

FILED

SEP 30 2010

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Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: T. Fraguero, Deputy

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 AMERICAN ATHLETIC, INC.; FISHER  
18 ATHLETIC EQUIPMENT, INC.; FRUIT OF  
19 THE LOOM, INC.; RUSSEL BRANDS, LLC;  
20 and DOES 1-150, inclusive,

21 Defendants.

Case No.: CW 1005197

**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  
5 exercise/fitness mats sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to  
7 warn California citizens about their exposure to DEHP, present in or on certain exercise/fitness  
8 mats that defendants manufacture, import, distribute, and/or offer for sale to consumers  
9 throughout the 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. Defendants manufacture, import, distribute, and/or sell exercise/fitness mats  
21 containing DEHP as follows:

22 a. Defendants AMERICAN ATHELETIC, INC. (“AMERICAN  
23 ATHELETIC”), FRUIT OF THE LOOM, INC. (“FRUIT OF THE LOOM”), and  
24 RUSSELL BRANDS, LLC (“RUSSELL”) manufacture, import, distribute, and/or  
25 sell exercise/fitness mats containing DEHP including, but not limited to, *AAI*  
26 *Cartwheel/Beam Mat, Item No. SG04-006-BLUE*; and



1 the State of California or implies by its conduct that it manufacture, import, distribute, and/or  
2 offer the PRODUCTS for sale or use in the State of California.

3 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons  
4 doing business within the meaning of California Health & Safety Code § 25249.11.

5 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
6 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
7 engage in the process of research, testing, designing, assembling, fabricating and/or  
8 manufacturing, e.g. by engaging in private labeling one or more of the PRODUCTS for sale or  
9 use in the State of California.

10 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
11 doing business within the meaning of California Health & Safety Code § 25249.11.

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

15 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons  
16 doing business within the meaning of California Health & Safety Code § 25249.11.

17 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
18 State of California and, in some circumstances, may also be manufacturers and/or distributors.

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

24 20. AMERICAN ATHLETIC, FISHER, FRUIT OF THE LOOM, RUSSELL,  
25 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER  
26 DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as  
27 “DEFENDANTS.”  
28

1 **VENUE AND JURISDICTION**

2 21. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil  
3 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because  
4 one or more instances of wrongful conduct occurred, and continues to occur, in the County of  
5 Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this  
6 County with respect to the PRODUCTS.

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

11 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
12 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
13 association that either are citizens of the State of California, have sufficient minimum contacts in  
14 the State of California, or otherwise purposefully avail themselves of the California market.  
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

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

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

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

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

1           27. On June 3, 2010, sixty-day notices of violation, together with the requisite  
2 Certificates of Merit, were provided to AMERICAN ATHLETIC, FISHER, FRUIT OF THE  
3 LOOM, RUSSELL, and various public enforcement agencies stating that as a result of  
4 AMERICAN ATHLETIC, FRUIT OF THE LOOM, FISHER, and RUSSELL's sales of the  
5 PRODUCTS, purchasers and users in the State of California were being exposed to DEHP  
6 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
7 purchasers and users first having been provided with a "clear and reasonable warning" regarding  
8 such toxic exposures.

9           28. DEFENDANTS have engaged in the manufacture, importation, distribution and/or  
10 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §  
11 25249.6 and DEFENDANTS' manufacture, importation, distribution and/or offering of the  
12 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has  
13 continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notices of violation.  
14 Plaintiff further alleges and believes that such violations will continue to occur into the future.

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

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

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

23           32. DEHP was present in or on the PRODUCTS in such a way as to expose  
24 individuals to DEHP through dermal contact and/or ingestion during the reasonably foreseeable  
25 use of the PRODUCTS.

26           33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
27 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by  
28 27 California Code of Regulations ("CCR") § 25602(b).



1 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable  
2 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures to DEHP;

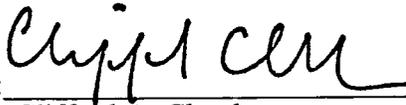
3 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

5  
6 Dated: September 30, 2010

Respectfully Submitted,

THE CHANLER GROUP

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8  
9 By: 

Clifford A. Chanler  
Attorneys for Plaintiff  
JOHN MOORE