1 Josh Voorhees, State Bar No. 241436 Christopher Tuttle, State Bar No. 264545 2 THE CHANLER GROUP San Francisco County Superior Court 2560 Ninth Street NOV 2 1 2017 3 Parker Plaza, Suite 214 Berkeley, CA 94710 Telephone: (510) 848-8880 Facsimile: (510) 848-8118 4 5 josh@chanler.com ctuttle@chanler.com 6 Attorneys for Plaintiff 7 JOHN MOORE 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA 9 COUNTY OF SAN FRANCISCO 10 UNLIMITED CIVIL JURISDICTION 11 12 Case No. CGC-16-555157 JOHN MOORE, 13 Plaintiff, 14 PROPOSEDY JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 15 v. SETTLEMENT AND CONSENT JUDGMENT L.D.F. INDUSTRIES, INC., et al., 16 Date: November 21, 2017 17 Defendants. Time: 9:30 a.m. Dept.: 302 18 Judge: Hon. Harold E. Kahn 19 Reservation No.: 10021121-07 20 21 22 23 24 25 26 27 28

JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT

Plaintiff John Moore and defendant L.D.F. Industries, Inc. having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a stipulated judgment ("Consent judgment"), and following this Court's issuance of an order approving their Proposition 65 settlement and Consent Judgment, 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: 1//2//17

JUDGE OF THE SUPERIOR COURT

(U/ner) RICHARD ULMER

EXHIBIT 1

1 2 3 4 5	Clifford Chanler, State Bar No. 135534 Christopher Tuttle, State Bar No. 264545 THE CHANLER GROUP 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710 Telephone:(510) 848-8880 Facsimile: (510) 848-8118	
6	Attorneys for Plaintiff JOHN MOORE	
7		
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
9	COUNTY OF SAN FRANCISCO	
10	UNLIMITED CIVIL JURISDICTION	
11	·	
12	JOHN MOORE,	Case No. CCG-16-555157
13	Plaintiff,	CONSENT JUDGMENT
14	v.	(Health & Safety Code § 25249.6 et seq. and
15		Code of Civil Procedure § 664.6)
16	L.D.F. INDUSTRIES, INC., et al.,	
17	Defendants.	
18		
19		
20		
21		
22		
23		
24		•
25		•
26		
27		
28		
	1	

CONSENT JUDGMENT

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff John Moore, ("Moore") and defendant L.D.F. Industries, Inc.("L.D.F."), with Moore and L.D.F. each referred to individually as a "Party" and collectively as the "Parties."

1.2 Plaintiff

Moore is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer and commercial products.

1.3 Defendant

L.D.F. 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 and Safety Code section 25249.5et seq. ("Proposition 65").

1.4 General Allegations

Moore alleges that L.D.F. manufactures, imports, sells and/or distributes for sale in California, vinyl/PVC rainsuits containing di(2-ethylhexyl)phthalate ("DEHP"), and that it does so without providing the health hazard warning that Moore alleges is required by Proposition 65.

1.5 Product Description

The products covered by this Consent Judgment are vinyl/PVC rainsuits containing DEHP, including, but not limited to, the *Comfi-Wear 3-Piece P.V.C. Heavy Duty Rainsuit with Super Strong Polyester Lining, Style RW-300, #14-384, UPC #7 43153-14384 1, #7 93770 22314 3* (collectively, "Products").

1.6 Notice of Violation

On August 8, 2016, Moore served L.D.F. and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that L.D.F. violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.7 Complaint

On November 2, 2016, Moore commenced the instant action, naming L.D.F., among others, as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 No Admission

L.D.F. denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by L.D.F. 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 by L.D.F. of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect L.D.F.'s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over L.D.F. as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" means the date on which the Court approves this Consent Judgment, including any unopposed tentative ruling granting approval of this Consent Judgment.

2. <u>INJUNCTIVE RELIEF: REFORMULATION & WARNINGS</u>

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, LDF shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are either: (a)

Reformulated Products as defined by Section 2.2, below; or (b) Products that are offered by LDF with a clear and reasonable warning pursuant to Section 2.3.

2.2 Reformulation Standard

For the purposes of this Settlement Agreement, "Reformulated Products" are defined as Products that contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.3 Product Warnings

Commencing on the Effective Date, Home Essentials shall provide clear and reasonable warnings for all Products as set forth in subsections 2.2(a) and (b) that do not qualify as Reformulated Products. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) Product Labeling. Home Essentials shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

△WARNING:

This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

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

∆WARNING:

This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

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

∆WARNING:

The following products contain DEHP, a chemical, known to the State of California to cause birth defects and other reproductive harm: [list products for which warning is required]

Essentials sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Home Essentials shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the specific Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

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

△WARNING:

This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Home Essentials may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

△WARNING:

Certain products identified with this symbol ∇ and offered for sale in this catalog contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Home Essentials must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

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

AWARNING:

This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

∆WARNING:

This product contains DEHP, a chemical known to the State of California to cause birth defects

and other reproductive harm.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment Pursuant to Health and Safety Code § 25249.7(b)(2)

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Consent Judgment, L.D.F. shall pay \$2,000 in civil penalties in accordance with this Section. This penalty payment will be allocated in accordance with California Health &

Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Moore. Moore's counsel shall be responsible for remitting L.D.F.'s penalty payment(s) under this Consent Judgment to OEHHA. Within 5 days of the Effective Date, L.D.F. shall provide the penalty payment as follows: (1) a check in the amount of \$1,500 payable to "OEHHA;" and (2) a check in the amount of \$500 payable to "John Moore Client Trust Account."

3.2 Reimbursement of Attorneys' 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. Shortly after the other settlement terms had been finalized, L.D.F. expressed a desire to resolve Moore's fees and costs. The Parties then negotiated a resolution of 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 through the mutual execution of this Consent Judgment. L.D.F. shall reimburse Moore and his counsel \$18,000. L.D.F.'s payment shall be delivered to the address in Section 3.4 in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Moore investigating, bringing this matter to L.D.F.'s attention, litigating, and negotiating a settlement of the matter in the public interest.

3.3 Payment Timing; Payments Held in Trust

L.D.F. shall deliver all payments required by this Consent Judgment to its counsel within one week of the date that this agreement is fully executed by the Parties. L.D.F.'s counsel shall confirm receipt of settlement funds in writing to Moore's counsel and, thereafter, hold the amounts paid in trust until the Effective Date. Within five (5) days of the Effective Date, L.D.F.'s counsel shall mail all settlement payments it has held in trust to Moore's counsel at the address provided in Section 3.4.

3.4 Payment Address

Within five days of the Effective Date, all payments required by this Consent Judgment shall be delivered to 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 Moore's Release of Proposition 65 Claims

Moore, acting on his own behalf and in the public interest, releases L.D.F. and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the Products including, but not limited to, their downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products manufactured, imported, distributed or sold by L.D.F. prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by L.D.F. with respect to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale by L.D.F. after the Effective Date.

4.2 Moore's Individual Release of Claims

Moore, in his individual capacity only and *not* in his representative capacity, also provides a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold by L.D.F. before the Effective Date.

4.3 L.D.F.'s Release of Moore

L.D.F., on its own behalf and on behalf of 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 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 the Parties. Moore and L.D.F. agree to support the entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion Moore shall draft and file and L.D.F. shall support, including by appearing at the hearing if so requested. If any third-party objection to the motion is filed, Moore and L.D.F. agree to work together to file a reply and appear at any hearing. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

6. SEVERABILITY

If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the remaining provisions 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 L.D.F. may provide Moore with written notice of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the

25

26

27

28

Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve L.D.F. from its obligation to comply with any pertinent state or federal law or regulation.

8. NOTICE

Unless specified herein, all correspondence and notice required by 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) a recognized overnight courier to any Party by the other at the following addresses:

To L.D.F.:

Lazar Follman, President L.D.F. Industries, Inc. 30 Warsoff Place Brooklyn, NY 11205

To Moore:

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

A simultaneous copy of any notice to L.D.F. shall be sent to Avrom R. Vann, Esquire, AVROM R. VANN, P.C., 1211 Avenue of the Americas, 40th Floor, New York, New York 10036-8718.

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 AND PDF 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. COMPLIANCE WITH REPORTING REQUIREMENTS

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

11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of

any party upon notice to the other party of a minimum of twenty five (25) days, and the entry of a modified Consent Judgment by the Court thereon, **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: Вy: Dated: 9/11/2017 Dated: