

1 Laurence D. Haveson, State Bar No. 152631
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 JOHN MOORE

FILED
JUN 25 2014
ALAMEDA COUNTY

CLERK OF THE SUPERIOR COURT
By Anita Dhir Deputy

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

14 JOHN MOORE,
15 Plaintiff,
16 v.

17 ACHIM IMPORTING COMPANY INC.; and
18 DOES 1-150, inclusive,
19 Defendants.

Case No. **RG 14730480**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(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 vinyl/PVC floor tiles sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about reproductive harms associated with their exposure to DEHP
8 present in and on the vinyl/PVC floor tiles that defendants manufacture, import, distribute,
9 and/or offer for sale to consumers throughout the State of California.

10 3. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
11 Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), “[n]o person in the course of
12 doing business shall knowingly and intentionally expose any individual to a chemical known to
13 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
14 warning to such individual” Health & Safety Code § 25249.6.

15 4. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
16 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
17 subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on
18 October 24, 2004. Health & Safety Code §§ 25249.8 & 25249.10(b); 27 Cal. Code Regs.
19 (“CCR”) § 27001(c). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

20 5. Defendants manufacture, import, distribute, sell and/or offer to sell vinyl/PVC
21 floor tiles that contain DEHP in levels that require a warning under Proposition 65, including,
22 but not limited to, the *Nexus Tile Collection Self-Adhesive Vinyl Floor Tiles, Style*
23 *FTVWD201DG, SKU Number FTVWD20120 (#0 54006 33236 8)*. All such vinyl/PVC floor
24 tiles containing DEHP are referred to collectively hereinafter as “PRODUCTS.”

25 6. Defendants’ failure to warn consumers and other individuals in the State of
26 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
27 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
28

1 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
2 & (b)(1).

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

7 8. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
8 penalties against defendants for their violations of Proposition 65.

9 **PARTIES**

10 9. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to
11 protecting the health of California citizens through the elimination or reduction of toxic
12 exposures from consumer products; he brings this action in the public interest pursuant to
13 Health and Safety Code section 25249.7(d).

14 10. Defendant Achim Importing Company, Inc. ("ACHIM") is a person in the course
15 of doing business within the meaning of Health and Safety Code section 25249.11.

16 11. ACHIM manufactures, imports, distributes, and/or offers the PRODUCTS for sale
17 or use in the State of California, or implies by its conduct that it manufactures, imports,
18 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

19 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
20 persons in the course of doing business within the meaning of Health and Safety Code section
21 25249.11.

22 13. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
23 and/or manufacture, or imply by their conduct that they research, test, design, assemble,
24 fabricate, and/or manufacture one or more of the PRODUCTS offered for sale or use in the
25 State of California.

26 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
27 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

28 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or

1 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
2 in the State of California.

3 16. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
4 the course of doing business within the meaning of Health and Safety Code section 25249.11.

5 17. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
6 State of California.

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

12 19. ACHIM, MANUFACTURER DEFENDANTS, DISTRIBUTOR
13 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
14 referred to as “DEFENDANTS.”

15 **VENUE AND JURISDICTION**

16 20. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
17 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
18 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
19 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
20 county with respect to the PRODUCTS.

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

25 22. The California Superior Court has jurisdiction over DEFENDANTS based on
26 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
27 association that is a citizen of the State of California, has sufficient minimum contacts in the
28 State of California, and/or otherwise purposefully avails itself of the California market.

1 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
2 California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

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

5 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
6 Paragraphs 1 through 22, inclusive.

7 24. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
8 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be
9 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
10 harm."

11 25. Proposition 65 states, "[n]o person in the course of doing business shall
12 knowingly and intentionally expose any individual to a chemical known to the state to cause
13 cancer or reproductive toxicity without first giving clear and reasonable warning to such
14 individual" Health & Safety Code § 25249.6.

15 26. On July 5, 2013, plaintiff served a Sixty-Day Notice Of Violation of Proposition
16 65 ("Notice"), together with the requisite certificate of merit, on ACHIM and various public
17 prosecutors stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing the
18 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the
19 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS,
20 without the individual purchasers and users first having been provided with a "clear and
21 reasonable warning" regarding such toxic exposures, as required by Proposition 65.

22 27. DEFENDANTS have engaged in the manufacture, import, distribution, sale,
23 and/or offering of the PRODUCTS for sale or use in violation of Health & Safety Code
24 § 25249.6, and such violations have continued to occur beyond DEFENDANTS' receipt of
25 plaintiff's Notice. DEFENDANTS' violations are thus ongoing and continuous in nature.
26 Plaintiff further alleges and believes that such violations will continue to occur into the future.

27 28. After receiving the plaintiff's Notice, the appropriate public prosecutors have
28 failed to commence and diligently prosecute a cause of action against DEFENDANTS under

1 Proposition 65 regarding the allegations in plaintiff's Notice.

2 29. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for
3 sale or use in California by DEFENDANTS contain detectable amounts of the LISTED
4 CHEMICAL, such that DEFENDANTS must provide a "clear and reasonable" warning under
5 Proposition 65 to consumers and/or users of the PRODUCTS in California.

6 30. DEFENDANTS knew or should have known that the PRODUCTS they
7 manufacture, import, distribute, sell, and/or offer for sale or use in California contain the
8 LISTED CHEMICAL.

9 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
10 expose individuals to DEHP through dermal contact and/or ingestion during reasonably
11 foreseeable use.

12 32. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
13 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
14 defined by 27 CCR § 25602(b).

15 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
16 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
17 and/or ingestion.

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

22 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those
23 consumers and other individuals in the State of California who were or who would become
24 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion while using the
25 PRODUCTS in reasonably foreseeable ways.

26 36. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
27 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
28 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold

1 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
2 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

3 37. Pursuant to Health & Safety Code § 25249.7(b), as a consequence of the above-
4 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for
5 each violation.

6 38. As a consequence of the above-described acts, Health & Safety Code
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

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

- 11 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil
12 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
- 13 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
14 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the
15 PRODUCTS for sale or use in California without first providing a “clear and reasonable
16 warning” as defined by 27 California Code of Regulations section 25601 *et seq.*, as to the harms
17 associated with exposures the LISTED CHEMICAL;
- 18 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
19 4. That the Court grant such other and further relief as may be just and proper.

20 Respectfully submitted.

21 Dated: June 25, 2014

22 THE CHANLER GROUP

23 By: Laurence D. Haveson
24 Laurence D. Haveson
25 Attorneys for Plaintiff
26 JOHN MOORE
27
28