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FILED

DEC 02 2010

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: D Taylor Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION
15

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 LUDLOW COMPOSITES CORPORATION,
20 and DOES 1-150, inclusive,

21 Defendants.

Case No. CIV 1006343

**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 (“DEHP”), a toxic chemical found in vinyl
5 flooring sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about their exposure to DEHP, present in or on certain vinyl flooring that
8 defendants manufacture, import, distribute, and/or offer for sale to consumers throughout the
9 State of California.

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

15 4. On October 23, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
18 requirements of Proposition 65, beginning on October 23, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*)

20 5. Defendant Ludlow Composites Corporation (“LUDLOW”) manufactures, imports,
21 distributes, and/or sells vinyl flooring containing DEHP including, but not limited to, *Clear*
22 *Carpet Runner, #CWN CP0312CL (#0 23244 20095 1).*

23 6. All such vinyl flooring containing DEHP shall hereinafter be collectively referred
24 to as the “PRODUCTS.”

25 7. Defendants’ failure to warn consumers and/or other individuals in the State of
26 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*
27 *seq.* about their exposure to DEHP in conjunction with defendants’ distribution, importation,
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1 manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects
2 defendants to enjoinder of such conduct as well as civil penalties for each such violation.

3 8. For defendants' violation of Proposition 65, plaintiff seeks preliminary injunctive
4 and permanent injunctive relief to compel defendants to provide purchasers or users of the
5 PRODUCTS with the required warning regarding the health hazards of DEHP. (*Cal. Health &*
6 *Safety Code § 25249.7(a).*)

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

9 **PARTIES**

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

14 11. LUDLOW is a person doing business within the meaning of California Health &
15 Safety Code § 25249.11.

16 12. LUDLOW manufactures, imports, distributes, and/or offer the PRODUCTS for
17 sale or use in the State of California or implies by its conduct that it manufactures, imports,
18 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

21 14. MANUFACTURER DEFENDANTS engage in the process of researching, testing,
22 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
23 engage in the process of researching, testing, designing, assembling, fabricating, and/or
24 manufacturing, e.g., by engaging in private labeling one or more of the PRODUCTS for sale or
25 use in the State of California.

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

1 association that either are citizens of the State of California, have sufficient minimum contacts in
2 the State of California, or otherwise purposefully avail themselves of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
4 courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

7 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 23, inclusive.

9 25. The citizens of the State of California have expressly stated in Proposition 65 that
10 they must be informed "about exposures to chemicals that cause cancer, birth defects and other
11 reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

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

16 27. On June 3, 2010, a sixty-day notice of violation, together with the requisite
17 Certificate of Merit, was provided to LUDLOW and various public enforcement agencies stating
18 that as a result of LUDLOW's sales of the PRODUCTS, purchasers and users in the State of
19 California were being exposed to DEHP resulting from the reasonably foreseeable uses of the
20 PRODUCTS, without the individual purchasers and users first having been provided with a
21 "clear and reasonable warning" regarding such toxic exposures.

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

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1 29. After receipt of the claims asserted in the June 3, 2010 sixty-day notice of
2 violation, the appropriate public enforcement agencies have failed to commence and diligently
3 prosecute a cause of action against DEFENDANTS under Proposition 65.

4 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
5 use in California by DEFENDANTS contained DEHP above the allowable state limits.

6 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
7 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
8 DEHP.

9 32. DEHP was present in or on the PRODUCTS in such a way as to expose
10 individuals to DEHP through dermal contact and ingestion during the reasonably foreseeable use
11 of the PRODUCTS.

12 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
13 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
14 27 California Code of Regulations (“CCR”) § 25602(b).

15 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
16 the PRODUCTS would expose individuals to DEHP through dermal contact and ingestion.

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

21 36. 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 DEHP through dermal contact and ingestion during the reasonably foreseeable use of
24 the PRODUCTS.

25 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
26 directly by California voters, individuals exposed to DEHP through dermal contact and
27 ingestion, resulting from the reasonably foreseeable use of the PRODUCTS, sold by
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1 DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to suffer,
2 irreparable harm, for which harm they have no plain, speedy, or adequate remedy at law.

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

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

9 **PRAYER FOR RELIEF**

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

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

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

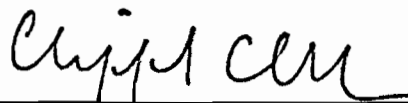
18 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

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21 Dated: December 2, 2010

22 Respectfully Submitted,

23 THE CHANLER GROUP

24
25 By: 
26 Clifford A. Chanler
27 Attorneys for Plaintiff
28 JOHN MOORE