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Attorneys for Plaintiff
JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

 Plaintiff,

 v.

TRUDEAU CORPORATION (AMERICA)
INC.; and DOES 1-150, inclusive,

 Defendants.

) Case No. 113CV243624
)
) **[PROPOSED] CONSENT JUDGMENT**
)
)
) Dept:
) Judge:
) Date: None set
)
) Action Filed: March 26, 2013

1 **1. INTRODUCTION**

2 **1.1 John Moore and Trudeau Corporation (America) Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore ("Moore" or
4 "Plaintiff") and defendant Trudeau Corporation (America) Inc. ("Trudeau" or "Defendant"), with
5 Plaintiff and Defendant collectively referred to as the "parties."

6 **1.2 John Moore**

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

10 **1.3 Trudeau Corporation (America) Inc.**

11 Moore alleges that Trudeau employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Moore alleges that Trudeau has manufactured, imported, distributed and/or sold in the State
16 of California forks with grips containing di(2-ethylhexyl)phthalate ("DEHP"). DEHP is listed
17 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and
18 other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Settlement Agreement are defined as forks with grips
21 containing DEHP including, but not limited to, *Trudeau Flower Forks, #0829306 (#0 63562 52073*
22 *7)*, which are manufactured, imported, distributed, sold and/or offered for sale by Trudeau in the
23 State of California, hereinafter the "Products."
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1 **1.6 Notice of Violation**

2 On May 10, 2012, Moore served Trudeau and various public enforcement agencies with a
3 document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with notice
4 that Trudeau was in violation of California Health & Safety Code § 25249.6 for failing to warn
5 consumers that its forks with grips exposed users in California to DEHP.

6 **1.7 Complaint**

7 On March 26, 2013, Moore filed a complaint in the Superior Court in and for the County of
8 Santa Clara against Trudeau and Does 1 through 150, *Moore v. Trudeau Corporation (America)*
9 *Inc., et al.*, Case No. 113CV243624 (the "Action"), alleging violations of California Health &
10 Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain forks with
11 grips sold by Trudeau in the State of California.

12 **1.8 No Admission**

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

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the parties stipulate that this Court has
23 jurisdiction over Trudeau as to the allegations contained in the Complaint, that venue is proper in
24 the County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of
25 this Consent Judgment.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term "Effective Date" shall mean July 1, 2013.
28

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Standards**

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

8 **2.2 Reformulation Commitment**

9 As of the Effective Date all Products manufactured, imported, distributed, sold, or offered
10 for sale in the State of California by Trudeau shall be Products that qualify as Reformulated
11 Products as defined in Section 2.1 above.

12 **3. MONETARY PAYMENTS**

13 In settlement of all the claims referred to in this Consent Judgment, Trudeau shall pay a total
14 of \$16,250 in civil penalties in accordance with this Section. Each penalty payment will be
15 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
16 the funds remitted to the California Office of Environmental Health Hazard Assessment
17 (“OEHHA”) and the remaining 25% of the penalty remitted to Moore, as follows:

18 **3.1 Initial Civil Penalty**

19 Trudeau shall pay an initial civil penalty in the amount of \$3,250 on or before July 1, 2013.
20 Trudeau shall issue two separate checks to: (a) “OEHHA” in the amount of \$2,437.50; and (b) “The
21 Chanler Group in Trust for John Moore” in the amount of \$812.50. All penalty payments shall be
22 delivered to the addresses listed in Section 3.3 below.

23 **3.2 Final Civil Penalty**

24 Trudeau shall pay a final civil penalty of \$13,000 on or before October 30, 2013. The final
25 civil penalty shall be waived in its entirety, however, if, no later than October 15, 2013, an officer of
26 Trudeau provides Moore with written certification that, as of the date of such certification and
27 continuing into the future, Trudeau has met the reformulation standard specified in Section 2 above,
28 such that all Products manufactured, imported, distributed, sold and offered for sale in California by

1 Trudeau are Reformulated Products. Moore must receive any such certification on or before
2 October 15, 2013. The certification in lieu of a final civil penalty payment provided by this Section
3 is a material term, and time is of the essence. Moore acknowledges that Trudeau has furnished a
4 draft copy of a declaration that meets the requirements for written certification of this section, so as
5 to qualify for waiver of the final civil penalty, and that if Trudeau furnishes Moore with an executed
6 copy of such certification on or before October 15, 2013, the final civil penalty shall be waived in
7 its entirety. In the event Trudeau does not furnish such executed written certification, Trudeau shall
8 issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of
9 \$9,750; and (b) "The Chanler Group in Trust for John Moore" in the amount of \$3,250.

10 **3.3 Payment Procedures**

11 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

12 (a) All payments owed to Moore, pursuant to Sections 3.1 through 3.2, shall
13 be delivered to the following payment address:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

19 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections
20 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop
21 65 Penalties") at the following addresses:

22 For United States Postal Service Delivery:

23 Mike Gyrics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010
27 Sacramento, CA 95812-4010

28 For Non-United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, Trudeau shall issue separate 1099 forms for each payment to Moore, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Moore and his counsel offered to resolve this dispute without reaching an agreement 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, and the agreement signed. The Parties then attempted, but were unable, to reach an accord on the compensation due to Moore and his counsel under the private attorney general doctrine codified at Code of Civil Procedure ("CCP") § 1021.5 for all work performed through the Effective Date of this Consent Judgment and for all work reasonably to be performed in connection with the terms set forth in this Consent Judgment after the Effective Date. The parties do agree, however, that Moore and his counsel are entitled to their reasonable attorneys' fees and costs under the prerequisites set forth by CCP § 1021.5 including their time incurred in this alternative dispute resolution process.

In an effort to save resources, the Parties have agreed to have the outstanding fee and cost issue adjudicated by mediation. If the mediation is unsuccessful, the Parties have further agreed to convey the necessary authority to the neutral conducting the mediation to determine a sum that it deems to be the reasonable attorneys' fees and costs recoverable by plaintiff. Moore and Trudeau agree that if the mediator is required to make a determination of Moore's reasonable fees and costs, that determination shall be final and binding upon the Parties. Trudeau agrees to pay the fees and costs of the mediation.

The mediation shall take place through the American Arbitration Association or JAMS Resolution Services in San Francisco on or before September 15, 2013, with payment to occur within 10 days of the date the mediator awards attorney's fees and costs or the date that the Parties

1 negotiate a fixed sum under the mediation, whichever is sooner. The payment shall be made
2 payable to The Chanler Group at the address in Section 3.3.1(a) of this Consent Judgment.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 Moore's Public Release of Proposition 65 Claims**

5 Moore acting on his own behalf and in the public interest releases Trudeau from all claims
6 for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the
7 Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
8 compliance with Proposition 65 with respect to exposures to DEHP from the Products as set forth in
9 the Notice.

10 **5.2 Moore's Individual Release of Claims**

11 Plaintiff also, in his individual capacity only and *not* in his representative capacity, provides
12 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
13 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
14 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
15 suspect or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the
16 Products manufactured, distributed or sold by Trudeau.

17 **5.3 Trudeau's Release of Moore**

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

24 **6. COURT APPROVAL**

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

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1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
8 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
9 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
10 preemption or rendered inapplicable by reason of law generally as to the Products, then Trudeau
11 shall provide written notice to Moore of any asserted change in the law, and shall have no further
12 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
13 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Trudeau from any
14 obligation to comply with any pertinent state or federal toxics control law.

15 **9. NOTICES**

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

20 To Trudeau:

21 Philippe Trudeau, President
22 Trudeau Corporation (America)
23 Inc.
24 10440 Woodward Avenue
25 Woodbridge, IL 60517

20 To John Moore:

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

26 Any party, from time to time, may specify in writing to the other party a change of address
27 to which all notices and other communications shall be sent.
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10. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

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

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Moore and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

12. ADDITIONAL POST EXECUTION ACTIVITIES

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

13. 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.

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14. 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: August 1, 2013

Date: _____

By: 

By: _____

John Moore

Philippe Trudeau, President
Trudeau Corporation (America) Inc.

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14. 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: _____

Date: JUNE 25TH 2013

By: _____
John Moore

By: 
Philippe Trudeau, President
Trudeau Corporation (America) Inc.