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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
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16 JOHN MOORE,

17 Plaintiff,

18 v.

19 DICK'S SPORTING GOODS, INC., and
20 DOES 1-150, inclusive,

21 Defendants.

Case No. CV 1006344

**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 mats 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 exercise mats that
8 defendant manufactures, imports, distributes, and/or offers 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 Dick’s Sporting Goods, Inc. (“DICK’S SPORTING GOODS”)
21 manufactures, imports, distributes, and/or sells exercise mats containing DEHP including, but
22 not limited to, *Fitness Gear 2’x 6’ High-Density Exercise Mat, Style #CFM00000 (#8 22688*
23 *19416 7).*

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

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

5 8. For defendants' violation of Proposition 65, plaintiff seeks preliminary injunctive
6 and permanent injunctive relief to compel defendant 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 defendant 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. DICK'S SPORTING GOODS is a person doing business within the meaning of
17 California Health & Safety Code § 25249.11.

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

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

24 14. MANUFACTURER DEFENDANTS engage in the process of researching, testing,
25 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
26 engage in the process of researching, testing, designing, assembling, fabricating, and/or

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1 manufacturing, e.g., by engaging in private labeling one or more of the PRODUCTS for sale or
2 use in the State of California.

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

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

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

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

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

17 20. DICK’S SPORTING GOODS, MANUFACTURER DEFENDANTS,
18 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
19 collectively be referred to hereinafter as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

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

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

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

9 **FIRST CAUSE OF ACTION**

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

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

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

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

20 27. On August 5, 2010, a sixty-day notice of violation, together with the requisite
21 Certificate of Merit, was provided to DICK’S SPORTING GOODS and various public
22 enforcement agencies stating that as a result of DICK’S SPORTING GOODS sales of the
23 PRODUCTS, purchasers and users in the State of California were being exposed to DEHP
24 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
25 purchasers and users first having been provided with a “clear and reasonable warning” regarding
26 such toxic exposures.

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1 28. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
2 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code
3 § 25249.6 and DEFENDANTS' manufacture, importation, distribution, and/or offering of the
4 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
5 continued to occur beyond DICK'S SPORTING GOODS receipt of plaintiff's sixty-day notice
6 of violation. Plaintiff further alleges and believes that such violations will continue to occur into
7 the future.

8 29. After receipt of the claims asserted in the August 5, 2010 sixty-day notice of
9 violation, the appropriate public enforcement agencies have failed to commence and diligently
10 prosecute a cause of action against DEFENDANTS under Proposition 65.

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

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

16 32. DEHP was present in or on the PRODUCTS in such a way as to expose
17 individuals to DEHP through dermal contact, and ingestion during the reasonably foreseeable
18 use of the PRODUCTS.

19 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
20 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
21 27 California Code of Regulations ("CCR") § 25602(b).

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

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

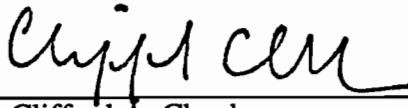
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: December 2, 2010

Respectfully Submitted,
THE CHANLER GROUP

By: 
Clifford A. Chanler
Attorneys for Plaintiff
JOHN MOORE