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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Main, Deputy

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

14 JOHN MOORE,)
15)
16 Plaintiff,)
17)
18 v.)
19)
20 AMERICAN BILTRITE, INC.;)
21 ARMSTRONG WORLD INDUSTRIES,)
22 INC.; CONGOLEUM CORPORATION;)
23 MANNINGTON MILLS, INC.; TARKETT,)
24 INC.; and DOES 1-150, inclusive,)
25)
26 Defendants.)

Case No. CIV 1102414

**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 Butyl Benzyl Phthalate (“BBP”), a toxic chemical found in vinyl
5 sheet 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 BBP, present in or on certain vinyl sheet flooring that
8 defendants manufacture, import, distribute, sell, and/or offer for sale to consumers and
9 businesses 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 December 2, 2005, California identified and listed BBP as a chemical known to
16 cause birth defects and other reproductive harm. BBP 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 December 2, 2006. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code §§ 25249.8 & 25249.10(b).*)

20 5. Defendants manufacture, import, distribute, and/or sell vinyl sheet flooring
21 containing BBP as follows:

22 a. Defendants AMERICAN BILTRITE, INC. (“AMERICAN
23 BILTRITE”) and CONGOLEUM CORPORATION (“CONGOLEUM”),
24 manufacture, import, distribute, and/or sell vinyl sheet flooring containing BBP
25 including, but not limited to, *Congoleum Airstep Plus, 58000 – Muslim, Item*
26 *299472 (#4 00001 46109 9);*

1 b. Defendant ARMSTRONG WORLD INDUSTRIES, INC.
2 ("ARMSTRONG") manufactures, imports, distributes, and/or sells vinyl sheet
3 flooring containing BBP including, but not limited to *Armstrong StrataMax*
4 *Better, Limestone – Oyster White, #X2527;*

5 c. Defendant MANNINGTON MILLS, INC. ("MANNINGTON")
6 manufactures, imports, distributes, and/or sells vinyl sheet flooring containing
7 BBP including, but not limited to *Mannington SobellaClassic, Coral Bay,*
8 *Product Number: ALT220;* and

9 d. Defendant TARKETT, INC. ("TARKETT") manufactures,
10 imports, distributes, and/or sells vinyl sheet flooring containing BBP including,
11 but not limited to *Tarkett Easy Living Fashion, Cameron Bleach, #14U12.*

12 6. AMERICAN BILTRITE, ARMSTRONG, CONGOLEUM, MANNINGTON and
13 TARKETT shall be referred to collectively as "Defendants."

14 7. All such vinyl sheet flooring containing BBP, as listed in paragraphs 6(a)-(d)
15 above, shall hereinafter be referred to as the "PRODUCTS."

16 8. Defendants' failure to warn consumers and/or other individuals in the State of
17 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
18 *seq.* about their exposure to BBP in conjunction with Defendants' distribution, importation,
19 manufacture, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects them to
20 enjoinder of such conduct as well as civil penalties for each such violation.

21 9. For Defendants' violation of Proposition 65, plaintiff seeks preliminary injunctive
22 and permanent injunctive relief to compel Defendants to provide purchasers or users of the
23 PRODUCTS with the required warning regarding the health hazards of BBP. (*Cal. Health &*
24 *Safety Code § 25249.7(a).*)

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

1 **PARTIES**

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

6 12. AMERICAN BILTRITE is a person doing business within the meaning of
7 California Health & Safety Code § 25249.11.

8 13. AMERICAN BILTRITE manufactures, imports, distributes, sells and/or offers the
9 PRODUCTS for sale or use in the State of California or implies by its conduct that it
10 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the State
11 of California.

12 14. ARMSTRONG is a person doing business within the meaning of California Health
13 & Safety Code § 25249.11.

14 15. ARMSTRONG manufactures, imports, distributes, sells and/or offers the
15 PRODUCTS for sale or use in the State of California or implies by its conduct that it
16 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the State
17 of California.

18 16. CONGOLEUM is a person doing business within the meaning of California Health
19 & Safety Code § 25249.11.

20 17. CONGOLEUM manufactures, imports, distributes, sells and/or offers the
21 PRODUCTS for sale or use in the State of California or implies by its conduct that it
22 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the State
23 of California.

24 18. MANNINGTON is a person doing business within the meaning of California
25 Health & Safety Code § 25249.11.

26 19. MANNINGTON manufactures, imports, distributes, sells and/or offers the
27 PRODUCTS for sale or use in the State of California or implies by its conduct that it
28

1 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the State
2 of California.

3 20. TARKETT is a person doing business within the meaning of California Health &
4 Safety Code § 25249.11.

5 21. TARKETT manufactures, imports, distributes, sells and/or offers the PRODUCTS
6 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
7 distributes, sells and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

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

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

28

1 35. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
2 and intentionally expose any individual to a chemical known to the state to cause cancer or
3 reproductive toxicity without first giving clear and reasonable warning to such individual....”

4 (*Id.*)

5 36. On or about February 24, 2011, 60-day notices of violation, together with the
6 requisite Certificates of Merit (the “Notices”), were provided to Defendants and various public
7 enforcement agencies stating that as a result of Defendants’ manufacture, distribution and/or sale
8 of the PRODUCTS, purchasers and users in the State of California were being exposed to BBP
9 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
10 purchasers and users first having been provided with a “clear and reasonable warning” regarding
11 such toxic exposures.

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

18 38. 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 39. The PRODUCTS manufactured, imported, distributed, sold and/or offered for sale
22 or use in California by DEFENDANTS contained BBP above the allowable state limits.

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

1 41. BBP was present in or on the PRODUCTS in such a way as to expose individuals
2 to BBP through dermal contact, inhalation and ingestion during the reasonably foreseeable use of
3 the PRODUCTS.

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

7 43. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
8 the PRODUCTS would expose individuals to BBP through dermal contact, inhalation and
9 ingestion.

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

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

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

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

