

ENDORSED
FILED
ALAMEDA COUNTY

MAR 18 2013

CLERK OF THE SUPERIOR COURT

By Donnan Pharr
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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 DOREL U.S.A., INC.; DOREL JUVENILE
19 GROUP, INC., AMERIWOOD INDUSTRIES,
20 INC.; and DOES 1-150, inclusive,

21 Defendants.

Case No. RG12652926

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

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

NATURE OF THE ACTION

1
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 (“DEHP”) and
5 tris(1,3-dichloro-popyl-prosphate (“TDCPP”), toxic chemicals found in the vinyl components
6 and/or foam padding of upholstered furniture sold in California. DEHP is a toxic chemical used
7 in the manufacture of various vinyl/PVC consumer products. TDCPP is a toxic chemical that is
8 used to treat polyurethane foam, a material used as padding or cushioning in a variety of
9 consumer products, including furniture.

10 2. By this First Amended Complaint, Plaintiff seeks to remedy Defendants’
11 continuing failures to warn citizens and other individuals about the health hazards associated
12 with exposures to toxic chemicals found in furniture they manufacture, distribute, sell, and offer
13 for sale or use throughout California, including DEHP present in and on the vinyl components
14 of chairs and other furniture, and TDCPP present in and on the foam padding of upholstered
15 furniture.

16 3. Detectable levels of DEHP are commonly found in and on the vinyl components
17 of chairs and other furniture, and detectable levels of TDCPP are commonly found in and on the
18 foam padding used in upholstered furniture that Defendants manufacture, distribute, and offer
19 for sale to consumers, many of whom are infants and children, throughout California. As a
20 result, these individuals are exposed to TDCPP when they inhale TDCPP released from padded
21 upholstered furniture, and also when TDCPP from padded upholstered furniture accumulates in
22 ambient particles that are subsequently ingested by the individuals by means of hand-to-mouth
23 contact. The same individuals are exposed to DEHP through dermal contact and/or ingestion
24 during the use of Defendants’ products or by hand-to-mouth contact during and after use.

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

3 5. TDCPP has been used in the manufacture of consumer products as a flame
4 retardant since the 1960s. In the late 1970s, based on findings that exposure to TDCPP could
5 have potentially mutagenic effects, the U.S. Consumer Product Safety Commission banned the
6 use of TDCPP in children’s pajamas.

7 6. On October 24, 2003, California identified and listed DEHP pursuant to
8 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP
9 became subject to the “clear and reasonable warning” requirements of the Act one year later on
10 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
11 25249.10(b).

12 7. On October 28, 2011, California identified and listed TDCPP, pursuant to
13 Proposition 65, as a chemical known to cause cancer. TDCPP became subject to the “clear and
14 reasonable warning” requirements of the act one year later on October 28, 2012. Cal. Code
15 Regs. tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP and TDCPP
16 are collectively referred to as the “LISTED CHEMICALS.”

17 8. Defendants manufacture, distribute, import, sell, and offer for sale without
18 warning in California, furniture, including chairs, with vinyl components containing DEHP, and
19 upholstered furniture with foam padding containing TDCPP, including, but not limited to, the
20 *Cosco Signature Wood Folding Chair, #4358-3244B, #37277WNMO (#0 44681 37663 4)* and
21 the *Cosco Wood Folding Chair, #4360-1665, #37277WNMO (#0 44681 37663 4)*. All such
22 furniture containing DEHP and TDCPP are referred to collectively as “PRODUCTS.”

23 9. Although Defendants expose infants, children, and other individuals to the
24 LISTED CHEMICALS in the PRODUCTS, Defendants provide no warnings about the
25 carcinogenic or teratogenic health hazards associated with TDCPP or DEHP exposures.
26 Defendants’ failure to warn consumers and other individuals in the State of California about the
27 health hazards associated with exposures to the LISTED CHEMICALS in conjunction with
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1 Defendants' sales of the PRODUCTS is a violation of Proposition 65, and subjects Defendants
2 to enjoinder of such conduct as well as civil penalties for each violation. Health & Safety
3 Code § 25249.7(a) & (b)(1).

4 10. As a result of Defendants' violations of Proposition 65, pursuant to Health and
5 Safety Code section 25249.7(a), Plaintiff seeks preliminary and permanent injunctive relief to
6 compel Defendants to provide purchasers or users of the PRODUCTS with the required warning
7 regarding the health hazards associated with exposures to the LISTED CHEMICALS. Pursuant
8 to Health and Safety Code section 25249.7(b), Plaintiff also seeks civil penalties against
9 Defendants for their violations of Proposition 65.

10 **PARTIES**

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

15 12. Defendant DOREL U.S.A., INC. ("DOREL U.S.A.") is a person in the course of
16 doing business within the meaning of Health and Safety Code section 25249.11.

17 13. DOREL U.S.A. manufactures, distributes, and/or offers the PRODUCTS for sale
18 in the State of California, or implies by its conduct that it manufactures, distributes, and/or offers
19 the PRODUCTS for sale in the State of California.

20 14. Defendant DOREL JUVENILE GROUP, INC. ("DOREL JUVENILE") is a
21 person in the course of doing business within the meaning of Health and Safety Code section
22 25249.11.

23 15. DOREL JUVENILE manufactures, distributes, and/or offers the PRODUCTS for
24 sale in the State of California, or implies by its conduct that it manufactures, distributes, and/or
25 offers the PRODUCTS for sale in the State of California.

26 16. Defendant AMERIWOOD INDUSTRIES, INC. ("AMERIWOOD") is a person in
27 the course of doing business within the meaning of Health and Safety Code section 25249.11.
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1 State of California, or otherwise purposefully avails itself of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

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

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

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

16 26. On May 10, 2012, Plaintiff's sixty-day notice of violation of Proposition 65,
17 together with the requisite certificate of merit, was provided to DOREL U.S.A., DOREL
18 JUVENILE (whose successor in interest is AMERIWOOD), and the requisite public
19 enforcement agencies stating that, as a result of DEFENDANTS' sales of the furniture,
20 including chairs, with vinyl components containing DEHP, purchasers and users in the State of
21 California were being exposed to DEHP resulting from their reasonably foreseeable use of
22 DEFENDANTS' products, without the individual purchasers and users first having been
23 provided with a “clear and reasonable warning” regarding such toxic exposures, as required by
24 Proposition 65.

25 27. On January 2, 2013, Plaintiff's second sixty-day notice of violation of Proposition
26 65, together with the requisite certificate of merit, was provided to DOREL U.S.A., DOREL
27 JUVENILE (whose successor in interest is AMERIWOOD), and certain public enforcement
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1 agencies stating that, as a result of DEFENDANTS' sales of the furniture, including chairs, with
2 foam padding containing TDCPP, purchasers and users in the State of California were being
3 exposed to TDCPP resulting from their reasonably foreseeable use of DEFENDANTS'
4 products, without the individual purchasers and users first having been provided with a "clear
5 and reasonable warning" regarding such toxic exposures, as required by Proposition 65. The
6 May 10, 2012 sixty-day notice of violation and the January 2, 2013 sixty-day notice shall,
7 where appropriate, collectively be referred to as "sixty-day notices of violation."

8 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
9 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
10 violations have continued to occur beyond their receipt of Plaintiff's sixty-day notices of
11 violation. As such, DEFENDANTS' violations are ongoing in nature, and will continue to
12 occur in the future.

13 29. After receiving Plaintiff's sixty-day notices of violation, the appropriate public
14 enforcement agencies have failed to commence and diligently prosecute a cause of action
15 against DEFENDANTS under Proposition 65.

16 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
17 or use in California by DEFENDANTS contain the LISTED CHEMICALS in amounts that
18 require a "clear and reasonable" warning under Proposition 65.

19 31. DEFENDANTS knew or should have known that the PRODUCTS they
20 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
21 CHEMICALS.

22 32. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
23 to expose individuals through dermal contact, ingestion, and/or inhalation during reasonably
24 foreseeable use.

25 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
26 continue to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are
27 defined by California Code of Regulations title 27, section 25602(b).
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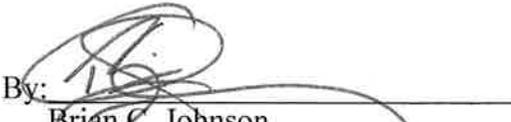
1 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
2 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
3 offering the PRODUCTS for sale or use in California without first providing a “clear and
4 reasonable warning,” as defined by California Code of Regulations title 27, section 25601 *et*
5 *seq.*, as to the harms associated with exposures the LISTED CHEMICALS;

6 3. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

7 4. That the Court grant such other and further relief as may be just and proper.

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9 Dated: March 15, 2013

Respectfully Submitted,
THE CHANLER GROUP

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11 By: 
12 Brian C. Johnson
13 Attorneys for Plaintiff
14 JOHN MOORE