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**FILED**

**AUG 09 2010**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT

By: D. Taylor Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

STAMINA PRODUCTS, INC.; OK-1  
MANUFACTURING COMPANY; ALTUS  
ATHLETIC MANUFACTURING CO.; and  
DOES 1-150, inclusive,

Defendants.

Case No. C101004177

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

*(Cal. Health & Safety Code § 25249.6 et seq.)*

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff JOHN MOORE in  
3 the public interest of the citizens of the State of California, to enforce the People's right to be  
4 informed of the presence of di(2-ethylhexyl)phthalate, a toxic chemical found in training and  
5 sauna fitness suits sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to  
7 warn California citizens about their exposure to di(2-ethylhexyl)phthalate, present in or on  
8 certain training and sauna fitness suits that defendants manufacture, distribute, and/or offer for  
9 sale to consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and on training  
11 and sauna fitness suits that defendants manufacture, distribute, and/or offer for sale to consumers  
12 throughout the State of California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "No person in the course  
15 of doing business shall knowingly and intentionally expose any individual to a chemical known  
16 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such individual. . . ." (*Cal. Health & Safety Code* § 25249.6.)

18 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as  
19 a chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate  
20 became subject to the warning requirement one year later and was therefore subject to the "clear  
21 and reasonable warning" requirements of Proposition 65, beginning on October 24, 2004. (27  
22 *CCR* § 27001(c); *Cal. Health & Safety Code* § 25249.8.)

23 6. Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the "LISTED  
24 CHEMICAL."

25 7. Defendants manufacture, distribute, and/or sell training and sauna fitness suits  
26 containing excessive levels of the LISTED CHEMICAL as follows:

27 a. Defendant STAMINA PRODCUCTS, INC. manufactures, distributes,  
28 and/or sells training and sauna fitness suits containing the LISTED CHEMICAL

1 including, but not limited to, the *Gold's Gym Sauna Suit #05-401GG (#0 22634 90401*  
2 *9)*; and

3 b. Defendants OK-1 MANUFACTURING COMPANY and ATLUS  
4 ATHLETIC MANUFACTURING CO manufacture, distribute, and/or sell training and  
5 sauna fitness suits containing the LISTED CHEMICAL including, but not limited to, the  
6 *Altus Thermal Training Suit, Item #1211 011S/M (#0 11726 02598 7)*.

7 8. All such training and sauna fitness suits containing the LISTED CHEMICAL as  
8 listed above in paragraph 7 shall hereinafter be referred to as the "PRODUCTS."

9 9. Defendants' failures to warn consumers and/or other individuals in the State of  
10 California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sale  
11 of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of  
12 such conduct as well as civil penalties for each such violation.

13 10. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
14 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
15 PRODUCTS with the required warning regarding the health hazards of the LISTED  
16 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a)*.)

17 11. Plaintiff also seeks civil penalties against defendants for their violations of  
18 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

19 **PARTIES**

20 12. Plaintiff JOHN MOORE, is a citizen of the State of California who is dedicated to  
21 protecting the health of California citizens through the elimination or reduction of toxic  
22 exposures from consumer products, and brings this action in the public interest pursuant to  
23 California Health & Safety Code § 25249.7.

24 13. Defendant STAMINA PRODUCTS, INC. ("STAMINA PRODUCTS") is a  
25 person doing business within the meaning of California Health & Safety Code § 25249.11.

26 14. Defendant STAMINA PRODUCTS manufactures, distributes, and/or offers the  
27 PRODUCTS for sale or use in the State of California or implies by its conduct that it  
28 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

1           15. Defendant OK-1 MANUFACTURING COMPANY ("OK-1") is a person doing  
2 business within the meaning of California Health & Safety Code § 25249.11.

3           16. Defendant OK-1 manufactures, distributes, and/or offers the PRODUCTS for sale  
4 or use in the State of California or implies by its conduct that it manufactures, distributes, and/or  
5 offers the PRODUCTS for sale or use in the State of California.

6           17. Defendant ALTUS ATHLETIC MANUFACTURING CO. ("ALTUS  
7 ATHLETIC") is a person doing business within the meaning of California Health & Safety Code  
8 § 25249.11.

9           18. Defendant ALTUS ATHLETIC manufactures, distributes, and/or offers the  
10 PRODUCTS for sale or use in the State of California or implies by its conduct that it  
11 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

12           19. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
13 persons doing business within the meaning of California Health & Safety Code § 25249.11.

14           20. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
15 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
16 engage in the process of research, testing, designing, assembling, fabricating and/or  
17 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

18           21. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
19 doing business within the meaning of California Health & Safety Code § 25249.11.

20           22. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
21 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in  
22 the State of California.

23           23. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing  
24 business within the meaning of California Health & Safety Code § 25249.11.

25           24. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the  
26 State of California.

27           25. At this time, the true names of Defendants DOES 1-150, inclusive, are unknown  
28 to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil

1 Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each of the  
2 fictitiously named defendants is responsible for the acts and occurrences herein alleged. When  
3 ascertained, their true names shall be reflected in an amended complaint.

4 26. STAMINA PRODUCTS, OK-1, ALTUS ATHLETIC, MANUFACTURER  
5 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where  
6 appropriate, collectively be referred to hereinafter as "DEFENDANTS."

#### 7 VENUE AND JURISDICTION

8 27. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil  
9 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because  
10 one or more instances of wrongful conduct occurred, and continues to occur, in the County of  
11 Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this  
12 County with respect to the PRODUCTS.

13 28. The California Superior Court has jurisdiction over this action pursuant to  
14 California Constitution Article VI, § 10, which grants the Superior Court "original jurisdiction in  
15 all causes except those given by statute to other trial courts." The statute under which this action  
16 is brought does not specify any other basis of subject matter jurisdiction.

17 29. The California Superior Court has jurisdiction over DEFENDANTS based on  
18 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
19 association that either are citizens of the State of California, have sufficient minimum contacts in  
20 the State of California, or otherwise purposefully avail themselves of the California market.  
21 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California  
22 courts consistent with traditional notions of fair play and substantial justice.

#### 23 FIRST CAUSE OF ACTION

##### 24 (Violation of Proposition 65 - Against All Defendants)

25 30. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
26 Paragraphs 1 through 29, inclusive.

27 31. The citizens of the State of California have expressly stated in the Safe Drinking  
28 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*

1 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,  
2 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6*.)

3 32. Proposition 65 states, “No person in the course of doing business shall knowingly  
4 and intentionally expose any individual to a chemical known to the state to cause cancer or  
5 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
6 (*Id.*)

7 33. On or about May 7, 2010, a sixty-day notice of violation, together with the  
8 requisite certificate of merit, was provided to STAMINA PRODUCTS and various public  
9 enforcement agencies stating that as a result of the DEFENDANTS’ sales of the PRODUCTS,  
10 purchasers and users in the State of California were being exposed to di(2-ethylhexyl)phthalate  
11 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
12 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
13 such toxic exposures.

14 34. On or about May 7, 2010, a sixty-day notice of violation, together with the  
15 requisite certificate of merit, was provided to OK-1 and ALTUS ATHLETIC and various public  
16 enforcement agencies stating that as a result of the DEFENDANTS sales of the PRODUCTS,  
17 purchasers and users in the State of California were being exposed to di(2-ethylhexyl)phthalate  
18 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
19 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
20 such toxic exposures.

21 35. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
22 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
23 DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use in  
24 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
25 DEFENDANTS’ receipt of plaintiff’s sixty-day notices of violation. Plaintiff further alleges and  
26 believes that such violations will continue to occur into the future.

27 36. After receipt of the claims asserted in the sixty-day notice of violation, the  
28 appropriate public enforcement agencies have failed to commence and diligently prosecute a

1 cause of action against DEFENDANTS under Proposition 65.

2 37. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
3 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
4 limits.

5 38. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
6 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
7 LISTED CHEMICAL.

8 39. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
9 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
10 during the reasonably foreseeable use of the PRODUCTS.

11 40. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
12 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
13 by 27 CCR § 25602(b).

14 41. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
15 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
16 and/or ingestion.

17 42. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
18 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
19 accidental participation in the manufacture, distribution, and/or offer for sale or use of  
20 PRODUCTS to individuals in the State of California.

21 43. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
22 consumers and/or other individuals in the State of California who were or who could become  
23 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
24 reasonably foreseeable use of the PRODUCTS.

25 44. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
26 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
27 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
28 by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to

1 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

2 45. As a consequence of the above-described acts, DEFENDANTS are liable for a  
3 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
4 Safety Code § 25249.7(b).

5 46. As a consequence of the above-described acts, California Health & Safety Code  
6 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
7 DEFENDANTS.

8 **PRAYER FOR RELIEF**

9 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

10 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
11 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation  
12 alleged herein;

13 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
14 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
15 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable  
16 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures to each of  
17 the LISTED CHEMICAL;

18 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

19 4. That the Court grant such other and further relief as may be just and proper.

20 Respectfully Submitted,

21 Dated: August 9, 2010

THE CHANLER GROUP

22  
23 By: 

24 JOSH VOORHEES  
25 CHRISTOPHER M. MARTIN  
26 Attorneys for Plaintiff  
27 JOHN MOORE  
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