may be just and proper.

Dated: August 15, 2018

Respectfully submitted,  
THE CHANLER GROUP

By:   
Clifford A. Chanler  
Attorneys for Plaintiff  
JOHN MOORE