

1 Clifford A. Chanler, State Bar No. 135534
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

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: S. Hendrix, 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 CHI HSIN IMPEX, INC.; and DOES 1-150,
19 inclusive,

20 Defendants.

Case No. CIV1004762

**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 mats
5 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 mats that
8 defendants manufacture, import, distribute, and/or offer 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. DEHP shall be referred to hereinafter as the “LISTED CHEMICAL.”

21 6. Defendants manufacture, import, distribute, and/or sell mats containing the
22 LISTED CHEMICAL as follows: *Marcy Classic Connecting Mat, MAT 28 (#0 96362 98880 3).*

23 7. All such mats containing the LISTED CHEMICAL, as listed in paragraph 6 above,
24 shall hereinafter be collectively referred to as the “PRODUCT[S].”

25 8. Defendants’ failure to warn adequately, if at all, a variety of California consumers,
26 businesses, employees, and other persons not covered by California’s Occupational Safety
27 Health Act, Labor Code § 6300 *et seq.*, in the State of California about their exposure to the
28 LISTED CHEMICAL in conjunction with defendants’ distribution, importation, manufacturing,

1 and sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to
2 enjoinder of such conduct as well as civil penalties for each violation.

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

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

9 **PARTIES**

10 11. 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 and commercial products, and brings this action in the public interest
13 pursuant to California Health & Safety Code § 25249.7.

14 12. CHI HSIN IMPEX, INC. ("IMPEX") is a person doing business within the
15 meaning of California Health & Safety Code § 25249.11.

16 13. IMPEX manufactures, imports, distributes, and/or offers the PRODUCTS for sale
17 or use in the State of California or implies by their conduct that they manufacture, import,
18 distribute, and/or offer the PRODUCTS for sale or use in the State of California.

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

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

25 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
26 doing business within the meaning of California Health & Safety Code § 25249.11.

27 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
28 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in

1 the State of California.

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

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

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

11 21. IMPEX, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
12 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to hereinafter
13 as “DEFENDANTS.”

14 **VENUE AND JURISDICTION**

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

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

24 24. The California Superior Court has jurisdiction over DEFENDANTS based on
25 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
26 association that either are citizens of the State of California, have sufficient minimum contacts in
27 the State of California, or otherwise purposefully avail themselves of the California market.

28

1 DEFENDANTS' purposeful avilment renders the exercise of personal jurisdiction by California
2 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 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
6 Paragraphs 1 through 24, inclusive.

7 26. The citizens of the State of California have expressly stated in Proposition 65 that
8 they must be informed "about exposures to chemicals that cause cancer, birth defects and other
9 reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

10 27. Proposition 65 states, "[n]o person in the course of doing business shall knowingly
11 and intentionally expose any individual to a chemical known to the state to cause cancer or
12 reproductive toxicity without first giving clear and reasonable warning to such individual...."
13 (*Id.*)

14 28. On or about March 19, 2010, a sixty-day notice of violation, together with the
15 requisite certificate of merit, was provided to IMPEX and various public enforcement agencies
16 stating that as a result of IMPEX's sales of the PRODUCTS, purchasers and users in the State of
17 California were being exposed to DEHP resulting from the reasonably foreseeable uses of the
18 PRODUCTS, without the individual purchasers and users first having been provided with a
19 "clear and reasonable warning" regarding such toxic exposures.

20 29. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
21 offering of the PRODUCTS for sale or use, in violation of California Health & Safety Code §
22 25249.6, and DEFENDANTS' manufacture, importation, distribution, and/or offering of the
23 PRODUCTS for sale or use, in violation of California Health & Safety Code § 25249.6, has
24 continued to occur beyond DEFENDANTS receipt of plaintiff's sixty-day notice of violation.
25 Plaintiff further alleges and believes that such violations will continue to occur into the future.

26 30. After receipt of the claims asserted in the sixty-day notice of violation, the
27 appropriate public enforcement agencies have failed to commence and diligently prosecute a
28 cause of action against DEFENDANTS under Proposition 65.

1 31. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
2 use in California by DEFENDANTS contained the LISTED CHEMICAL above the allowable
3 state limits.

4 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
5 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
6 the LISTED CHEMICAL.

7 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
8 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
9 during the reasonably foreseeable use of the PRODUCTS.

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

13 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
14 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
15 and/or ingestion.

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

20 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
21 consumers and/or other individuals in the State of California who were or who could become
22 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
23 reasonably foreseeable use of the PRODUCTS.

24 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
25 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
26 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold
27 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
28 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

