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9 Attorneys for Plaintiff
10 JOHN MOORE

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,
16
17 Plaintiff,

18 v.

19 A.L.S. INDUSTRIES, INC.: and DOES 1-
20 150, inclusive,
21
22 Defendants.

) Case No.: CIV-1103517
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) **[PROPOSED] CONSENT JUDGMENT**
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) (*Cal. Health & Safety Code § 25249.6 et seq.*)
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1. INTRODUCTION

1.1 John Moore and A.L.S. Industries, Inc.

This Consent Judgment is entered into by and between John Moore ("Moore" or "Plaintiff") and A.L.S. Industries, Inc. ("A.L.S." or "Defendant"), with Moore and A.L.S. collectively referred to as the "Parties."

1.2 John Moore

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

1.3 A.L.S. Industries, Inc.

At all times relevant to this action A.L.S. employed ten or more persons and was a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

1.4 General Allegations

Moore alleges that A.L.S. manufactured, imported, distributed, sold and/or offered for sale cases for mobile electronic devices in California that contain di(2-ethylhexyl)phthalate ("DEHP") without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause birth defects and other reproductive harm.

1.5 Product Description

The products that are covered by this Consent Judgment are: all cases for mobile electronic devices containing DEHP manufactured, imported, distributed, sold and/or offered for sale in California by A.L.S., including, but not limited to, *Wii Game Traveler Brunswick Wii Travel Bag, Model NWB300 (#0 48413 40601 9)*.

1.6 Notice of Violation

On April 19, 2011, Moore served A.L.S. and various public enforcement agencies, with a document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with notice of alleged violations of California Health & Safety Code 25249.6 for failing to warn consumers that

1 cases for mobile electronic devices sold by A.L.S. exposed users in California to DEHP. To the
2 best of the Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the
3 Notice.

4 **1.7 Complaint**

5 On July 15, 2011, Moore filed a complaint in the Superior Court in and for the County of
6 Marin against A.L.S., and Does 1 through 150, *Moore v. A.L.S. Industries, Inc., et al.*, Case
7 No. CIV-1103517 (the "Complaint" or "Action"), alleging violations of California Health & Safety
8 Code § 25249.6, based on the alleged exposures to DEHP contained in certain cases for mobile
9 electronic devices sold by A.L.S.

10 **1.8 No Admission**

11 A.L.S. denies the material, factual and legal allegations contained in Moore's Notice and
12 Complaint and maintains that all products that it manufactured, imported, distributed, sold and/or
13 offered for sale in California, including the Product, have been and are in compliance with all laws.
14 Nothing in this Consent Judgment shall be construed as an admission by A.L.S. of any fact, finding,
15 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
16 construed as an admission by A.L.S. of any fact, finding, conclusion, issue of law, or violation of
17 law. However, this section shall not diminish or otherwise affect Defendant's obligations,
18 responsibilities, and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over A.L.S. as to the allegations contained in the Complaint, that venue is proper in the
22 County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
23 Consent Judgment, pursuant to California Code of Civil Procedure section 664.6, as a full and
24 binding resolution of all claims that were or could have been raised in the Complaint against A.L.S.
25 based on the facts alleged therein and in the Notice.

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1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean August 31, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

Reformulated Products are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, all Products manufactured, imported, distributed, sold and/or offered for sale in the State of California by A.L.S. shall be products that qualify as Reformulated Products as defined in Section 2.1 above.

3. MONETARY PAYMENTS

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

A.L.S. has been assessed a civil penalty in the amount of \$33,000. However, due to its commitment to reformulate the Products pursuant to Section 2.2 above, A.L.S. shall receive a credit of \$25,000 and, therefore, pay a civil penalty of \$8,000. The civil penalty shall be apportioned in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of these penalty monies earmarked for John Moore.

3.2 Reimbursement of Plaintiff's 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 this fee issue to be resolved after the material terms of the agreement had been settled. A.L.S. then

1 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
 2 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
 3 Moore and his counsel under general contract principles and the private attorney general doctrine
 4 codified at California Code of Civil Procedure section 1021.5, for all work performed in this
 5 matter, except fees that may be incurred on appeal. Under these legal principles, A.L.S. shall pay
 6 the amount of \$38,000 for fees and costs incurred investigating, litigating and enforcing this
 7 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
 8 obtaining the Court's approval of this Consent Judgment in the public interest. However, in the
 9 event a third party were to appeal entry of this Consent Judgment, Plaintiff and his counsel shall be
 10 entitled to seek their reasonable attorney's fees and costs associated with all appellate work
 11 defending the entry of judgment pursuant to CCP § 1021.5.

12 **3.3 Payment Procedures**

13 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall
 14 be delivered on or before September 28, 2012, to The Chanler Group, and shall be held in trust
 15 pending the Court's approval of this Consent Judgment.

16 Payments delivered to The Chanler Group shall be made payable, as follows:

- 17 (a) "The Chanler Group in Trust for OEHHA" in the amount of \$6,000;
- 18 (b) "The Chanler Group in Trust for John Moore" in the amount of
 19 \$2,000; and
- 20 (c) "The Chanler Group in Trust" in the amount of \$38,000.

21 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
 22 and the settlement funds have been transmitted to plaintiff's counsel, A.L.S. shall issue three
 23 separate 1099 forms, as follows:

- 24 (a) The first 1099 shall be issued to the Office of Environmental Health
 25 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
 26 0284486) in the amount of \$6,000;

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- 1 (b) The second 1099 shall be issued to John Moore in the amount of
- 2 \$2,000, whose address and tax identification number shall be furnished upon
- 3 request; and
- 4 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
- 5 3171522) in the amount of \$38,000.

6 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered to
 7 the following payment address:

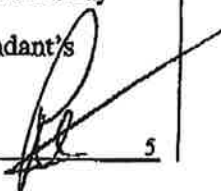
8 The Chanler Group
 9 Attn: Proposition 65 Controller
 10 2560 Ninth Street
 11 Parker Plaza, Suite 214
 12 Berkeley, CA 94710

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Moore's Public Release of Proposition 65 Claims**

13 In further consideration of the promises and agreements herein contained, and for the
 14 payments to be made pursuant to Section 3, Moore, on behalf of himself, his past and current
 15 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
 16 public pursuant to Health & Safety Code § 25249.7 (d), hereby waives all rights to institute or
 17 participate in, directly or indirectly, any form of legal action and releases all claims that Moore
 18 may have, including, without limitation, all actions, and causes of action, in law or in equity,
 19 suits, liabilities, demands, obligations, agreements, promises, royalties, accountings, damages,
 20 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
 21 fees, and attorney's fees but exclusive of fees and costs on appeal) of any nature whatsoever, fixed
 22 or contingent, against A.L.S. and each of its downstream wholesalers, licensors, licensees,
 23 auctioneers, retailers, distributors, franchisees, dealers, customers, owners, purchasers, users,
 24 parent companies, corporate affiliated entities under common ownership including, but not limited
 25 to R.D.S. Industries, Inc., subsidiaries, and their respective officers, directors, attorneys,
 26 representatives, shareholders, agents, and employees, and sister and parent entities, (collectively
 27 "Releasees") that arise under Proposition 65, as such claims relate in any way to Defendant's

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1 alleged failure to warn about exposures to DEHP contained in the Products manufactured,
2 imported, received into inventory, distributed, sold and/or offered by sale by A.L.S. before the
3 Effective Date (collectively "claims"). Compliance with the terms of this Consent Judgment
4 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products
5 as set forth in the Notice.

6 **4.2 Moore's Individual Release of Claims**

7 Moore also, in his individual capacity only and *not* in his representative capacity, provides
8 to Releasees a general release herein which shall be effective as a full and final accord and
9 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
10 damages, losses, claims, liabilities and demands of Moore of any nature, character or kind, known
11 or unknown, suspected or unsuspected, arising out of the subject matter of this dispute including
12 with respect to DEHP in the Products. Moore acknowledges that he is familiar with Section 1542
13 of the California Civil Code, which provides as follows:

14 A general release does not extend to claims which the creditor does
15 not know or suspect to exist in his or her favor at the time of
16 executing the release, which if known by him or her must have
17 materially affected his or her settlement with the debtor.

18 Moore, in his individual capacity only and *not* in his representative capacity, expressly
19 waives and relinquishes any and all rights and benefits which he may have under, or which may be
20 conferred on him by the provisions of Section 1542 of the California Civil Code as well as under
21 any other state or federal statute or common law principle of similar effect, to the fullest extent that
22 he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of
23 such intention, the release hereby given shall be and remain in effect as a full and complete release
24 notwithstanding the discovery or existence of any such additional or different claims or facts
25 arising out of the released matters, as to the DEHP contained in the Products manufactured,
26 distributed, sold and/or offered for sale by Defendant.

27 **4.3 Defendant's Release of Moore**

28 A.L.S., on behalf of itself, its past and current agents, representatives, attorneys,
successors, and/or assignees, hereby waives any and all claims against Moore, his attorneys and

1 other representatives, for any and all actions taken or statements made (or those that could have
 2 been taken or made) by Moore and his attorneys and other representatives, whether in the course
 3 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
 4 respect to the Products.

5 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

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

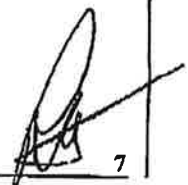
13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of California
 15 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
 16 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
 17 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
 18 preemption or rendered inapplicable by reason of law generally as to the Products,
 19 then A.L.S. shall have no further obligations pursuant to this Consent Judgment with respect to, and
 20 to the extent that, the Products are so affected.

21 **8. NOTICES**

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

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12. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

13. 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:

Date: 9/24/12

Date: 9/20/2012

By: [Signature]
John Moore

By: [Signature]
Richard Smith, President
A.L.S. Industries, Inc.