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19 Attorneys for Defendant ROSS STORES, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF ALAMEDA

22 JOHN MOORE,

23 Plaintiff,

24 v.

25 ROSS STORES, INC.; and DOES 1-150,
26 inclusive,

27 Defendants.

Case No. RG11-595386

Assigned For All Purposes To The
Honorable

CONSENT JUDGMENT [PROPOSED]

1 **1. INTRODUCTION**

2 **1.1 John Moore, and Ross Stores, Inc..**

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

6 **1.2 Plaintiff.**

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

10 **1.3 Defendant.**

11 Ross 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 §25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Moore alleges that Ross has manufactured, distributed, sold, and/or offered for sale
16 ottomans containing di(2-ethylhexyl)phthalate (“DEHP”) for use in the State of California
17 without the requisite Proposition 65 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 Notice of Violation.**

20 **1.5.1 Notice**

21 On June 29, 2011, Moore served Ross and various public enforcement agencies with a
22 document entitled “60-Day Notice of Violation” that alleged that Ross violated Proposition 65 by
23 failing to warn consumers that ottomans including, but not limited to, Ottoman, D1052 C6614,
24 #400051310996 that Ross sold and/or offered for sale exposed users in California to DEHP
25 (“Notice”).

26 **1.5.2 Complaint**

27 On September 15, 2011, Moore filed a complaint in this action in the Superior Court for
28 the County of Alameda, naming Ross as a defendant, alleging violations of Health & Safety Code

1 § 25249.6 based on the alleged exposures to DEHP contained in ottomans manufactured,
2 distributed, sold and/or offered for sale by Ross in California (“Complaint”).

3 **1.6 No Admission.**

4 The Parties enter into this Consent Judgment as a full and final settlement of all claims
5 that were raised in the Complaint or that could have been raised in the Complaint as to Covered
6 Products, defined below, arising out of the facts or conduct alleged therein. By execution of this
7 Consent Judgment and agreeing to comply with its terms, Ross does not admit any facts or
8 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
9 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
10 requirements relating to DEHP in Covered Products. This Consent Judgment is the product of
11 negotiation and compromise and is accepted by Ross for purposes of settling, compromising, and
12 resolving issues disputed in this action. However, this section shall not diminish or otherwise
13 affect the obligations, responsibilities and duties of Ross under this Consent Judgment.

14 **1.7 Consent to Jurisdiction.**

15 For purposes of this Consent Judgment only, Ross stipulates that this Court has
16 jurisdiction over Ross as to the allegations contained in the Complaint, that venue is proper in the
17 County of Alameda and that this Court has, and will retain, jurisdiction to enter and enforce the
18 provisions of this Consent Judgment pursuant to Code of Civil Procedure § 664.6.

19 **2. DEFINITIONS**

20 **2.1** “Covered Products” means ottomans supplied to Ross by Maison Home
21 Furnishings and LAD Products Inc. (the “Suppliers”) and offered for sale by Ross in California
22 including, but not limited to, the Maison Home Furnishings product with SKU #400051310996
23 and the LAD Products Inc. product with SKU # 400068084248.

24 **2.2** “Effective Date” means the date of entry of this Consent Judgment.

25 **3. INJUNCTIVE RELIEF**

26 **3.1** Commencing on the Effective Date, Ross shall not sell and/or offer for sale in
27 California Covered Products unless Ross has obtained a written certification from the Supplier of
28 the Covered Products that it will not supply to Ross Covered Products with Accessible

1 Components containing a DEHP concentration in excess of 1,000 parts per million (“ppm”).
2 Ross shall maintain this certification for three years following the last purchase of Covered
3 Products from the Supplier. “Accessible Component” is defined as any component of a Covered
4 Product that could be touched by a person during reasonably foreseeable use.

5 **4. ENFORCEMENT OF CONSENT JUDGMENT**

6 **4.1 General Enforcement Provisions.**

7 Any Party may, by motion or application for an order to show cause before the Alameda
8 Superior Court, enforce the terms and conditions contained in this Consent Judgment. A Party
9 may file such a motion or application only after that Party first provides 30 days notice to the
10 Party allegedly failing to comply with the terms and conditions of this Consent Judgment and
11 attempts to resolve such Party’s failure to comply in an open and good faith manner for a period
12 of no less than 30 days. Any action to enforce alleged violations of Section 3.1 shall be brought
13 exclusively pursuant to Section 4.2.

14 **4.2 Notice Regarding Violation.**

15 Within 10 days of receiving a written notice of violation from Plaintiff (“NOV”)
16 containing (a) a copy of the sales receipt from Ross showing the date and location from which the
17 Covered Product was purchased, and the identification of the Covered Product, including the
18 SKU and/or other identification number(s); and (b) all test data obtained by Plaintiff regarding the
19 Covered Product and supporting documentation sufficient for validation of the test results,
20 including any laboratory reports, quality assurance reports and quality control reports associated
21 with the testing of the Covered Products demonstrating that an Accessible Component of a
22 Covered Product contains more than 1,000 ppm DEHP, Ross shall discontinue the sale of that
23 item in California and provide a copy of the certification obtained from the Supplier with respect
24 to the Covered Product at issue, and shall have no further liability under this Consent Judgment or
25 Proposition 65 with respect to the Covered Product and DEHP. An NOV shall be based upon
26 testing from an independent laboratory pursuant to Environmental Protection Agency testing
27 methodologies 3580A and 8270C or any other methodology utilized by federal and state agencies
28 for the purpose of determining DEHP content in a solid substance.

1 **4.3 Monetary Payments for Violating Section 3.1.**

2 **4.3.1 No Certification Obtained from Supplier**

3 In the event that Moore purchases a Covered Product in California that contains more than
4 1,000 ppm DEHP after the Effective Date and Ross fails to provide a copy of the certification
5 obtained from the Supplier of the Covered Product at issue, in addition to Ross discontinuing sale
6 of the Covered Product in California, Ross shall pay \$5,000 in civil penalties. The civil penalty
7 shall be apportioned in accordance with Section 5.1 below.

8 In addition to the above, Ross shall reimburse Moore and his counsel \$12,000 for fees and
9 costs incurred as a result of investigating and identifying the violation. Payment shall be made in
10 accordance with Section 5.2 below. Any payments stemming from Section 4.3.1 shall be
11 delivered to Moore’s counsel at the address found in Section 5.1 within five business days of the
12 expiration of the 30 day period Ross has to provide the written certification.

13 **5. MONETARY PAYMENTS**

14 **5.1 Payments Made Pursuant to Health & Safety Code §25249.7(b).**

15 For its cooperation in the settlement process and its commitment to only sell reformulated
16 Covered Products pursuant to Section 3.1, Moore shall provide Ross with a penalty credit of
17 \$14,000. Thereafter, the remaining penalty amount of \$7,000 will be paid by Ross and
18 apportioned in accordance with California Health & Safety Code §25192, with 75% of these
19 funds remitted to the State of California’s Office of Environmental Health Hazard Assessment
20 (“OEHHA”) and the remaining 25% of the amount remitted to John Moore as provided by
21 California Health & Safety Code §25249.12(d). Ross shall issue two separate checks for the
22 payment: (a) one check made payable to “The Chanler Group in trust For Office of
23 Environmental Health Hazard Assessment” in the amount of \$5,250, representing 75% of the
24 total payment; and (b) one check to “The Chanler Group in trust for John Moore” in the amount
25 of \$1,750, representing 25% of the total payment. Two separate 1099s shall be issued for the
26 above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and
27 (b) John Moore, whose information shall be provided five calendar days before the payment is
28 due.

1 Payment shall be delivered to Moore's counsel within five business days of the Effective
2 Date, at the following address:

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565

6 **5.2 Reimbursement of Fees and Costs.**

7 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
8 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
9 this fee issue to be resolved after the material terms of the agreement had been settled. Ross then
10 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
11 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
12 to Moore and his counsel under general contract principles and the private attorney general
13 doctrine codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed
14 through the mutual execution of this agreement. Ross, on behalf of itself and those in its chain of
15 distribution, shall reimburse Moore and his counsel a total of \$33,000 for fees and costs incurred
16 as a result of investigating, bringing this matter to Ross' attention, and litigating and negotiating a
17 settlement in the public interest and obtaining judicial approval thereof. Ross shall issue a
18 separate 1099 for fees and costs (EIN: 94-3171522) and shall make the check payable to "The
19 Chanler Group" to be delivered within two business days of the Effective Date, to the following
20 address:

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710-2565

24 **6. CLAIMS COVERED AND RELEASED**

25 **6.1** This Consent Judgment is a full, final, and binding resolution between Moore, on
26 behalf of himself and in the public interest, and Ross, its parents, subsidiaries, affiliated entities,
27 sister and related companies, directors, officers, shareholders, employees, attorneys, successors
28 and assigns, (collectively "Defendant Releasees") and each entity to whom Defendant directly

1 or indirectly distributes or sells Covered Products, including but not limited to downstream
2 distributors, wholesalers, customers, resellers, retailers, franchisees, cooperative members,
3 licensors, and licensees that sold or distributed the Covered Products (collectively “Downstream
4 Defendant Releasees”), regarding the failure to warn about exposure to DEHP arising in
5 connection with Covered Products manufactured, sourced, distributed, sold, offered for sale by
6 Defendant Releasees prior to the Effective Date. Compliance with the terms of this Consent
7 Judgment by Ross and Defendant Releasees constitutes compliance with Proposition 65 with
8 respect to DEHP in Covered Products.

9 **6.2** In further consideration of the promises and agreements herein contained, Moore
10 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
11 assignees, and in the interest of the general public, hereby waives all rights to institute or
12 participate in, directly or indirectly, any form of legal action and releases all claims, including,
13 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
14 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
15 limited to, investigation fees, expert fees, and attorneys’ fees) limited to and arising out of
16 alleged or actual exposures to DEHP in the Covered Products up through the Effective Date
17 (collectively “Claims”), against Ross, Defendant Releasees, and Downstream Defendant
18 Releasees.

19 **6.3** Moore also, in his individual capacity only and not in his representative capacity,
20 provides a general release herein which shall be effective as a full and final accord and
21 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
22 damages, losses, claims, liabilities and demands of Moore of any nature, character or kind,
23 whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or
24 actual exposures to DEHP pursuant to Proposition 65 in the Covered Products manufactured,
25 distributed, sold and/or offered for sale by Defendant Releasees and Downstream Defendant
26 Releasees.

27 **6.4** Moore acknowledges that he is familiar with Section 1542 of the California Civil
28 Code, which provides as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
4 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
5 HER SETTLEMENT WITH THE DEBTOR.

6 Moore, expressly waives and relinquishes any and all rights and benefits which he may
7 have under, or which may be conferred on him by the provisions of Section 1542 of the
8 California Civil Code as well as under any other state or federal statute or common law
9 principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits
10 pertaining to alleged exposures to DEHP from the Covered Products sold by Ross in California
11 before the Effective Date. In furtherance of such intention, the release hereby given shall be and
12 remain in effect as a full and complete release notwithstanding the discovery or existence of any
13 such additional or different claims or facts arising out of alleged or actual exposure now or in
14 the future to DEHP in the Covered Products manufactured, imported, distributed, sold and/or
15 offered for sale by Ross, that could otherwise be made against Ross, Defendant Releasees, and
16 Downstream Defendant Releasees.

17 **6.5** Ross on behalf of itself, its past and current agents, representatives, attorneys,
18 successors, and/or assignees, hereby waives any and all Claims against Moore, his attorneys,
19 and other representatives for any and all actions taken or statements made (or those that could
20 have been taken or made) by Moore and his attorneys and other representatives, whether in the
21 course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in
22 this matter with respect to the Covered Products.

23 Ross also provides a general release herein which shall be effective as a full and final
24 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
25 attorneys' fees, damages, losses claims, liabilities and demands of Ross of any nature, character
26 or kind, known or unknown, suspected or unsuspected, limited to and arising out of alleged or
27 actual exposures to DEHP pursuant to Proposition 65 in the Covered Products manufactured,
28 distributed, sold and/or offered for sale by Defendant Releasees and Downstream Defendant
Releasees. Ross acknowledges that it is familiar with Section 1542 of the California Civil Code

1 which provides as follows:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
3 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
4 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
5 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
6 HER SETTLEMENT WITH THE DEBTOR.

7 Ross expressly waives and relinquishes any and all rights and benefits which it may have
8 under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil
9 Code as well as under any other state of federal statute or common law principle of similar
10 effect, to the fullest extent that Ross may lawfully waive such rights or benefits pertaining to
11 alleged exposures to DEHP from the Covered Products sold by Ross in California before the
12 Effective Date..

13 **7. COURT APPROVAL**

14 **7.1** Plaintiff shall file a motion seeking approval of this Consent Judgment pursuant to
15 California Health & Safety Code §25249.7(f), and Ross shall support the entry of such motion.

16 **7.2** If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
17 and any and all prior agreements between the Parties merged herein shall terminate and become
18 null and void, and the action shall revert to the status that existed prior to the execution date of
19 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
20 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
21 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
22 action, or in any other proceeding; and (c) the parties agree to meet and confer to determine
23 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

24 **8. GOVERNING LAW**

25 **8.1** The terms of this Consent Judgment shall be governed by the laws of the State of
26 California, and shall apply only to Covered Products offered for sale in the State of California. In
27 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
28 generally, or as to the Products, then Ross may provide written notice to Moore of any asserted

1 change in the law, and shall have no further obligations pursuant to this Consent Judgment with
2 respect to, and to the extent that, the Products are so affected.

3 **8.2** The Parties, including their counsel, have participated in the preparation of this
4 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
5 Consent Judgment was subject to revision and modification by the Parties and has been accepted
6 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
7 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
8 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
9 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
10 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
11 this regard, the Parties hereby waive California Civil Code § 1654.

12 **9. NOTICES**

13 **9.1** Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
15 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
16 Party by the other Party at the following addresses:

17 To Ross:

18 Mark LeHocky
19 Senior Vice President and General Counsel
20 Ross Stores, Inc.
4440 Rosewood Drive
Pleasanton, CA 94588

21 With a copy to:

22 Jeffrey B. Margulies, Esq.
23 Fulbright & Jaworski LLP
555 South Flower Street
24 41st Floor
Los Angeles, California 90071
25 213-892-9286
213-892-9494 fax
26 jmarginies@fulbright.com

28

1 To Moore:

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

7 **9.2** Any Party, from time to time, may specify in writing to the other Party a change of
8 address to which all notices and other communications shall be sent.

9 **10. MODIFICATION**

10 **10.1 Modification.** This Consent Judgment may be modified by written agreement of
11 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
12 Party and entry of a modified Consent Judgment by the court.

13 **10.2 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
14 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
15 modify the Consent Judgment.

16 **11. ENTIRE AGREEMENT AND SEVERABILITY**

17 This Consent Judgment contains the sole and entire agreement and understanding of the
18 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
19 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
20 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
21 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
22 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
23 other provisions hereof whether or not similar. If, subsequent to the execution of this Consent
24 Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable
25 or invalid, the validity of the enforceable provisions remaining shall not be adversely affected.

26 **12. RETENTION OF JURISDICTION**

27 **12.1** This Court shall retain jurisdiction of this matter to implement or modify the
28 Consent Judgment.

1 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

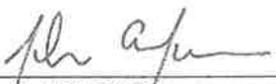
2 **13.1** This Consent Judgment may be executed in counterparts and by facsimile or
3 portable document format (pdf), each of which shall be deemed an original, and all of which,
4 when taken together, shall constitute one and the same document.

5 **14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6 **14.1** Moore agrees to comply with the reporting form requirements referenced in
7 California Health & Safety Code § 25249.7(f).

8 **15. AUTHORIZATION**

9 **15.1** The undersigned are authorized to execute this Consent Judgment on behalf of
10 their respective Parties and have read, understood, and agree to all of the terms and conditions of
11 this Consent Judgment.

AGREED TO:	AGREED TO:
Date: <u>August 14, 2012</u>	Date: _____
By: <u></u> Plaintiff JOHN MOORE	By: _____ Defendant ROSS STORES, INC.

19
20 **IT IS SO ORDERED.**

21 Date: _____
22 _____
23 JUDGE OF THE SUPERIOR COURT
24
25
26
27
28

1 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

2 **13.1** This Consent Judgment may be executed in counterparts and by facsimile or
3 portable document format (pdf), each of which shall be deemed an original, and all of which,
4 when taken together, shall constitute one and the same document.

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10 their respective Parties and have read, understood, and agree to all of the terms and conditions of
11 this Consent Judgment.

AGREED TO:	AGREED TO:
Date: _____	Date: <u>August 14, 2012</u>
By: _____ Plaintiff JOHN MOORE	By: <u>[Signature]</u> , VP Corporate Counsel Defendant ROSS STORES, INC.

12
13
14
15
16
17
18
19 **IT IS SO ORDERED.**

20
21 Date: _____
22 _____
23 JUDGE OF THE SUPERIOR COURT
24
25
26
27
28