

1 Jennifer Henry, State Bar No. 208221
Brian Johnson, State Bar No. 235965
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 Attorneys for Plaintiff
6 JOHN MOORE

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 JOHN MOORE,

13 Plaintiff,

14 v.

15 LUCKY LINE PRODUCTS, INC., *et al.*,

16 Defendants.
17

Case No. RG11590560

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

1 **1. INTRODUCTION**

2 **1.1 John Moore and Lucky Line Products, Inc.**

3 This Consent Judgment is entered into by and between John Moore (“Moore” or
4 “Plaintiff”) and Lucky Line Products, Inc. (“Lucky Line” or “Defendant”), with Moore and Lucky
5 Line collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Moore alleges that Lucky Line has manufactured, distributed, and/or offered for sale in
16 California luggage tags containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the
17 requisite “clear and reasonable” exposure warnings required by Proposition 65. DEHP is listed
18 pursuant to Proposition 65 as a chemical known to the state of California to cause birth defects and
19 other reproductive harm. Lucky Line denies those allegations and denies that it has or had any
20 obligations to provide warnings under Proposition 65, as stated more fully in Paragraph 1.8 below.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are luggage tags containing DEHP,
23 including but not limited to, the *Lucky Line Products Luggage Tags, #63101 (#0 85721 63101 6)*
24 sold by Lucky Line directly or indirectly in California (“Covered Products”).

25 **1.6 Notice of Violation**

26 On November 23, 2010, Moore served Lucky Line and various public enforcement
27 agencies with a document entitled 60-Day Notice of Violation (“Notice”) that informed Lucky
28 Line and the public enforcers that Lucky Line was allegedly in violation of Proposition 65 for

1 failing to warn its customers and consumers in California that the Covered Products expose users
2 to DEHP.

3 **1.7 Complaint**

4 On August 15, 2011, Moore filed the instant action (“Complaint”) naming Lucky Line as a
5 defendant and alleging a cause of action for the violations of Health & Safety Code § 25249.6
6 alleged in the Notice.

7 **1.8 No Admission**

8 Lucky Line denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all Covered Products it has produced, sold or distributed, directly or
10 indirectly, in California have been, and are, in compliance with all laws, including Proposition 65.
11 Nothing in this Consent Judgment shall be construed as an admission by Lucky Line or any other
12 party released by this Consent Judgment of any fact, finding, conclusion of law, issue of law, or
13 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
14 admission of any fact, finding, conclusion of law, issue of law, or violation of law, the same being
15 specifically denied by Lucky Line. This section shall not, however, diminish or otherwise affect
16 Lucky Line’s obligations, responsibilities and duties under this Consent Judgment.

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Lucky Line as to the allegations in the Complaint, that venue is proper in
20 Alameda County, and that this Court has jurisdiction to enter and enforce the provisions of the
21 Consent Judgment under Code of Civil Procedure § 664.6, as a full, final, and binding resolution of
22 all claims which were raised or could have been raised in the Complaint against Lucky Line, based
23 on the facts alleged by Moore in the Notice and Complaint.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
26 Consent Judgment is approved by the Court.

27 ///

28 ///

1 **2. INJUNCTIVE RELIEF – REFORMULATION**

2 As of the Effective Date, Lucky Line shall not sell or offer for sale in California, or ship to
3 a third-party distributor or retailer for sale in California, any Covered Product that is not “DEHP
4 Free.” For purposes of this Consent Judgment, “DEHP Free” shall mean that each accessible
5 component of the Covered Products does not contain DEHP in a concentration exceeding 1,000
6 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing
7 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for
8 the purpose of determining DEHP content in a solid substance, and suitable for the materials
9 comprising the Covered Products.

10 “Accessible component” as used in this Consent Judgment means a component of a
11 Covered Product that can be touched by a person during normal and foreseeable use of the Covered
12 Product.

13 Covered Products manufactured or shipped to a third-party distributor or retailer prior to the
14 Effective Date are not subject to the reformulation obligations of this Consent Judgment.

15 **3. MONETARY PAYMENTS**

16 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

17 Pursuant to Health & Safety Code § 25249.7(b), Lucky Line shall pay \$7,000 in civil
18 penalties, subject to a credit of \$3,500 for Lucky Line’s commitment to offer only DEHP Free
19 Covered Products pursuant to Section 2, for a net penalty payment of \$3,500.

20 The civil penalty payment shall be allocated according to Health & Safety Code §
21 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty payment earmarked for the
22 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
23 twenty-five percent (25%) of the penalty amount earmarked for Moore.

24 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

25 The Parties acknowledge that Moore and his counsel offered to resolve this dispute with
26 regard to injunctive relief and civil penalties without reaching terms on the amount of fees and costs
27 to be reimbursed to them, thereby leaving the fee and cost issue to be resolved after the material
28 terms of the agreement had been settled in principle, and subject to Lucky Line’s final agreement to

1 all terms of this agreement and its overall impact upon Lucky Line. Moore and his counsel then
2 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
3 finalized in principle. The Parties then attempted to (and did) reach an accord on the compensation
4 due to Moore and his counsel under the private attorney general doctrine codified at California
5 Code of Civil Procedure § 1021.5 for all work reasonably performed in this matter. Under these
6 legal principles, Lucky Line shall pay \$25,500, for all fees and costs incurred investigating,
7 litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred)
8 drafting, negotiating, and obtaining the Court's approval of this Consent Judgment in the public
9 interest. Except as otherwise provided in this Consent Judgment, each party shall bear its own
10 attorneys' fees and costs.

11 **3.3 Payment Procedures**

12 **3.3.1 Funds Held in Trust**

13 All payments made under this Consent Judgment shall be held in trust until the Court
14 approves the settlement. Lucky Line shall deliver its payments according to the payment schedule
15 established by section 3.3.2.

16 **3.3.2 Payment Schedule**

17 Lucky Lines shall deliver its settlement payments to Moore's counsel according the
18 following Payment Schedule:

19 (a) On or before June 25, 2012, Lucky Line shall deliver two checks for the
20 following amounts made payable to:

21 (i) "The Chanler Group in Trust for OEHHA" in the amount of \$2,625; and

22 (ii) "The Chanler Group in Trust for John Moore" in the amount of \$875.

23 (b) On or before July 25, 2012, Lucky Line shall deliver a third check payable to
24 "The Chanler Group in Trust" in the amount of \$8,500;

25 (c) On or before August 25, 2012, Lucky Line shall deliver a fourth check
26 payable to "The Chanler Group in Trust" in the amount of \$8,500; and

27 (d) On or before September 25, 2012, Lucky Line shall deliver a fifth check
28 payable to "The Chanler Group in Trust" in the amount of \$8,500.

1 **3.3.3 Issuance of 1099 Forms**

2 After the Consent Judgment has been approved, Lucky Line shall issue three 1099
3 forms for its settlement payments to:

4 (a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010,
5 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid to OEI IIIA in the amount of
6 \$2,625;

7 (b) “John Moore”, whose address and tax identification number shall be
8 furnished upon request after this Consent Judgment has been fully executed by the Parties, for civil
9 penalties paid in the amount of \$875; and

10 (c) “The Chanler Group” (EIN: 94-3171522) for the reimbursement of fees and
11 costs in the amount of \$25,500.

12 **3.3.4 Payment Address**

13 All payments and tax documents required by this Section shall be delivered to the
14 following address:

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

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Moore’s Public Release of Proposition 65 Claims**

22 Moore, acting on his own behalf and in the public interest, to the fullest extent permitted by
23 law and equity, releases Lucky Line, each person that has distributed or sold Covered Products
24 provided directly or indirectly by Lucky Line, including but not limited to downstream distributors,
25 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees, and all
26 of their predecessors and successors in interest, parent, subsidiary and affiliated entities under
27 common ownership or control, directors, officers, employees, agents, shareholders, members and
28 attorneys (“Releasees”), from all claims for violations of Proposition 65 up through the Effective
Date based on actual or alleged exposure to DEHP from Covered Products as set forth in the Notice.
Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65

1 with respect to actual or alleged exposures to DEHP from Covered Products as set forth in the
2 Notice.

3 **4.2 Moore's Individual Release of Claims**

4 Moore also, in his individual capacity only and not in his representative capacity, provides a
5 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
6 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
7 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
8 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the
9 Covered Products manufactured, distributed or sold by Lucky Line and other Releasees.

10 **4.3 Lucky Line's Release of Moore**

11 Lucky Line on behalf of itself, its past and current agents, representatives, attorneys,
12 successors, and/or assignees, hereby waives any and all claims against Moore, his attorneys and
13 other representatives, for any and all actions taken or statements made (or those that could have
14 been taken or made) by Moore and his attorneys and other representatives, whether in the course of
15 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
16 respect to the Covered Products.

17 **4.4 No Other Known Claims or Violations**

18 Plaintiff and Plaintiff's counsel affirm that they are not presently aware of any actual or
19 alleged violations of Proposition 65 by Lucky Line or for which Lucky Line bears legal
20 responsibility other than those that are fully resolved by this Consent Judgment. This Paragraph
21 does not, however, provide a release for any such unknown, actual or alleged violations involving
22 other substances and product categories, if any, nor does it limit the scope of the releases provided
23 by Paragraphs 4.1 and 4.2 for Covered Products.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and
26 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
27 after it has been fully executed by all Parties, in which event any monies that have been provided to
28

1 Moore or his counsel pursuant to section 3.3.1 shall be refunded within fifteen (15) days after
2 receiving written notice from Lucky Line that the one-year period has expired.

3 **6. SEVERABILITY**

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

7 **7. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of California
9 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
10 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
11 Lucky Line shall have no further obligations pursuant to this Consent Judgment with respect to,
12 and to the extent that, the Covered Products are so affected.

13 **8. NOTICES**

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

18 For Lucky Line:

19 Bill Fleming, President
20 Lucky Line Products, Inc.
21 7890 Dunbrook Rd.
San Diego, CA 92126

22 For Moore:

23 Proposition 65 Coordinator
24 The Chanler Group
25 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

28 ///

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Moore shall comply with the reporting form requirements referenced in California Health &
7 Safety Code § 25249.7(f) and as otherwise provided by law. In addition, the Parties acknowledge
8 that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain
9 judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Moore and
10 Lucky Line and their respective counsel agree to mutually employ their best efforts to support the
11 entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the
12 Court in a timely manner. For purposes of this section, "best efforts" shall include, at a minimum,
13 cooperating on the drafting and filing of any papers in support of the required motion for judicial
14 approval.

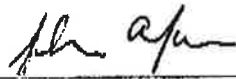
15 **11. MODIFICATION**

16 This Consent Judgment may only be modified by: (1) written agreement of the Parties and
17 upon entry of a modified consent judgment by the Court; or (2) upon a successful motion or
18 application of any party and entry of a modified consent judgment by the Court as provided by law.

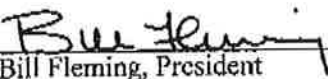
19 **12. AUTHORIZATION**

20 The undersigned are authorized to execute this Consent Judgment and have read,
21 understood, and agree to all of the terms and conditions of this Consent Judgment.

22 **AGREED TO:**

23
24 By: 
25 John Moore

AGREED TO:

24 By: 
25 Bill Fleming, President
Lucky Line Products, Inc.

26 Date: MAY 25, 2012

26 Date: MAY 29, 2012