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12 MERKURY INNOVATIONS LLC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF MARIN
15 UNLIMITED CIVIL JURISDICTION
16

17 JOHN MOORE,) Case No. CV-1104147
18 Plaintiff,)
19 v.) **[PROPOSED] CONSENT JUDGMENT**
20 MERKURY INNOVATIONS LLC; and)
DOES 1-150, inclusive,) (*Cal. Health & Safety Code § 25249.6 et seq.*)
21 Defendants.)
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1 **1. INTRODUCTION**

2 **1.1 John Moore and Merkury Innovations LLC**

3 This Consent Judgment is entered into by and between John Moore (hereinafter “Moore” or
4 “Plaintiff”) and Merkury Innovations LLC (hereinafter “Merkury” or “Defendant”), with Moore
5 and Merkury collectively referred to as the “Parties.”

6 **1.2 John Moore**

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 Merkury Innovations LLC**

11 Merkury 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 Merkury has manufactured, imported, distributed, and/or sold in
16 California cases for digital cameras containing di(2-ethylhexyl)phthalate (“DEHP”) without the
17 requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are cases for digital cameras
21 containing DEHP including, but not limited to, *Targus Universal Digital Camera Starter Kit (TGK-*
22 *FR300, #8 44702 00128 2)*, *Small Camera Case-Red (TGC-CC425)*, *Small Camera Case-Grey*
23 *(TGC-CC460)*, *Compact Camera Case (TGC-DC125 and TGC-DC325)*, *SLR Digital Camera Case*
24 *(TGC-DE100)*, *Camcorder & Camera Case (TGC-EC210)*, *Sling Bag-Black (TGC-SBM200)*,
25 *Camera Case-Black (TGC-SC610)*, *DSLR Camera Starter Kit (TG-DS500)*, *Universal Camera*
26 *Starter (TGK-WM200)*, *Targus Essentials Kit (TG-RA1010)*, manufactured, imported, distributed,
27 and/or sold by Merkury in California, (hereinafter “Products”), and other cases including, but not
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1 limited to, *iPad Case with Pocket (M-IPC110)*, *iPad Case (M-IPC310)*, *iPad Case with Double*
2 *(M-IPC610)*, *Kindle 2 Case (M-PEKC10)*, *Sony E-Reader Case (M-SPC110)*, and *Wide Shoulder*
3 *Strap (TG-DWSS)*, manufactured, imported, distributed, and/or sold by Merkury in California,
4 hereinafter “Additional Products.”

5 **1.6 Notice of Violation**

6 On May 4, 2011, Moore served Merkury and various public enforcement agencies with a
7 document entitled 60-Day Notice of Violation (“Notice”) that provided the recipients with notice
8 that alleged Merkury was in violation of Proposition 65 based on its alleged failure to warn
9 consumers and customers that the Products exposed users in California to DEHP. To the best of
10 the Parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

11 **1.7 Complaint**

12 On or about August 18, 2011, Moore filed a complaint in the Marin County Superior Court
13 against Merkury Innovations LLC and Does 1 through 150, *Moore v. Merkury Innovations LLC,*
14 *et al.*, Case No. CIV-1104147 (“Complaint” or “Action”), alleging violations of Proposition 65
15 based on the alleged exposures to DEHP in certain cases for digital cameras manufactured,
16 imported, distributed, and/or sold by Merkury in the State of California.

17 **1.8 No Admission**

18 Merkury denies the factual and legal allegations contained in the Notice and Complaint,
19 and maintains that all products that it has sold in California, including the Products and Additional
20 Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall
21 be construed as an admission by Merkury of any fact, finding, conclusion, issue of law, or
22 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
23 admission by Merkury of any fact, finding, conclusion, issue of law, or violation of law, such
24 being specifically denied by Merkury. However, this Section shall not diminish or otherwise
25 affect Merkury’s obligations, responsibilities and duties under this Consent Judgment.
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1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Merkury as to the allegations contained in the Complaint, that venue is proper in
4 the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
5 Consent Judgment, pursuant to California Code of Civil Procedure § 664.6, as a full and binding
6 resolution of all claims which were or could have been raised in the Complaint against Merkury
7 based on the facts alleged therein and in the Notice.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term “Effective Date” shall mean June 15,
10 2012.

11 **2. INJUNCTIVE RELIEF: REFORMULATION**

12 **2.1 Reformulation Standard**

13 “Reformulated Products” shall mean Products and Additional Products containing less than
14 1,000 parts per million (“ppm”) of DEHP, when analyzed pursuant to Environmental Protection
15 Agency testing methodologies 3580A and 8270C, or any method allowed by any state or federal
16 agency to assess the DEHP content by weight of a solid substance.

17 **2.2 Reformulated Products Specification Compliance Date**

18 No more than 30 days after execution of this Agreement, Merkury shall have provided the
19 Reformulation Standard to its then-current vendors of Products and Additional Products that will be
20 sold or offered for sale to California citizens and shall instruct each vendor to use reasonable efforts
21 to provide Products and Additional Products that comply with the Reformulation Standard
22 expeditiously.

23 **2.3 Reformulation Commitment**

24 All Products and Additional Products that Merkury receives into inventory on or after the
25 Effective Date for resale by Merkury in the State of California shall qualify as Reformulated
26 Products as defined in Section 2.1.

1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

3 Merkury shall make a payment of \$6,000 to be apportioned in accordance with Health &
4 Safety Code § 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the
5 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
6 remaining 25% of these penalty monies earmarked for John Moore. This penalty reflects a credit
7 of \$12,000 based on Merkury’s commitment to reformulate the Products pursuant to Section 2.1
8 above.

9 **3.2 Reimbursement of Moore’s Fees and Costs**

10 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
11 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
12 issue to be resolved after the material terms of the agreement had been settled. Merkury then
13 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
14 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
15 to Moore and his counsel under general contract principles and the private attorney general
16 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed in
17 this matter. Under these legal principles, Merkury shall pay the amount of \$33,000 for fees and
18 costs incurred investigating, litigating and enforcing this matter, including the fees and costs
19 incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of this
20 Consent Judgment in the public interest. This Section 3.2 of the Consent Judgment defines the
21 extent to which Defendant shall have any obligation to Plaintiff and/or his counsel attorneys’ fees
22 and costs in connection with this Action.

23 **3.3 Payment Procedures**

24 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall
25 be delivered on or before April 17, 2012, to either The Chanler Group or the attorney of record for
26 Merkury, and shall be held in trust pending the Court’s approval of this Consent Judgment.

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

- 2 (a) One check made payable to “The Chanler Group in Trust for
3 OEHHA” in the amount of \$4,500;
- 4 (b) One check made payable to “The Chanler Group in Trust John Moore”
5 in the amount of \$1,500; and
- 6 (c) One check made payable to “The Chanler Group in Trust” in the
7 amount of \$33,000.

8 Payments delivered to Arnold & Porter LLP shall be made payable, as follows:

- 9 (a) One check made payable to “Arnold & Porter LLP in Trust for
10 OEHHA” in the amount of \$4,500;
- 11 (b) One check made payable to “Arnold & Porter LLP in Trust for John
12 Moore” in the amount of \$1,500; and
- 13 (c) One check made payable to “Arnold & Porter LLP in Trust for The
14 Chanler Group” in the amount of \$33,000.

15 If Merkury elects to deliver payments to its attorney of record, such attorney of
16 record shall: (a) confirm in writing within five days of receipt that the funds have been deposited
17 in a trust account; and (b) within two days of the date of the hearing on which the Court approves
18 the Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as
19 follows:

- 20 (a) One check made payable to “The Chanler Group in Trust for
21 OEHHA” in the amount of \$4,500;
- 22 (b) One check to “The Chanler Group in Trust for John Moore” in the
23 amount of \$1,500; and
- 24 (c) One check to “The Chanler Group” in the amount of \$33,000.

25 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved and
26 the settlement funds have been transmitted to Moore’s counsel, Merkury shall issue three separate
27 1099 forms, as follows:
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- 1 (a) The first 1099 shall be issued to the Office of Environmental Health
2 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
3 68-0284486) in the amount of \$4,500;
- 4 (b) The second 1099 shall be issued to John Moore in the amount of
5 \$1,500, whose address and tax identification number shall be
6 furnished upon request; and
- 7 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
8 3171522) in the amount of \$33,000.

9 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered to
10 the following payment address:

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

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 Moore's Public Release of Proposition 65 Claims**

16 In further consideration of the promises and agreements herein contained, and for the
17 payments to be made pursuant to Section 3, Moore, on behalf of himself, his past and current
18 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
19 public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or
20 participate in, directly or indirectly, any form of legal action and releases all claims that Moore
21 may have, including, without limitation, all actions, and causes of action, in law or in equity, suits,
22 liabilities, demands, obligations, agreements, promises, royalties, accountings, damages, costs,
23 fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees,
24 and attorney's fees but exclusive of fees and costs on appeal) of any nature whatsoever, fixed or
25 contingent, against Defendant and each of its downstream wholesalers, licensors, licensees,
26 auctioneers, retailers, distributors, franchisees, dealers, customers, owners, purchasers, users,
27 parent companies, corporate affiliated entities under common ownership, subsidiaries, and their
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1 respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and
2 sister and parent entities (collectively “Releasees”) that arise under Proposition 65, as such claims
3 relate in any way to Defendant’s alleged failure to warn about exposures to DEHP contained in the
4 Products manufactured, imported, received into inventory, distributed, sold and/or offered by sale
5 by Merkury before the Effective Date (collectively “claims”). Compliance with the terms of this
6 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP
7 from the Products as set forth in the Notice.

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

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

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

21 Moore, in his individual capacity only and not in his representative capacity, on behalf of himself
22 and his agents, attorneys, representatives, successors and assigns, expressly waives and
23 relinquishes any and all rights and benefits which he may have under, or which may be conferred
24 on him by the provisions of Section 1542 of the California Civil Code as well as under any other
25 state or federal statute or common law principle of similar effect, to the fullest extent that he may
26 lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such
27 intention, the release hereby given shall be and remain in effect as a full and complete release
28 notwithstanding the discovery or existence of any such additional or different claims or facts
arising out of the released matters.

1 **4.3 Merkury’s Release of Plaintiff**

2 Merkury on behalf of itself, its past and current agents, representatives, attorneys, successors,
3 and/or assignees, hereby waives any and all claims against Moore, his attorneys and
4 other representatives, for any and all actions taken or statements made (or those that could have
5 been taken or made) by Moore and his attorneys and other representatives, whether in the course
6 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
7 with respect to the Products.

8 **5. COURT APPROVAL**

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

12 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

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

1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Consent Judgment shall be sent by (i) personal delivery, (ii) first-class, registered or certified
4 mail, return receipt requested, or (iii) overnight courier on any Party by the other Party at the
5 following addresses:

6 To Merkury:	To Moore:
7 Douglas A. Winthrop, Esq.	Proposition 65 Coordinator
8 Arnold & Porter LLP	The Chanler Group
9 Three Embarcadero	Center 2560 Ninth Street
Seventh Floor	Parker Plaza, Suite 214
San Francisco, CA 94111-4024	Berkeley, CA 94710-2565

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

12 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

16 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

17 Moore agrees to comply with the reporting form requirements referenced in California Health
18 & Safety Code § 25249.7(f).

19 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

20 The Parties agree to mutually employ their best efforts to support the entry of this agreement
21 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
22 manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
23 noticed motion is required to obtain judicial approval for this Consent Judgment, which Moore
24 shall draft and file, and Merkury shall join. If any third party objection to the
25 noticed motion is filed, the Parties shall work together to file a joint reply and appear at any
26 hearing before the Court. This provision is a material component of the Consent Judgment and
27 shall be treated as such in the event of a breach.

1 **12. MODIFICATION**

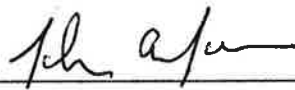
2 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
3 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
4 of any Party and entry of a modified consent judgment by the Court.

5 **13. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective parties and have read, understood, and agree to all of the terms and conditions of this
8 Consent Judgment.

9
10 **AGREED TO:**

AGREED TO:

11
12 By: 
13 John Moore

By: _____
Chaby Orfali, Executive Vice President
Merkury Innovations LLC

14 Date: MAY 17, 2012

Date: _____

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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:

By: _____
John Moore

Date: _____

AGREED TO:

By: _____
Chaby Orfali, Executive Vice President
Mercury Innovations LLC

Date: _____