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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF ALAMEDA
15 UNLIMITED CIVIL JURISDICTION

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 CARLISLE COMPANIES,
20 INCORPORATED; CARLISLE
21 FOODSERVICE PRODUCTS,
22 INCORPORATED; and DOES 1-150,
23 inclusive,

24 Defendants.

Case No. RG10542585

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

VIA FAX

**ENDORSED
FILED
ALAMEDA COUNTY
JAN 13 2011
CLERK OF THE SUPERIOR COURT
By: Esther Coleman, Deputy**

1 NATURE OF THE ACTION

2 1. This First Amended Complaint is a representative action brought by plaintiff
3 JOHN MOORE in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of di(2-ethylhexyl)phthalate, a toxic chemical
5 found in tablecloths sold in California.

6 2. By this First Amended Complaint, plaintiff seeks to remedy defendants’
7 continuing failures to warn California citizens about their exposure to di(2-ethylhexyl)phthalate,
8 present in or on certain tablecloths that defendants manufacture, distribute, and/or offer for sale
9 to consumers 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 tablecloths containing excessive
26 levels of the LISTED CHEMICAL including, but not limited to, the *Marko by Carlisle 8 Gauge*
27 *Vinyl Tablecloth #53185470T018 (#7 47021 02413 3)*. All such tablecloths containing the
28 LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

1 8. Defendants' failures to warn consumers and/or other individuals in the State of
2 California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sale
3 of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of
4 such conduct as well as civil penalties for each such violation.

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

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

11 **PARTIES**

12 11. Plaintiff 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 products, and brings this action in the public interest pursuant to
15 California Health & Safety Code § 25249.7.

16 12. Defendant CARLISLE COMPANIES, INCORPORATED ("CARLISLE
17 COMPANIES") is a person doing business within the meaning of California Health & Safety
18 Code § 25249.11.

19 13. Defendant CARLISLE COMPANIES manufactures, distributes, and/or offers the
20 PRODUCTS for sale or use in the State of California or implies by its conduct that it
21 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

22 14. Defendant CARLISLE FOODSERVICE PRODUCTS, INCORPORATED
23 ("CARLISLE FOODSERVICE") is a person doing business within the meaning of California
24 Health & Safety Code § 25249.11.

25 15. Defendant CARLISLE FOODSERVICE manufactures, distributes, and/or offers
26 the PRODUCTS for sale or use in the State of California or implies by its conduct that it
27 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

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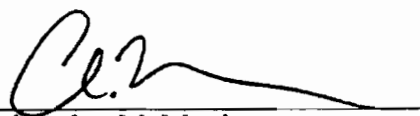
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Respectfully Submitted,

THE CHANLER GROUP

Dated: January 8, 2011

By: 
Christopher M. Martin
Attorneys for Plaintiff
JOHN MOORE