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6 JOHN MOORE

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

12 JOHN MOORE,  
13 Plaintiff,  
14 v.  
15 G.H. MEISER & CO.; and DOES 1-150,  
inclusive,  
16 Defendants.  
17

Case No. RG 13696555

**[PROPOSED] CONSENT JUDGMENT**

1     **1. INTRODUCTION**

2             **1.1 John Moore and G.H. Meiser & Co.**

3             This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or  
4             “Plaintiff”) and defendant G.H. Meiser & Co. (“Meiser” or “Defendant”), with Plaintiff and  
5             Defendant collectively referred to as the “Parties” and each individually referred to as a “Party.”

6             **1.2 Plaintiff**

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

10            **1.3 Defendant**

11            Meiser 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 Meiser manufactured, imported, distributed, sold and/or offered for  
16            sale tire deflators containing di(2-ethylhexyl)phthalate (“DEHP”) and lead in the State of  
17            California without the health hazard warnings required by Proposition 65. DEHP and lead are  
18            listed pursuant to Proposition 65 as known to the State of California to cause birth defects and  
19            other reproductive harm.

20            **1.5 Product Description**

21            The products that are covered by this Consent Judgment are defined as tire deflators  
22            containing DEHP and lead including, but not limited to, the *ARB Recovery E-Z Deflator*, *ARB-*  
23            *4028-V*, *ARB 505P* (#9 333643 049381), which Meiser manufactured, imported, distributed,  
24            sold and/or offered for sale in the State of California, hereinafter referred to as the “Products.”

25            **1.6 Notice of Violation**

26            On July 5, 2013, Moore served Meiser and various public enforcement agencies with a  
27            document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with  
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1 notice of alleged violations of Proposition 65 for failing to warn consumers that the Products  
2 exposed users in California to DEHP and lead. To the best of the Parties' knowledge, no public  
3 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On or about September 23, 2013, Moore, who was and is acting in the interest of the  
6 general public in California, filed a complaint ("Complaint" or "Action") in the Superior Court  
7 in and for the County of Alameda against Meiser and Does 1 through 150, alleging, *inter alia*,  
8 violations of Proposition 65 based on the alleged exposures to DEHP and lead contained in the  
9 Products.

10 **1.8 No Admission**

11 Meiser denies the material factual and legal allegations contained in Moore's Notice and  
12 Complaint and maintains that all Products it has sold and distributed in California have been and  
13 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an  
14 admission by Meiser of any fact, finding, issue of law, or violation of law; nor shall compliance  
15 with this Consent Judgment constitute or be construed as an admission by Meiser of any fact,  
16 finding, conclusion, issue of law, or violation of law, such being specifically denied by Meiser.  
17 However, this Section shall not diminish or otherwise affect Meiser's obligations,  
18 responsibilities, and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
21 jurisdiction over Meiser as to the allegations contained in the Complaint, that venue is proper in  
22 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions  
23 of this Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date  
26 this Consent Judgment is approved by the Court.  
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1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Reformulation Standards**

3 As of the Effective Date, Meiser shall only manufacture, import, distribute, sell and/or  
4 offer for sale in California Products that are “Reformulated Products” or Products that contain  
5 the proper health hazard warnings pursuant to Section 2.2 below. For purposes of this Consent  
6 Judgment, “Reformulated Products” shall mean Products containing components that may be  
7 handled, touched, or mouthed by a consumer, and which components yield: (1) less than 1.0  
8 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100; (2) less than  
9 100 parts per million (“ppm”) lead when analyzed pursuant to EPA testing methodologies  
10 3050B and 6010B; and (3) contain less than or equal to 1,000 ppm (0.1%) DEHP when  
11 analyzed pursuant to EPA testing methodologies 3580A and 8270C.

12 **2.2 Product Warnings**

13 Commencing on the Effective Date, Meiser shall, for all Products other than Reformulated  
14 Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). Each  
15 warning shall be prominently placed with such conspicuousness as compared with other words,  
16 statements, designs, or devices as to render it likely to be read and understood by an ordinary  
17 individual under customary conditions before purchase or use. Each warning shall be provided in  
18 a manner such that the consumer or user understands to which *specific* Product the warning  
19 applies, so as to minimize the risk of consumer confusion.

20 **(a) Retail Store Sales.**

21 **(i) Product Labeling.** Meiser shall affix a warning to the packaging,  
22 labeling, or directly on each Product sold in retail outlets in California by Meiser or any person  
23 selling the Products, that states:

24 **WARNING:** This product contains [DEHP and lead,]<sup>1</sup>  
25 chemicals known to the State of California to  
26 cause birth defects and other reproductive harm.

27 \_\_\_\_\_  
28 <sup>1</sup> To the extent Meiser reformulates one chemical but not the other, the warning shall refer only to the unreformulated chemical.

1 (ii) **Point-of-Sale Warnings.** Alternatively, Meiser may provide  
2 warning signs in the form below to its customers in California with instructions to post the  
3 warnings in close proximity to the point of display of the Products. Such instruction sent to  
4 Meiser’s customers shall be sent by certified mail, return receipt requested.

5 **WARNING:** This product contains [DEHP and lead,]  
6 chemicals known to the State of California to  
cause birth defects and other reproductive harm.

7 Where more than one Product is sold in proximity to other like items or to those that do  
8 not require a warning (*e.g.*, Reformulated Products as defined in Section 2.2), the following  
9 statement shall be used:<sup>2</sup>

10 **WARNING:** The following products contain [DEHP and  
11 lead,] chemicals known to the State of California  
to cause birth defects and other reproductive  
12 harm:  
[list products for which warning is required]

13 (b) **Mail Order Catalog and Internet Sales.** In the event that Meiser sells  
14 Products via mail order catalog and/or the internet, to customers located in California, after the  
15 Effective Date, that are not Reformulated Products, Meiser shall provide warnings for such  
16 Products sold via mail order catalog or the internet to California residents. Warnings given in the  
17 mail order catalog or on the internet shall identify the *specific* Product to which the warning  
18 applies as further specified in Sections 2.2(b)(i) and (ii).

19 (i) **Mail Order Catalog Warning.** Any warning provided in a mail  
20 order catalog shall be in the same type size or larger than the Product description text within the  
21 catalog. The following warning shall be provided on the same page and in the same location as  
22 the display and/or description of the Product:

23 **WARNING:** This product contains [DEHP and lead,]  
24 chemicals known to the State of California to  
cause birth defects and other reproductive harm.

27 <sup>2</sup> For purposes of the Consent Judgment, “sold in proximity” shall mean that the Product and another similar product  
28 are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 Where it is impracticable to provide the warning on the same page and in the same  
2 location as the display and/or description of the Product, Meiser may utilize a designated symbol  
3 to cross reference the applicable warning and shall define the term “designated symbol” with the  
4 following language on the inside of the front cover of the catalog or on the same page as any  
5 order form for the Product(s):

6 **WARNING:** Certain products identified with this symbol ▼  
7 and offered for sale in this catalog contain  
8 [DEHP and lead,] chemicals known to the State  
of California to cause birth defects and other  
reproductive harm.

9 The designated symbol must appear on the same page and in close proximity to the  
10 display and/or description of the Product. On each page where the designated symbol appears,  
11 Meiser must provide a header or footer directing the consumer to the warning language and  
12 definition of the designated symbol.

13 **(ii) Internet Website Warning.** A warning shall be given in  
14 conjunction with the sale of the Products via the internet, which warning shall appear either: (a)  
15 on the same web page on which a Product is displayed; (b) on the same web page as the order  
16 form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web  
17 pages displayed to a purchaser during the checkout process. The following warning statement  
18 shall be used and shall appear in any of the above instances adjacent to or immediately following  
19 the display, description, or price of the Product for which it is given in the same type size or larger  
20 than the Product description text:

21 **WARNING:** This product contains [DEHP and lead,]  
22 chemicals known to the State of California to  
cause birth defects and other reproductive harm.

23 Alternatively, the designated symbol may appear adjacent to or immediately following the  
24 display, description, or price of the Product for which a warning is being given, provided that the  
25 following warning statement also appears elsewhere on the same web page, as follows:

26 **WARNING:** Products identified on this page with the  
27 following symbol ▼ contain [DEHP and lead,]  
28 chemicals known to the State of California to  
cause birth defects and other reproductive harm.

1 **3. MONETARY PAYMENTS**

2 In settlement of all claims referred to in this Settlement Agreement, Meiser shall pay a  
3 total of \$6,000 in civil penalties in accordance with this Section. Each penalty payment will be  
4 allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with  
5 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment  
6 (“OEHHA”) and the remaining 25% of the penalty remitted to Moore, as follows:

7 **3.1 Initial Civil Penalty**

8 Meiser shall pay an initial civil penalty in the amount of \$2,000 on or before October 15,  
9 2013. Meiser shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,500; and (b)  
10 “The Chanler Group in Trust for John Moore” in the amount of \$500. All penalty payments  
11 shall be delivered to the addresses listed in Section 3.3 below.

12 **3.2 Final Civil Penalty**

13 Meiser shall pay a final civil penalty of \$4,000 on or before January 15, 2014. One half  
14 of the final civil penalty (\$2,000) shall be waived, however, if, no later than December 31,  
15 2013, an officer of Meiser provides Moore with written certification that, as of the date of such  
16 certification and continuing into the future, Meiser has met the reformulation standard specified  
17 in Section 2.1 above for lead, such that all Products manufactured, imported, distributed, sold  
18 and/or offered for sale in California by Meiser are Reformulated Products with respect to lead.  
19 Likewise, one half of the final civil penalty (\$2,000) shall be waived if, no later than December  
20 31, 2013, an officer of Meiser provides Moore with written certification that, as of the date of  
21 such certification and continuing into the future, Meiser has met the reformulation standard  
22 specified in Section 2.1 above for DEHP, such that all Products manufactured, imported,  
23 distributed, sold and/or offered for sale in California by Meiser are Reformulated Products with  
24 respect to DEHP. The certification in lieu of a final civil penalty payment provided by this  
25 Section is a material term, and time is of the essence. In the event the entire final penalty is not  
26 waived, Meiser shall issue two separate checks for its final civil penalty payments to: (a)  
27 “OEHHA” in an amount equal to 75% of the final penalty due; and (b) “The Chanler Group in  
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1 Trust for John Moore” in an amount of 25% of the final penalty due.

2 **3.3 Reimbursement of Plaintiff’s Fees and Costs**

3 The Parties acknowledge that Moore and his counsel offered to resolve the non-  
4 monetary terms of this dispute before reaching terms on the amount of fees and costs to be  
5 reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the  
6 agreement had been agreed to in principle. The Parties then agreed to resolve the fee and cost  
7 issue shortly after the other settlement terms had been tentatively finalized, subject to agreement  
8 on fees and costs. The Parties then attempted to (and did) reach an accord on the compensation  
9 due to Moore and his counsel under general contract principles and the private attorney general  
10 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed  
11 in this matter, except fees that may be incurred on appeal. Under these legal principles, Meiser  
12 shall pay the amount of \$32,000 for fees and costs incurred investigating, litigating and  
13 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,  
14 drafting, and obtaining the Court’s approval of this Consent Judgment in the public interest.  
15 Meiser shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check  
16 payable to “The Chanler Group” and shall deliver payment on or before October 15, 2013, to  
17 the address listed in Section 3.4.1(a) below.

18 **3.4 Payment Procedures**

19 **3.4.1 Issuance of Payments.** Payments shall be delivered as follows:

20 (a) All payments owed to Moore, pursuant to Sections 3.1 and 3.2, shall be  
21 delivered to the following payment address:

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

27 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections  
28 3.1 and 3.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the  
following addresses:



1 For United States Postal Service Delivery:

2 Mike Gyurics  
3 Fiscal Operations Branch Chief  
4 Office of Environmental Health Hazard Assessment  
5 P.O. Box 4010  
6 Sacramento, CA 95812

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics  
9 Fiscal Operations Branch Chief  
10 Office of Environmental Health Hazard Assessment  
11 1011 I Street  
12 Sacramento, CA 95814

13 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the  
14 address set forth above in 3.4.1(a), as proof of payment to OEHHA.

15 **3.4.2 Issuance of 1099 Forms.** After each penalty payment, Meiser shall issue  
16 separate 1099 forms for each payment to Moore, whose address and tax identification number  
17 shall be furnished upon request after this Consent Judgment has been fully executed by the  
18 Parties, and OEHHA at the addresses listed in Section 3.4.1(b) above.

19 **4. CLAIMS COVERED AND RELEASED**

20 **4.1 Moore's Public Release of Proposition 65 Claims**

21 Moore acting on his own behalf and in the public interest releases Meiser, its parents,  
22 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,  
23 attorneys, representatives and each entity to whom Meiser directly or indirectly distributes or  
24 sells Products, including but not limited to downstream distributors, wholesalers, customers,  
25 retailers, franchisees, cooperative members, licensors, and licensees, including without limitation  
26 Air Locker, Inc. and ARB Corp., and their respective parents, subsidiaries, affiliated entities that  
27 are under common ownership, directors, officers, employees, attorneys, representatives  
28 ("Releasees") from all claims for violations of Proposition 65 up through the Effective Date  
based on exposure to DEHP and lead from the Products as set forth in the Notice. Compliance

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

3 **4.2 Moore's Individual Release of Claims**

4 Moore also, in his individual capacity only and *not* in his representative capacity, provides  
5 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
6 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
7 liabilities and demands of Moore of any nature, character or kind, whether known or unknown,  
8 suspected or unsuspected, limited to and arising out of any violation of Proposition 65 up  
9 through the Effective Date regarding the failure to warn about exposure to DEHP and lead in the  
10 Products manufactured, imported, distributed, sold and/or offered for sale by Releasees.

11 **4.3 Meiser's Release of Moore**

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

18 **5. COURT APPROVAL**

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

24 **6. SEVERABILITY**

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

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1     **7. GOVERNING LAW**

2             The terms of this Consent Judgment shall be governed by the laws of the State of  
3 California and apply within the State of California. In the event that Proposition 65 is repealed  
4 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then  
5 Meiser shall provide written notice to Moore of any asserted change in the law, and shall have  
6 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,  
7 the Products are so affected.

8     **8. NOTICES**

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

13     To Meiser:

14             Joshua A. Bloom  
15             Barg Coffin Lewis & Trapp, LLP  
16             350 California Street  
17             22<sup>nd</sup> Floor  
18             San Francisco, CA 94104

13             To Moore:

14             Proposition 65 Coordinator  
15             The Chanler Group  
16             2560 Ninth Street  
17             Parker Plaza, Suite 214  
18             Berkeley, CA 94710-2565

17     With a copy to:

18             Bruce Parduhn, Owner & Vice President  
19             G.H. Meiser & Co.  
20             2407 140<sup>th</sup> Place  
21             Posen, IL 60469

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

24     **9. COUNTERPARTS; FACSIMILE SIGNATURES**

25             This Consent Judgment may be executed in counterparts and by facsimile or portable  
26 document format (".pdf"), each of which shall be deemed an original, and all of which, when  
27 taken together, shall constitute one and the same document. A facsimile or .pdf signature shall  
28 be as valid as the original.

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

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

4 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

5 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to  
6 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent  
7 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to  
8 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial  
9 approval of this Consent Judgment, which Moore shall file, and which Meiser shall not oppose.  
10 If any third party objection to the noticed motion is filed, Moore and Meiser shall work together  
11 to file a joint reply and appear at any hearing before the Court. If the Court does not approve  
12 the motion to approve this Consent Judgment, and the Parties choose not to pursue a modified  
13 Consent Judgment within 30 days of said denial, or in the event that the Court approves this  
14 Consent Judgment and any person successfully appeals that approval, all payments made  
15 pursuant to this Consent Judgment will be returned to Meiser within fifteen (15) days of an  
16 order reversing or vacating the approval..

17 **12. MODIFICATION**

18 This Consent Judgment may be modified only: (1) by written agreement of the Parties  
19 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful  
20 motion of any Party and entry of a modified Consent Judgment by the court.

21 **13. ENTIRE AGREEMENT**

22 This Consent Judgment contains the sole and entire agreement and understanding of the  
23 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
24 negotiations, commitments, and understandings related hereto. No representations, oral or  
25 otherwise, express or implied, other than those contained herein have been made by any party  
26 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
27 deemed to exist or to bind any of the Parties.  
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1 **14. AUTHORIZATION**


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

5 **AGREED TO:**

**AGREED TO:**

6 Date: OCTOBER 10, 2013

Date: \_\_\_\_\_

7  
8 By:   
9 John Moore

By: \_\_\_\_\_  
Bruce Parduhn, Owner & Vice President  
G.H. Meiser & Co.

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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: 10/14/13

By: \_\_\_\_\_  
John Moore

By:   
Bruce Parduhn, Owner & Vice President  
G.H. Meiser & Co.