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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

JOHN MOORE

Plaintiff,

v.

BUXTON ACQUISITION CO., L.L.C.; *et al.*,

Defendants.

Case No. CGC-11-511248

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

Date: January 12, 2012
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Harold E. Kahn

Plaintiff, John Moore, and defendant, Buxton Acquisition Co., L.L.C., 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 the parties' Proposition 65 settlement and Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby 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: JAN 12 2012

HAROLD KAHN
JUDGE OF THE SUPERIOR COURT

Exhibit 1

Brian C Johnson, State Bar No. 235965
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Attorneys for Plaintiff
JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

JOHN MOORE, Plaintiff, v. BUXTON ACQUISITION CO., L.L.C.; *et al.*, Defendants.	Case No. CGC-11-511248 **[PROPOSED] CONSENT JUDGMENT** Health & Safety Code § 25249.6 *et seq.*

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between John Moore ("Moore" or "Plaintiff") and Buxton Acquisition Co., L.L.C. ("Buxton" or "Defendant"), with Moore and Buxton collectively referred to as the "Parties."

1.2 Plaintiff

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

1.3 Defendant

Buxton 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 Buxton has manufactured, distributed, and/or offered for sale in California books/journals with soft (vinyl) covers containing excessive amounts of di(2-ethylhexyl)phthalate ("DEHP") without the first providing the requisite "clear and reasonable" exposure warnings required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause birth defects and other reproductive harm.

1.5 Product Description

The products that are covered by this Consent Judgment are books/journals with covers containing DEHP, including, but not limited to, the *Buxton Writing Pad Folio, #36-006 (#0 43345 82831 1)*, sold by Buxton in California ("Products").

1.6 Notice of Violation

On April 8, 2011, Moore served Buxton and various public enforcement agencies with a document entitled 60-Day Notice of Violation ("Notice") that informed Buxton and the public enforcers that Buxton was allegedly in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to DEHP.

1.7 Complaint

On July 7, 2011, Moore filed the instant action ("Complaint") naming Buxton as a defendant and stating a cause of action for the violations of Health & Safety Code § 25249.6 alleged in the Notice.

1.8 No Admission

Buxton denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that it has sold in California, including the Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Buxton of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Buxton. This section shall not, however, diminish or otherwise affect Buxton'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 Buxton as to the allegations in the Complaint, that venue is proper in the San Francisco County, and that this Court has jurisdiction to enter and enforce the provisions of the Consent Judgment under Code of Civil Procedure § 664.6, as a full, final, and binding resolution of all claims which were raised or could have been raised in the Complaint against Buxton, based on the facts alleged by Moore in the Notice and Complaint.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean January 1, 2012.

2. <u>INJUNCTIVE RELIEF</u>

On or after the Effective Date, Buxton shall not purchase for sale in California or ship to a third-party distributor or retailer for sale in California, any Product that is not "DEHP Free." For purposes of this Consent Judgment, "DEHP Free" shall mean Products containing DEHP in concentrations that do not exceed 1,000 parts per million (0.1%) 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 DEHP content in a solid substance. It is understood that Products shipped to a third-party distributor or retailer prior to the Effective Date are not covered by the terms of this Consent Judgment.

3. MONETARY PAYMENTS

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

Buxton shall pay $5,000 in civil penalties pursuant to Health & Safety Code § 25249.7(b). This amount reflects a penalty credit of $6,000 agreed to by Moore for Buxton's cooperation during the settlement process and its commitment to Proposition 65 compliance, including offering only DEHP Free Products in California pursuant to Section 2.

The civil penalty payment shall be allocated according to Health & Safety Code §§ 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty earmarked for the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent (25%) of the penalty earmarked for Moore.

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 the issue to be resolved after the material terms of the agreement had been settled. Buxton 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 codified at California Code of Civil Procedure § 1021.5 for all work performed in this matter, exclusive of fees on appeal, if any. Under these legal principles, Buxton shall pay $30,500 for all fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) drafting, negotiating, and obtaining the Court's approval of this Consent Judgment in the public interest.

3.3 Payment Procedures

3.3.1 Payments Held in Trust

All payments made under this Consent Judgment shall be held in trust until the Court approves the settlement. The Parties acknowledge that Moore's counsel gave Buxton the option of depositing the funds into its attorney's trust account, but that Buxton elected to have The Chanler Group hold the settlement funds in its trust account.

3.3.2 Payment Schedule

All settlement funds required by Sections 3.1 and 3.2 shall be delivered to Moore's counsel according to the following schedule:

(a) On or before November 7, 2011, Buxton shall deliver three checks made payable as follows:

(1) one check to "The Chanler Group in Trust for OEHHA" in the amount of $3,750;

(2) a second check to "The Chanler Group in Trust for John Moore" in the amount of $1,250; and

(3) a third check to "The Chanler Group in Trust" in the amount of $3,875.

(b) On or before December 5, 2011, Buxton shall deliver a fourth check made payable to "The Chanler Group in Trust" in the amount of $8,875.

(c) On or before January 9, 2012, Buxton shall deliver a fifth check made payable to "The Chanler Group in Trust" in the amount of $8,875.

(d) On or before February 6, 2012, Buxton shall deliver a sixth check made payable to "The Chanler Group in Trust" in the amount of $8,875.

3.3.3 Issuance of 1099 Forms

After the Consent Judgment has been approved, Buxton shall issue three 1099 forms for payments made pursuant Sections 3.1 and 3.2 as follows:

(a) one 1099 form to the "Office of Environmental Health Hazard Assessment", P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid to OEHHA in the amount of $3,750;

(b) a second 1099 form to "John Moore", whose address and tax identification number shall be furnished within five days of the date this Consent Judgment is fully executed by the Parties, for civil penalties paid in the amount of $1,250; and

(c) a third 1099 form to "The Chanler Group" (EIN: 94-3171522) for the reimbursement of attorney fees and costs in the amount of $30,500.

3.3.4 Payment Address

All payments and tax documents required by this Section 3 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

4. CLAIMS COVERED AND RELEASED

4.1 Full, Final and Binding Resolution of Proposition 65 Allegations

This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of himself and the public, and Defendant, of any violation of Proposition 65 that was or could have been asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Defendant directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, or sold by Defendant. Compliance with this Consent Judgment constitutes compliance with Proposition 65 now and after the Effective Date for Products sold by Buxton and the Releasees in California.

4.2 Plaintiff's Public Release of Proposition 65 Claims

In further consideration of the promises and agreements contained herein, Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public in California, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation,

all actions and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees – exclusive of fees and costs on appeal, if any – (collectively "Claims") arising under Proposition 65 (collectively "Claims") for unwarned exposures to DEHP contained in the Products sold by Buxton.

4.3 Plaintiff's Individual Release of Claims

Plaintiff, 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 Claims, liabilities, and demands of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP contained in the Products sold by Buxton.

4.4 Defendant's Release of Plaintiff

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

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all Parties, in which event any monies that have been provided to Moore or his counsel pursuant to Sections 3.1 and 3.2 shall be refunded within fifteen (15) days after receiving written notice from Buxton that the one-year period has expired.

6. SEVERABILITY

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

7. **GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Buxton shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

8. **NOTICES**

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

For Buxton:

Eric Lund, President
Buxton Acquisition Co., L.L.C.
45 Plainfield Street
Chicopee, MA 01013

and

Deborah A. Basile, Esq.
Doherty, Wallace, Pillsbury & Murphy, P.C.
One Monarch Place, Suite 1900
1414 Main Street
Springfiled, MA 01144-1900

For Moore:

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

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

9. **COUNTERPARTS; FACSIMILE SIGNATURES**

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

10. **POST EXECUTION ACTIVITIES**

Moore agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f). In addition, the parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Moore and Buxton and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of this section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

11. **MODIFICATION**

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

12. **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:

By: _____
John Moore

Date: October 21, 2011

AGREED TO:

By: _____
Eric Lund, President
Buxton Acquisition Co., L.L.C.

Date: October 19 2011