

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Laurence D. Haveson, State Bar No. 152631
Christopher M. Martin, State Bar No. 186021
THE CHANLER GROUP
81 Throckmorton, Suite 203
Mill Valley, CA 94941
Telephone: (415) 388-1128
Facsimile: (415) 388-1135

Attorneys for Plaintiff
JOHN MOORE

RECEIVED
MARIN COUNTY
SUPERIOR COURT

JAN 14 P 12:41

FILED

JAN 20 2012

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Turner, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

DURALEE FABRICS, LTD, *et al.*,

Defendants.

Case No. CIV-1101222

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: January 20, 2012
Time: 8:30 a.m.
Dept. E
Judge: Hon. Faye D'Opal

1 In the above-entitled action, Plaintiff JOHN MOORE and Defendant DURALEE
2 FABRICS, LTD. having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the [Proposed] Consent Judgment (“Consent Judgment”) entered into by
4 the parties, and following issuance of an order approving this Proposition 65 settlement
5 agreement on January 20, 2012.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health &
7 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is entered in
8 accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation
9 of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil
10 Procedure § 664.6.

11 **IT IS SO ORDERED.**

12
13
14 Dated: JAN 20 2012

FAYE D'OPAL

JUDGE OF THE SUPERIOR COURT

15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

1 Laurence D. Haveson, State Bar No. 152631
Christopher M. Martin, State Bar No. 186021
2 THE CHANLER GROUP
2560 Ninth Street, Suite 214
3 Berkeley, CA 94710
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
JOHN MOORE
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11
12

13 JOHN MOORE,
14 Plaintiff,
15 v.
16 DURALEE FABRICS, LTD.; and DOES 1
17 through 150, inclusive,
18 Defendants.

Case No. CIV-1101222

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT DURALEE FABRICS,
LTD.**

1 **1. INTRODUCTION**

2 **1.1 John Moore and Duralee Fabrics, Ltd.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (hereinafter
4 “Moore” or “Plaintiff”) and defendant Duralee Fabrics, Ltd. (hereinafter “Duralee” or
5 “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties” and each
6 individually referred to as a “Party.”

7 **1.2 Plaintiff**

8 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 Duralee 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 Duralee manufactured, distributed and/or sold faux leather fabric
17 containing di(2-ethylhexyl)phthalate (hereinafter “DEHP” or the “Listed Chemical”) in the
18 State of California without the requisite health hazard warnings. DEHP is listed pursuant to
19 Proposition 65 as known to the State of California to cause birth defects and other reproductive
20 harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: faux
23 leather fabric containing DEHP identified in Exhibit A and which Defendant manufactured,
24 distributed, and/or sold in the State of California. All such faux leather fabric containing DEHP
25 are referred to hereinafter as the “Products.”

26 **1.6 Notices of Violation**

27 On October 29, 2010, Moore served Duralee and various public enforcement agencies
28 with a document entitled “60-Day Notice of Violation” (hereinafter “Notice”) that provided

1 Duralee and public enforcers with notice of alleged violations of California Health & Safety
2 Code §25249.6 for failing to warn consumers that the Products exposed users in California to
3 DEHP.

4 **1.7 Complaint**

5 On March 8, 2011, Moore, who was and is acting in the interest of the general public in
6 California, filed a complaint (hereinafter “Complaint” or “Action”) in the Superior Court in and
7 for the County of Marin against Duralee Fabrics, Ltd., and Does 1 through 150, alleging
8 violations of California Health & Safety Code §25249.6 based on the alleged exposures to
9 DEHP contained in the Products.

10 **1.8 No Admission**

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

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Duralee as to the allegations contained in the Complaint, that venue is proper
22 in the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions
23 of this Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean November
26 30, 2011.

27
28

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

2 **2.1 Product Warnings**

3 As of the Effective Date, Duralee shall provide clear and reasonable warnings, as set forth
4 in subsection 2.1(a) below, with respect to all Products shipped, sold, or offered for sale in
5 California. Each warning shall be prominently placed with such conspicuousness as compared
6 with other words, statements, designs, or devices as to render it likely to be read and understood
7 by an ordinary individual under customary conditions before purchase or use. Each warning shall
8 be provided in a manner such that the consumer or user understands to which *specific* Product the
9 warning applies, so as to minimize the risk of consumer confusion.

10 (a) **Product Labeling.** Duralee shall affix a warning to the packaging,
11 labeling, or directly on each Product sold to customers in California, including a statement
12 in its sample books sent to its trade stores, containing either of the following language
13 alternatives:

14 **WARNING:** This product contains chemicals, including
15 DEHP, known to the State of California to
16 cause cancer and birth defects (or other
17 reproductive harm).

18 **or**

19 **WARNING:** This product contains DEHP, a chemical
20 known to the State of California to cause birth
21 defects and other reproductive harm.

22 **2.2 Exceptions To Warning Requirements**

23 The warning requirements set forth in Section 2.1 shall not apply to any Product shipped,
24 distributed or sold by Duralee in California prior to the Effective Date.

25 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

26 In settlement of all the claims referred to in this Consent Judgment against it, Duralee
27 shall be assessed a civil penalty in the amount of \$12,000, which shall be made in two separate
28 installments of \$4,000 and \$8,000, to be apportioned in accordance with California Health &
Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to the State of
California's Office of Environmental Health Hazard Assessment and the remaining 25% of these

1 penalty monies remitted to Moore, as provided by California Health & Safety Code §
2 25249.12(d). Duralee shall issue two separate checks for each penalty payment: (a) one check
3 for each penalty payment made payable to "The Chanler Group in Trust for the Office of
4 Environmental Health Hazard Assessment" in amounts of \$3,000 and \$6,000, for the first and
5 second payment of civil fines, respectively, representing 75% of the total penalty; and (b) one
6 check for each penalty payment to "The Chanler Group in Trust for John Moore" in amounts of
7 \$1,000 and \$2,000, for the first and second payment of civil fines, respectively, representing
8 25% of the total penalty. Separate 1099s shall be issued for each of the above payments. Two
9 separate 1099's, one 1099 for each of the civil penalty payments, shall be issued to the Office of
10 Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
11 0284486), and two separate 1099's, one 1099 for each of the civil penalty payments, shall be
12 issued to Moore, whose address and tax identification number shall be furnished, upon request,
13 at least five (5) calendar days before the payment is due. The first and second payment of civil
14 fines shall be delivered to Moore's counsel on or before October 15, 2011, and July 31, 2012,
15 respectively, at the following address:

16 The Chanler Group
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

21 The second payment of civil fines, however, shall be waived in its entirety if an officer of
22 Duralee certifies in writing that, as of July 1, 2012, Products to be sold in California are
23 reformulated so the Products contain less than or equal to 1,000 parts per million (0.1%) of the
24 Listed Chemical when analyzed pursuant to Environmental Protection Agency testing
25 methodologies 3580A and 8270C and that Duralee will only sell, in California, Products that are
26 so reformulated for at least the next two years following July 1, 2012. Such certification must be
27 received by The Chanler Group on or before July 15, 2012 in order for the waiver to apply.

28 **4. REIMBURSEMENT OF FEES AND COSTS**

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

1 after the material terms of the agreement had been settled. However, Duralee stated its desire to
2 have the fees negotiated along with the rest of the settlement. The parties then reached an accord
3 on the compensation due to Moore and his counsel under general contract principles and the
4 private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all
5 work performed through the mutual execution of this agreement and approval by the trial court,
6 excluding any fees on appeal. Duralee shall pay Moore and his counsel a total of \$38,700 for fees
7 and costs incurred as a result of investigating, bringing this matter to Duralee's attention, and
8 litigating and negotiating a settlement in the public interest. These fees and costs include those
9 that will be reasonably incurred in the future to support entry of this agreement including, but not
10 limited to, fulfilling reporting requirements, filing a motion to approve, providing notice of entry
11 of judgment and such other activities as may be necessary. Moore estimates that he will incur
12 \$13,500 in future fees and costs associated with this matter.

13 Payment shall be delivered to Moore's counsel on or before October 15, 2011, at the
14 following address:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710-2565

20 Except as specifically provided above, each Party shall bear its own costs and attorney's fees in
21 connection with this action.

22 **5. CLAIMS COVERED AND RELEASED**

23 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

24 This Consent Judgment is a full, final and binding resolution between Plaintiff, on behalf
25 of himself and the public, and Defendant, of any violation of Proposition 65 that was or could
26 have been asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated entities that
27 are under common ownership, directors, officers, employees, attorneys, and each entity to whom
28 Defendant directly or indirectly distributes or sells Products, including but not limited to
downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,

1 licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to
2 the Listed Chemical contained in the Products that were sold by Defendant.

3 **5.2 Plaintiff’s Release of Defendant**

4 In further consideration of the promises and agreements herein contained, and for the
5 payments to be made pursuant to Sections 3 and 4, Moore on behalf of himself, his past and
6 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
7 general public pursuant to Health & Safety Code Section 25249.7(d), hereby waives all rights to
8 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
9 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
10 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
11 limited to, investigation fees, expert fees, and attorney’s fees) of any nature whatsoever, whether
12 known or unknown, fixed or contingent (collectively “claims”), against Duralee and each of its
13 wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, dealers,
14 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and
15 their respective officers, directors, attorneys, representatives, shareholders, agents, and
16 employees, and sister and parent entities (collectively “Releasees”), for any violation of
17 Proposition 65, or any other statutory or common law claims that have been or could have been
18 asserted in the Complaint against Duralee for Duralee’s alleged failure to provide clear and
19 reasonable warnings of exposure to the Listed Chemical contained in the Products or any other
20 claim based on the facts or conduct alleged in the Complaint as to such Products.

21 Moore in his individual capacity on behalf of himself, his past and current agents,
22 representatives, attorneys, and successors and/or assigns, and *not* his representative capacity,
23 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
24 action and releases all claims which he now has or may have in the future against Duralee,
25 irrespective of the subject matter, of all character, kind and nature, whether said claims are known
26 or unknown or are suspected or unsuspected and Moore expressly waives any and all rights and
27 benefits which he now has, or in the future may have, under California Civil Code § 1542, which
28 provides as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
4 THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST
5 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
6 WITH THE DEBTOR.

7 **5.3 Defendant's Release of Plaintiff**

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

14 **6. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the court and
16 shall be null and void if, for any reason, it is not approved and entered by the court within one
17 year after it has been fully executed by all Parties, in which event any monies that have been
18 provided to Moore or his counsel pursuant to Section 3 and/or Section 4 above, shall be
19 refunded within fifteen (15) days after receiving written notice from Duralee that the one-year
20 period has expired.

21 **7. SEVERABILITY**

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

25 **8. 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
Duralee shall provide written notice to Moore of any asserted change in the law, and shall have

1 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
2 the Products are so affected.

3 **9. NOTICES**

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

8 To Duralee:

9 Lee Silberman, Executive Vice President
10 Duralee Fabrics, Ltd.
11 1775 Fifth Avenue
12 Bay Shore, NY 11706

13 With a copy to:

14 Kathryn H. Edwards
15 Orrick, Herrington & Sutcliffe LLP
16 405 Howard Street
17 San Francisco, CA 94105

18 To Moore:

19 Proposition 65 Coordinator
20 The Chanler Group
21 2560 Ninth Street
22 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 **10. 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.

11. 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 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

2 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts
3 to support the entry of this agreement as a Consent Judgment and obtain approval of the
4 Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to
5 California Health and Safety Code section 25249.7, a noticed motion is required to obtain
6 judicial approval of this Consent Judgment, which Moore shall file, and which Duralee shall not
7 oppose. If any third party objection to the noticed motion is filed, Moore and Duralee shall
8 work together to file a joint reply and appear at any hearing before the Court. If the Superior
9 Court does not approve the motion to approve this Consent Judgment, and the Parties choose
10 not to pursue a modified Consent Judgment within 30 days of said denial, or in the event that
11 the Superior Court approve this Consent Judgment and any person successfully appeals that
12 approval, all payments made pursuant to this Consent Judgment will be returned to Duralee.

13 **13. MODIFICATION**

14 This Consent Judgment may be modified only: (1) by written agreement of the Parties
15 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
16 motion of any party and entry of a modified Consent Judgment by the Court. The Attorney
17 General shall be served with notice of any proposed modification to this Consent Judgment at
18 least fifteen (15) days in advance of its consideration by the Court. Moore shall be entitled to
19 his reasonable fees and costs incurred in the modification process under CCP §1021.5 if Duralee
20 seeks to modify the terms of this Consent Judgment.

21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. AUTHORIZATION

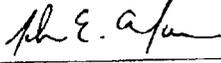
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: September 26, 2011

Date: September 22, 2011

By: 
Plaintiff JOHN MOORE.

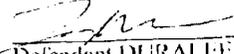
By: 
Defendant DURALIFE FABRICS, LTD.

EXHIBIT A

Suburban Home Embroidered Faux Leather, including the following patterns and colors:

Pattern	Color
Delano	160
Delano	203
Delano	270
Delano	289
Delano	554
Delano	582
Delano	598
Delano	599
Bentley	203
Bentley	289
Bentley	313
Bentley	554
Tides	160
Tides	270
Tides	289
Tides	313
Tides	554
Tides	582
Tides	598
Smyth Park	160
Smyth Park	203
Smyth Park	289
Smyth Park	313
Smyth Park	582
Smyth Park	598
Smyth Park	599
Magellan	160
Magellan	203

Magellan	270
Magellan	289
Magellan	313
Magellan	554
Magellan	582
Magellan	598
Magellan	599