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2 THE CHANLER GROUP

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF ALAMEDA

17 UNLIMITED CIVIL JURISDICTION

18 JOHN MOORE,

19 Plaintiff,

20 v.

21 CARLISLE COMPANIES INCORPORATED;
22 CARLISLE FOODSERVICE PRODUCTS
23 INCORPORATED and DOES 1 through 150,
24 inclusive,

25 Defendants.

26 Case No. RG-10542585

27 **[PROPOSED] CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (hereinafter
4 “Moore” or “Plaintiff”) on the one hand and defendant Carlisle FoodService Products,
5 Incorporated (hereinafter referred to as “CFSP” or “Defendant”) on the other hand, with Moore
6 and CFSP collectively referred to as the “Parties” and each individually referred to as a “Party.”

7 **1.2 Plaintiff**

8 John Moore is an individual residing in California who seeks to promote awareness of
9 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
10 substances in consumer products.

11 **1.3 Defendant**

12 CFSP employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code §25249.6 *et seq.* (hereinafter “Proposition 65”).

15 **1.4 General Allegations**

16 Moore alleges that CFSP manufactured, distributed and/or sold tablecloths containing
17 di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the State of California without the requisite
18 health hazard warnings. DEHP is listed pursuant to Proposition 65 as known to the State of
19 California to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows:
22 tablecloths containing DEHP including, but not limited to, the *Marko by Carlisle 8 Gauge Vinyl*
23 *Tablecloth #53185470T018 (#7 47021 02413 3)* manufactured, distributed, and/or sold in the
24 State of California by CFSP. All such tablecloths containing DEHP are referred to hereinafter
25 as the “Products” and are listed on Exhibit A attached hereto.
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1 **1.6 Notice of Violation**

2 On July 1, 2010, Moore served CFSP and various public enforcement agencies with a
3 document entitled “60-Day Notice of Violation” (hereinafter “Notice”) that provided recipients
4 with notice of alleged violations of Proposition 65 for failing to warn consumers that the
5 Products exposed users in California to DEHP.

6 **1.7 Complaint**

7 On October 20, 2010, Moore, who was and is acting in the interest of the general public
8 in California, filed a complaint in the Superior Court in and for the County of Alameda against
9 Carlisle Companies Incorporated, Carlisle FoodService Products Incorporated, and Does 1
10 through 150, alleging violations of Proposition 65 based on the alleged exposures to DEHP
11 contained in the Products. On January 13, 2011, Moore filed a First Amended Complaint in the
12 Action. The October 20, 2010, complaint and the January 13, 2011, First Amended Complaint
13 shall collectively be referred to hereinafter as the “Complaint.”

14 **1.8 No Admission**

15 CFSP denies the material factual and legal allegations contained in Moore's Notice and
16 Complaint, and maintains that all Products sold and distributed in California have been and are
17 in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
18 admission by CFSP of any fact, finding, issue of law, or violation of law; nor shall compliance
19 with this Consent Judgment constitute or be construed as an admission by CFSP of any fact,
20 finding, conclusion, issue of law, or violation of law, such being specifically denied by CFSP.
21 However, this section shall not diminish or otherwise affect CFSP's obligations, responsibilities,
22 and duties under this Consent Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over CFSP as to the allegations contained in the Complaint, that venue is proper
26 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
27 provisions of this Consent Judgment.

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean thirty (30)
3 days following the date this Consent Judgment is fully executed by the Parties.

4 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

5 **2.1 Reformulation Standards**

6 For purposes of this Consent Judgment, “Reformulated Products” are defined as those
7 Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) in
8 each accessible component when analyzed pursuant to U.S. Environmental Protection Agency
9 testing methodologies 3580A and 8270C or any other methodology utilized by federal or state
10 agencies for the purpose of determining DEHP content in a solid substance.

11 **2.2 Requirements for Products Remaining in Inventory in California**

12 Within 30 days of the entry of this Consent Judgment, CFSP shall send a letter to each
13 customer in California to whom it supplied, on or after July 1, 2009, Products that did not meet
14 the reformulation standard of Section 2.1, mandating that the customer either provide
15 Proposition 65 warnings for such Products remaining in its inventory or return such Products to
16 CFSP at no cost to the customer. A copy of the letter shall be provided to counsel for Moore
17 and shall state that CFSP will pay for shipping of the returned product.

18 If CFSP elects to instruct its customer to provide a Proposition 65 warning, it shall
19 include a sufficient number of warning stickers containing the following language:

20 **WARNING:** This product contains chemicals,
21 including one or more phthalates, known
22 to the State of California to cause cancer
 and birth defects and other reproductive
 harm.

23 This letter shall include instructions that the stickers be placed on the product packaging
24 for those Products in such customer's inventory, and shall be prominently placed with such
25 conspicuousness as compared with other words, statements, designs or devices as to render it
26 likely to be read and understood by an ordinary individual under customary conditions before
27 purchase or use. As part of the instructions under either option, CFSP must specify the product
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1 name, product number, and SKU number if available, for each Product covered by the
2 instruction letter.

3 **2.3 Product Warnings**

4 Within 30 days of the entry of this Consent Judgment, CFSP shall, for all Products
5 shipped to California customers (and for Products shipped outside of California if CFSP has
6 reason to believe the Products will be resold or used in California) other than Reformulated
7 Products, provide clear and reasonable warnings as follows:

8 **WARNING:** This product contains chemicals, including
9 one or more phthalates, known to the State
10 of California to cause cancer and birth
11 defects and other reproductive harm.

12 In all cases, each warning shall be prominently placed with such conspicuousness as
13 compared with other words, statements, designs, or devices as to render it likely to be read and
14 understood by an ordinary individual under customary conditions before purchase or use. Each
15 warning shall be provided in a manner such that the consumer or user understands to which
16 *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

17 **(a) Internet Advertising for Sales.** In the event that CFSP advertises for sale
18 Products via the internet, to customers located in California, after the Effective Date, that are not
19 Reformulated Products, CFSP shall provide warnings for such Products advertised for sale via
20 the internet to California residents. Warnings given on the internet shall identify the specific
21 product to which the warning applies as further specified in Sections 2.3(a)(i).

22 **(i) Internet Website Warning.** A warning shall be given in
23 conjunction with the advertising for sale of the Products via the internet, which warning shall
24 appear either: (a) on the same web page on which a Product is displayed; or (b) on the same page
25 as the price for any Product. The following warning statement shall be used and shall appear in
26 any of the above instances adjacent to or immediately following the display, description, or price
27 of the Product for which it is given in the same type size or larger than the Product description
28 text:

1 for the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)
2 and the remaining 25% of these penalty monies earmarked for Moore.

3 (c) **Final Civil Penalty.** CFSP shall pay a final civil penalty in the amount of
4 \$30,000 on December 31, 2013. As an incentive for CFSP to reformulate the Products, however,
5 this final civil penalty shall be waived in its entirety if an officer of CFSP certifies in writing that,
6 as of December 1, 2013, all of the Products listed on Exhibit A are Reformulated Products. In
7 order for this final civil penalty to be waived, the certification must be received by The Chanler
8 Group on or before December 15, 2013.

9 The final civil penalty payment shall be apportioned in accordance with Health & Safety
10 Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the
11 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
12 remaining 25% of these penalty monies earmarked for Moore.

13 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

14 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
15 without reaching an agreement on the amount fees and costs to be reimbursed to them, thereby
16 leaving this fee issue to be resolved after the material terms of the agreement had been settled,
17 and the agreement signed. The Parties then attempted, but were unable, to reach an accord on
18 the compensation due to Moore and his counsel under the private attorney general doctrine
19 codified at Code of Civil Procedure (“CCP”) § 1021.5 for all work performed through the
20 Effective Date of this Consent Judgment and for all work reasonably to be performed in
21 connection with the terms set forth in this Consent Judgment after the Effective Date. The
22 parties do agree, however, that Moore and his counsel are entitled to their reasonable attorneys’
23 fees and costs under the prerequisites set forth by CCP § 1021.5; however, they disagree as to the
24 amount of such fees. Accordingly, following the execution of this Consent Judgment, the Parties
25 shall have the outstanding fees and costs issue adjudicated by binding arbitration through the
26 American Arbitration Association or JAMS Resolution Services in San Francisco. CFSP
27 acknowledges it shall: (1) agree to pay the fees and costs of the arbitration; (2) stipulate that the
28 parties will inform the arbitration service that it is the objective of the parties that the process be

1 completed on or before January 30, 2012; and (3) pay the award within ten days of the issuance
2 of the decision.

3 **3.3 Payment Procedures**

4 **3.3.1 Funds Held In Trust.** All payments required by Sections 3.1, that are to
5 be paid prior to the approval of this Consent Judgment, shall be delivered to The Chanler Group
6 by the dates required, and shall be held in trust until the Court approves this Consent Judgment.
7 The Parties acknowledge that Moore gave CFSP the option of depositing the required payments
8 into its attorneys' trust accounts, but that CFSP elected to have the funds held in trust by
9 The Chanler Group. The settlement funds shall be made payable by checks, as follows: (a)
10 "The Chanler Group in Trust for OEHHA" in an amount equal to 75% of the civil penalty; and
11 (b) "The Chanler Group in Trust for John Moore" in an amount equal to 25% of the penalty.

12 Within three days of the date of the hearing on which the Court approves this Consent
13 Judgment, the payments being held in trust by The Chanler Group shall be disbursed as follows:

14 (a) One check made payable to "OEHHA" in the amount of \$7,500;

15 and

16 (b) One check made payable to "John Moore" in the amount of
17 \$2,500.

18 **3.3.2 Issuance of 1099 Forms.** After this Consent Judgment has been approved
19 and the settlement funds have been transmitted to plaintiff's counsel, CFSP shall issue two
20 separate 1099 forms, as follows:

21 (a) The first 1099 shall be issued to the Office of Environmental
22 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the
23 amount of \$7,500; and

24 (b) The second 1099 shall be issued to Moore in the amount of \$2,500,
25 whose address and tax identification number shall be furnished upon request.

1 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered
2 to the following payment address:

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710

8 **4. RELEASE OF ALL CLAIMS**

9 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

10 This Consent Judgment is a full, final and binding resolution between Moore, on behalf
11 of himself and the public, and CFSP, of any violation of Proposition 65 that was or could have
12 been asserted by Moore against CFSP, its parents, subsidiaries, affiliated entities that are under
13 common ownership, including but not limited to, Carlisle Companies Incorporated, directors,
14 officers, employees, attorneys, and each entity to whom CFSP directly or indirectly distributes
15 or sells Products, including, but not limited to, downstream distributors, wholesalers, customers,
16 retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on
17 their failure to warn about alleged exposures to DEHP contained in the Products that were sold
18 by CFSP.

19 **4.2 Moore’s Public Release of Proposition 65 Claims.**

20 In further consideration of the promises and agreements herein contained, Moore on
21 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
22 assignees, and in the interest of the general public, hereby waives all rights to institute or
23 participate in, directly or indirectly, any form of legal action and releases all claims, including,
24 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
25 demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not
26 limited to, investigation fees, expert fees, and attorneys’ fees, but exclusive of fees and costs on
27 appeal – limited to and arising under Proposition 65 with respect to DEHP in the Products sold
28 by CFSP (collectively “claims”), against CFSP and Releasees.

1 **4.3 Moore’s Individual Release of Claims.**

2 Moore also, in his individual capacity only and *not* in his representative capacity,
3 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
4 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
5 claims, liabilities and demands of Moore of any nature, character or kind, whether known or
6 unknown, suspected or unsuspected, against CFSP and Releasees, limited to and arising out of
7 alleged or actual exposures to DEHP in the Products manufactured, distributed or sold by CFSP.

8 **4.4 CFSP’s Release of Moore.**

9 CFSP on behalf of itself, its past and current agents, representatives, attorneys,
10 successors, and/or assignees, hereby waives any and all claims against Moore, his attorneys and
11 other representatives, for any and all actions taken or statements made (or those that could have
12 been taken or made) by Moore and his attorneys and other representatives, whether in the
13 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
14 matter with respect to the Products.

15 **5. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the court and
17 shall be null and void if, for any reason, it is not approved and entered by the court within one
18 year after it has been fully executed by all Parties, in which event any monies that have been
19 provided to Moore or his counsel pursuant to Section 3 above, shall be refunded within fifteen
20 (15) days after receiving written notice from CFSP that the one-year period has expired.

21 **6. SEVERABILITY**

22 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
23 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
24 provisions remaining shall not be adversely affected.

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California and apply within the State of California. In the event that Proposition 65 is repealed
28 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then

1 CFSP shall provide written notice to Moore of any asserted change in the law, and shall have no
2 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
3 Products are so affected.

4 **8. NOTICES**

5 Unless specified herein, all correspondence and notices required to be provided pursuant
6 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
7 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by
8 the other Party at the following addresses:

9 To CFSP:

10 Jill A. Franklin, Esq.
11 Schaffer Lax McNaughton & Chen LLP
12 515 S. Figueroa Street, Suite 1400
13 Los Angeles, CA 90071

14 With copies to:

15 David Shannon, President
16 Carlisle Foodservice Products Inc.
17 4711 East Hefner Road
18 Oklahoma City, OK 73131

19 To Moore:

20 Proposition 65 Coordinator
21 The Chanler Group
22 2560 Ninth Street Parker Plaza, Suite 214
23 Berkeley, CA 94710-2565

24 Any Party, from time to time, may specify in writing to the other Party a change of
25 address to which all notices and other communications shall be sent.

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

27 This Consent Judgment may be executed in counterparts and by facsimile, each of which
28 shall be deemed an original, and all of which, when taken together, shall constitute one and the
same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Moore agrees to comply with the reporting form requirements referenced in California
Health & Safety Code §25249.7(f).

1 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

2 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a Motion to
3 Approve the Agreement (“Noticed Motion”) is required to obtain judicial approval of this
4 Consent Judgment. In furtherance of obtaining such approval, Moore, CFSP, and their
5 respective counsel agree to mutually employ their best efforts to support the entry of this
6 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in
7 a timely manner. For purposes of this Paragraph, best efforts shall include at a minimum that
8 CFSP join in or file a joinder in the Noticed Motion and participate in any oral argument before
9 the Court on the hearing of the Noticed Motion.

10 **12. MODIFICATION**

11 This Consent Judgment may be modified only: (1) by written agreement of the parties
12 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
13 motion of any party and entry of a modified Consent Judgment by the court. Moore shall be
14 entitled to his reasonable fees and costs incurred in the modification process under CCP §1021.5
15 if CFSP seeks to modify the terms of this Consent Judgment.

16 **13. AUTHORIZATION**

17 The undersigned are authorized to execute this Consent Judgment on behalf of their
18 respective parties and have read, understood, and agree to all of the terms and conditions of this
19 Consent Judgment.
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22 **AGREED TO:**

AGREED TO:

23 Date: OCTOBER 20, 2011

Date: _____

24
25 By: 
26 Plaintiff JOHN MOORE

By: _____
Defendant CARLISLE FOODSERVICE
PRODUCTS, INC.

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AGREED TO:

AGREED TO:

Date: _____

Date: October 20, 2011

By: _____
Plaintiff JOHN MOORE

By: Carol Ward
Defendant CARLISLE FOODSERVICE
PRODUCTS, INC.

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EXHIBIT A

1. Marko By Carlisle 8 Gauge Vinyl Tablecloth #53185470T018 (#7 47021 02413 3);
2. Marko By Carlisle 5110-R-001 - Vinyl Tablecloth, 15 Yard Roll, Classic Series, Scandia Block, Red;
3. Marko By Carlisle 5112-R-064 - Vinyl Tablecloth, 15 Yard Roll, Classic Series, Crossweave, Forest Green;
4. Marko By Carlisle 5804-R-530 - Vinyl Tablecloth, 15 Yard Roll, Designer Series, Chili Peppers, Red;
5. Marko By Carlisle 5880-R-081 - Vinyl Tablecloth, 15 Yard Roll, Designer Series, Newsprint, Ivory;
6. Marko By Carlisle 5882-R-002 - Vinyl Tablecloth, 15 Yard Roll, Designer Series, Nautical, Blue;
7. Marko By Carlisle 5903-Rove Reflection Blue (290)
8. Marko By Carlisle 5901 Rapture Nutmeg (039)
9. Marko By Carlisle 5902 Vapor Chartreuse (290)