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7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
12
13

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 STAR ASIA, U.S.A., LLC; *et al.*,

18 Defendants.
19

Case No. RG12624392

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)
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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, John Moore (“Moore”), and
4 defendant, Star Asia, U.S.A., LLC (“Star Asia”), with Moore and Star Asia collectively referred to as
5 the “Parties” and individually as a “Party.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Moore alleges that Star Asia sold tools with grips containing di(2-ethylhexyl)phthalate
16 (“DEHP”) without first providing the clear and reasonable warning required by Proposition 65.
17 DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause
18 birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment, and to which this Consent Judgment is
21 specifically limited, are the following tools with grips manufactured, distributed, sold, or offered for
22 sale in California by Star Asia: (a) the *Titan Telescopic Magnetic Pickup Tool*; and (b) the *Telescopic*
23 *Inspection Mirror* (collectively, the “Products”).

24 **1.6 Notice of Violation**

25 On or about October 28, 2011, Moore served Star Asia and various public enforcement
26 agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of
27 Moore’s allegation that Star Asia was in violation of Proposition 65 for failing to warn its customers
28 and consumers in California that the Products expose users to DEHP.

1 **1.7 Complaint**

2 On April 5, 2012, Moore filed the instant action against Star Asia (“Complaint”) for the
3 violations of Health & Safety Code § 25249.6 alleged in the Notice.

4 **1.8 No Admission**

5 Star Asia denies the material, factual and legal allegations contained in the Notice and
6 Complaint, and it maintains that all of the products that it has sold and distributed in California,
7 including the Products, have been, and are, in compliance with all laws. Star Asia has informed
8 Moore that, prior to the issuance of the Notice, Star Asia had begun implementing a warning program
9 for the some of the Products intended for distribution or sale in California. Nothing in this Consent
10 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
11 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
12 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
13 not, however, diminish or otherwise affect Star Asia’s obligations, responsibilities, and duties under
14 this Consent Judgment.

15 **1.9 Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Star Asia as to the allegations in the Complaint, that venue is proper in Alameda
18 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
19 Judgment.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” shall mean December 31,
22 2012.

23 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

24 Commencing on the Effective Date and continuing thereafter, Star Asia shall only sell in
25 California, or distribute for sale in California, the Products if they qualify as “Reformulated
26 Products.” For purposes of this Consent Judgment, Reformulated Products are defined as Products
27 that contain a maximum concentration, by weight, of DEHP, di-n-butyl phthalate (“DBP”), and butyl,
28 benzyl phthalate (“BBP”), each, of 1,000 parts per million (“ppm”) or less in each Accessible

1 Component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
2 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of
3 determining phthalate content in a solid substance. For purposes of this Consent Judgment, an
4 “Accessible Component” means any component or part of a Product that could be touched by a
5 person during reasonably foreseeable use.

6 **3. MONETARY PAYMENTS**

7 **3.1 Civil Penalty Payment**

8 Pursuant to Health & Safety Code § 25249.7(b), Star Asia shall pay civil penalties totaling
9 \$20,000 in penalty payments and credits. Star Asia shall pay an initial civil penalty of \$7,500.
10 Thereafter, Star Asia shall receive a penalty credit of \$12,500 upon providing Moore’s counsel, by no
11 later than January 31, 2013, with written certification that, as of the Effective Date, Star Asia
12 complied with the requirements of Section 2 of this Consent Judgment. In the event of such
13 certification, the penalty amount of \$12,500 shall be waived by Moore in its entirety. If Star Asia
14 fails to provide the written certification required under this Section 3.1, Star Asia shall remit the
15 penalty amount of \$12,500 by February 5, 2013 to the address set forth in Section 3.3.3.

16 The penalty payments will be allocated according to Health & Safety Code § 25249.12 (c)(1)
17 & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California Office of
18 Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five (25%) of the
19 penalty amount earmarked for Moore.

20 **3.2 Reimbursement of Moore’s Fees and Costs**

21 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
22 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
23 to be resolved after the material terms of the agreement had been settled. Shortly after all other
24 settlement terms had been finalized, Star Asia expressed a desire to resolve the fee and costs issue.
25 The Parties then attempted to (and did) reach an accord on the compensation due Moore and his
26 counsel under general contract principles and the private attorney general doctrine codified at
27 California Code of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees
28 and costs that may be incurred on appeal, if any. Under these legal principles, Star Asia shall pay

1 \$32,000 for fees and costs incurred investigating, litigating, and enforcing this matter, including the
2 fees and costs incurred (and yet to be incurred) drafting, negotiating, and obtaining the Court's
3 approval of this Consent Judgment in the public interest.

4 **3.3 Payment Procedures**

5 **3.3.1 Payments Held in Trust**

6 All payments made under this Consent Judgment shall be held in trust until the Court
7 approves the settlement. The Parties acknowledge that Moore's counsel gave Star Asia the option of
8 depositing the funds into its attorney's trust account, but that Star Asia elected to have The Chanler
9 Group hold the settlement funds in trust until such time as the hearing of the motion for judicial
10 approval. Settlement funds delivered to The Chanler Group shall be in the form of three checks for
11 the following amounts, made payable as follows:

- 12 (a) to "The Chanler Group in Trust for OEHHA" in the amount of \$5,625;
- 13 (b) to "The Chanler Group in Trust for John Moore" in the amount of \$1,875;
- 14 and
- 15 (c) to "The Chanler Group in Trust" in the amount of \$32,000.

16 **3.3.2 Issuance of 1099 Forms**

17 After the Consent Judgment has been approved, Star Asia shall issue three 1099 forms for
18 the payments made pursuant Sections 3.1 and 3.2, as follows:

- 19 (a) one 1099 form to "Office of Environmental Health Hazard Assessment", P.O.
20 Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid in the
21 amount of \$5625;
- 22 (b) a second 1099 form to "John Moore", whose address and tax identification
23 number shall be furnished upon request after this Consent Judgment has been fully
24 executed by the Parties, for civil penalties paid in the amount of \$1875; and
- 25 (c) a third 1099 form to "The Chanler Group" (EIN: 94-3171522) for the
26 reimbursement of Moore's fees and costs in the amount of \$32,000.

1 **3.3.3 Payment Timing; Delivery Address**

2 All payments and tax forms required by this Section shall be delivered within fifteen (15)
3 days after the date the Consent Judgment is fully executed by the Parties to Moore’s counsel at the
4 following address:

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

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

10 This Consent Judgment is a full, final and binding resolution between Moore, on behalf of
11 himself and the public, and Star Asia, of any violation of Proposition 65 that was or could have
12 been asserted by Moore against Star Asia and its parents, subsidiaries, affiliated entities under
13 common ownership, directors, officers, employees, attorneys, and each person or entity to whom
14 Star Asia directly or indirectly distributes or sells the Products, including, but not limited to, its
15 downstream distributors, wholesalers, customers, retailers, franchisors, franchisees, cooperative
16 members, licensors, and licensees (collectively, “Releasees”), arising from unwarned exposures to
17 DEHP from the Products manufactured, distributed, or sold by Star Asia prior to the Effective Date.

18 **4.2 Moore’s Public Release of Proposition 65 Claims**

19 In further consideration of the promises and agreements herein contained, Moore, acting on
20 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
21 assignees, and in the public interest pursuant to Health & Safety Code § 25249.7(d), hereby waives
22 all rights to institute or participate in, directly or indirectly, any form of legal action against Star
23 Asia and the Releasees, and forever releases any and all claims against Star Asia and the Releasees,
24 including, without limitation, all actions and causes of action (in law or in equity), claims, suits,
25 liabilities, demands, obligations, damages, costs, fines, penalties, expenses (including, but not
26 limited to, investigation fees, and attorneys’ fees) or losses (collectively, “Claims”), arising under
27 Proposition 65 as set forth in the Notice with respect to DEHP in the Products imported,
28 manufactured, distributed, or sold by Star Asia prior to the Effective Date. Compliance by Star

1 Asia with the terms of this Consent Judgment constitutes compliance with Proposition 65 with
2 respect to exposures to DEHP from the Products as set forth in the Notice.

3 4.3 Moore's Individual Release of Claims

4 Moore also, on behalf of himself, his past and current agents, representatives, attorneys, and
5 successors and/or assignees, and *not* in his representative capacity, hereby provides a release which
6 shall be effective as a full and final accord and satisfaction, as a bar to all Claims that may be
7 asserted against Star Asia and the Releasees, whether known or unknown, suspected or
8 unsuspected, arising out of alleged or actual exposures to DEHP, DBP, and/or BBP in the Products
9 imported, manufactured, sold or distributed for sale by Star Asia prior to the Effective Date.

10 It is possible that other Claims not known to the Parties arising out of the facts alleged in the
11 Notice or the Complaint and relating to the unwarned exposures to DEHP, DBP, and/or BBP from
12 the Products will develop or be discovered. Moore, on behalf of himself, his past and current
13 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
14 capacity, acknowledges that this Consent Judgment is expressly intended to cover and include all
15 such Claims, including all rights of action therefor. Moore has full knowledge of the contents of
16 California Civil Code § 1542. Moore acknowledges that, in connection with the individual release
17 provided in this Section 4.3, the Claims released in Sections 4.1 and 4.2 may include unknown
18 Claims, and nevertheless waives California Civil Code § 1542 as to any such unknown Claims.
19 California Civil Code § 1542 reads as follows:

20 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
21 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
22 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR**
23 **HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
24 **THE DEBTOR.”**

25 Moore, on behalf of himself, his past and current agents, representatives, attorneys, and
26 successors and/or assignees, and not in his representative capacity, acknowledges and understands the
27 significance and consequences of this specific waiver of California Civil Code § 1542.

26 4.4 Star Asia's Release of Moore

27 Star Asia on behalf of itself, its past and current agents, representatives, attorneys, successors,
28 and/or assignees, hereby waives any and all claims against Moore, his attorneys and other

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

5 It is possible that other Claims not known to the Parties arising out of the facts alleged in the
6 Notice or the Complaint and relating to the subject of this Proposition 65 enforcement action will
7 develop or be discovered. Star Asia, on its own behalf and on behalf of its parents, subsidiaries,
8 affiliated entities under common ownership, directors, officers, employees, and/or attorneys
9 acknowledges that this Consent Judgment is expressly intended to cover and include all such
10 Claims, including all rights of action therefor. Star Asia has full knowledge of the contents of
11 California Civil Code § 1542, and it acknowledges that, in connection with the release provided in
12 this Section 4.4, the Claims released herein may include unknown Claims, and nevertheless waives
13 California Civil Code § 1542 as to any such unknown Claims. California Civil Code § 1542 reads
14 as follows:

15 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
16 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
17 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR**
18 **HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
19 **THE DEBTOR.”**

20 Star Asia, on its own behalf and on behalf of its parents, subsidiaries, affiliated entities under
21 common ownership, directors, officers, employees, and/or attorneys acknowledges and understands
22 the significance and consequences of this specific waiver of California Civil Code § 1542.

23 **5. COURT APPROVAL**

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

27 **6. SEVERABILITY**

28 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
Judgment is held by a court to be 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 Star Asia may
5 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 Star Asia 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 by this Consent Judgment
11 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
12 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

13 For Star Asia:

14 Steve Tsitsis, President
15 Star Asia, U.S.A., LLC
16 6528 South 216th St.
17 Kent, WA 98032
18 with a copy to:

19 Doug Winthrop, Esq.
20 Arnold & Porter, LLP
21 One Embarcadero Center , 7th Floor
22 San Francisco, CA 94111

23 For Moore:

24 The Chanler Group
25 Attn: Proposition 65 Coordinator
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710

Any Party, from time to time, may specify in writing to the other Party a change of address to which
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. 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 further acknowledge that, pursuant to California Health &
8 Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the
9 settlement. In furtherance of obtaining such approval, Moore and Star Asia 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 to obtain judicial approval of the same in a timely manner. For purposes of
12 this Section, “best efforts” shall include, at a minimum, cooperating on the drafting and filing of the
13 moving papers and supporting the motion for judicial approval.

14 **11. SOLE AGREEMENT**

15 This Consent Judgment contains the sole and entire agreement and understanding of the
16 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
17 commitments, or understandings related thereto, if any, are hereby merged herein and therein. There
18 are no warranties, representations, or other agreements between the Parties except as expressly set
19 forth herein. No representations, oral or otherwise, express or implied, other than those specifically
20 referred to in this Consent Judgment have been made by any Party hereto. No other agreements not
21 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any
22 of the Parties hereto. No supplementation, modification, waiver, or termination of this Consent
23 Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of
24 any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of
25 the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
26 waiver.

1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and have read, understood,
7 and agree to all of the terms and conditions contained herein.

8 **AGREED TO:**

AGREED TO:

9
10 Date: September 12, 2012

Date: _____

11 By: 
12 JOHN MOORE

By: _____
Steve Tsitsis, President
STAR ASIA U.S.A., LLC

1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and have read, understood,
7 and agree to all of the terms and conditions contained herein.

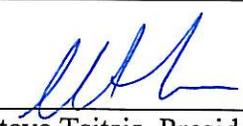
8 **AGREED TO:**

AGREED TO:

9
10 Date: _____

Date: 9/7/2012

11
12 By: _____
JOHN MOORE

By:  _____
Steve Tsitsis, President
STAR ASIA U.S.A., LLC

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