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Attorneys for Plaintiff
JOHN MOORE

ENDORSED
FILED
San Francisco County Superior Court
SEP 04 2012
CLERK OF THE COURT
BY: CYNTHIA S. HERBERT
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,) Case No.: CGC-11-514224
)
Plaintiff,)
)
v.) **[PROPOSED] JUDGMENT**
) **PURSUANT TO TERMS OF**
) **PROPOSITION 65 SETTLEMENT**
) **AND CONSENT JUDGMENT**
WINPLUS NORTH AMERICA, INC.; *et al.*,)
)
Defendants.) Date: September 4, 2012
) Time: 9:30 a.m.
) Dept.: 302
) Judge: Hon. Harold E. Kahn

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In the above-entitled action, Plaintiff John Moore and Defendant Winplus North America, 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.

HAROLD KAHN

Dated: SEP 04 2012

JUDGE OF THE SUPERIOR COURT

Exhibit 1

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11 Attorneys for Defendant
WINPLUS NORTH AMERICA, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 JOHN MOORE,
17 Plaintiff,
18 v.
19 WINPLUS NORTH AMERICA, INC.; and
20 DOES 1-150, inclusive,
21 Defendants.
22 _____

) Case No. CGC-11-514224
)
) **[PROPOSED] CONSENT JUDGMENT**
)
) Dept:
) Judge:
) Date: None set
)
) Complaint Filed: September 13, 2011

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1 **1. INTRODUCTION**

2 **1.1 John Moore and Winplus North America, Inc.**

3 This Consent Judgment is entered into by and between John Moore (“Moore” or “Plaintiff”)
4 and Winplus North America, Inc. (“Winplus” or “Defendant”), with Plaintiff and Defendant
5 collectively referred to as the “Parties.”

6 **1.2 John Moore**

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

10 **1.3 Winplus North America, Inc.**

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

14 **1.4 General Allegations**

15 Winplus has manufactured, imported, distributed and/or sold in California automotive seat
16 covers that contain di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65 health
17 hazard warnings. DEHP is on the Proposition 65 list as known to cause birth defects and other
18 reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as automotive seat
21 covers containing DEHP including, but not limited to, *Type S Seat Cover, Quilted Coupe Suede,*
22 *SC30415-6 (#6 43334 30415 6)*, manufactured, imported, distributed and/or sold by Winplus,
23 hereinafter referred to as the “Products.”

24 **1.6 Notice of Violation**

25 On or about June 29, 2011, Moore served Winplus and various public enforcement agencies,
26 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with
27 notice of alleged violations of Proposition 65 based on Winplus’ alleged failure to warn consumers
28

1 that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no
2 public prosecutor has commenced and is diligently prosecuting an action against this violation.

3 **1.7 Complaint**

4 On September 13, 2011, Moore filed a complaint in the Superior Court in and for the
5 County of San Francisco against Winplus North America, Inc. and Does 1 through 150, *Moore v.*
6 *Winplus, et al.*, Case No. CGC-11-514224 ("Complaint" or "Action"), alleging violations of
7 Proposition 65, based on the alleged exposures to DEHP contained in certain automotive seat covers
8 sold by Winplus.

9 **1.8 No Admission**

10 Winplus denies the material, factual and legal allegations contained in Moore's Notice and
11 Complaint and maintains that all Products it has sold, manufactured, imported and/or distributed in
12 California have been and are in compliance with all laws. Nothing in this Consent Judgment shall
13 be construed as an admission by Winplus of any fact, finding, issue of law, or violation of law, nor
14 shall compliance with this Consent Judgment constitute or be construed as an admission by Winplus
15 of any fact, finding, conclusion, issue of law, or violation of law. Winplus represents it had no
16 knowledge of the presence DEHP in its Products and has implemented an internal program to
17 ensure compliance with Proposition 65. However, this section shall not diminish or otherwise
18 affect Winplus' obligations, 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 Winplus as to the allegations contained in the Complaint, that venue is proper in
22 the County of San Francisco 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 June 4, 2012.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Reformulation Standard**

3 “Reformulated Products” are defined as containing DEHP in concentrations less than 0.1
4 percent (1,000 parts per million) in each accessible component when analyzed pursuant to U.S.
5 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
6 methodology utilized by federal or state agencies for the purpose of determining the DEHP content
7 in a solid substance.

8 **2.2 Reformulation Commitment**

9 As of the Effective Date, all Products manufactured, imported, distributed, sold and/or
10 offered for sale in the state of California by Winplus shall qualify as Reformulated Products as
11 defined in Section 2.1 above, or shall carry Proposition 65 warnings as set forth in Section 2.3
12 below.

13 **2.3 Product Warnings**

14 Commencing on the Effective Date, Winplus shall, for all Products other than Reformulated
15 Products, provide clear and reasonable warnings as set forth in Section 2.3(a) and (b). Each
16 warning shall be prominently placed with such conspicuousness as compared with other words,
17 statements, designs, or devices as to render it likely to be read and understood by an ordinary
18 individual under customary conditions before purchase or use. Each warning shall be provided in a
19 manner such that the consumer or user understands to which specific Products the warning applies,
20 so as to minimize the risk of consumer confusion.

21 **(a) Retail Store Sales.**

22 **(i) Product Labeling.** Defendant shall affix a warning to the packaging,
23 labeling, or directly on each Product sold in retail outlets in California by Defendant or any person
24 selling the Products, that states:

25 **WARNING:** This product contains phthalate chemicals,
26 including DEHP, known to the State of
27 California to cause birth defects and other
28 reproductive harm.

1 (ii) **Point-of-Sale Warnings.** Alternatively, Winplus may provide
2 warning signs in the form below to its customers in California with instructions to post the
3 warnings in close proximity to the point of display of the Products. Such instruction sent to
4 Winplus' customers shall be sent by certified mail, return receipt requested.

5 **WARNING:** This product contains phthalate chemicals,
6 including DEHP, known to the State of
7 California to cause birth defects and other
8 reproductive harm.

9 Where more than one Product is sold in proximity to other like items or to those that do not
10 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
11 shall be used:¹

12 **WARNING:** The following products contain phthalate
13 chemicals, including DEHP, known to the State
14 of California to cause birth defects and other
15 reproductive harm:

16 *[list products for which warning is required]*

17 (b) **Mail Order Catalog and Internet Sales.** In the event that Winplus sells
18 Products via mail order catalog and/or the internet, to customers located in California, after the
19 Effective Date, that are not Reformulated Products, Winplus shall provide warnings for such
20 Products sold via mail order catalog or the internet to California residents. Warnings given in the
21 mail order catalog or on the internet shall identify the specific Product to which the warning applies
22 as further specified in Sections 2.3(b)(i) and (ii).

23 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
24 order catalog shall be in the same type size or larger than the Product's description text within the
25 catalog. The following warning shall be provided on the same page and in the same location as the
26 display and/or description of the Product:

27 **WARNING:** This product contains phthalate chemicals,
28 including DEHP, known to the State of
California to cause birth defects and other
reproductive harm.

¹ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 Where it is impracticable to provide the warning on the same page and in the same location
2 as the display and/or description of the Products, Winplus may utilize a designated symbol to cross
3 reference the applicable warning and shall define the term “designated symbol” with the following
4 language on the inside of the front cover of the catalog or on the same page as any order form for
5 the Products:

6 **WARNING:** Certain products identified with this symbol
7 ▼ and offered for sale in this catalog contain
8 phthalate chemicals, including DEHP,
9 known to the State of California to cause
10 birth defects and other reproductive harm.

11 The designated symbol must appear on the same page and in close proximity to the display
12 and/or description of the Products. On each page where the designated symbol appears, Winplus
13 shall provide a header or footer directing the consumer to the warning language and definition of
14 the designated symbol.

15 (ii) **Internet Website Warning.** A warning shall be given in conjunction
16 with the sale of the Products via the internet, which warning shall appear either: (a) on the same
17 web page on which the Products are displayed; (b) on the same web page as the order form for the
18 Products; (c) on the same page as the price for any of the Products; or (d) on one or more web pages
19 displayed to a purchaser during the checkout process. The following warning statement shall be
20 used and shall appear in any of the above instances adjacent to or immediately following the
21 display, description, or price of the Products for which it is given in the same type size or larger
22 than the Products description text:

23 **WARNING:** This product contains phthalate chemicals,
24 including DEHP, known to the State of
25 California to cause birth defects and other
26 reproductive harm.

27 Alternatively, the designated symbol may appear adjacent to or immediately following the
28 displays, descriptions, or prices of the Products for which a warning is being given, provided that
the following warning statement also appears elsewhere on the same web page, as follows:

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12. MODIFICATION

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

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 6-21-12

By _____
Plaintiff, John Moore

By 
Authorized Signatory for Defendant,
Winplus North America, Inc