

COPY

By Fax

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Clifford A. Chanler, State Bar No. 135534
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118
E-mail: cliff@chanler.com

Attorneys for Plaintiff
JOHN MOORE

ENDORSED
FILED

2016 JUN 30 A 9:49

David H. Yamaseki, Clerk of the Superior Court
County of Santa Clara, California
By: C. P. [Signature]
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

NAMASTE LABORATORIES, L.L.C., *et al.*,

Defendants.

Case No. 16CV291196

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

Date: June 30, 2016
Time: 9:00 a.m.
Dept.: 9
Judge: Hon. Mary E. Arand

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff John Moore and Defendant Namaste Laboratories, 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 their Proposition 65 settlement and Consent Judgment on June 30, 2016, and for good cause being shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 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 terms of the settlement under Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: 6/30/2016

Mary E. Arand

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Clifford A. Chanler, State Bar No. 135534
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE
Plaintiff,
v.
NAMASTE LABORATORIES, L.L.C., *et al.*,
Defendants.

Case No. 16CV291196
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*, and
Cal. Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”), and
4 defendant Namaste Laboratories, L.L.C. (“Namaste”), with Moore and Namaste each individually
5 referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Moore alleges that Namaste manufactures, imports, sells, and distributes for sale in
16 California, vinyl/PVC gloves that contain diisononyl phthalate (“DINP”), and that it does so without
17 first providing the exposure warning required by Proposition 65. DINP is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP that
21 are manufactured, imported, sold, or distributed for sale in California by Namaste (“Products”)
22 including, but not limited to, the *ORS Olive Oil Built-In Protection™ No-Lye Hair Relaxer, Normal*
23 *Strength, ORS Olive Oil Built-In Protection™ No-Lye Hair Relaxer, Extra Strength; ORS Olive Oil*
24 *Girls™ Built-In Protection Plus™ No-Lye Relaxer System; ORS Olive Oil Built-In Protection™ New*
25 *Growth No-Lye Hair Relaxer, Normal Strength; ORS Olive Oil Built-In Protection™ New Growth*
26 *No-Lye Hair Relaxer, Extra Strength; and the following colored products: Booster Pack (item #*
27 *1103024016); Jet Black (item # 1103064020); Brown (item # 1103064021); Raging Red (item #*
28 *1103064022); Honey Blonde (item # 1103064023); Light Golden Blonde (item # 1103064024); and*

1 Volume Developer (item # 1103064025 25) and the following relaxer/texturizer products: Zone
2 Relaxer (item # 11194) and Texturizer (item # 11195).

3 **1.6 Notices of Violation**

4 Initially, on December 22, 2014, Moore served Namaste, the California Attorney General, and
5 all other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”),
6 alleging that Namaste violated Proposition 65 when it failed to warn its customers and consumers in
7 California of the health hazards associated with exposures to DINP from the Products.

8 On March, 5, 2015, Moore commenced an action against Namaste and several other
9 defendants in Santa Clara Superior Court, Case No. CIV1500844. On March 9, 2015, Moore
10 dismissed the action as to Namaste without prejudice.

11 Subsequently, on December 29, 2015, Moore served Namaste, Sally Beauty Holdings, Inc.,
12 Sally Beauty Supply LLC, Wal-Mart Stores, Inc., Kmart Corporation, the California Attorney
13 General, and all other requisite public enforcement agencies with a Supplemental 60-Day Notice of
14 Violation (“Supplemental Notice”), alleging that Namaste violated Proposition 65 when it failed to
15 warn its customers and consumers in California of the health hazards associated with exposures to
16 DINP from the Products.

17 The Notice and Supplemental Notice are collectively referred to herein as the “Notices”. No
18 public enforcer has commenced and is diligently prosecuting an action to enforce the violations
19 alleged in the Notice.

20 **1.7 Complaint**

21 On February 4, 2016, Moore filed the instant action (“Complaint”), for the violations of
22 Proposition 65 that are the subject of the Notice. Upon the latter of the expiration of the sixty-day
23 notice period following Moore’s service of the Supplemental Notice, or the Court’s entry of this
24 Consent Judgment, the complaint shall be deemed amended nunc pro tunc to include all Products and
25 alleged violations that are the subject of the Notices, provided that, as of the expiration of the sixty-
26 day notice period following Moore’s service of the Supplemental Notice, no public enforcer has
27 commenced and is diligently prosecuting the allegations set forth in the Supplemental Notice.
28

1 **1.8 No Admission**

2 Namaste denies the material, factual, and legal allegations contained in the Notices and
3 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
4 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
5 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
6 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
7 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
8 not, however, diminish or otherwise affect Namaste's obligations, responsibilities, and duties under
9 this Consent Judgment.

10 **1.9 Jurisdiction**

11 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
12 jurisdiction over Namaste as to the allegations in the Complaint, that venue is proper in Santa Clara
13 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
14 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

15 **1.10 Effective Date**

16 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
17 the motion for approval of the Consent Judgment contemplated by Section 5 is granted by the Court
18 including any tentative ruling that is not opposed and, as such, becomes the granting of the motion.

19 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

20 Commencing 90 days from the Effective Date, and continuing thereafter, Namaste agrees
21 only to sell to its California retailers and consumers in California, "Reformulated Products." For
22 purposes of this Consent Judgment, "Reformulated Products" are defined as Products with a
23 maximum DINP concentration of 1,000 parts per million (0.1 %) in any Product analyzed pursuant to
24 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or CPSC-CH-
25 C1001-09.3, or equivalent methodologies utilized by state or federal agencies for the purpose of
26 determining DINP content in a solid substance. Namaste may comply with the above requirements
27 by relying on written certification obtained from each of its suppliers regarding the DINP
28 concentrations in the Products, provided that (i) such reliance is in good faith; and (ii) such

1 certification is provided for each PVC glove model sold by Namaste at least once a year; and (iii)
2 shall provide a copy of the certification to plaintiff if requested. Namaste's suppliers can provide
3 such certification through a statement provided on their letterhead, provided that such statement
4 specifically refers to the reformulation standard for Reformulated Products as defined in this section,
5 or can provide laboratory test results confirming compliance with the reformulation standard defined
6 in this section. Such statement is deemed sufficient to comply with this provision if it states that the
7 supplier certifies that the Reformulated Products have been analyzed pursuant to U.S. Environmental
8 Protection Agency testing methodologies 3580A and 8270C, or CPSC-CH-C1001-09.3, or equivalent
9 methodologies utilized by state or federal agencies for the purpose of determining DINP content in a
10 solid substance, and that the maximum DINP concentration does not exceed 1,000 parts per million
11 (0.1 %).

12 In the event of (a) the requirements of Proposition 65 are no longer applicable to the Products
13 due a change in California or federal law; (b) the modification of the provisions of Proposition 65 that
14 relate to Namaste's obligations to warn California consumers relating to the potential health hazards
15 associated with exposures to DINP from the Products; or (c) the removal of DINP from the
16 Proposition 65 list of chemicals known to the State to cause cancer or reproductive toxicity, or any
17 future modifications of the NSRL or MADL for DINP, then the requirements of this section shall be
18 amended consistent with the amendments or modifications of the requirements of Proposition 65
19 applicable to the Products. In the event of any future modifications of the NSRL or MADL for DINP
20 after the Effective Date, or any other future more permissive regulation, law or court decision that
21 impacts the obligations relating to Proposition 65 warning requirements relating to the potential
22 health hazards associated with exposures to DINP, then the parties agree to meet and confer in good
23 faith to determine whether and how a revised reformulation standard for the Products should be
24 established if such change is warranted. Modifications of the reformulation requirements of this
25 section do not alter Namaste's obligations to comply with the monetary settlement terms of Section 3
26 herein.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payment**

3 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
4 to in this Consent Judgment, Namaste shall pay \$3,000.00 in civil penalties in single check made
5 payable to "John Moore, Client Trust Account.". The civil penalty payment shall be allocated
6 according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%)
7 of the funds paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"),
8 and twenty-five percent (25%) of the funds remitted to Moore. To address the requirements of this
9 paragraph Namaste shall, by no later than five business days following the Effective Date, provide (a)
10 one check made payable to "OEHHA" in the amount of \$2,250.00 to which tax identification number
11 68-0284486 shall be assigned and (b) a separate check made payable to "John Moore, Client Trust
12 Account" for \$750.00 to which a tax identification number provided by plaintiff's counsel within at
13 least three days of the Effective Date shall be assigned. Both of these checks shall be sent to the
14 address found in Section 3.3 below. Moore's counsel shall be responsible for delivering any penalty
15 paid under this Consent Judgment to OEHHA.

16 **3.2 Reimbursement of Attorney's Fees and Costs**

17 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
19 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
20 other settlement terms had been finalized, Namaste expressed a desire to resolve Moore's fees and
21 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Moore and
22 his counsel under general contract principles and the private attorney general doctrine codified at
23 Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this
24 Consent Judgment. Namaste shall pay \$24,750.00 for the fees and costs incurred by Moore
25 investigating, bringing this matter to the attention of Namaste's management, litigating, and
26 negotiating a settlement in the public interest. Under these legal principles, Namaste shall, by no later
27 than five business days following the Effective Date, provide a check in the amount of \$24,750.00 to
28

1 "The Chanler Group" to which tax identification number 94-3171522 shall be assigned. This check
2 shall also be sent to the address found in Section 3.3 below.

3 **3.3 Payment Address**

4 All payments required by this Consent Judgment shall be delivered to:

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Moore's Public Release of Proposition 65 Claims**

12 Moore, acting on his own behalf and in the public interest, releases Namaste and its parent
13 company/companies, and their respective agents, subsidiaries, affiliated entities under common
14 ownership, directors, officers, employees, servants, insurance companies, adjusters, successors,
15 assigns, , executors, administrators and attorneys ("Releasees") and each entity to whom it directly
16 or indirectly distributes or sells the Products including, but not limited to, it's downstream
17 distributors, wholesalers, customers, retailers including but not limited to Wal-Mart Stores, Inc.,
18 Walmart.com USA LLC, Pharmapacks LLC; Sally Beauty Holdings, Inc., Sally Beauty Supply,
19 Inc., Kmart Corporation, Olla Beauty Supply, Inc. and their respective affiliates, subsidiaries and
20 parents franchisers, cooperative members, licensors and licensees, and all other persons, firms,
21 corporations, associations, distributors, retailers and/or partnerships associated or affiliated with
22 Namaste and the Namaste product lines and the successors and assigns of those released hereunder
23 ("Downstream Releasees") for any violations arising under Proposition 65 for the failure to warn
24 about exposures to DINP from Products sold by Namaste prior to the Effective Date, as set forth in
25 the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with
26 Proposition 65 with respect to the failure to warn about exposures to DINP in Products sold by
27 Namaste after the Effective Date.

28 **4.2 Moore's Individual Release of Claims and Dismissal of Action**

Moore, in his individual capacity only and *not* in his representative capacity, also provides a
release to Namaste, Releasees, and Downstream Releasees which shall be effective as a full and final

1 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
2 attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or
3 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
4 exposures to DINP in Products sold or distributed for sale by Namaste before the Effective Date.
5 Moore also agrees to, within 30 days after the Effective Date, file with the Santa Clara Court requests
6 for dismissal with prejudice as to Namaste of this action and the prior action (Case No.
7 CIV1500844), and to provide Namaste with conformed copies of said requests for dismissal upon
8 receipt from the Court. This dismissal shall not undermine Namaste's duties and obligation under this
9 agreement, nor shall restrict plaintiff's remedies in the event of an alleged breach.

10 4.3 Namaste's Release of Moore

11 Namaste, on its own behalf, and on behalf of its past and current agents, representatives,
12 attorneys, successors, and assignees, hereby waives any and all claims against Moore and his
13 attorneys and other representatives, for any and all actions taken or statements made by Moore and
14 his attorneys and other representatives, whether in the course of investigating claims, otherwise
15 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

16 4.4 Mutual Waiver of California Civil Code Section 1542

17 The Parties each acknowledge he/it is familiar with Section 1542 of the Civil Code, which
18 provides as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
21 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
WITH THE DEBTOR.

22 The Parties, each on his/its own behalf (and Moore in his individual capacity only and not in any
23 representative capacity), and on behalf of his/its past and current agents, representatives, counsel,
24 successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which
25 they may have under, or which may be conferred upon them by the provisions of Civil Code section
26 1542 as well as under any other state or federal statute or common law principle of similar effect, to
27 the fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters,
28 as defined by Sections 4.2 and 4.3, above.

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall
3 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
4 has been fully executed by the Parties, or by such additional time as the Parties may agree to in
5 writing.

6 **6. SEVERABILITY**

7 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
8 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
9 adversely affected.

10 **7. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the state of California
12 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
13 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Namaste may
14 provide written notice to Moore of any asserted change in the law, and shall have no further
15 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
16 Products are so affected.

17 **8. NOTICE**

18 All correspondence and notice required by this Consent Judgment shall be in writing and sent
19 by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt requested; or (iii) a
20 recognized overnight courier to the following addresses:

21 For Namaste:

22 Amit Bajla,
23 Chief Financial Officer,
24 Namaste Laboratories, L.L.C.,
25 310 South Racine Avenue,
26 Floor 8
27 Chicago, IL 60607

28 Byrdie Tucker, Esq.
 General Counsel
 Namaste Laboratories, L.L.C.,
 310 South Racine Avenue,
 Floor 8
 Chicago, IL 60607

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

with a copy to:

Hany Fangary, Esq.
Castellón & Funderburk LLP
811 Wilshire Boulevard
Suite 1025
Los Angeles, CA 90017

For Moore:

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

Any Party may, from time to time, specify in writing to the other, 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 Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers, supporting the motion, and appearing at the hearing before the Court.

11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry of a modified consent judgment by the Court thereon; or (ii) a successful motion or application of any Party, and the entry of a modified consent judgment by the Court thereon.

1 **12. AUTHORIZATION**

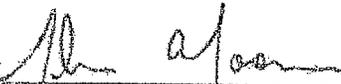
2 The undersigned are authorized to execute this Consent Judgment and have read, understood,
3 and agree to all of the terms and conditions contained herein.
4

5
6 **AGREED TO:**

AGREED TO:

7 Date: 4/22/2016

Date: _____

8
9 By:  _____

JOHN MOORE

By: _____

Amit Bajla, Chief Financial Officer,
NAMASTE LABORATORIES, L.L.C.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: _____

Date: 04/25/16.

By: _____
JOHN MOORE

By:  _____
Amit Bajaj, Chief Financial Officer,
NAMASTE LABORATORIES, L.L.C.

APPROVED
INITIALS: HBT Date: 4-25-2016
LEGAL DEPARTMENT