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6

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,

12 Plaintiff,

13 v.

14 CATHOLIC BOOK PUBLISHING CORP.;
15 CATHOLIC BOOK PUBLISHING CORP. OF
16 NEW JERSEY; and DOES 1-150, inclusive,

17 Defendants.
18

Case No. CGC-11-513307

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between John Moore (“Moore” or “Plaintiff”),
4 Catholic Book Publishing Corp., and Catholic Book Publishing Corp. of New Jersey (together
5 “Catholic Book” or “Defendant”), with Moore and Catholic Book collectively referred to as the
6 “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Moore alleges that Catholic Book sold in the State of California coverings for books
17 containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a
18 chemical that is known to the State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows: coverings for
21 books containing DEHP, including, without limitation, *New St. Joseph Weekday Missal Complete*
22 *Edition Volume 1, No. 920/09 (ISBN #9 780899 429311)*. Covering for books containing DEHP are
23 referred to herein as “Products” and are limited to those items manufactured, sold, or distributed by
24 Catholic Book in California.

25 **1.6 Notices of Violation**

26 On or about May 4, 2011, Moore served Catholic Book and various public enforcement
27 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Catholic
28 Book and such public enforcers with notice that Catholic Book was allegedly in violation of Health &

1 Safety Code § 25249.6 for failing to warn its customers and consumers in California that its
2 coverings for books exposed users to DEHP.

3 **1.7 Complaint**

4 On or about August 11, 2011, Moore, acting in the interest of the general public in California,
5 filed the instant action (“Complaint”), against Catholic Book for the violations of Proposition 65
6 alleged in the Notice.

7 **1.8 No Admission**

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

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Catholic Book as to the allegations contained in the Complaint, that venue is proper
19 in this county, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean December 30,
23 2011.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulation Standards**

26 Commencing on the Effective Date, Catholic Book shall only manufacture, distribute, sell, or
27 offer to ship for sale in California “Reformulated Products.” For the purposes of this Consent
28

1 Judgment, Reformulated Products are defined as coverings for books containing DEHP in a
2 concentration equal to or less than 1,000 parts per million (ppm) (0.1%).

3 **2.2 Verification of Reformulated Products**

4 The method of analysis used to determine whether Catholic Book's coverings for books are
5 Reformulated Products in compliance with this Section 2 shall be made pursuant to U.S.
6 Environmental Protection Agency (EPA) testing methodologies 3580A and 8270C. For every
7 Product ordered, caused to be ordered, manufactured or caused to be manufactured for distribution to
8 or sale in California after the Effective Date, and for every Product distributed, caused to be
9 distributed, sold or caused to be sold in California by Defendant, Defendant shall maintain copies of
10 all testing of such products demonstrating compliance with this Section.

11 **3. MONETARY PAYMENTS**

12 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

13 Catholic Book shall make a payment of \$3,000 to be apportioned in accordance with Health
14 & Safety Code §§ 25249.12 (c)(1) & (d), with seventy-five percent (75%) of the penalty earmarked
15 for the California Office of Environmental Health Hazard Assessment ("OEHHA") and the
16 remaining twenty-five percent (25%) of the penalty earmarked for Moore.

17 **3.2 Reimbursement of Plaintiff's Fees and Costs**

18 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
19 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
20 to be resolved after the material terms of the agreement had been settled. Catholic Book then
21 expressed a desire to resolve the issue shortly after the other settlement terms had been finalized.
22 The Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
23 counsel under general contract principles and the private attorney general doctrine codified at
24 California Code of Civil Procedure § 1021.5 for all work performed in this matter, except fees that
25 may be incurred on appeal. Under these legal principles, Catholic Book shall pay \$26,000 for the
26 fees and costs incurred by Moore and Moore's counsel investigating, litigating and enforcing this
27 matter, and negotiating a settlement, including the fees and costs incurred (and yet to be incurred)
28 negotiating, drafting, and obtaining the Court's approval of this Consent Judgment.

1 **3.3 Payment Procedures**

2 **3.3.1 Funds Held in Trust**

3 All payments required by Sections 3.1 and 3.2 shall delivered on or before the Effective Date
4 to either The Chanler Group or the attorney of record for Defendant, and shall be held in trust
5 pending the Court’s approval of this Consent Judgment.

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

- 7 (a) “The Chanler Group in Trust for OEHHA” in the amount of \$2,250;
- 8 (b) “The Chanler Group in Trust for John Moore” in the amount of \$750; and
- 9 (c) “The Chanler Group in Trust” in the amount of \$26,000.

10 Payments delivered to counsel for Defendant shall be made payable as follows:

- 11 (a) “Fox Rothschild LLP in Trust for OEHHA” in the amount of \$2,250;
- 12 (b) “Fox Rothschild LLP in Trust for John Moore” in the amount of \$750; and
- 13 (c) “Fox Rothschild LLP in Trust for The Chanler Group” in the amount of
14 \$26,000.

15 If Defendant elects to deliver payments to its attorney of record, the attorney of record shall
16 confirm in writing within five days of deposit that the funds have been deposited in its trust account.

17 Within two days of the date of the hearing of the motion for judicial approval of the Consent
18 Judgment, the payments held in trust by the attorney of record for Defendant shall be delivered to
19 The Chanler Group in three checks for the following amounts, made payable as follows:

- 20 (a) “The Chanler Group in Trust for OEHHA” in the amount of \$2,250;
- 21 (b) “The Chanler Group in Trust for John Moore” in the amount of \$750; and
- 22 (c) “The Chanler Group” in the amount of \$26,000.

23 **3.3.2 Issuance of 1099 Forms**

24 After the Consent Judgment has been approved and the settlement funds have been
25 transmitted to plaintiff’s counsel, Catholic Book shall issue three separate 1099 forms, as follows:

- 26 (a) The first 1099 shall be issued to the Office of Environmental Health Hazard
27 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$2,250;
- 28 (b) The second 1099 shall be issued to John Moore in the amount of \$750, whose

1 address and tax identification number shall be furnished upon request; and

2 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in
3 the amount of \$26,000.

4 **3.3.3 Payment Address**

5 All payments made pursuant to this Section shall be delivered to Moore's counsel at the
6 following address:

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

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

12 This Consent Judgment is a full, final and binding resolution between Plaintiff, on behalf of
13 himself and the public, and Defendant, of any violation of Proposition 65 that was or could have
14 been asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated entities under
15 common ownership, Defendant's directors, officers, employees, attorneys, and each entity to whom
16 Defendant directly or indirectly distributes or sells Products, including but not limited to
17 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
18 licensors, and licensees ("Releasees"), based on their alleged unwarned exposures to the respective
19 Listed Chemical(s) contained in Products sold by Defendant, as alleged in the Notices, before the
20 Effective Date.

21 **4.2 Plaintiff's Public Release of Proposition 65 Claims**

22 In further consideration of the promises and agreements herein contained, Plaintiff on behalf
23 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and
24 in the interest of the general public, hereby waives all rights to institute or participate in, directly or
25 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
26 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,
27 fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees,
28 and attorneys' fees – but exclusive of fees and costs on appeal – against Catholic Book and the

1 Releasees arising under Proposition 65 (collectively “Claims”). This release is limited to those
2 claims were brought or could have been brought against Catholic Book for actual or alleged
3 exposures to the respective Listed Chemical(s) found in the Products sold by Catholic Book, as
4 alleged in Notices, before the Effective Date.

5 **4.3 Plaintiff’s Individual Release of Claims**

6 Plaintiff also, in his individual capacity only and *not* in his representative capacity, provides
7 a release to Catholic Book and the Releasees which shall be effective as a full and final accord and
8 satisfaction, as a bar to all Claims, liabilities, and demands of any nature, character or kind, whether
9 known or unknown, suspected or unsuspected against Catholic Book and Releasees, arising out of a
10 exposures to the respected Listed Chemical(s) contained in the Products, as alleged in the Notices.

11 **4.4 Defendant’s Release of Plaintiff**

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

18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and shall
20 be null and void if, for any reason, it is not approved and entered within one year after it has been
21 fully executed by the Parties. In the event the Consent Judgment is not entered in this period, any
22 monies that have been provided to Moore or his counsel pursuant to Section 3 of this Consent
23 Judgment shall be refunded within fifteen (15) days of receiving written notice from Catholic Book
24 that the one-year period has expired and the Consent Judgment has not been approved and entered by
25 the Court.

26 **6. SEVERABILITY**

27 If, subsequent to the execution of this Consent Judgment, any of its provisions are held to be
28 unenforceable, the validity of the remaining provisions shall not be adversely affected.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
4 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Catholic Book
5 may provide written notice to Moore of any asserted change in the law, and shall have no further
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
7 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Catholic Book from any
8 obligation to comply with any pertinent state or federal toxics control laws.

9 **8. NOTICES**

10 Unless specified herein, all correspondence and notices required to be provided pursuant to
11 this Consent Judgment shall be shall be sent by: (i) personal delivery; (ii) first-class, registered or
12 certified mail, return receipt requested; or (iii) overnight courier at the following addresses:

13 For Catholic Book:

14 Robert Cavalero, President
15 Catholic Book Publishing Corp.
16 Catholic Book Publishing Corp. of New Jersey
17 77 West End Road
18 Totowa, NJ 07512

17 and

18 David F. Faustman, Esq.
19 Fox Rothschild LLP
20 235 Pine Street, Suite 1500
21 S.F. CA 94104

21 For Moore:

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

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

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, when
4 taken together, shall constitute one and the same document.

5 **10. ADDITIONAL POST EXECUTION ACTIVITIES**

6 Moore agrees to comply with the reporting form requirements referenced in California Health
7 & Safety Code § 25249.7(f). The Parties also acknowledge that, pursuant to California Health &
8 Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of their
9 settlement. In furtherance of obtaining such approval, Moore and Catholic Book and their respective
10 counsel agree to mutually employ their “best efforts” to support the entry of this agreement as a
11 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
12 For purposes of this section, “best efforts” shall include, at a minimum, cooperating on the drafting
13 and filing of any papers in support of the required motion for judicial approval.

14 **11. MODIFICATION**

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

18 **12. AUTHORIZATION**

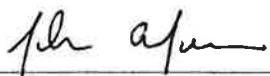
19 The undersigned are authorized to execute this Consent Judgment and have read, understood,
20 and agree to all of the terms and conditions hereof.

21 **AGREED TO:**

AGREED TO:

22 Date: JANUARY 12, 2012

Date: _____

23
24 By: 
25 John Moore

By: _____
Robert Cavalero, President
Catholic Book Publishing Corp.; and
Catholic Book Publishing Corp.
of New Jersey

28

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21 **AGREED TO:**

22 Date: _____

23
24 By: _____
25 John Moore

AGREED TO:

22 Date: 1/6/2012

23
24 By: Robert Cavalero
25 Robert Cavalero, President
26 Catholic Book Publishing Corp.; and
27 Catholic Book Publishing Corp.
28 of New Jersey