

Endorsed
FILED
ALAMEDA COUNTY
2013 JAN -3 AM 10:15
Esther Coleman

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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

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16 JOHN MOORE,
17 Plaintiff,

18 v.

19 PIER 1 IMPORTS, INC.; PIER 1 IMPORTS
20 (U.S.), INC.; and DOES 1-150, inclusive,

21 Defendants.

22 Case No. _____

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

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

26 BY 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 (“DEHP”), a toxic chemical found in
5 vinyl/PVC placemats sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to DEHP present in and on the vinyl/PVC
8 placemats manufactured, distributed, and offered for sale or use to consumers throughout the
9 state of California.

10 3. High levels of DEHP are commonly found in and on the vinyl/PVC placemats
11 that defendants manufacture, distribute, and offer for sale to consumers throughout the state of
12 California.

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 vinyl/PVC placemats that contain
24 DEHP in levels that require a warning under Proposition 65, including, but not limited to, the
25 *Placemat, #2335869 (#520/520)*. All such vinyl/PVC placemats containing DEHP are referred
26 to collectively hereinafter as “PRODUCTS.”
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1 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
2 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
3 county with respect to the PRODUCTS.

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

8 25. The California Superior Court has jurisdiction over DEFENDANTS based on
9 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
10 association that is a citizen of the state of California, has sufficient minimum contacts in the
11 state of California, and/or otherwise purposefully avails itself of the California market.
12 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
13 California courts consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

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

16 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 25, inclusive.

18 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
19 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be
20 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
21 harm.”

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

26 29. On August 31, 2012, plaintiff’s sixty-day notice of violation, together with the
27 requisite certificate of merit, was provided to PIER 1, PIER 1 U.S. and certain public
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1 enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS
2 containing the LISTED CHEMICAL, purchasers and users in the state of California were being
3 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the
4 PRODUCTS, without the individual purchasers and users first having been provided with a
5 "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

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

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

14 32. The PRODUCTS manufactured, distributed, and offered for sale or use in
15 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
16 allowable state limits, such that they require a "clear and reasonable" warning under Proposition
17 65.

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

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

23 35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
24 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
25 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 CHEMICAL;

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: December 24 2012

Respectfully Submitted,
THE CHANLER GROUP

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11 By: _____

Jennifer Henry
Attorneys for Plaintiff
JOHN MOORE