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 JOHN MOORE

FILED
 ALAMEDA COUNTY

OCT 12 2012

CLERK OF THE SUPERIOR COURT
 By WLS Deputy

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 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF ALAMEDA
 10 UNLIMITED CIVIL JURISDICTION
 11

12 JOHN MOORE,

13 Plaintiff,

14 v.

15 SMART & FINAL STORES, LLC; and DOES
 16 1 through 150,

17 Defendants.
 18

Case No. RG11561296

~~PROPOSED~~ ^{MSG} JUDGMENT PURSUANT
 TO TERMS OF PROPOSITION 65
 SETTLEMENT AND CONSENT
 JUDGMENT

Date: October 12, 2012

Time: 3:00 P.M.

Dept.: 18

Judge: Hon. Marshall Whitley

Reservation No. R-1312313

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^{MSG}
~~PROPOSED~~ JUDGMENT PURSUANT TO TERMS OF PROP. 65 SETTLEMENT AND CONSENT JUDGMENT

1 In the above-entitled action, Plaintiff JOHN MOORE, and Defendant SMART & FINAL
2 STORES, LLC, having agreed through their respective counsel that Judgment be entered pursuant
3 to the terms of their settlement agreement in the form of a Consent Judgment, and following this
4 Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

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

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IT IS SO ORDERED.

Dated: 10/12/12

Marshall S. Whitley
THE HONORABLE MARSHALL WHITLEY

EXHIBIT 1

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff John Moore (“Moore” or
4 “Plaintiff”) and Defendant Smart and Final Stores, LLC (“Smart” or “Defendant”), with Plaintiff
5 and Defendant collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Defendant employs 10 or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Defendant has manufactured, distributed and/or sold, in the State of
16 California, aprons known as Smart & Final Chef’s Review Brown Vinyl Bib Apron
17 (#041512622038) which expose users to di-n-butyl phthalate (“DBP”) and di(2-
18 ethylhexylphthalate) (“DEHP”) without first providing “clear and reasonable warnings” under
19 Proposition 65. DBP and DEHP are listed as reproductive and developmental toxicants pursuant
20 to Proposition 65 and are referred to hereinafter as the “Listed Chemicals.” Smart & Final Chef’s
21 Review Brown Vinyl Bib Aprons containing the Listed Chemicals are referred to herein as the
22 “Products.”

23 **1.5 Notice of Violation**

24 On November 23, 2010, Moore served Defendant and various public enforcement
25 agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers
26 and Defendant with notice of alleged violations of Health & Safety Code § 25249.6 for failing to
27 warn consumers that the Products that Defendant manufactured, distributed and/or sold exposed
28 users in California to the Listed Chemicals.

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1.6 Complaint

On February 15, 2011, Moore, acting in the interest of the general public in California, filed the instant action in the Superior Court for the County of Alameda, alleging violations of Health & Safety Code § 25249.6 based on the exposures to lead contained in Products manufactured, distributed, and/or sold by Defendant (“Complaint”). On June 10, 2011, Moore filed an amendment to the complaint to name Defendant Smart and Final Stores, LLC.

1.7 No Admission

This Consent Judgment resolves claims that are denied and disputed by Defendant. The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Defendant denies the material, factual, and legal allegations contained in the Notice and Complaint and maintains that all Products it has manufactured, distributed and/or sold in California, including the Products, have been, and are, in compliance with all applicable laws. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, this Section shall not diminish or otherwise affect Defendant’s obligations, responsibilities, and duties under this Consent Judgment.

1.8 Consent to Jurisdiction

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

1.9 Effective Date

For the purposes of this Consent Judgment, the term “Effective Date” shall mean May 15, 2012.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1** As of the Effective Date, Smart shall not manufacture, distribute, sell or offer for
3 sale in California any Products unless they are "DBP and DEHP Free." For purposes of this
4 Settlement Agreement, "DBP and DEHP Free" shall mean Products containing no more than 0.1
5 percent (1,000 parts per million) of the Listed Chemicals when analyzed pursuant to
6 Environmental Protection Agency testing methodologies 3580A and 8270C.

7 **3. MONETARY PAYMENTS**

8 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

9 Smart shall make a payment of \$1,500 to be apportioned in accordance with Health &
10 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked
11 for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")
12 and the 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 terms on the amount of 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 Smart then expressed a desire to resolve the fee and cost issue shortly after the other settlement
18 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
19 compensation due to Moore and his counsel under general contract principles and the private
20 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
21 work performed in this matter, except fees that may be incurred on appeal. Under these legal
22 principles, Smart shall pay the amount of \$28,500 for fees and costs incurred investigating,
23 litigating and enforcing this matter, including the fees and costs incurred (and yet to be
24 incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment
25 in the public interest.

26 **3.3 Payment Procedures**

27 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2
28 shall delivered within 5 days of execution of this agreement to either The Chanler Group or the

1 attorney of record for Smart and shall be held in trust pending the Court's approval of this
2 Consent Judgment.

3 Payments delivered to The Chanler Group shall be made payable, as follows:

- 4 (a) One check made payable to "The Chanler Group in Trust for
5 OEHHA" in the amount of \$1,125;
- 6 (b) One check made payable to "The Chanler Group in Trust for "John
7 Moore" in the amount of \$375; and
- 8 (c) One check made payable to "The Chanler Group in Trust" in the
9 amount of \$28,500.

10 Payments delivered to David G. Freedman shall be made payable, as follows:

- 11 (a) One check made payable to " David G. Freedman in Trust for
12 OEHHA" in the amount of \$1,125;
- 13 (b) One check made payable to "David G. Freedman in Trust for John
14 Moore" in the amount of \$375; and
- 15 (c) One check made payable to "David G. Freedman in Trust for The
16 Chanler Group" in the amount of \$28,500.

17 If Smart elects to deliver payments to its attorney of record, such attorney of record shall:

18 (a) confirm in writing within five days of receipt that the funds have been deposited in a trust
19 account; and (b) within two days of the date of the hearing on which the Court approves the
20 Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as
21 follows:

- 22 (a) One check made payable to "The Chanler Group in Trust for
23 OEHHA" in the amount of \$1,125;
- 24 (b) One check to "The Chanler Group in Trust for John Moore" in the
25 amount of \$375; and
- 26 (c) One check to "The Chanler Group" in the amount of \$28,500.

27 **3.3.2 Issuance of 1099 Forms:** After the Consent Judgment has been approved
28 and the settlement funds have been transmitted to plaintiff's counsel, Smart shall issue three

1 separate 1099 forms, as follows:

2 (a) The first 1099 shall be issued to the Office of Environmental
3 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
4 68-0284486) in the amount of \$1,125;

5 (b) The second 1099 shall be issued to John Moore in the amount of
6 \$375, whose address and tax identification number shall be furnished
7 upon request; and

8 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
9 3171522) in the amount of \$28,500.

10 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered
11 to the following payment address:

12 The Chanler Group
13 Attn: Proposition 65 Controller
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

15 **4. CLAIMS COVERED AND RELEASE CLAIMS COVERED AND RELEASED**

16 **4.1 Plaintiff's Public Release of Proposition 65 Claims.** Plaintiff acting on his own
17 behalf and in the public interest releases Defendant and each of its officers, employees, agents,
18 members, suppliers, vendors, successors and assigns, from all claims for violations of Proposition
19 65 up through the Effective Date based on exposure to the Listed Chemicals from the Products as
20 set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
21 compliance with Proposition 65 with respect to exposures to the Listed Chemicals from the
22 Products as set forth in the Notice.

23 **4.2 Plaintiff's Individual Release of Claims.** Plaintiff also, in his individual capacity
24 only and *not* in his representative capacity, provides a release herein which shall be effective as a
25 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
26 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of plaintiff of any
27 nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and
28 arising out of alleged or actual exposures to the Listed Chemicals in the Products manufactured,

1 distributed or sold by Defendant. This release extends to Defendant and each of its officers,
2 employees, agents, members, suppliers, vendors, successors and assigns.

3 **4.3. Defendant's Release of Plaintiff.** Defendant on behalf of itself, its past and
4 current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all
5 claims against Plaintiff, his attorneys and other representatives, for any and all actions taken or
6 statements made (or those that could have been taken or made) by Plaintiff and his attorneys and
7 other representatives, whether in the course of investigating claims or otherwise seeking to
8 enforce Proposition 65 against it in this matter with respect to the Products.

9 **4.4 Defendant's Release of Moore.** Defendant waives any and all claims against
10 Moore, his attorneys, and other representatives for any and all actions taken or statements made
11 (or those that could have been taken or made) by Moore and his attorneys and other
12 representatives, whether in the course of investigating claims or otherwise seeking enforcement of
13 Proposition 65 against them in this matter, and/or with respect to the Products.

14 **5. SEVERABILITY**

15 If, subsequent to Court approval of this Consent Judgment, any of the provisions of this
16 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
17 provisions remaining shall not be adversely affected unless the Court finds that any unenforceable
18 provision is not severable from the remainder of the Consent Judgment.

19 **6. COURT APPROVAL**

20 Moore shall file a motion for Court approval of this Consent Judgment within 35 days
21 after it has been fully executed by all Parties. This Consent Judgment is not effective until it is
22 approved and entered by the Court and shall be null and void if, for any reason, it is not
23 approved and entered by the Court within 120 days after it has been fully executed by all Parties.
24 In the event this Consent Judgment is (a) not entered by this Court within 120 days of the
25 Effective Date for any reason whatsoever; or (b) is entered by the Court and subsequently
26 overturned by any appellate court, any monies that have been provided to Moore or his counsel
27 pursuant to Sections 3 and/or 4 above shall be refunded within fifteen (15) days after receiving a
28 written demand from Defendant requesting the return of such funds.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
4 inapplicable by reason of law generally, or as to the Listed Chemicals and/or the Products, then
5 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to,
6 and to the extent that, the Products are so affected.

7 **8. NOTICES**

8 When any Party is entitled to receive any notice under this Consent Judgment, the notice
9 shall be sent by certified mail and electronic mail to the person(s) identified below:

10 To Defendant:

11 Smart and Final Stores, LLC
12 600 Citadel Dr.
13 Commerce CA 90040
14 Attention: Donald Alvarado

14 With Copy to:

15 David G. Freedman
16 1800 Century Park East, 8th Fl.
17 Los Angeles, CA 90067

17 To Moore:

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

22 Any Party may modify the person and address to whom the notice is to be sent by sending each
23 other Party notice by certified mail and/or other verifiable form of written communication.

23 **9. POST EXECUTION ACTIVITIES**

24 Moore agrees to comply with the reporting form requirements referenced, in California
25 Health & Safety Code §25249.7(f). The parties acknowledge that, pursuant to Health & Safety
26 Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment.
27 In furtherance of obtaining such approval, Moore and Defendant, and their respective counsel
28

1 agree to mutually employ their best efforts to support the entry of this agreement as a Consent
2 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For
3 purposes of this paragraph, “best efforts” shall include, at a minimum, cooperating on the drafting
4 and filing of any papers in support of the requisite motion for judicial approval.

5 **10. MODIFICATION**

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

9 **11. ENTIRE AGREEMENT**

10 This Consent Judgment contains the sole and entire agreement and understanding of the
11 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
12 negotiations, commitments, and understandings related hereto. No representations, oral or
13 otherwise, express or implied, other than those contained herein have been made by any party
14 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
15 deemed to exist or to bind any of the parties.

16 **12. ATTORNEY’S FEES**

17 **12.1** A Party who unsuccessfully brings or contests an action arising out of this Consent
18 Judgment shall be required to pay the prevailing Party’s reasonable attorney’s fees and costs
19 unless the unsuccessful Party has acted with substantial justification. For purposes of this
20 Consent Judgment, the term “substantial justification” shall carry the same meaning as used in the
21 Civil Discovery Act, Code of Civil Procedure § 2016.010 *et seq.*

22 **12.2** Except as specifically provided in the above paragraph and in Section 4.1 above,
23 each Party shall bear its own costs and attorney’s fees in connection with this action.

24 **13. COUNTERPARTS, FACSIMILE SIGNATURES**

25 This Consent Judgment may be executed in counterparts and by facsimile or portable
26 document format (PDF), each of which shall be deemed an original, and all of which, when taken
27 together, shall constitute one and the same document.

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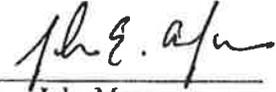
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14. AUTHORIZATION

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:

Dated: ~~June~~ ^{July 6}, 2012

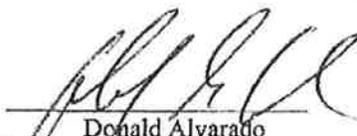


John Moore

AGREED TO:

Dated: June , 2012

SMART AND FINAL STORES, LLC

By: 

Donald Alvarado
Its: Sr. Vice President & General Counsel