

16

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
Laralei S. Paras, State Bar No. 203319
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118
clifford@chanler.com
laralei@chanler.com

Attorneys for Plaintiff
JOHN MOORE

FILED
San Francisco County Superior Court

APR 22 2019

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

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

JOHN MOORE,
Plaintiff,
v.
DICK'S SPORTING GOODS, INC.; *et al.*,
Defendants.

Case No. CGC-18-568974
**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**
Date: April 22, 2019
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Ethan P. Schulman
Reservation No.: 02280422-07

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

In the above entitled action, Plaintiff John Moore and Defendant Golf Time, 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 April 22, 2019.

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

IT IS SO ORDERED.

Dated: April 22, 2019


JUDGE OF THE SUPERIOR COURT


ETHAN P. SCHULMAN 

EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
Laralei S. Paras, State Bar No. 203319
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5 clifford@chanler.com
laralei@chanler.com

6
7 Attorneys for Plaintiff
JOHN MOORE

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

12
13 JOHN MOORE,
14 Plaintiff,
15 v.
16 DICK'S SPORTING GOODS, INC.; *et al.*,
17 Defendants.

Case No. CGC-18-568974

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 Golf Time, L.L.C. (Golf Time), with Moore and Golf Time each referred to individually
5 as 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 products.

10 **1.3 Defendant**

11 Golf Time 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 § 25249.5 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Moore alleges that Golf Time manufactures, imports, sells and/or distributes for sale in
16 California vinyl/PVC golf head club headcovers including, without limitation, golf putter covers
17 containing di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard
18 warning that Moore alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65
19 as a chemical known to the State of California to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are vinyl/PVC golf club head covers
22 including, without limitation, golf putter covers containing DEHP including, but not limited to the
23 *NFL 3 Pack Golf Club Headcovers, San Francisco 49ers 3 pk contour hc, UPC #6 37556 32794 9*,
24 manufactured, imported, or purchased for resale by Golf Time and distributed, sold and/or offered
25 for sale in California, hereinafter the “Products.”

26 **1.6 Notice of Violation**

27 On April 26, 2018, Moore served Golf Time and the requisite public enforcement agencies
28 with a 60-Day Notice of Violation (Notice), alleging that Golf Time violated Proposition 65 when it

1 failed to warn its customers and consumers in California that the Products expose users to DEHP.
2 To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
3 prosecuting an action to enforce the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On August 16, 2018, Moore commenced the instant action (Complaint), naming Golf Time
6 as one of the defendants for the alleged violations of Proposition 65 that are the subject of the
7 Notice.

8 **1.8 No Admission**

9 Golf Time denies the material, factual and legal allegations contained in the Notice and
10 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
11 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
12 Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute or be
13 construed as, an admission by Golf Time of any fact, finding, conclusion of law, issue of law, or
14 violation of law. This section shall not, however, diminish or otherwise affect Golf Time's
15 obligations, responsibilities, and duties under this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Golf Time as to the allegations contained in the Complaint, that venue is proper in
19 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions
20 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
23 Consent Judgment is approved by the Court, including an unopposed tentative ruling.

24 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

25 **2.1 Commitment to Reformulate or Provide Warnings**

26 As of the Effective Date, Golf Time shall only manufacture for sale, import for sale, and
27 purchase for resale in California Products that are Reformulated Products as defined by Section 2.2 or
28 carry a clear and reasonable health hazard warning per section 2.3. Any Products, that are not

1 Reformulated Products, which Golf Time sells, ships for sale, or distributes for sale to customers or
2 consumers in California, or to customers with nationwide distribution, after the Effective Date, shall
3 be labeled with a clear and reasonable warning as set forth in Section 2.3. If, after the Effective Date,
4 Golf Time sells Products that are not Reformulated Products by mail order catalog or the internet to
5 customers located in California, Golf Time shall also provide warnings for such Products by
6 identifying the specific Product to which the warning applies as specified in Sections 2.4 through 2.6.


7 **2.2 Reformulation Standard**

8 “Reformulated Products” are Products containing DEHP in concentrations of less than 0.1
9 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory
10 accredited by the State of California, a federal agency, or a nationally recognized accrediting
11 organization. For purposes of compliance with this reformulation standard, testing samples shall be
12 prepared and extracted using Consumer Product Safety Commission (CPSC) methodology
13 CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA)
14 methodology 8270D, or other methodologies utilized by federal or state government agencies to
15 determine phthalate content in a solid substance.

16 **2.3 Clear and Reasonable Warnings**

17 As of the Effective Date, Golf Time shall provide clear and reasonable warnings for all
18 Products provided for sale to customers in California in accordance with this Section pursuant to
19 Title 27, California Code of Regulations, § 25600, *et seq.* Each warning shall be prominently placed
20 with such conspicuousness as compared with other words, statements, designs, or devices as to
21 render it likely to be read and understood by an ordinary individual under customary conditions
22 before purchase or use and shall be provided in a manner such that it is clearly associated with the
23 specific Product to which the warning applies.

24 **(a) Warning.** The warning shall consist of the following statement (Warning):

25  **WARNING:** This product can expose you to DEHP, which is
26 known to the State of California to cause birth
27 defects or other reproductive harm. For more
28 information go to www.P65Warnings.ca.gov.

1 **(b) Short-Form Warning.** Golf Time may, but is not required to, use the
2 following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning), and
3 subject to the additional requirements in Sections 2.5 and 2.6, as follows:

4  **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov

5
6 **(c) Foreign Language Requirement.** Where a consumer product sign, label or
7 shelf tag used to provide a warning includes consumer information in a language other than English,
8 the warning must also be provided in that language in addition to English.

9 **2.4 Product Warnings**

10 Golf Time shall affix a warning to the Product label or otherwise directly on each Product
11 provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to
12 customers located in California. For the purpose of this agreement, “Product label” means a display
13 of written, printed or graphic material that is printed on or affixed to a Product or its immediate
14 container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no
15 smaller than the largest type size used for other consumer information on the product. The warning
16 shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b),
17 respectively.

18 **2.5 Mail Order Catalog Warnings**

19 In the event that, after the Effective Date, Golf Time prints new catalogs and sells Products
20 via mail order through such catalogs to customers located in California, Golf Time shall provide a
21 warning for each Product both on the Product label in accordance with Section 2.4, and in the
22 catalog in a manner that clearly associates the warning with the specific Product being purchased.
23 Any warning provided in a mail order catalog shall be in the same type size or larger than other
24 consumer information provided for the Product within the catalog and shall be provided on the same
25 page and in the same location as the display and/or description of the Product. The catalog warning
26 may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the
27 Product label also uses the Short-Form Warning content.

28 ///

1 **2.6 Internet Warnings**

2 If, after the Effective Date, Golf Time sells Products via the internet to customers located in
3 California, Golf Time shall provide warnings for each Product both on the Product label in
4 accordance with Section 2.4, and by prominently displaying the warning to the customer prior to
5 completing the purchase or during the purchase of the Products without requiring customers to seek
6 out the warning. The Warning, or a clearly marked hyperlink to the Warning using the word
7 “**WARNING**”, given in conjunction with the sale of the Products via the internet shall appear either:
8 (a) on the same web page on which the Product is displayed; (b) on the same web page as the order
9 form for the Product; or (c) on one or more web pages displayed to a purchaser during the checkout
10 process. The warning shall appear in any of the above instances adjacent to or immediately
11 following the display or description of the Product for which it is given in the same type size or
12 larger than the Product description text. The internet warning may use the Short-Form Warning
13 content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-
14 Form Warning content.

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty Payments**

17 Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged
18 in the Notice or referred to in this Consent Judgment, Golf Time agrees to pay a total of \$4,000 in
19 civil penalties. The penalty payment will be allocated in accordance with California Health and
20 Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of
21 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
22 amount retained by Moore. Golf Time shall issue its payment within five (5) days after the Effective
23 Date in two checks made payable to: (a) “OEHHA” in the amount of \$3,000; and (b) “John Moore,
24 Client Trust Account” in the amount of \$1,000. Golf Time shall be liable for payment of interest, at
25 a rate of 10% simple interest, for all amounts due and owing under this Section that are not received
26 within two business days of the due date.

27 ///

28 ///

1 **3.2 Reimbursement of Attorneys' Fees and Costs**

2 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
3 reaching terms on their fees and costs. Shortly after the other settlement terms had been finalized,
4 the Parties negotiated the compensation to be paid to Moore and his counsel under general contract
5 principles and the private attorney general doctrine codified at California Code of Civil Procedure
6 § 1021.5 for all work performed through the mutual execution of this Consent Judgment and court
7 approval of the same, but exclusive of fees and costs on appeal, if any. Golf Time agrees to pay
8 \$24,000 for all fees and costs incurred investigating, bringing this matter to Golf Time's attention,
9 litigating, and negotiating a settlement in the public interest. Golf Time agrees to make four (4)
10 equal installments in the form of checks made payable to "The Chanler Group" to be delivered to the
11 address in Section 3.3, by overnight courier, with a tracking number, with the first installment due
12 within fifteen (15) days of the Effective Date, the second installment due within forty-five (45) days
13 of the Effective Date, the third installment due within seventy-five (75) days of the Effective Date,
14 and the fourth installment due within 105 days of the Effective Date. Golf Time shall be liable for
15 payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this
16 Section that are not received within two business days of the due date.

17 **3.3 Payment Address**

18 All payments required by this Consent Judgment shall be delivered to the following address:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 **4. CLAIMS COVERED AND RELEASED**

25 **4.1 Moore's Release of Proposition 65 Claims**

26 Moore, acting on his own behalf and in the public interest, releases Golf Time and its
27 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
28 attorneys (collectively, Releasees) and each entity to whom Golf Time directly or indirectly
distributes or sells the Products including, but not limited to, its downstream distributors,
wholesalers, customers, retailers (including Dick's Sporting Goods, Inc. and Golf Galaxy, LLC),

1 franchisers, cooperative members, licensors and licensees (collectively “Downstream Releasees”)
2 for any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
3 manufactured, imported, distributed or sold by Golf Time prior to the Effective Date, as set forth in
4 the Notice and Complaint. Compliance with the terms of this Consent Judgment constitutes
5 compliance with Proposition 65 by Golf Time with respect to the alleged or actual failure to warn
6 about exposures to DEHP from Products manufactured, sold or distributed for sale by Golf Time
7 after the Effective Date.

8 **4.2 Moore’s Individual Release of Claims**

9 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
10 release to Golf Time, Releasees, and Downstream Releasees which shall be effective as a full and
11 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
12 attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or
13 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
14 exposures to DEHP in Products manufactured, imported, distributed or sold by Golf Time before the
15 Effective Date. Nothing in Section 4 affects Moore’s right to commence or prosecute an action
16 under Proposition 65 against a Releasee or Downstream Releasee that does not involve Golf Time’s
17 Products.

18 **4.3 Golf Time’s Release of Moore**

19 Golf Time, on its own behalf and on behalf of its past and current agents, representatives,
20 attorneys, successors and/or assignees, hereby waives any and all claims against Moore, his
21 attorneys and other representatives, for any and all actions taken or statements made (or those that
22 could have been taken or made) by Moore and his attorneys and other representatives in the course
23 of investigating claims, seeking to enforce Proposition 65 against Golf Time in this matter, or with
24 respect to the Products.

25 ///

26 ///

27 ///

28

1 **5. COURT APPROVAL**

2 This Consent Judgment shall be null and void if, for any reason, it is not approved and
3 entered by the Court within one year after it has been fully executed by all Parties. Moore and Golf
4 Time agree to support the entry of this agreement as a judgment and to obtain the Court's approval
5 of their settlement in a timely manner. The Parties acknowledge that, pursuant to Health and Safety
6 Code § 25249.7(f)(4), a noticed motion is required for judicial approval of this Consent Judgment,
7 which motion Moore shall draft and file. In furtherance of obtaining such approval, the Parties agree
8 to mutually employ their best efforts, and those of their counsel, to support the entry of this
9 agreement as a judgment, and to obtain judicial approval of their settlement in a timely manner. For
10 purposes of this section, "best efforts" shall include, at a minimum, supporting the motion for
11 approval, responding to any objection that any third-party may file or lodge, and appearing at the
12 hearing before the Court if so requested.

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of California
19 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
20 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Golf Time
21 may provide Moore with written notice of any asserted change in the law, and shall have no further
22 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
23 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Golf Time
24 from its obligation to comply with any pertinent state or federal law or regulation.

25 ///

26 ///

27 ///

28 ///

1 **8. NOTICE**

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

6 To Golf Time:

7 David McDevitt, Owner
8 Golf Time, L.L.C.
9 2221 Luna Rd
10 Carrollton, TX 75006

To Moore:

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

11 With a Copy To:

12 Greg C. Noschese, Esq.
13 Munsch Hardt Kopf & Harr, P.C.
14 500 N. Akard Street, Suite 3800
15 Dallas, Texas 75201-6659

16 Any Party may, from time to time, specify in writing to the other Party a change of address to which
17 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 § 25249.7(f).

25 **11. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement and understanding of the
27 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
28 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
therein. There are no warranties, representations, or other agreements between the Parties except as
expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
specifically referred to in this Consent Judgment have been made by any Party hereto. No other

1 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
2 exist or to bind any of the Parties hereto.

3 **12. MODIFICATION**

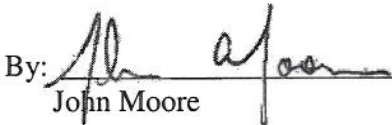
4 This Consent Judgment may be modified only by: (a) a written agreement of the Parties and
5 the entry of a modified Consent Judgment by the Court thereon; or (b) upon a successful motion of
6 any party and the entry of a modified Consent Judgment by the Court thereon.

7 **13. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
10 Consent Judgment.


11 **AGREED TO:**

12 Date: 2/7/2019

13 By: 
14 John Moore

AGREED TO:

12 Date: 3/14/19

13 By: 
14 David McDevitt, Owner
15 Golf Time, L.L.C.

16
17
18
19
20
21
22
23
24
25
26
27
28