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FILED

FEB 17 2011

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

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 THE HOME DEPOT, INC.; NATCO
19 PRODUCTS CORPORATION; and DOES 1-
20 150, inclusive,

21 Defendants.

) Case No. CIV1100913

) **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 mats and vinyl 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 mats and vinyl
8 flooring 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. Defendant NATCO PRODUCTS CORPORATION (“NATCO”), manufactures,
21 imports, distributes, and/or sells vinyl mats containing DEHP including, but not limited to, *Car*
22 *Go Mat 3 Piece Set, #364-80-83, #359CMF.53.4 (#0 38698 61398 1).*

23 6. NATCO and THE HOME DEPOT, INC. (“HOME DEPOT”), (NATCO and
24 HOME DEPOT shall hereinafter collectively be referred to as “Defendants”) manufacture,
25 import, distribute, and/or sell vinyl flooring containing DEHP including, but not limited to, *The*
26 *Gold Label Collection Vinyl, Beige, Tan, Blue, White, Tulip, and Black (#0 38698 00136 8).*

1 individual purchasers and users first having been provided with a “clear and reasonable warning”
2 regarding such toxic exposures.

3 29. On November 23, 2010, a sixty-day notice of violation (“November 23, 2010
4 Notice”), together with the requisite Certificate of Merit, was provided to NATCO, HOME
5 DEPOT and various public enforcement agencies stating that as a result of Defendants’ sale,
6 manufacture and/or distribution of the PRODUCTS, purchasers and users in the State of
7 California were being exposed to DEHP resulting from the reasonably foreseeable use of the
8 PRODUCTS, without the individual purchasers and users first having been provided with a
9 “clear and reasonable warning” regarding such toxic exposures.

10 30. The July 1, 2010 Notice and November 23, 2010 Notice shall hereinafter be
11 referred to collectively as the “Notices”.

12 31. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
13 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
14 25249.6 and DEFENDANTS’ manufacture, importation, distribution, and/or offering of the
15 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
16 continued to occur beyond Defendants’ receipt of plaintiff’s Notices. Plaintiff further alleges
17 and believes that such violations will continue to occur into the future.

18 32. After receipt of the claims asserted in the Notices, the appropriate public
19 enforcement agencies have failed to commence and diligently prosecute a cause of action against
20 DEFENDANTS under Proposition 65.

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

23 34. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
24 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
25 DEHP.

26 35. DEHP was present in or on the PRODUCTS in such a way as to expose
27 individuals to DEHP through dermal contact, ingestion and/or inhalation during the reasonably
28

1 foreseeable use of the PRODUCTS.

2 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
3 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
4 27 California Code of Regulations (“CCR”) § 25602(b).

5 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
6 the PRODUCTS would expose individuals to DEHP through dermal contact, ingestion and/or
7 inhalation.

8 38. DEFENDANTS intended that such exposures to DEHP from the reasonably
9 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
10 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to
11 individuals in the State of California.

12 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
13 consumers and/or other individuals in the State of California who were or who could become
14 exposed to DEHP through dermal contact, ingestion and/or inhalation during the reasonably
15 foreseeable use of the PRODUCTS.

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

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

24 42. As a consequence of the above-described acts, California Health & Safety Code
25 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
26 DEFENDANTS.

1 **PRAYER FOR RELIEF**

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

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

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

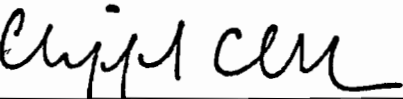
10 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

12 Dated: February 17, 2011

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14 Respectfully Submitted,

15 THE CHANLER GROUP

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17 By: 

18 Clifford A. Chanler
19 Attorneys for Plaintiff
20 JOHN MOORE
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