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7 Attorneys for Plaintiff
JOHN MOORE

ENDORSED
FILED
ALAMEDA COUNTY

APR 12 2017

CLERK OF THE SUPERIOR COURT
By DEBBIE SHEETS Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,
14 Plaintiff,
15 v.
16 PLASTIC DEVELOPMENT GROUP, LLC; *et*
al,
17 Defendant.

Case No. RG16830930

**[PROPOSED] ORDER APPROVING
PROPOSITION 65 SETTLEMENT**

Date: April 12, 2017
Time: 3:00 p.m.
Dept. 18
Judge: Hon. Jo-Lynne Lee

Reservation No. R1828273

1 Plaintiff John Moore and defendant Plastic Development Group, LLC have agreed
2 through their respective counsel to the terms of a settlement resolving all parties and
3 claims at issue in this Health and Safety Code section 25249.5 et seq. (Proposition 65)
4 action pursuant to the terms of the stipulated settlement agreement (“Settlement”) executed
5 by the parties, and attached to this Order as Exhibit 1. After consideration of the papers
6 submitted and the arguments presented, the Court finds that the terms of the settlement
7 agreement memorialized in the Consent Judgment meet the criteria established by Health
8 and Safety Code section 25249.7(f) in that:

- 9 1. the injunctive relief, including the product reformulation required by the
10 Settlement complies with Proposition 65;
- 11 2. the reimbursement of attorneys’ fees under the Settlement is reasonable
12 under California law; and
- 13 3. the payment of civil penalties required by the Settlement is reasonable
14 based on the criteria set forth in Health and Safety Code section
15 25249.7(b)(2).

16 Accordingly, the Motion for Approval of the Proposition 65 Settlement is GRANTED. At
17 the request of the parties, the Court will maintain jurisdiction over this matter to enforce
18 the terms of the Settlement pursuant to Code of Civil Procedure section 664.6.

19 **IT IS SO ORDERED.**

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Dated: APR 12 2017




JUDGE OF THE SUPERIOR COURT

1 Troy C. Bailey, State Bar No. 277424
Ryan C. Oca, State Bar No. 303113
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12 JOHN MOORE,

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15 PLASTIC DEVELOPMENT GROUP, LLC; *et*
16 *al.*,

17 Defendants.

Case No. RG16830930

**STIPULATED SETTLEMENT
AGREEMENT PURSUANT TO SECTION
664.6 C.C.P.**

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Settlement Agreement pursuant to Section 664.6 C.C.P. (the "Settlement Agreement")
4 is entered into by and between John Moore ("Moore") and Plastic Development Group, LLC
5 ("PDG"), with Moore and PDG each individually referred to as a "Party" and collectively as the
6 "Parties." Moore is an individual residing in the State of California who seeks to promote awareness
7 of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
8 substances used in consumer products. Moore alleges that PDG employs ten or more persons and is
9 a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
10 Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.* ("Proposition
11 65").

12 **1.2 General Allegations**

13 Moore alleges that PDG manufactures, sells, and/or distributes for sale in California, chairs
14 with vinyl/PVC upholstery that allegedly contains the phthalate di(2-ethylhexyl)phthalate ("DEHP").
15 DEHP is listed pursuant to 27 C.C.R. section 27001 as a chemical known to cause birth defects or
16 other reproductive harm. Moore alleges PDG failed to provide the health hazard warning required
17 by 27 C.C.R., Division 4, Article 6 (§§ 25601 *et seq.*) for consumer exposures to DEHP from the
18 chair seat cushions with vinyl/PVC upholstery.

19 **1.3 Product Description**

20 The products covered by this Settlement Agreement are chairs with vinyl/PVC upholstery
21 containing DEHP that are manufactured, sold, or distributed for sale in California by PDG. The
22 products at issue include, but are not limited to, the *LifeStyles by PDG Ladder Back Folding Chair,*
23 *Item: 840, UPC #8 55488 00425 1* (collectively referred to as the "Products").

24 **1.4 Notice of Violation**

25 On May 26, 2016, Moore served PDG and the requisite public enforcement agencies with a
26 60-Day Notice of Violation (the "Notice"), alleging that PDG violated Proposition 65 when it failed
27 to warn consumers in California of the health hazards associated with exposures to DEHP from the
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1 Products. Neither Party is aware of any public enforcer diligently prosecuting an action in which the
2 alleged violations are those referred to, in whole or in part, in the Notice.

3 **1.5 Complaint**

4 On September 13, 2016, Moore commenced the instant action ("Complaint"), setting forth
5 PDG as a defendant for the alleged violations that are the subject of the Notice. Prior to the filing of
6 the complaint the Parties negotiated a resolution of Moore's claims related to the Products, including
7 all of the essential terms of this Settlement Agreement, subject to the Court's approval of the same
8 pursuant to Health and Safety Code section 25249.7(f).

9 **1.6 Jurisdiction**

10 For purposes of this Settlement Agreement only, the Parties stipulate, pursuant to section
11 664.6 C.C.P., that this Court has jurisdiction over PDG and Moore as to the allegations contained in
12 the Notice and in the Complaint, that venue is proper in the County of Alameda, and that the Court
13 has jurisdiction to enforce the provisions of this Settlement Agreement pursuant to section 664.6
14 C.C.P. as to (a) the alleged violations of Proposition 65 as set forth in the Notice and Complaint, and
15 (b) the terms of this Settlement Agreement.

16 **1.7 No Admission**

17 PDG denies that a consumer is exposed to DEHP from the use of the Products or any of its
18 other products from reasonably foreseeable use that mandates a warning of the type as set forth in
19 sections 25249.6 & 25249.10 H.&S.C. and 27 C.C.R., Division 4, Article 6, section 25601 et seq.

20 PDG further denies the material, factual, and legal allegations contained in the 60-Day
21 Notice and in the Complaint, and maintains that all of the products that PDG has sold, imported,
22 and/or distributed in California, and all of said products manufactured, imported, sold, or
23 distributed by others in which PDG is in the stream of commerce, including the Products, have been
24 and are in compliance with all laws, including but not limited to Proposition 65.

25 Nothing herein shall be construed as an admission by PDG of any fact, finding, issue of law,
26 or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed
27 as an admission by PDG of any fact, finding, conclusion, issue of law, or violation of law.

1 Except as expressly set forth herein, nothing in this Settlement Agreement shall prejudice,
2 waive, or impair any right, remedy, argument, complaint, or defense the Parties may have in any
3 other or future legal proceeding unrelated to this specific proceeding.

4 **1.8 Effective Date**

5 For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date
6 this Settlement Agreement is approved by the Court.

7 **2. INJUNCTIVE SETTLEMENT TERMS: REFORMULATED PRODUCTS**

8 Commencing on the Effective Date and continuing thereafter, PDG agrees to only
9 manufacture for sale in, purchase for sale in, or convey for sale in California "Reformulated
10 Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean
11 products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each component
12 when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and
13 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of
14 determining the DEHP content in a solid substance.

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty Payments**

17 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims
18 alleged in the Notice, the Complaint, or referred to in this Settlement Agreement, PDG agrees to pay
19 \$9,000 in civil penalties. The penalty payment will be allocated in accordance with California
20 Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to
21 the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
22 25% of the penalty amount paid to Moore. PDG shall tender its payment in two separate checks
23 made payable to "John Moore, Client Trust Account" in the amount of \$2,250 and to "OEHHA" in
24 the amount of \$6,750, and shall be disbursed in accordance with Section 3.3 below. Moore's
25 counsel shall undertake and be responsible for delivering OEHHA's portion of any civil penalty
26 payment made under this Settlement Agreement to OEHHA.

1 **3.2 Attorneys' Fees and Costs**

2 The Parties reached an accord on the compensation due to Moore and his counsel under
3 general contract principles and the private attorney general doctrine codified at Code of Civil
4 Procedure section 1021.5 for all work performed in this matter. Under these legal principles, PDG
5 agrees to pay \$27,500, in the form of a check made payable to "The Chanler Group" for all fees and
6 costs incurred investigating, bringing this matter to the attention of PDG's management, and
7 negotiating a settlement in the public interest. This payment shall be disbursed in accordance with
8 Section 3.3 below

9 **3.3 Payment Timing; Payments Held in Trust**

10 The Section 3.1 and 3.2 checks due under this Settlement Agreement shall be delivered to
11 PDG's counsel within ten (10) days of the date that this Settlement Agreement is fully executed by
12 the Parties, and held by counsel until, and disbursed, within three (3) business days after PDG's
13 counsel receives notice that this Settlement Agreement was approved by the court. These checks
14 shall be sent to the address provided in Section 3.4 below. Moore and his counsel shall provide
15 PDG with 1099's related to all payments noted in this Section 3.

16 **3.4 Payment Address**

17 All payments under this Settlement Agreement shall be delivered to:

18 The Chanler Group
19 Attn: Proposition 65 Controller
20 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

21 **4. RELEASE OF ALL CLAIMS**

22 **4.1** Moore, suing in the public interest, hereby releases PDG; all of PDG's downstream
23 distributors and retailers of the Products; and, the affiliates and subsidiaries of each of these
24 aforementioned entities; all entities served with the Notice; the divisions, successors, subsidiaries, parent
25 corporations, related entities, affiliates, agents, contractors, experts, consultants, counsel, service
26 providers, officers, directors, and employees of PDG; and, all of the aforementioned entities
27 described or named in this Para. 4.1, of any liability whatsoever under Proposition 65 related to the
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1 Products and the alleged failure to warn California consumers of an alleged exposure to DEHP from
2 any of the Products sold in California on or before the Effective Date.

3 **4.2** PDG, on behalf of itself, and on behalf of its past and current officers, directors,
4 managers, agents, representatives, counsel, successors, and/or assignees, hereby waives any and all
5 claims against Moore, his counsel and other representatives, for any and all actions taken or
6 statements made (or those that could have been taken or made) by Moore and his attorneys and other
7 representatives, whether in the course of investigating claims about or otherwise seeking to enforce
8 Proposition 65 against them in this matter with respect to the Products.

9 **4.3** Moore, on behalf of himself, his past and current agents, representatives, attorneys,
10 and successors and/or assignees, and *not* in his representative capacity, hereby provides a release that
11 shall be effective as a full and final accord and satisfaction, as a bar to all Claims under Proposition
12 65, Bus. & Prof. Code section 17200 et seq., and any other statutory or common law, that are or may
13 have been asserted against PDG, its past and current officers, directors, managers, agents,
14 representatives, counsel, successors, and/or assignees, and/or those downstream entities in PDG's
15 chain of distribution, as to claims whether known or unknown, suspected or unsuspected, arising out
16 of alleged exposures to, and/or failure to warn of alleged exposures to, DEHP from the Products
17 shipped, distributed, or sold prior to the Effective Date.

18 **4.4** The Parties agree, understand, and acknowledge that this Settlement Agreement
19 represents a compromise of this action and the release of claims as set forth herein, and that neither
20 the fact nor the terms of this Settlement Agreement shall be construed as an admission of liability or
21 wrongdoing on the part of the Parties.

22 **4.5 Mutual Waiver of California Civil Code Section 1542**

23 The Parties each acknowledge he/it is familiar with section 1542 of the Civil Code, which
24 provides as follows:

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

1 The Parties, each on his/its own behalf (and Moore in his individual capacity only and *not* in any
2 representative capacity), and on behalf of his/its past and current agents, representatives, counsel,
3 successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which
4 they may have under, or which may be conferred upon them by the provisions of Civil Code section
5 1542 as well as under any other state or federal statute or common law principle of similar effect, to
6 the fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters,
7 as defined by Sections 4.2 and 4.3, above.

8 **5. APPLICATION AND SEVERABILITY**

9 **5.1** This Settlement Agreement shall apply to, be binding upon, and benefit the Parties
10 and their respective officers, directors, shareholders, employees, agents, parent companies,
11 subsidiaries, divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers,
12 retailers, predecessors, successors, and assigns. This Settlement Agreement shall have no
13 application to the Products which are distributed or sold outside the State of California and which
14 thereafter are not used by consumers in California.

15 **5.2** If, subsequent to the execution of this Settlement Agreement, any provision of this
16 Settlement Agreement is held by a court to be unenforceable, the validity of the remaining
17 provisions shall not be adversely affected.

18 **6. GOVERNING LAW**

19 The terms of this Settlement Agreement shall be governed by the laws of the State of
20 California and apply within the State of California. Compliance with the terms of this Settlement
21 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to
22 alleged exposures to DEHP arising from the Products. In the event that Proposition 65 is repealed or
23 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then PDG may
24 provide written notice to Moore of any asserted change in the law, and shall have no further
25 injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that,
26 the Products are so affected.

1 7. **NOTICE**

2 Unless specified otherwise in this Settlement Agreement, all correspondence and notice
3 required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a)
4 personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a
5 recognized overnight courier on any Party by the other Party at the following addresses:

6 **For Moore:**

7 Proposition 65 Coordinator
8 The Chanler Group
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

12 **For PDG:**

13 Richard Ballentine, General Counsel
14 Plastic Development Group, LLC
15 24445 Northwestern Highway, Suite 101
16 Southfield, MI 48075

17 **with a copy to:**

18 Thomas H. Clarke, Jr.
19 Attn: Roxana Riedell
20 RMKB
21 1001 Marshall Street, Suite 500
22 Redwood City 94063-2052
23 Ph: (415) 543-4800
24 Fax: (415) 972-6301
25 Email: thomas.clarke@rmkb.com

26 For all notices and correspondence required to be provided in writing pursuant to this Settlement
27 Agreement, the Parties shall also send a courtesy notice by electronic mail, traditional mail, and/or
28 facsimile to counsel with the correspondence or notice attached thereto. The provision of such
courtesy notice shall not lessen, diminish, or void the requirement noted herein regarding how actual
notices and correspondence are to be sent. 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.

1 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6 Moore and his attorneys agree to comply with the reporting form requirements referenced in
7 California Health and Safety Code section 25249.7(f).

8 **10. MODIFICATION**

9 This Settlement Agreement may be modified only by signed written agreement of the Parties
10 or order of the Court.

11 **11. AUTHORIZATION**

12 **11.1** Each of the Parties acknowledges that they had the right and ability to consult with
13 and seek the advice of counsel of their choice and each voluntarily has entered into this Settlement.

14 **11.2** The undersigned affirmatively represent that they are authorized to execute this
15 Settlement on behalf of their respective Party and have read, understood, and agree to all of the
16 terms and conditions of this document, and further certifies that he or she is fully authorized by the
17 Party he or she represents to execute the Settlement Agreement on behalf of the Party represented
18 and legally bind that Party.

19 **11.3** Except to the extent otherwise noted, each of the Parties shall bear its own costs and
20 fees.

21 **12. COURT APPROVAL**

22 **12.1** After execution of this Settlement Agreement by the Parties, Moore shall notice a
23 Motion for Court Approval. The Parties shall use their best efforts to support approval of this
24 Settlement Agreement.

25 **12.2** If the California Attorney General objects to any term in this Settlement Agreement,
26 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior
27 to the hearing on the motion.

1 **12.3** If this Settlement Agreement is not ultimately approved by the Court, it shall be void
2 and have no force or effect.

3 **13. DRAFTING**

4 The terms of this Settlement Agreement have been reviewed by the respective counsel for
5 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
6 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
7 construction of this Settlement Agreement, no inference, assumption, or presumption shall be drawn,
8 and no provision of this Settlement Agreement shall be construed against any Party, based on the
9 fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
10 portion of the Settlement Agreement. It is conclusively presumed that all of the Parties participated
11 equally in the preparation and drafting of this Settlement Agreement.

12 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES AND ENFORCEMENT**

13 **14.1** If a dispute arises with respect to either Party's compliance with the terms of this
14 Settlement Agreement, the Parties shall meet in person or by telephone and endeavor to resolve the
15 dispute in an amicable manner prior to filing of any motion related to the terms and conditions of the
16 Settlement Agreement.

17 **14.2** For purposes of this Settlement Agreement only, the Parties stipulate that in the event
18 that enforcement of this Settlement Agreement is deemed necessary by one or both of the Parties, or
19 a dispute between the Parties arises regarding this Settlement Agreement, the Superior Court of
20 California, County of Alameda, has proper jurisdiction and venue over the Parties as to the terms and
21 conditions of this Settlement Agreement, that venue is proper in the County of Alameda, and that
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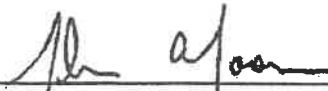
1 this Court has jurisdiction to approve, enter, and oversee the enforcement of this Settlement
2 Agreement.

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4 **AGREED TO:**

AGREED TO:

5 Date: 2/22/2017

Date: 2/24/17

6
7 By: 
8 JOHN MOORE

By: 
For: PLASTIC DEVELOPMENT GROUP, LLC
By: Richard Ballentine
Its: General Counsel

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