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10 JOHN MOORE

RECEIVED
FILED JUN 27 2013

JUL 31 2013 MARIN COUNTY
SUPERIOR COURT
KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Bond, 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 AS TO**
) **DEFENDANT MANNINGTON MILLS,**
) **INC.**
)
) Date: August 28, 2013
) Time: 8:30 a.m.
) Dept.: B
) Judge:

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In the above-entitled action, Plaintiff John Moore and Defendant Mannington Mills, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment:

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

IT IS SO ORDERED.

Dated: JUL 31 2013

ROY CHERNUS
JUDGE OF THE SUPERIOR COURT

Exhibit 1

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Attorneys for Plaintiff
JOHN MOORE

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

JOHN MOORE,) Case No. CIV-1102414
)
Plaintiff,)
)
v.) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANT MANNINGTON MILLS,**
) **INC.**
AMERICAN BILTRITE, *et al.*,)
)
Defendants.)
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1. INTRODUCTION

1.1 John Moore and Mannington Mills, Inc.

This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or “Plaintiff”), and Mannington Mills, Inc. (“Mannington” 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 Mannington

Mannington 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 Mannington has manufactured, imported, distributed, and/or sold vinyl sheet flooring containing 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.

1.5 Notice of Violation

On February 24, 2011, Moore served Mannington 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 Mannington'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 his Complaint in the Superior Court in and for the County of Marin, naming Mannington 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 Mannington.

1.7 No Admission

Mannington denies the material, factual, and legal allegations contained in Moore’s Notice and Complaint and maintains that all products that it or 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 Mannington 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 Mannington of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Mannington’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 Mannington 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 Mannington.

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 2.4 The term “Reformulated Product” shall mean Covered Products that meet the
2 reformulation standard set forth in Section 3.1.

3 **3. INJUNCTIVE RELIEF**

4 3.1 **Reformulation**

5 Commencing on May 15, 2013, all Covered Products manufactured by, or on behalf of,
6 Mannington, for sale in the State of California, shall contain BBP in concentrations of less than 0.1
7 percent (1,000 parts per million) in each Accessible Component when analyzed pursuant to U.S.
8 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
9 methodology utilized by federal or state agencies for the purpose of determining the BBP content in
10 a solid substance.

11 **4. MONETARY PAYMENTS**

12 In settlement of all the claims referred to in this Consent Judgment, Mannington shall pay a
13 total of \$102,500 in accordance with this Section. Each penalty payment will be allocated in
14 accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
15 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
16 remaining 25% of the penalty remitted to Moore, as follows:

17 4.1 **Initial Civil Penalty**

18 Mannington shall pay an initial civil penalty in the amount of \$25,000 within five
19 days of the Effective Date. Mannington shall issue two separate checks to: (a) “OEHHA” in the
20 amount of \$18,750; and (b) “The Chanler Group in Trust for John Moore” in the amount of \$6,250.
21 All penalty payments shall be delivered to the addresses listed in Section 4.5 below.

22 4.2 **Final Civil Penalty**

23 Mannington shall pay a final civil penalty of \$70,000 on or before December 31,
24 2013. The final civil penalty shall be waived in its entirety, however, if, no later than December 15,
25 2013, an officer of Mannington provides Moore with written certification that, as of the date of such
26 certification and continuing into the future, Mannington has met the reformulation standard
27 specified in Section 3.1 above and that all Covered Products manufactured, distributed, sold and
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1 offered for sale in California by Mannington are Reformulated Products. Moore must receive any
2 such certification on or before December 15, 2013. The certification in lieu of a final civil penalty
3 payment provided by this Section is a material term, and time is of the essence. Mannington shall
4 issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of
5 \$52,500; and (b) "The Chanler Group in Trust for John Moore" in the amount of \$17,500.

6 **4.3 Payment in Lieu of Further Civil Penalty**

7 Mannington shall pay the sum of \$7,500 to Silent Spring Institute ("Silent Spring"), a not-
8 for-profit institution, in lieu of further civil fines pursuant to California Health & Safety Code §
9 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). Silent Spring will use such
10 funds in one or more of the following ways: (a) to continue its work identifying the links between
11 exposure to environmental chemicals including lead and phthalates such as di(2-
12 ethylhexyl)phthalate ("DEHP"), di-n-butyl phthalate ("DBP") and butyl benzyl phthalate ("BBP")
13 that cause reproductive and developmental harm, as well as educating the public about such
14 potential exposures; (b) to conduct exposure- and risk-based prioritization of chemicals listed under
15 Proposition 65, or chemicals OEHHA has identified as candidates for listing, in order to identify
16 exposures of potential public health significance; (c) to monitor compliance with the reformulation
17 requirements of this and other, similar consent judgments addressing Proposition 65-listed chemical
18 exposures; or (d) to conduct additional exposure measurements that evaluate the levels of chemical
19 exposures to users of products that contain lead, DEHP, DBP and BBP.

20 **4.4 Reimbursement of Fees and Costs**

21 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
23 this fee issue to be resolved after the material terms of the agreement had been settled. Mannington
24 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
25 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
26 Moore and his counsel under general contract principles and the private attorney general doctrine
27 codified at California Code of Civil Procedure (CCP) §1021.5, for all of the work performed
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1 through the mutual execution of this agreement. Mannington shall reimburse Moore and his
2 counsel \$92,500 for fees and costs incurred as a result of investigating, bringing this matter to its
3 attention, and negotiating a settlement in the public interest. Mannington shall make the check
4 payable to “The Chanler Group” and shall deliver payment within five days of the Effective Date to
5 the address listed in Section 4.5.1(a) below.

6 4.5 **Payment Procedures**

7 4.5.1 **Issuance of Payments.** Payments shall be delivered as follows:

- 8 (a) All Payments owed to Moore and his counsel, pursuant to Sections 4.1,
9 4.2 and 4.4 shall be delivered to the following payment address:

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

- 15 (b) All Payments owed to OEHHA (EIN: 68-0284486), pursuant to
16 Sections 4.1 and 4.2 shall be delivered directly to OEHHA (Memo
17 line “Prop 65 Penalties”) at the following address:

18 For United States Postal Service Delivery:

19 Mike Gyrics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 P.O. Box 4010
23 Sacramento, CA 95812-4010

24 For Non-United States Postal Service Delivery:

25 Mike Gyrics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 1001 I Street
 Sacramento, CA 95814

- (c) The payment owed to Silent Spring, pursuant to Section 4.3, shall be
made payable to “The Chanler Group in Trust for Silent Spring

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Institute” and shall be delivered to the payment address listed in Section 4.5.1(a).

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth in 4.5.1 (a), as proof of payment to OEHHA.

4.5.2 **Issuance of 1099 Forms.** After each penalty payment, Manington shall issue separate 1099 forms for each payment to Moore, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the parties, and OEHHA at the address listed in Section 4.5.1(b) above.

5. CLAIMS COVERED AND RELEASED

5.1 **Moore’s Release of Proposition 65 Claims**

Moore acting on behalf of himself and in the the public interest releases Mannington, its parents, subsidiaries, affiliated entities under common ownership, sister and related companies, directors, officers, shareholders, employees, attorneys, successors and assigns and each entity to whom Defendant directly or indirectly distributes or sells the Covered Products, including, but not limited to, downstream distributors, wholesalers, customers, resellers, retailers, franchisees, cooperative members, licensors, and licensees that sold or distributed the Covered Products (collectively “Releasees”), from all claims for violations of Proposition 65 up through the Effective Date based on exposure to BBP from the Covered Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to BBP in the Covered Products.

5.2 **Moore’s Individual Release of Claims**

Moore also, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to BBP in the Covered Products manufactured, imported, distributed, sold or offered for sale by Mannington.

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5.3 Mannington’s Release of Moore

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

6. COURT APPROVAL

6.1 By this Consent Judgment and upon its approval, the Parties waive their right to trial on the merits, and waive their rights to seek appellate review of any and all interim rulings, including all pleading, procedural, and discovery orders, only, however, as they relate to Defendant Mannington.

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

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

7. ENFORCEMENT OF CONSENT JUDGMENT

Any Party may, by motion, application for an order to show cause before the Marin County Superior Court, or any other appropriate action, enforce the terms and conditions contained in this Consent Judgment. A Party may file such a motion, action or application only after that Party first provides 30 days notice to the Party allegedly failing to comply with the terms and conditions of

1 this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good
2 faith manner for a period of no less than 30 days.

3 **8. GOVERNING LAW**

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

11 8.1 This Consent Judgment contains the sole and entire agreement and understanding of
12 the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and
13 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
14 deemed merged. There are no warranties, representations, or other agreements between the Parties
15 except as expressly set forth in this Consent Judgment. No representations, oral or otherwise,
16 express or implied, other than those specifically referred to in this Consent Judgment have been
17 made by any party. No other agreements not specifically contained or referenced in this Consent
18 Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No
19 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
20 unless executed in writing by the party to be bound. No waiver of any of the provisions of this
21 Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
22 whether or not similar, nor shall such waiver constitute a continuing waiver.

23 8.2 The Parties, including their counsel, have participated in the preparation of this
24 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
25 Consent Judgment was subject to revision and modification of the Parties and has been accepted
26 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
27 ambiguity existing in this Consent Judgment shall not be interpreted against any party as a result of
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1 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
2 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
3 the drafting party should not be employed in the interpretation of this Consent Judgment and, in this
4 regard, the Parties hereby waive California Code Section 1654.

5 **9. NOTICES**

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

10 To Mannington:

11 Scott Salerni
12 Corporate Counsel
13 Mannington Mills, Inc.
14 75 Mannington Mills Road
15 Salem, NJ 08079

To Moore:

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

14 With a copy to:

15 Jeffrey Margulies, Esq.
16 Fulbright & Jaworski L.L.P.
17 555 South Flower Street
Forty-First Floor
Los Angeles, CA 90071

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

20 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

24 **11. MODIFICATION**

25 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
26 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
27 of any Party and entry of a modified Consent Judgment by the Court.
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12. 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: JUNE 4, 2013

Date: _____

By: 
Plaintiff, John Moore

By: _____
Defendant, Mannington Mills, Inc.

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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.

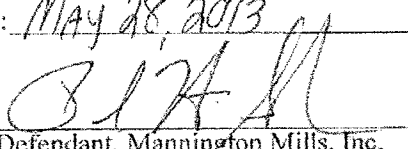

AGREED TO:

AGREED TO:

Date: _____

Date: MAY 28, 2013

By: _____
Plaintiff, John Moore

By:  _____ 
Defendant, Mannington Mills, Inc.
PAUL H. SNYDEL
SR. Vice PRESIDENT, CFO