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11 Attorneys for Plaintiff
12 JOHN MOORE

FILED

AUG - 8 2017

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF MARIN

15 UNLIMITED CIVIL JURISDICTION

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 XYLEM, INC.; WEST COAST GASKET
20 CO.;

21 Defendants.

Case No. CIV 1600763

^{SPF}
~~PROPOSED~~ JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT

Date: August 8, 2017

Time: 1:30 p.m.

Dept.: C

Judge: Stephen P. Freccero

1 In the above-entitled action, Plaintiff John Moore and Defendant West Coast Gasket Co.,
2 having agreed through their respective counsel that Judgment be entered pursuant to the terms of
3 their settlement agreement in the form of a [Proposed] Consent Judgment (“Consent Judgment”),
4 and following this Court’s issuance of an Order approving this Proposition 65 settlement and
5 Consent Judgment,

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

11
12 **IT IS SO ORDERED.**

13
14 Dated: AUG 8 - 2017

13 **STEPHEN P. FRECCERO**
14 _____
15 JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 Brian C. Johnson, State Bar No. 235965
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3 THE CHANLER GROUP
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11 Attorneys for Plaintiff
12 JOHN MOORE

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF MARIN
16 UNLIMITED CIVIL JURISDICTION
17

18 JOHN MOORE,

19 Plaintiff,

20 v.

21 WEST COAST GASKET CO.; *et al.*,

22 Defendants.

Case No. CIV1600763

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
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”)
4 and defendant West Coast Gasket Co. (“WCG”), with Moore and WCG 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
8 exposures to toxic chemicals and to improve human health by reducing or eliminating
9 hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 WCG 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
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that WCG manufactures, imports, distributes, sells, or offers for sale, in
16 California, vinyl/PVC tubing that contains di(2-ethylhexyl)phthalate (“DEHP”), without first
17 providing the exposure warning required by Proposition 65. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC tubing containing
21 DEHP that are manufactured, imported, distributed, sold, and/or offered for sale, in California,
22 by WCG, including, but not limited to, the vinyl/PVC components of the *Jabsco Self-Priming*
23 *Electric Drill Pump Kit, #17215-0000, UPC #6 71880 01257 7*, hereinafter the “Products.”

24 **1.6 Notices of Violation**

25 On October 21, 2015, Moore served Xylem, Inc. (“Xylem”) and the requisite public
26 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Xylem
27 violated Proposition 65 by failing to warn its customers and consumers in California of the
28 health hazards associated with exposures to DEHP from the Products.

1 On June 14, 2016, Moore served a Supplemental 60-Day Notice of Violation
2 (“Supplemental Notice”) alleging that, in addition to Xylem, WCG also violated Proposition 65
3 by failing to warn its customers and consumers in California of the health hazards associated
4 with exposures to DEHP from the Products. Hereinafter, the Notice and Supplemental Notice
5 will be referred to, collectively, as the “Notices.” To the best of the Parties’ knowledge, no
6 public enforcer has commenced and is diligently prosecuting an action to enforce the violations
7 alleged in the Notices.

8 **1.7 Complaint and Procedural History**

9 On March 2, 2016, Moore filed the instant action (“Complaint”), naming Xylem as a
10 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of
11 the Notices. On July 19, 2016, Xylem filed a responsive pleading in the form of an Answer,
12 denying any wrongdoing. On October 18, 2016, the Parties filed a Stipulation and Proposed
13 Order Granting Leave to File Amendment to the Complaint Identifying Doe Defendant. The
14 Court granted the Order on October 18, 2016, and Moore filed a Doe Amendment to the
15 Complaint identifying WCG as Doe Defendant No. 51, on October 20, 2016. On December 28,
16 2016, WCG filed a responsive pleading in the form of an Answer, denying any wrongdoing.
17 Hereinafter, the Complaint and associated Amendment will be referred to, collectively, as the
18 “Complaint.”

19 **1.8 No Admission**

20 WCG denies the material, factual, and legal allegations contained in the Notices and
21 Complaint and maintains that all of the products it sold and distributed for sale in California,
22 including the Products, have been, and are, in compliance with all laws. Nothing in this
23 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
24 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
25 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
26 of law. This Section shall not, however, diminish or otherwise affect WCG’s obligations,
27 responsibilities, and duties under this Consent Judgment.
28

1 **1.9 Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over WCG as to the allegations in the Complaint, that venue is proper in the
4 County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
5 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” shall mean the later
8 of either the date upon which the Motion for Approval of the Consent Judgment is granted by
9 the Court, or the date upon which Plaintiff’s counsel provides written notice to WCG’s counsel,
10 including via email, that the Motion for Approval has been granted by the Court.

11 **2. INJUNCTIVE RELIEF: REFORMULATION**

12 Commencing on the Effective Date and continuing thereafter, WCG agrees to only
13 manufacture for sale, import for sale, distribute for sale, purchase for sale or sell, in or into
14 California, “Reformulated Products.” For purposes of this Consent Judgment, “Reformulated
15 Products” are defined as Products containing DEHP in a maximum concentration of 1,000 parts
16 per million (0.1%) in any accessible component (i.e., any component that may be touched
17 during a reasonably foreseeable use), when analyzed pursuant to U.S. Environmental Protection
18 Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by
19 federal or state agencies for the purpose of determining DEHP content in a solid substance.

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Civil Penalty Payment**

22 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged
23 in the Notices and referred to in this Consent Judgment, within ten (10) days of the Effective
24 Date, WCG agrees to pay \$3,500 in civil penalties. The civil penalty payment shall be
25 allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five
26 percent (75%) of the penalty paid to the California Office of Environmental Health Hazard
27 Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty paid to
28 Moore. WCG shall issue two payments, via check or wire transfer, for the following amounts:

1 (a) "OEHHA" in the amount of \$2,625; and (b) "John Moore, Client Trust Account" in the
2 amount of \$875. Both payments shall be sent to Moore's counsel, and Moore's counsel shall
3 be responsible for delivering OEHHA's portion of any penalty payment made under this
4 Settlement Agreement.

5 3.2 Reimbursement of Attorney's Fees and Costs

6 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
8 leaving the issue to be resolved after the material terms of this Consent Judgment had been
9 settled. After the Parties reached an agreement as to all other settlement terms, the Parties then
10 reached an accord on the compensation due to Moore and his counsel, under general contract
11 principles and the private attorney general doctrine, codified at California Code of Civil
12 Procedure § 1021.5, for all work performed through the mutual execution of this Consent
13 Judgment. Under these legal principles, the Parties agree that WCG shall make four equal
14 installment payments of \$10,000 each, for a total of \$40,000, to Moore and his counsel for all
15 fees and costs incurred in investigating, bringing this matter to the attention of WCG's
16 management, and negotiating a settlement in the public interest.

17 Within ten (10) days of the Effective Date, WCG shall make the first of four \$10,000
18 installment payments, concurrent with the civil penalty payment due under Section 3.1, above.
19 WCG shall make the final three installment payments of \$10,000 each on or before each due
20 date below:

- 21 • August 15, 2017;
- 22 • September 15, 2017; and
- 23 • October 15, 2017.

24 WCG's payments shall be delivered in the form of a check or wire transfer, payable to
25 "The Chanler Group." Moore's counsel agrees to provide wire transfer instructions, should
26 WCG elect to provide its payments via this method.

1 **3.3 Provision of Tax Identification Number**

2 Upon the mutual execution of the Consent Judgment, Moore’s counsel agrees to
3 provide WCG’s counsel with IRS W9 tax forms for OEHHA, Moore and Moore’s counsel, to
4 enable WCG to process the payments due under the terms of this agreement. Until such time
5 as the taxpayer identification is provided, the Parties agree that any payments due under
6 Section 3 of this Consent Judgment shall be tolled.

7 **3.4 Payment Address**

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

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

14 **3.5 Delayed or Missed Payments**

15 The Parties agree that WCG shall pay 5% interest on any installment payment that is
16 not paid within fifteen (15) days of its due date. The Parties further agree that, if any payment
17 due under this Consent Judgment is received more than 30 days after the date it is due, Moore
18 and his counsel may seek to enforce the payment obligations established by this Consent
19 Judgment and seek to recover the reasonable and necessary fees and costs incurred in doing so,
20 consistent with California law.

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Moore’s Public Release of Proposition 65 Claims**

23 Moore, acting on his own behalf and in the public interest, releases WCG and its
24 parents, subsidiaries, affiliated entities under common ownership, directors, officers,
25 employees, and attorneys (“Releasees”), and each entity to whom WCG directly or indirectly
26 distributes or sells the Products, including, without limitation, its downstream customers,
27 distributors, wholesalers, and retailers, including Xylem (“Downstream Releasees”), for any
28 violation arising under Proposition 65 pertaining to the failure to warn about exposures to
DEHP from Products manufactured for sale, purchased or imported for sale, distributed, sold
or offered for sale by WCG, Releasees, or Downstream Releasees prior to the Effective Date,

1 as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes
2 compliance with Proposition 65 with respect to exposures to DEHP from Products sold or
3 distributed for sale by WCG after the Effective Date. The Parties agree and acknowledge that
4 the releases provided under this Consent Judgment shall not extend upstream to any entity
5 that manufactured the Products, or any components part thereof, or to any entity that
6 distributed or sold the Products, or any component parts thereof, to WCG.

7 **4.2 Moore's Individual Release of Claims**

8 Moore, in his individual capacity only and *not* in his representative capacity, also
9 provides a release to WCG, Releasees, and Downstream Releasees which shall be effective as a
10 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
11 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any
12 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
13 alleged or actual exposures to DEHP in Products sold or distributed for sale by WCG prior to
14 the Effective Date.

15 **4.3 WCG's Release of Moore**

16 WCG, on its own behalf, and on behalf of its past and current agents, representatives,
17 attorneys, successors, and assignees, hereby waives any and all claims against Moore and his
18 attorneys and other representatives, for any and all actions taken or statements made by
19 Moore and his attorneys and other representatives, whether in the course of investigating
20 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to
21 the Products.

22 **5. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court,
24 and it shall be null and void if it is not approved and entered by the Court within one year after
25 it is fully executed by the Parties, or within such additional time as the Parties may agree to in
26 writing.

27
28

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

12 **8. NOTICE**

13 Unless specified herein, all correspondence and notice required by this Consent
14 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or
15 certified mail, return receipt requested; or (iii) a recognized overnight courier to the following
16 addresses:

17 For WCG:

18 Louis Russell, President
19 West Coast Gasket Co.
20 300 Ranger Avenue
21 Brea, CA 92821

21 With a copy to:

22 Daniel Rashtian, Counsel
23 Callahan & Blaine
24 3 Hutton Centre Drive, Ninth Floor
25 Santa Ana, CA 92707-8722

24 For Moore:

25 Proposition 65 Coordinator
26 The Chanler Group
27 2560 Ninth Street
28 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

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

3 **9. COUNTERPARTS; FACSIMILE OR PDF SIGNATURES**

4 This Consent Judgment may be executed in counterparts, and signatures may be sent via
5 email or facsimile. A signature received in pdf format, via email or via facsimile, shall be
6 deemed the same as an original, and all signatures, when taken together, shall constitute one
7 and the same document.

8 **10. POST-EXECUTION ACTIVITIES**

9 Moore agrees to comply with the reporting form requirements referenced in Health and
10 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
11 Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
12 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts,
13 and those of their counsel, to support the entry of this agreement as judgment, and to obtain
14 judicial approval of their settlement in a timely manner. For purposes of this Section, "best
15 efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary
16 moving papers, supporting the motion, and appearing at the hearing before the Court.

17 **11. MODIFICATION**

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

21 **12. AUTHORIZATION**

22 The undersigned are authorized to execute this Consent Judgment and acknowledge that
23 they have read, understand, and agree to all of the terms and conditions contained herein.

24 **AGREED TO:**

25 Date: 5/18/2017

26
27 By: 

28 JOHN MOORE

AGREED TO:

Date: 5/14/17

By: 

Louis Russell, President
WEST COAST GASKET CO.