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ENDORSED
FILED
ALAMEDA COUNTY
OCT 26 2012
CLERK OF THE SUPERIOR COURT
By RGILL Deputy

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

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 ESCALADE, INCORPORATED; INDIAN
19 INDUSTRIES INC.; and DOES 1-150,
20 inclusive,

21 Defendants.

22 Case No. RG12 65 3 7 6 1

23 **COMPLAINT FOR CIVIL PENALTIES
24 AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

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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 billiard table covers sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens and other individuals exposed to DEHP present in and on billiard table
8 covers manufactured, distributed, and offered for sale or use to consumers throughout the state
9 of California.

10 3. DEHP is present in and on the billiard table covers that defendants manufacture,
11 distribute, and offer for sale to consumers throughout the state of California in levels that
12 require a warning under Health and Safety Code section 25249.6.

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

18 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and sell billiard table covers that contain
24 DEHP in levels that require a warning under Proposition 65, including, but not limited to, the
25 *Mizerak Deluxe Billiard Table Cover, Item No. P0863 (#7 54806 06451 2)*. All such billiard
26 table covers containing DEHP are referred to collectively hereinafter as “PRODUCTS.”
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1 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
2 county with respect to the PRODUCTS.

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

7 25. 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 is a citizen of the state of California, has sufficient minimum contacts in the
10 state of California, or otherwise purposefully avails itself of the California market.
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
12 California 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 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 25, inclusive.

17 27. In the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986,
18 the People of California expressly declared their right “[t]o be informed about exposures to
19 chemicals that cause cancer, birth defects, or other reproductive harm.”

20 28. Proposition 65 states, “[n]o person in the course of doing business shall
21 knowingly and intentionally expose any individual to a chemical known to the state to cause
22 cancer or reproductive toxicity without first giving clear and reasonable warning to such
23 individual” Health & Safety Code § 25249.6.

24 29. On March 29, 2012, plaintiff’s sixty-day notice of violation, together with the
25 requisite certificate of merit, was provided to ESCALADE, INDIAN and certain public
26 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
27 containing the LISTED CHEMICAL, purchasers and users in California were being exposed to
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1 the LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,
2 without those individual purchasers and users first having been provided with the “clear and
3 reasonable warning” regarding such toxic exposures that is required by Proposition 65.

4 30. DEFENDANTS have engaged in the manufacture, distribution, and offering of
5 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
6 DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day
7 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous, and will
8 continue to occur in the future.

9 31. After receiving 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 32. The PRODUCTS manufactured, distributed, and offered for sale or use in
13 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
14 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
15 65.

16 33. DEFENDANTS knew or should have known that the PRODUCTS they
17 manufacture, distribute, and offer for sale or use in California contain the LISTED
18 CHEMICAL.

19 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
20 expose individuals through dermal contact and/or ingestion during reasonably foreseeable uses.

21 35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
22 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
23 defined by California Code of Regulations title 27, section 25602(b).

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

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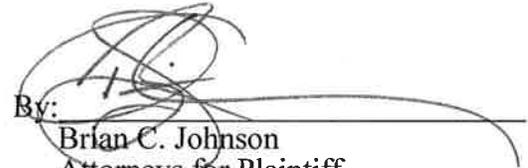
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reasonable warnings” as defined by California Code of Regulations title 27, section 25601 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

- 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 25, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Brian C. Johnson
Attorneys for Plaintiff
JOHN MOORE