

ENDORSED  
FILED  
ALAMEDA COUNTY

10 OCT 20 PM 1:18

CLERK OF THE SUPERIOR COURT  
BY BARBARA C. YOUNG, DEPUTY

1 Clifford A. Chanler, State Bar No. 135534  
Christopher M. Martin, State Bar No. 186021  
2 Josh Voorhees, State Bar No. 241436  
THE CHANLER GROUP  
3 2560 Ninth Street  
Parker Plaza, Suite 214  
4 Berkeley, CA 94710  
Telephone: (510) 848-8880  
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff  
JOHN MOORE

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 CARLISLE COMPANIES,  
INCORPORATED; CARLISLE  
17 FOODSERVICE PRODUCTS,  
INCORPORATED; and DOES 1-150,  
18 inclusive,

19 Defendants.

Case No. RG 10542585

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

*(Cal. Health & Safety Code § 25249.6 et seq.)*

28 **VIA FAX**

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, a toxic chemical found in tablecloths sold  
5 in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to  
7 warn California citizens about their exposure to di(2-ethylhexyl)phthalate, present in or on  
8 certain tablecloths that defendants manufacture, distribute, and/or offer for sale to consumers  
9 throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and on  
11 tablecloths that defendants manufacture, distribute, and/or offer for sale to consumers throughout  
12 the State of California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "No person in the course  
15 of doing business shall knowingly and intentionally expose any individual to a chemical known  
16 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such individual. . . ." (*Cal. Health & Safety Code § 25249.6.*)

18 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as  
19 a chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate  
20 became subject to the warning requirement one year later and was therefore subject to the "clear  
21 and reasonable warning" requirements of Proposition 65, beginning on October 24, 2004. (27  
22 *CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

23 6. Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the "LISTED  
24 CHEMICAL."

25 7. Defendants manufacture, distribute, and/or sell training and sauna fitness suits  
26 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the *Marko*  
27 *by Carlisle 8 Gauge Vinyl Tablecloth #53185470T018 (#7 47021 02413 3)*. All such tablecloths  
28 containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."





1 Alameda and/or because DEFENDANTS conducted, and continue to conduct, business in this  
2 County with respect to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

15 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
16 Paragraphs 1 through 26, inclusive.

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

20 29. Proposition 65 states, “No person in the course of doing business shall knowingly  
21 and intentionally expose any individual to a chemical known to the state to cause cancer or  
22 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
23 (*Id.*)

24 30. On or about July 1, 2010, a sixty-day notice of violation, together with the  
25 requisite certificate of merit, was provided to CARLISLE COMPANIES, CARLISLE  
26 FOODSERVICE and various public enforcement agencies stating that as a result of the  
27 DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the State of California were  
28 being exposed to di(2-ethylhexyl)phthalate resulting from the reasonably foreseeable uses of the

1 PRODUCTS, without the individual purchasers and users first having been provided with a  
2 “clear and reasonable warning” regarding such toxic exposures.

3 31. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
4 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
5 DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use in  
6 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
7 DEFENDANTS’ receipt of plaintiff’s sixty-day notices of violation. Plaintiff further alleges and  
8 believes that such violations will continue to occur into the future.

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

12 33. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
13 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
14 limits.

15 34. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
16 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
17 LISTED CHEMICAL.

18 35. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
19 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
20 during the reasonably foreseeable use of the PRODUCTS.

21 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
22 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
23 by 27 CCR § 25602(b).

24 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
25 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
26 and/or ingestion.

27 38. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
28 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the manufacture, distribution, and/or offer for sale or use of  
2 PRODUCTS to individuals in the State of California.

3 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and/or other individuals in the State of California who were or who could become  
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
6 reasonably foreseeable use of the PRODUCTS.

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

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

15 42. As a consequence of the above-described acts, California Health & Safety Code  
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

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

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

23 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
25 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
26  
27  
28

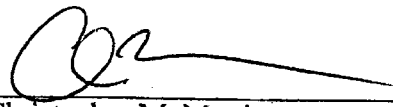
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to each of the LISTED CHEMICAL;

- 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: October 8, 2010

Respectfully Submitted,  
THE CHANLER GROUP

By:   
\_\_\_\_\_  
Christopher M. Martin  
Attorneys for Plaintiff  
JOHN MOORE