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12 JOHN MOORE

FILED
San Francisco County Superior Court

NOV 21 2017

CLERK OF THE COURT
BY: 
Deputy Clerk

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

13 JOHN MOORE,
14 Plaintiff,
15 v.
16 L.D.F. INDUSTRIES, INC., et al.,
17 Defendants.

Case No. CGC-16-555157
[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT
Date: November 21, 2017
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Harold E. Kahn
Reservation No.: 10021121-07

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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: 11/21/17

Richard B. Ullmer
JUDGE OF THE SUPERIOR COURT
(Ulmer) RICHARD ULMER

EXHIBIT 1

1 Clifford Chanler, State Bar No. 135534
2 Christopher Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone:(510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 JOHN MOORE

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 L.D.F. INDUSTRIES, INC., *et al.*,

20 Defendants.
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Case No. CCG-16-555157

CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 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 L.D.F. Industries, Inc.(“L.D.F.”), with Moore and L.D.F. each referred to individually as
5 a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 L.D.F. employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

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

18 **1.5 Product Description**

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

23 **1.6 Notice of Violation**

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

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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. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

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.

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

7 **3.2 Reimbursement of Attorneys’ Fees and Costs**

8 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
10 to be resolved after the material terms of the agreement had been settled. Shortly after the other
11 settlement terms had been finalized, L.D.F. expressed a desire to resolve Moore’s fees and costs.
12 The Parties then negotiated a resolution of the compensation due to Moore and his counsel under
13 general contract principles and the private attorney general doctrine codified at California Code of
14 Civil Procedure § 1021.5 for all work performed through the mutual execution of this Consent
15 Judgment. L.D.F. shall reimburse Moore and his counsel \$18,000. L.D.F.’s payment shall be
16 delivered to the address in Section 3.4 in the form of a check payable to “The Chanler Group.” The
17 reimbursement shall cover all fees and costs incurred by Moore investigating, bringing this matter
18 to L.D.F.’s attention, litigating, and negotiating a settlement of the matter in the public interest.

19 **3.3 Payment Timing; Payments Held in Trust**

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

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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.

1 **4.3 L.D.F.'s Release of Moore**

2 L.D.F., on its own behalf and on behalf of its past and current agents, representatives,
3 attorneys, successors and/or assignees, hereby waives any and all claims against Moore and his
4 attorneys and other representatives, for any and all actions taken or statements made (or those that
5 could have been taken or made) by Moore and his attorneys and other representatives in the course
6 of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to
7 the Products.

8 **5. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and
10 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
11 after it has been fully executed by the Parties. Moore and L.D.F. agree to support the entry of this
12 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
13 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
14 noticed motion is required for judicial approval of this Consent Judgment, which motion Moore
15 shall draft and file and L.D.F. shall support, including by appearing at the hearing if so requested.
16 If any third-party objection to the motion is filed, Moore and L.D.F. agree to work together to file a
17 reply and appear at any hearing. This provision is a material component of the Consent Judgment
18 and shall be treated as such in the event of a breach.

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
26 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then L.D.F.
27 may provide Moore with written notice of any asserted change in the law, and shall have no further
28 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the

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

3 **8. NOTICE**

4 Unless specified herein, all correspondence and notice required by this Consent Judgment
5 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
6 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
7 following addresses:

8 **To L.D.F.:**

9 Lazar Follman, President
10 L.D.F. Industries, Inc.
11 30 Warsoff Place
12 Brooklyn, NY 11205

8 **To Moore:**

9 Attn: Proposition 65 Coordinator
10 The Chanler Group
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710-2565

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

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

18 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

19 This Consent Judgment may be executed in counterparts and by facsimile or portable
20 document format (pdf) signature, each of which shall be deemed an original and, all of which, when
21 taken together, shall constitute one and the same document.

22 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

25 **11. MODIFICATION**

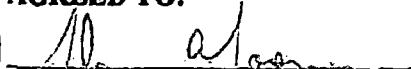
26 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
27 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
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1 any party upon notice to the other party of a minimum of twenty five (25) days, and the entry of a
2 modified Consent Judgment by the Court thereon.

3 **12. AUTHORIZATION**

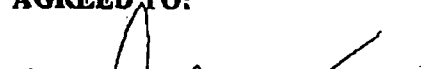
4 The undersigned are authorized to execute this Consent Judgment on behalf of their
5 respective Parties and have read, understood, and agree to all of the terms and conditions of this
6 Consent Judgment.

8 **AGREED TO:**

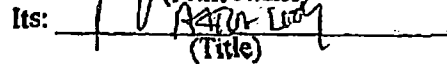
9 
10 JOHN MOORE

11 Dated: 9/11/2017

AGREED TO:


L.D.F. INDUSTRIES, INC.

By: 
(Print Name)

Its: 
(Title)

Dated: 8.28.17

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