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9 Attorneys for Plaintiff
10 JOHN MOORE

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 DEZINE NEWS, INC., *et al.*

20 Defendants.
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Case No. RG15778467

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”), and
4 Dezine News, Inc. (“Dezine”), with Moore and Dezine each individually referred to as a “Party” and
5 collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Dezine employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Dezine manufactures, imports, sells, or distributes for sale in California,
16 vinyl/PVC belts that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the
17 exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC belts containing DEHP that
21 are manufactured, imported, sold, or distributed for sale in California by Dezine including, but not
22 limited to, *George Reversible Belt, UL13A457-408, UPC #8 83449 15547 6*, hereinafter the
23 “Products.”

24 **1.6 Notice of Violation**

25 On or about February 27, 2015, Moore served Dezine, and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Dezine violated
27 Proposition 65 by failing to warn its customers and consumers in California that the Products expose
28

1 users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is
2 diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On July 20, 2015, Moore filed the instant action ("Complaint") naming Dezine as a defendant
5 for the alleged violations of Health and Safety Code section 25249.6 that are the subject of the
6 Notice.

7 **1.8 No Admission**

8 Dezine denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
14 not, however, diminish or otherwise affect Dezine's obligations, responsibilities, and duties under
15 this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Dezine as to the allegations contained in the Complaint, that venue is proper in the
19 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the motion for approval of the Consent Judgment is granted by the Court, including a tentative ruling
24 that is not opposed by any party or non-party.

25 **1.11 Execution Date**

26 For purposes of this Consent Judgment, the term "Execution Date" means the date on which
27 this Consent Judgment is signed by all Parties.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 Commencing not earlier than 30 days and not later than 90 days after the Effective Date
3 (Reformulation Compliance Date), and continuing thereafter, Dezine shall only manufacture, sell, or
4 distribute for sale in California, "Reformulated Products." For purposes of this Consent Judgment,
5 Reformulated Products are Products containing DEHP, butyl benzyl phthalate ("BBP"), di-n-butyl
6 ("DBP"), Di-isodecyl phthalate ("DIDP"), and Diisononyl phthalate ("DINP"), and Di-n-hexyl
7 phthalate ("DnHP") in concentrations of less than 0.1 percent (1,000 parts per million) when
8 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
9 8270C or other methodology utilized by federal or state government agencies for the purpose of
10 determining DEHP, BBP, DBP, DIDP, DINP, and DnHP content in a solid substance.

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Civil Penalty Payment**

13 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
14 this Consent Judgment, Dezine shall pay thirty-three thousand, two hundred dollars (\$33,200) in civil
15 penalties. The civil penalty payment shall be allocated according to Health and Safety Code section
16 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of
17 Environmental Health Hazard Assessment ("OEHHA") by Moore and the remaining 25% to be
18 retained by Moore. Dezine shall provide its payment in a check made payable to "John Moore,
19 Client Trust Account" in the amount of \$33,200. Dezine represents that, upon receiving the Notice, it
20 recalled the George Reversible Belt referenced in Paragraph 1.5, above, from Wal-Mart's California
21 stores. As such, the civil penalty amount reflects an automatic \$18,000 penalty credit for its
22 immediate corrective action to further the public interest. Dezine also represents that in response to
23 the concerns raised in the Notice, Dezine has instituted post-manufacture, pre-distribution testing of
24 representative samples of all styles of vinyl/PVC belts to be sold in California. Dezine further
25 represents that it has expanded testing beyond DEHP to all six Proposition 65 regulated phthalates,
26 now including BBP, DBP, DIDP, DINP, and DnHP. Dezine also represents that its protocol for
27 testing of bulk materials used in all of its covered products that contain any amount of phthalate
28 chemicals regulated under Proposition 65 as of the Effective Date of Consent Judgment will require

1 proof of delivery of such bulk materials to the testing facility before acceptance by Dezine of the
2 product batch manufactured from such bulk materials. As such, the civil penalty amount reflects
3 additional penalty credits for these supplemental actions to the further benefit of the public.

4 **3.2 Representations**

5 Dezine represents that the sales data and other information concerning its Products sales
6 information, knowledge of DEHP, prior reformulation of a significant portion of its Products, and
7 augmentation of pre-manufacturing testing protocol, that it provided to Moore in negotiating this
8 Settlement Agreement was truthful to its knowledge at the time of execution of this Settlement
9 Agreement and a material factor upon which Moore relied to determine the amount of civil penalties
10 assessed pursuant to Health & Safety Code § 25249.7. If, within twelve months of the Effective Date,
11 Moore discovers and presents to Dezine, evidence demonstrating that the preceding representation and
12 warranty was materially inaccurate, then Dezine shall have 30 days to meet and confer regarding
13 Moore's contention. Should this 30 day period pass without any such resolution between Moore and
14 Dezine, Moore shall be entitled to file a formal legal claim including, but not limited to, a claim for
15 damages for breach of contract.

16 **3.3 Reimbursement of Attorney's Fees and Costs**

17 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
19 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
20 other settlement terms had been finalized, Dezine expressed a desire to resolve Moore's fees and
21 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Moore and
22 his counsel under general contract principles and the private attorney general doctrine codified at
23 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
24 execution of this Consent Judgment. Within ten (10) days of the Effective Date, Dezine shall issue a
25 check to "The Chanler Group" in the amount of forty-three thousand seven hundred dollars (\$43,700)
26 for the fees and costs incurred by Moore investigating, bringing this matter to Dezine's attention,
27 litigating and negotiating a settlement in the public interest, bringing the motion to approve before the
28 Court and other activities reasonably to be incurred in the future in connection with this agreement.

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3.4 Payments Held In Trust

Dezine shall deliver all payments required by Sections 3.1 and 3.3 to The Chanler Group within forty (40) days of the Execution Date which The Chanler Group shall hold in a third party escrow account until the Effective Date.

3.5 Payment Address

All payments required by this Consent Judgment shall be delivered to the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Moore’s Public Release of Proposition 65 Claims

Moore, acting on his own behalf and in the public interest, releases Dezine and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any and all claims, actions, causes of action, suits, demand, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been asserted, as to any alleged violations arising under Proposition 65 for unwarned exposures to DEHP from Products manufactured, sold or distributed by Dezine prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to failures to warn about DEHP from the Products manufactured, sold or distributed by Dezine before the Reformulation Compliance Date, as set forth in the Notice.

4.2 Moore’s Individual Release of Claims

Moore, in his individual capacity and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees only and *not* in his representative capacity on behalf of the

1 public, also provides a release to Dezine, Releasees, and Downstream Releasees which shall be
2 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
3 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
4 Moore of any nature, character or kind, whether known or unknown, suspected or unsuspected,
5 arising out of alleged or actual exposures to BBP, DBP, DIDP, DINP, and DnHP in the Products sold
6 or distributed for sale by Dezine before the Effective Date.

7 **4.3 Dezine's Release of Moore**

8 Dezine, on its own behalf, and on behalf of its past and current agents, representatives,
9 attorneys, successors, and assignees, hereby waives any and all claims against Moore and his
10 attorneys and other representatives, for any and all actions taken or statements made by Moore and
11 his attorneys and other representatives, whether in the course of investigating claims, otherwise
12 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

13 **5. COURT APPROVAL**

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

17 **6. SEVERABILITY**

18 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
19 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
20 adversely affected.

21 **7. GOVERNING LAW**

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

1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required by this Consent Judgment
3 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
4 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

5 **Dezine:**

6 James David Wagner, President
7 Dezine News, Inc.
8 3901 La Reunion Parkway
9 Dallas, TX 75212

 Ivan Tether, Esq.
 Tether Law
 860 Via de la Paz, Suite E-3D
 Pacific Palisades, CA 90272

9 **Moore:**

10 Proposition 65 Coordinator
11 The Chanler Group
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

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

15 **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by facsimile or portable
17 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
18 taken together, shall constitute one and the same document.

19 **10. POST EXECUTION ACTIVITIES**

20 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
21 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
22 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
23 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
24 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
25 approval of their settlement in a timely manner. For purposes of this Section, “best efforts” shall
26 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
27 supporting the motion, and appearing at the hearing before the Court.
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11. MODIFICATION

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

12. AUTHORIZATION

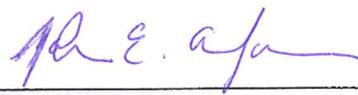
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: SEPTEMBER 25, 2015

Date: September 25, 2015

By: 
JOHN MOORE

By: 
JAMES DAVID WAGNER, President
DEZINE NEWS, INC.