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10 JOHN MOORE

FILED
JUL 11 2012
KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Yarborough, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 AMERICAN BILTRITE, INC.; *et al.*,

18 Defendants.

) Case No.: CIV-1102414

) ~~PROPOSED~~ JUDGMENT PURSUANT
) TO TERMS OF PROPOSITION 65
) SETTLEMENT AND CONSENT
) JUDGMENT

) Date: July 11, 2012

) Time: 8:30 a.m.

) Dept.: B

) Judge: Hon. Roy O. Chernus

1 In the above-entitled action, Plaintiff JOHN MOORE and Defendant TARKETT, INC.,
2 having agreed that a judgment be entered pursuant to the terms of the Consent Judgment entered into
3 by the parties, and following the issuance of an order approving this Proposition 65 settlement
4 agreement on July 11, 2012:

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

9 **IT IS SO ORDERED.**

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11 Dated: JUL 11 2012

ROY CHERNUS
JUDGE OF THE SUPERIOR COURT

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Exhibit 1

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1. INTRODUCTION

1.1 John Moore and Tarkett, Inc.

This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or “Plaintiff”), and Tarkett, Inc. (“Tarkett” or “Defendant”), each a “Party” and collectively “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 Tarkett

Tarkett 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 Tarkett has manufactured, imported, distributed, sold, and/or offered for sale vinyl sheet flooring that contains butyl benzyl phthalate (“BBP”), without the requisite Proposition 65 warnings. BBP is on the Proposition 65 list as a chemical known to cause birth defects and other reproductive harm. Tarkett represents that its affiliates ceased manufacturing vinyl sheet flooring containing BBP in Accessible Components (as defined below) as of November 2010.

1.5 Notice of Violation

On February 24, 2011, Moore served Tarkett and various public enforcement agencies, with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice of alleged violations of California Health & Safety Code § 25249.6 based on Tarkett's alleged failure to warn consumers that its vinyl sheet flooring exposed users in California to BBP. To the best of the parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

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1.6 Complaint

On May 12, 2011, Moore filed its Complaint in the Superior Court in and for the County of Marin, naming Tarkett as a defendant, *Moore v. American Biltrite, Inc. et al.*, Case No. CIV-1102414 (the “Action” or “Complaint”), alleging violations of California Health & Safety Code § 25249.6, based on, among other things, the alleged exposures to BBP contained in vinyl sheet flooring sold by Tarkett.

1.7 No Admission

Tarkett denies the material, factual, and legal allegations contained in Moore’s Notice and Complaint and maintains that all products that its affiliates have sold, manufactured, imported, distributed, and/or offered for sale in California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Tarkett 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 Tarkett of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Tarkett’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 Tarkett 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 pursuant to Code of Civil Procedure § 664.6.

2. DEFINITIONS

2.1 The term “Covered Product” means vinyl sheet flooring manufactured, distributed and/or sold in California by Tarkett and/or Tarkett USA, Inc.

2.2 The term “Effective Date” means the date on which a judgment based on this Consent Judgment is entered by the Court.

2.3 The term “Accessible Component” means any component of a Covered Product that could be touched by a person during reasonably foreseeable use.

1 **3. INJUNCTIVE RELIEF: REFORMULATION**

2 3.1 Commencing on the Effective Date, all Covered Products manufactured, imported,
3 distributed, sold, or offered by Tarkett for sale in the State of California shall not contain BBP in
4 concentrations in excess of 0.1 percent (1,000 parts per million) in each Accessible Component
5 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
6 and 8270C or any other methodology utilized by federal or state agencies for the purpose of
7 determining the BBP content in a solid substance.

8 **4. PENALTIES**

9 4.1 In settlement of all the claims referred to in this Consent Judgment, Tarkett shall pay
10 a civil penalty of \$12,000, to be apportioned in accordance with California Health & Safety Code §
11 25249.12, subsections (c)(1) & (d), with 75% of these funds remitted to the State of California’s
12 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
13 penalty remitted to John Moore. This penalty reflects a credit of \$24,000 due to Tarkett’s
14 reformulation of the Covered Products. Tarkett shall issue two separate checks for the penalty
15 payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount
16 of \$9,000 representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust
17 for John Moore” in the amount of \$3,000, representing 25% of the total penalty. Two separate
18 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814
19 (EIN: 68-0284486); and (b) John Moore, whose information shall be provided five calendar days
20 before the payment is due.

21 4.2 Payment shall be delivered to Moore’s counsel within ten (10) days of the Effective
22 Date, at the following address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710
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1 **5. REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS**

2 5.1 The Parties reached an accord on the compensation due to Moore and his counsel
3 under general contract principles and the private attorney general doctrine codified at California
4 Code of Civil Procedure (CCP) §1021.5. Tarkett shall reimburse Moore and his counsel \$39,500
5 for fees and costs incurred as a result of investigating, bringing this matter to its attention, and
6 negotiating a settlement in the public interest. This figure includes Moore's future fees and costs
7 including attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as
8 well as any other legal work performed after the execution of this Consent Judgment incurred in an
9 effort to obtain finality of the case.

10 5.2 The check for reimbursement of fees and costs shall be made payable to "The
11 Chanler Group" and shall be delivered within ten (10) days of the Effective Date, to the following
12 address:

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

16 A separate 1099 shall be issued to "The Chanler Group" (EIN: 94-3171522) for the amount
17 of the reimbursement of Plaintiff's fees and costs.

18 **6. RELEASE OF ALL CLAIMS**

19 6.1 This Consent Judgment is a full, final and binding resolution between Moore, on
20 behalf of himself and in the the public interest, and Tarkett, of any violation of Proposition 65 that
21 was or could have been asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated
22 entities, sister and related companies, directors, officers, shareholders, employees, attorneys,
23 successors and assigns, including but not limited to Tarkett, Inc. (collectively "Defendant
24 Releasees") and each entity to whom Defendant directly or indirectly distributes or sells Covered
25 Products, including but not limited to downstream distributors, wholesalers, customers, resellers,
26 retailers, franchisees, cooperative members, licensors, and licensees that sold or distributed the
27 Covered Products (collectively "Downstream Defendant Releasees"), regarding the failure to warn
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1 about exposures to BBP arising in connection with Covered Products manufactured, sourced,
2 distributed, sold, offered for sale by Defendant Releasees prior to the Effective Date. Compliance
3 with the terms of this Consent Judgment by Tarkett and Defendant Releasees constitutes
4 compliance with Proposition 65 with respect to BBP in Covered Products.

5 6.2 In further consideration of the promises and agreements herein contained, Moore on
6 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
7 assignees, and in the interest of the general public, hereby waives all rights to institute or participate
8 in, directly or indirectly, any form of legal action and releases all claims, including, without
9 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
10 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
11 investigation fees, expert fees, and attorneys' fees), limited to and arising out of alleged or actual
12 exposures to BBP in the Covered Products up through the Effective Date (collectively "Claims")
13 against Tarkett, Defendant Releasees, and Downstream Defendant Releasees.

14 6.3 Moore also, in his individual capacity only and *not* in his representative capacity,
15 provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar
16 to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
17 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
18 suspected or unsuspected, limited to and arising out of alleged or actual exposures to any chemical
19 listed pursuant to Proposition 65 in the Covered Products manufactured, imported, distributed, sold
20 or offered for sale by Defendant Releasees and Downstream Defendant Releasees.

21 6.4 Moore acknowledges that he is familiar with Section 1542 of the California Civil
22 Code, which provides as follows:

23 **A general release does not extend to claims which the creditor**
24 **does not know or suspect to exist in his or her favor at the time**
25 **of executing the release, which if known by him or her must**
26 **have materially affected his or her settlement with the debtor.**

27 Moore expressly waives and relinquishes any and all rights and benefits which he may have
28 under, or which may be conferred on him by the provisions of Section 1542 of the California Civil
Code as well as under any other state or federal statute or common law principle of similar effect, to

1 the fullest extent that he may lawfully waive such rights or benefits pertaining to the released
2 matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a
3 full and complete release notwithstanding the discovery or existence of any such additional or
4 different claims or facts arising out of alleged or actual exposure now or in the future to BBP in the
5 Covered Products manufactured, imported, distributed, sold, or offered for sale by Tarkett, that
6 could otherwise be made against Tarkett, Defendant Releasees, and Downstream Defendant
7 Releasees.

8 6.5 Tarkett on behalf of itself, its past and current agents, representatives, attorneys,
9 successors, and/or assignees, hereby waives any and all claims against Plaintiff, 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 Plaintiff 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 with
13 respect to the Covered Products.

14 **7. COURT APPROVAL**

15 7.1 By this Consent Judgment and upon its approval, the Parties waive their right to trial
16 on the merits, and waive rights to seek appellate review of any and all interim rulings, including all
17 pleading, procedural, and discovery orders.

18 7.2 Plaintiff shall file a motion seeking approval of this Consent Judgment pursuant to
19 California Health & Safety Code §25249.7(f), and Tarkett shall support the entry of such motion.

20 7.3 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
21 shall terminate and become null and void, and the action shall revert to the status that existed prior
22 to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
23 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
24 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
25 purpose in this action, or in any other proceeding; and (c) the parties agree to meet and confer to
26 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

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1 **8. ENFORCEMENT OF CONSENT JUDGMENT**

2 8.1 Any Party may, by motion or application for an order to show cause before the
3 Marin County Superior Court, enforce the terms and conditions contained in this Consent Judgment.
4 A Party may file such a motion or application only after that Party first provides 30 days notice to
5 the Party allegedly failing to comply with the terms and conditions of this Consent Judgment and
6 attempts to resolve such Party's failure to comply in an open and good faith manner for a period of
7 no less than 30 days.

8 **9. GOVERNING LAW**

9 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and apply within the State of California. In the event that Proposition 65 is repealed,
11 preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the
12 provisions of this Consent Judgment are rendered inapplicable or no longer require as a result of
13 any such repeal or preemption or rendered inapplicable by reason of law generally as to the
14 Covered Products, then Tarkett shall have no further obligations pursuant to this Consent Judgment
15 with respect to, and to the extent that, the Covered Products are so affected.

16 9.2 This Consent Judgment contains the sole and entire agreement and understanding of
17 the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and
18 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
19 deemed merged. There are no warranties, representations, or other agreements between the Parties
20 except as expressly set forth in this Consent Judgment. No representations, oral or otherwise,
21 express or implied, other than those specifically referred to in this Consent Judgment have been
22 made by any party. No other agreements not specifically contained or referenced in this Consent
23 Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No
24 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
25 unless executed in writing by the party to be bound. No waiver of any of the provisions of this
26 Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
27 whether or not similar, nor shall such waiver constitute a continuing waiver.

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11. COUNTERPARTS; FACSIMILE SIGNATURES

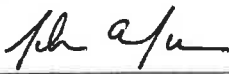
11.1 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

12. MODIFICATION

12.1 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. AUTHORIZATION

13.1 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: <u>MARCH 9, 2012</u>	Date: _____
By: <u></u>	By: _____
Plaintiff, John Moore	Defendant, Tarkett, Inc.

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11. COUNTERPARTS; FACSIMILE SIGNATURES

11.1 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.

12. MODIFICATION

12.1 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. AUTHORIZATION

13.1 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: _____

Date: March 9, 2012

By: _____
Plaintiff, John Moore

By: Kary K Underhill, VP Legal
Defendant, Tarkett, Inc.