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10 JOHN MOORE

**FILED**

**NOV 19 2010**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT

*By: S. Hendryx, Deputy*

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 HALSTEAD NEW ENGLAND  
18 CORPORATION, and DOES 1-150, inclusive,

19 Defendants.

Case No. CIV 1006130

**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 failures to  
7 warn California citizens about their exposure to DEHP, present in or on certain vinyl flooring  
8 that 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 Halstead New England Corporation (“HALSTEAD”) manufactures,  
21 imports, distributes, and/or sells vinyl flooring containing DEHP including, but not limited to,  
22 *Traffic Master Images Vinyl Tile, Red Wood (#0 88969 55331 7) and Traffic Master Images*  
23 *Vinyl Tile, HB Amber (#0 88969 55303 4).*

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

26 7. Defendants’ failures to warn consumers and/or other individuals in the State of  
27 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*  
28

1  
2 *seq.* about their exposure to DEHP in conjunction with defendants' manufacturing, importation,  
3 distribution, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects  
4 defendants to enjoinder of such conduct as well as civil penalties for each such violation.

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

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

11 **PARTIES**

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

16 11. HALSTEAD is a person doing business within the meaning of California Health &  
17 Safety Code § 25249.11.

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

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

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

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

2 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
3 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in  
4 the State of California.

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

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

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

14 19. HALSTEAD, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
15 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
16 referred to hereinafter as “DEFENDANTS.”

17 **VENUE AND JURISDICTION**

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

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

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

6 **FIRST CAUSE OF ACTION**

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

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

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

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

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

23 27. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or  
24 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §  
25 25249.6 and DEFENDANTS' manufacture, importation, distribution, and/or offering of the  
26 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has  
27 continued to occur beyond HALSTEAD's receipt of plaintiff's sixty-day notice of violation.

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1 Plaintiff further alleges and believes that such violations will continue to occur into the future.

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

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

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

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

13 32. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
14 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by  
15 27 CCR § 25602(b).

16 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
17 the PRODUCTS would expose individuals to DEHP through dermal contact, ingestion, and/or  
18 inhalation.

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

23 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
24 consumers and/or other individuals in the State of California who were or who could become  
25 exposed to DEHP through dermal contact, ingestion, and/or inhalation during the reasonably  
26 foreseeable use of the PRODUCTS.

27 36. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
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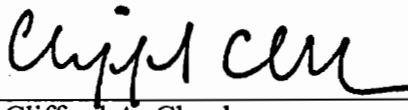
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: November 19, 2010

Respectfully Submitted,

THE CHANLER GROUP

By:   
Clifford A. Chanler  
Attorneys for Plaintiff  
JOHN MOORE