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KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Dieter Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

JOHN MOORE, Plaintiff, v. CHI HSIN IMPEX, INC., *et al.*, Defendants.	Case No. CIV-1004762 **[PROPOSED] CONSENT JUDGMENT** Dept: L Judge: Hon. Lynn Duryee

1. INTRODUCTION

1.1 John Moore and Chi Hsin Impex, Inc.

This Consent Judgment is entered into by and between plaintiff John Moore ("Moore" or "Plaintiff") and Chi Hsin Impex, Inc. ("Chi Hsin"), with Moore and Chi Hsin collectively referred to as the "parties."

1.2 John Moore

Moore is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products.

1.3 Chi Hsin Impex, Inc.

Moore alleges that Chi Hsin employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

1.4 General Allegations

Moore alleges that Chi Hsin has manufactured, imported, distributed and/or sold mats containing di(2-ethylhexyl)phthalate ("DEHP") without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause birth defects and other reproductive harm.

1.5 Product Description

As used in this Consent Judgment, "Products" are defined as the *Marcy Classic Connecting Mat, MAT 28 (#0 96362 98880 3)* and the other products identified in CIV 1203409 manufactured, imported, distributed and/or sold by Chi Hsin in California.

1.6 Notices of Violation

On March 19, 2010, Moore served Chi Hsin and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with notice that alleged that Chi Hsin was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that mats exposed users in California to DEHP. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

On November 23, 2010, Moore served Chi Hsin and various public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" ("Supplemental Notice") that provided the recipients with notice that alleged that Chi Hsin was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that mats exposed users in California to DEHP and spring clips exposed users in California to DBP. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

On March 8, 2012, Moore served Chi Hsin and various public enforcement agencies with a document entitled "Second Supplemental 60-Day Notice of Violation" ("Second Supplemental Notice") that provided the recipients with notice that alleged that Chi Hsin was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that: (1) mats exposed users in California to DEHP; (2) spring clips exposed users in California to DEHP, DBP, and lead; (3) exercise balls exposed users in California to DEHP; and (4) dumbbell handles with grips exposed users in California to DEHP and lead. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice, the Supplemental Notice or the Second Supplemental Notice. The Notice, the Supplemental Notice, and the Second Suppelemtnal Notice shall collectively be referred to hereinafter as the "Notices."

1.7 <u>Complaint and Cross Complaint</u>

On September 9, 2010, Moore filed a complaint in the Superior Court in and for the County of Marin against Chi Hsin, *Moore v Chi Hsin Impex, Inc.*; *and Does 1-150, inclusive*, Case No. CIV-1004762 (the "Complaint"), alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in Products manufactured, distributed and/or sold in the State of California by Chi Hsin.

On April 18, 2011, Chi Hsin filed a cross-complaint for declaratory relief in the Superior Court in and for the County of Marin against Moore.

On July 26, 2012, Moore filed a second complaint, *Moore v. Chi Hsin Impex, Inc. et al.*, Case No. CIV-1203409 (the "Second Complaint"), alleging futher violations of California Health & Safety Code § 25249.6. By order of the Court, the Second Complaint shall be deemed consolidated

with the original Complaint.

1.8 No Admission

Chi Hsin denies the material, factual and legal allegations contained in Moore's Notices and Complaint and maintains that all products that it has sold, manufactured, imported and/or distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Chi Hsin of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Chi Hsin of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Chi Hsin's obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over Chi Hsin as to the allegations contained in the Complaint, that venue is proper in the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean July 27, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

Reformulated Products are defined as Products containing concentrations less than: (a) 0.1 percent (1,000 parts per million) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance; and (b) Chi Hsin represents that it has eliminated those components that were alleged by Moore to contain lead, but in the event such components continue to exist they shall contain less than 0.03 percent (300 parts per million)) of lead in each accessible component alledged by Moore to have contained the presence of lead.

2.2 Reformulation Commitment

As of the Effective Date, Chi Hsin shall discontinue manufacturing or importing Products in the State of California unless they qualify as Reformulated Products as specified in Section 2.1 above. Further, as of 180 day from the Effective Date, Chi Hsin shall not distribute or sell Products in the State of California unless they qualify as Reformulated Products as specified in Section 2.1, and any interim sales of Products that are not Reformulated Products shall bear a clear and reasonable warning for reproductive harm that shall be affixed to the Product or its packaging.

3. MONETARY PAYMENTS

3.1 Civil Penalty

In settlement of all the claims referred to in this Settlement Agreement relating to the manufacture, importation, distribution, sale, and offer of the Products for sale in California, Chi Hsin shall pay a civil penalty of $20,000. The civil penalty shall be apportioned in accordance with California Health & Safety Code §§ 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Moore. This penalty reflects a credit of $70,000 based on Chi Hsin's commitment to reformulate the Products pursuant to Section 2 above. Chi Hsin shall issue two separate checks for the initial civil penalty payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of $15,000 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Moore" in the amount of $5,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Moore, whose information shall be provided five calendar days before the payment is due. Payment pursuant to this section shall be delivered to Moore's counsel at the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

3.2 Reimbursement of Plaintiff's Fees and Costs

The Parties acknowledge that Moore and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Chi Hsin then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Moore and his counsel under general contract principles and the private attorney general doctrine for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, Chi Hsin shall pay the amount of $70,000 for fees and costs incurred investigating, litigating, and enforcing this matter.

3.3 Payment Procedures

All payments required by Sections 3.1 through 3.3 shall be delivered on or before July 30, 2012. Chi Hsin shall issue three separate 1099 forms, as follows:

(a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of $15,000;

(b) The second 1099 shall be issued to Moore in the amount of $5,000, whose address and tax identification number shall be furnished upon request; and

(c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of $70,000.

4. CLAIMS COVERED AND RELEASED

4.1 Moore's Public Release of Proposition 65 Claims

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3, Moore, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or

participate in, directly or indirectly, any form of legal action and releases all claims that Moore may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of any nature whatsoever, fixed or contingent, against Defendant and any or all or each of its downstream wholesalers, licensors, licensees, auctioneers, retailers, including, but not limited to those entities listed on Exhibit A attached hereto, distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliated entities under common ownership, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") that arise under Proposition 65 that was or could have been asserted by Moore, as such claims relate to Defendant's alleged failure to warn about exposures to DEHP and lead contained in any of the Products manufactured, imported, distributed, sold and/or offered for sale by Chi Hsin before the Effective Date (collectively "claims").

4.2 Mutual Release

Chi Hsin and John Moore, on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive any and all claims against one another, their attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by either party and their attorneys and other representatives, whether in the course of these consolidated matters.

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court. Trial having commenced on July 27, 2012, the parties request that the Court enter this Consent Judgment as its judgment. If, for any reason, it is not approved and entered by the Court it shall be null and void.

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
8 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
9 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
10 preemption or rendered inapplicable by reason of law generally as to the Products, then Chi Hsin
11 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
12 extent that, the Products are so affected.

13 **8. ENFORCEMENT OF CONSENT JUDGMENT**

14 Either party may, by motion or application for an order to show cause before the Superior
15 Court of the County of Marin, enforce the terms and conditions contained in this Consent
16 Judgment. A party may file such motion or application only after that party first provides thirty
17 (30) days notice to the party allegedly failing to comply with the terms and conditions of this
18 Consent Judgment and attempt to resolve such party's failure in an open and good faith manner
19 for a period of no less than thirty (30) days.

20 **9. NOTICES**

21 Unless specified herein, all correspondence and notices required to be provided pursuant to
22 this Consent Judgment shall be in writing and: (i) personally delivered; (ii) sent by first-class,
23 (registered or certified mail) return receipt requested; or (iii) sent by overnight courier to one party
24 from the other party at the following addresses:

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To Chi Hsin:

H.G. Robert Fong
Ku & Fong
523 West Sixth Street, Suite 707
Los Angeles, CA 90014

Charles L. Murray III
523 West Sixth Street, Suite 707
Los Angeles, CA 90014

To Moore:

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

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

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or .pdf signature shall be as valid as the original.

11. POST EXECUTION ACTIVITIES

Chi Hsin agrees to dismiss its cross-complaint with predjudice within two court days of the approval of the settlement.

12. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

13. COMPLIANCE

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

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13. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

Date: July 27, 2012

By: _____
Plaintiff, John Moore

AGREED TO:

Date: July 27, 12

By: _____
Defendant, Chi Hsin Impex, Inc.

SO ordered

7/27/2012

EXHIBIT A

(Moore v. Chi Hsin Impex, Inc.)

AMAZON.COM.
AAFES.COM
BENNY'S
COMP-U-CARD
COST-U-LESS INC.
COSTCO.COM
FINER FITNESS INC.
FITNESS FIRST, INC.
FRED MEYER, INC.
GLOBAL SPORTS INTERACTIVE
HAYNEEDLE, INC.
J & L SPORTS
MASSCLOSEOUTS LLC
MEIJER
PLAY IT AGAIN SPORTS-CANADA
WINMARK CORPORATION
PLAY IT AGAIN SPRTS 10132
PLAY IT AGAIN SPORTS #10756
PLAY IT AGAIN SPORTS
PLAY IT AGAIN SPORTS
QVC.COM
THE SPORTSMAN'S GUIDE, INC.
TARGET.COM, DIVISION OF
BIG 5 CORP
WAL'MART ONLINE
SAMPLE