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20 Venture Products, LLC

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 FOR THE CITY AND COUNTY OF MARIN
23 UNLIMITED CIVIL JURISDICTION

24 JOHN MOORE,
25 Plaintiff,

26 vs.

27 VENTURE PRODUCTS, LLC, *et al.*,
28 Defendants.

Case No. CIV-1005991

[PROPOSED] CONSENT JUDGMENT AS
TO VENTURE PRODUCTS, LLC

Dept:
Judge:
Date:

Complaint Filed: November 12, 2010

1 **1. INTRODUCTION**

2 **1.1. John Moore and Venture Products, LLC**

3 This Consent Judgment is entered into by and between plaintiff John Moore
4 (“Moore” or “Plaintiff”) and defendant Venture Products, LLC (“Venture”), with Plaintiff
5 and Venture collectively referred to as the “parties.”

6 **1.2. John Moore**

7 Moore is an individual residing in the State of California who seeks to promote
8 awareness of exposure to toxic chemicals and to improve human health by reducing or
9 eliminating hazardous substances contained in consumer and commercial products.

10 **1.3. Venture Products, LLC**

11 Moore alleges that Venture employs ten or more persons and is a person in the
12 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement
13 Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4. General Allegations**

15 Moore alleges that Venture has manufactured, imported, distributed and/or sold
16 vinyl floor tiles containing di(2-ethylhexyl)phthalate (“DEHP”), without the requisite
17 Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause cancer as
18 well as birth defects and other reproductive harm.

19 **1.5. Product Description**

20 The products that are covered by this Consent Judgment (“Covered Products”) are
21 defined as all vinyl floor mats, floor tiles and floor coverings containing DEHP including,
22 but not limited to, *Best-Step Ultra-Flex Flooring System, Item No. BS115 (#8 99530 01898*
23 *8)*.

24 **1.6. Notice of Violation**

25 On or about September 1, 2010, Moore served Venture Products, LLC and various
26 public enforcement agencies, with a document entitled “60-Day Notice of Violation” (the
27 “Notice”) that provided the recipients with notice of alleged violations of California Health
28 & Safety Code § 25249.6 for failing to warn consumers that the Covered Products sold by

1 Venture exposed users in California to DEHP. To the best of the parties' knowledge, no
2 public enforcer has prosecuted the allegations set forth in the Notice.

3 **1.7. Complaint**

4 On November 12, 2010, Moore filed a complaint in the Superior Court in and for
5 the County of Marin against Venture, and others, *Moore v. Venture Products, LLC*, Case
6 No. CIV-1005991 (the "Action"), alleging violations of California Health & Safety Code
7 § 25249.6, based on the alleged exposures to DEHP contained in certain vinyl flooring
8 products sold by Venture.

9 **1.8. No Admission**

10 Venture denies the material, factual and legal allegations contained in Moore's
11 Notice and Complaint and maintains that all products that it has sold, manufactured,
12 imported and/or distributed in California, including Covered Products, have been and are
13 in compliance with all laws. Nothing in this Consent Judgment is or shall be construed as
14 an admission by the Parties of any fact, conclusion of law, issue of law or violation of law,
15 nor shall compliance with the Consent Judgment constitute or be construed as an
16 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.
17 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
18 argument or defense the Parties may have in any other legal proceeding. This Consent
19 Judgment is the product of negotiation and compromise and is accepted by the Parties for
20 purposes of settling, compromising and resolving issues disputed in these Actions.

21 **1.9. Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the parties stipulate that this Court has
23 jurisdiction over Venture as to the allegations contained in the Complaint, that venue is
24 proper in the County of Marin and that this Court has jurisdiction to enter and enforce the
25 provisions of this Consent Judgment.

26 **1.10. Effective Date**

27 For purposes of this Consent Judgment, the term "Effective Date" shall mean
28 December 31, 2010.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1. Reformulation Standards**

3 Reformulated Products, as that term used herein, means Covered Products
4 containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) in each
5 accessible component (the “DEHP Standard”) when analyzed pursuant to U.S.
6 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
7 methodology utilized by federal or state agencies for the purpose of determining DEHP
8 content in a solid substance. For purposes of this agreement, the term “accessible
9 component” means a poly vinyl chloride or other soft plastic, vinyl, or synthetic leather
10 component of a Covered Product that could be touched by a person during reasonably
11 foreseeable use.

12 **2.2. DEHP Specification Compliance Date**

13 No more than thirty days after the Effective Date, if it has not already done so,
14 Venture shall have provided notice regarding the DEHP Standard to each of its then-
15 current vendors of those Covered Products that will be sold or offered for sale to California
16 citizens and shall instruct each vendor to use reasonable efforts to provide Covered
17 Products that comply with the DEHP Standard expeditiously. In addressing the obligation
18 set forth in the preceding sentence, Venture shall not employ statements that will
19 encourage a vendor to delay compliance with the DEHP Standard.

20 **2.3. Implementation of the Reformulation Standard**

21 Commencing no later than one month from the Effective Date, Venture shall not
22 purchase, import, or manufacture any Covered Product that will be sold or offered for sale
23 to California citizens except Reformulated Product.

24 **3. PAYMENT OF PENALTIES**

25 **3.1. Civil Penalty**

26 In settlement of all the claims referred to in this Consent Judgment, Venture shall
27 pay \$8,000 in civil penalties, to be apportioned in accordance with California Health &
28 Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of

1 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
2 remaining 25% of the penalty remitted to John Moore. This civil penalty reflects a credit
3 of \$20,000 based on Venture's commitment to reformulate in an expeditious manner.
4 Venture shall issue two separate checks for the penalty payment: (a) one check made
5 payable to "The Chanler Group in Trust For OEHHA" in the amount of \$6,000,
6 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust
7 for John Moore" in the amount of \$2,000, representing 25% of the total penalty. Two
8 separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010,
9 Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall
10 be provided five calendar days before the payment is due.

11 Payment shall be delivered to Moore's counsel on or before January 10, 2011, at the
12 following address:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

18 **4. REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS**

19 The parties reached an accord on the compensation due to Moore and his counsel
20 under general contract principles and the private attorney general doctrine codified at
21 California Code of Civil Procedure (CCP) § 1021.5. Venture shall reimburse Moore and
22 his counsel \$36,000 for fees and costs incurred as a result of investigating, bringing this
23 matter to its attention, and negotiating a settlement in the public interest. This figure
24 includes Moore's future fees and costs including attorney's fees to be incurred in seeking
25 judicial approval of this Consent Judgment as well as any other legal work performed after
26 the execution of this Consent Judgment incurred in an effort to obtain finality of the case.
27 However, in the event a third party were to appeal entry of this Consent Judgment,
28 Plaintiff and his counsel shall be entitled to their reasonable attorney's fees and costs
associated with all appellate work defending the entry of judgment pursuant to CCP
§ 1021.5.

1 The check for reimbursement of fees and costs shall be made payable to “The
2 Chanler Group” and shall be delivered on or before January 10, 2011, to the following
3 address:

4 The Chanler Group
5 Attn: Proposition 65 Controller
6 2560 Ninth Street
7 Parker Plaza, Suite 214
8 Berkeley, CA 94710

9 A separate 1099 shall be issued to “The Chanler Group” (EIN: 94-3171522) for the
10 amount of the reimbursement of Plaintiff’s fees and costs.

11 **5. RELEASE OF ALL CLAIMS**

12 **5.1.** This Consent Judgment is a full, final and binding resolution between
13 Plaintiff on his behalf and the public interest and Venture and its parents, subsidiaries,
14 affiliated entities under common ownership, and their respective directors, officers,
15 employees, and attorneys (“Defendant Releasees”) and each entity to whom Venture
16 directly or indirectly distributes or sells Covered Products, including but not limited to
17 distributors, wholesalers, customers, retailers (including Sears, Roebuck & Co., and Sears
18 Holdings Corporation, hereinafter “Sears”), distributors, franchisees, dealers, customers,
19 owners, purchasers, users, and the parent companies, corporate affiliates, and subsidiaries
20 of each, (“Downstream Defendant Releasees”) of any violation of Proposition 65 that was
21 or could have been asserted in the Complaint against Venture, Defendant Releasees, and
22 Downstream Defendant Releasees, based on failure to warn about alleged exposure to
23 DEHP contained in Covered Products that were sold in violation of Section 2.3.

24 **5.2. Moore’s Release of Venture**

25 In further consideration of the promises and agreements herein contained, and for
26 the payments to be made pursuant to Sections 3 and 4, Moore, on behalf of himself, his
27 past and current agents, representatives, attorneys, successors, and/or assignees, and in the
28 interest of the general public pursuant to Health & Safety Code § 25249.7(d), does hereby
waive all rights to institute or participate in, directly or indirectly, any form of legal action
and releases all claims, including, without limitation, all actions, and causes of action, in

1 law or in equity, suits, liabilities, demands, obligations, agreements, promises, royalties,
2 accountings, damages, costs, fines, penalties, losses, or expenses (including, but not
3 limited to, investigation fees, expert fees, and attorney's fees) of any nature whatsoever,
4 whether known or unknown, fixed or contingent (collectively "claims"), against Venture
5 and Defendant Releasees that arise under Proposition 65, as such claims relate to Venture's
6 alleged failure to warn about exposures to DEHP contained in Covered Products.

7 The parties further understand and agree that this release shall not extend upstream
8 to any entities that manufactured Covered Products for Venture or any component parts
9 thereof or to any distributors or suppliers who sold Covered Products or any component
10 parts thereof to Venture.

11 **5.3. Moore's Dismissal without Prejudice as to Sears**

12 In further consideration of the promises and agreements herein contained, and for
13 the payments to be made pursuant to Sections 3 and 4, Moore, on behalf of himself, his
14 past and current agents, representatives, attorneys, successors, and/or assignees, and in the
15 interest of the general public pursuant to Health & Safety Code § 25249.7(d), hereby
16 further agrees to dismiss without prejudice Sears from this Action.

17 **5.4. Venture's Release of Moore**

18 Venture, on behalf of itself and Defendant Releasees, waives any and all claims
19 against Moore, his attorneys, and other representatives for any and all actions taken by
20 Moore and his attorneys and other representatives, whether in the course of investigating
21 claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or
22 with respect to Covered Products.

23 **6. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court
25 and shall be null and void if, for any reason, it is not approved and entered by the Court
26 within one year after it has been fully executed by all parties.

27

28

1 **7. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any of the provisions of
3 this Consent Judgment are held by a court to be unenforceable, the validity of the
4 enforceable provisions remaining shall not be adversely affected.

5 **8. 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
8 repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or if
9 any of the provisions of this Consent Judgment are rendered inapplicable or no longer
10 require as a result of any such repeal or preemption or rendered inapplicable by reason of
11 law generally as to the Products, then Venture shall have no further obligations pursuant to
12 this Consent Judgment with respect to, and to the extent that, Covered Products are so
13 affected.

14 **9. NOTICES**

15 Unless specified herein, all correspondence and notices required to be provided
16 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by:
17 (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight
18 courier on any party by the other party at the following addresses:

19 To Venture:

20 Steven Fischer
21 President
22 Venture Products, LLC
376 Hollywood Avenue, Suite 209
Fairfield, NJ 07004

To Moore:

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

23 With copy to:

24 John J. Allen, Esq.
25 Allen Matkins Leck Gamble
26 Mallory & Natsis LLP
515 South Figueroa Street, 7th Floor
Los Angeles, CA 90071-3398

27
28

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

3 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile or pdf
5 signature, each of which shall be deemed an original, and all of which, when taken
6 together, shall constitute one and the same document. A facsimile or pdf signature shall be
7 as valid as the original.

8 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

9 Moore and his attorneys agree to comply with the reporting form requirements
10 referenced in California Health & Safety Code § 25249.7(f).

11 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

12 Moore and Venture agree to mutually employ their and their counsel's, best efforts
13 to support the entry of this agreement as a Consent Judgment and obtain approval of the
14 Consent Judgment by the Court in a timely manner. The parties acknowledge that,
15 pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to
16 obtain judicial approval of this Consent Judgment, which Moore shall prepare and file, and
17 Venture shall join. If any third party objection to the noticed motion is filed, Moore and
18 Venture shall work together to file a joint reply and appear at any hearing before the Court.
19 This provision is a material component of the Consent Judgment and shall be treated as
20 such in the event of a breach. If the Superior Court does not approve the motion to
21 approve this Consent Judgment, and if the parties choose not to pursue a modified Consent
22 Judgment within 30 days after the Court's denial of the motion to approve, all payments
23 made pursuant to this Consent Judgment will be returned to counsel for Venture.

24 **13. RETENTION OF CERTAIN RIGHTS**

25 Nothing in this Consent Judgment shall release, or in any way affect any rights that
26 Venture might have against any other party, besides Moore and his counsel.

27
28

1 **14. COUNTERPARTS**

2 The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile or portable document format (.pdf), which taken together shall be
4 deemed to constitute one document.

5 **15. MODIFICATION**

6 This Consent Judgment may be modified only: (1) by written agreement of the
7 parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a
8 successful motion of any party, as provided by law, and entry of a modified Consent
9 Judgment by the Court.

10 **16. AUTHORIZATION**

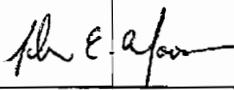
11 Each signatory to this Consent Judgment certifies that he or she is fully authorized
12 by the party he or she represents to execute this Consent Judgment on behalf of the party
13 represented and to legally bind that Party.

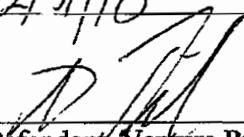
14
15 **AGREED TO:**

AGREED TO:

16
17 Date: DECEMBER 29, 2010

Date: 12/31/10

18
19 By: 
20 Plaintiff, John Moore

By: 
Defendant, Venture Products, LLC

21
22
23 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

24
25
26 **Dated:** _____
27 **Judge of the Superior Court**