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**FILED**

FEB 17 2011

KIM TURNER  
Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: R. Smith, 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; THE HOME DEPOT, INC.;  
19 and DOES 1-150, inclusive,

20 Defendants.

) Case No. CIV-1006130

) **FIRST AMENDED COMPLAINT FOR  
21 CIVIL PENALTIES AND INJUNCTIVE  
22 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, sell 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 Halstead New England Corporation (“HALSTEAD”) and The Home  
21 Depot, Inc. (“HOME DEPOT”) manufacture, import, distribute, and/or sell vinyl flooring  
22 containing DEHP including, but not limited to: *Traffic Master Images Vinyl Tile, Red Wood (#0*  
23 *88969 55331 7)*; and *Traffic Master Images 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 *seq.* about their exposure to DEHP in conjunction with defendants' distribution, importation,  
2 manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects  
3 defendants to enjoinder of such conduct as well as civil penalties for each such violation.

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

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

10 **PARTIES**

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

15 11. Defendants HOME DEPOT and HALSTEAD are each persons doing business  
16 within the meaning of California Health & Safety Code § 25249.11.

17 12. Defendants HOME DEPOT and HALSTEAD each manufacture, import,  
18 distribute, and/or offer the PRODUCTS for sale or use in the State of California or imply by their  
19 conduct that they manufacture, import, distribute, and/or offer the PRODUCTS for sale or use in  
20 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,

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

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

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

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

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

15 20. HOME DEPOT, HALSTEAD, MANUFACTURER DEFENDANTS,  
16 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,  
17 collectively be referred to hereinafter as “DEFENDANTS.”

#### 18 VENUE AND JURISDICTION

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

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



1 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
2 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
3 such toxic exposures.

4 29. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or  
5 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §  
6 25249.6 and DEFENDANTS’ manufacture, importation, distribution, and/or offering of the  
7 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has  
8 continued to occur beyond HOME DEPOT and HALSTEAD’s receipt of plaintiff’s sixty-day  
9 notices of violation. Plaintiff further alleges and believes that such violations will continue to  
10 occur into the future.

11 30. After receipt of the claims asserted in the June 17, 2010 and November 23, 2010  
12 supplemental notices of violation, the appropriate public enforcement agencies have failed to  
13 commence and diligently prosecute a cause of action against DEFENDANTS under Proposition  
14 65.

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

17 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
18 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained  
19 DEHP.

20 33. DEHP was present in or on the PRODUCTS in such a way as to expose  
21 individuals to DEHP through dermal contact, ingestion, and/or inhalation during the reasonably  
22 foreseeable use of the PRODUCTS.

23 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
24 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by  
25 27 California Code of Regulations (“CCR”) § 25602(b).

1 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
2 the PRODUCTS would expose individuals to DEHP through dermal contact, ingestion, and/or  
3 inhalation.

4 36. DEFENDANTS intended that such exposures to DEHP from the reasonably  
5 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
6 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to  
7 individuals in the State of California.

8 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
9 consumers and/or other individuals in the State of California who were or who could become  
10 exposed to DEHP through dermal contact, ingestion, and/or inhalation during the reasonably  
11 foreseeable use of the PRODUCTS.

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

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

20 40. As a consequence of the above-described acts, California Health & Safety Code  
21 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
22 DEFENDANTS.

23 **PRAYER FOR RELIEF**

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

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

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


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

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

7  
8 Dated: February 17, 2011

Respectfully Submitted,

9 THE CHANLER GROUP

10  
11 By:   
12 Clifford A. Chanler  
13 Attorneys for Plaintiff  
14 JOHN MOORE