

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN SETTLEMENT				
CASE INFO	COURT DOCKET NUMBER		COURT NAME		
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES	PAYMENT: OTHER	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED / /	For Internal Use Only
	COPY OF SETTLEMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT				
	ORGANIZATION			TELEPHONE NUMBER ()	
	ADDRESS			FAX NUMBER ()	
	CITY	STATE	ZIP	E-MAIL ADDRESS	

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

1 Tanya E. Moore, SBN 206683
MOORE LAW FIRM, P.C.
2 332 North Second Street
San Jose, California 95112
3 Telephone (408) 298-2000
Facsimile (408) 298-6046
4 E-mail: service@moorelawfirm.com

5 Attorney for Plaintiff
Safe Products for Californians, LLC
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

10
11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 16CV291468
LLC,)
12) **[PROPOSED] CONSENT JUDGMENT**
Plaintiff,)
13) (Health & Safety Code § 25249.5, *et seq.*)
vs.)
14)
15 SUNLIGHT SUPPLY, INC.; DOES 1)
THROUGH 150, inclusive;)
16)
Defendants.)
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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Safe Products for
4 Californians, LLC (“SPFC”) and defendant Sunlight Supply, Inc. (“Sunlight”), with SPFC and
5 Sunlight each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 SPFC is a limited liability California company with its principal place of business
8 within the State of California, County of Santa Clara, who seeks to promote awareness of
9 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
10 substances contained in consumer and commercial products.

11 **1.3 Defendant**

12 Sunlight employs ten or more persons and is a person in the course of doing business
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
14 Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 SPFC alleges that the products Sunlight manufactures, imports, sells and/or distributes
17 for sale in California cause exposure to di(2-ethylhexyl)phthalate (“DEHP”), and that it does so
18 without providing the health hazard warning that SPFC alleges is required by Proposition 65.

19 **1.5 Product Description**

20 The product covered by this Consent Judgment is the *clear flexible tubing* that Sunlight
21 manufactures, imports, sells and/or distributes for sale in California (“Product”).

22 **1.6 Notice of Violation**

23 On September 4, 2015, SPFC served Sunlight and the requisite public enforcement
24 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Sunlight violated
25 Proposition 65 when it failed to warn its customers and consumers in California that the
26 Product exposes users to DEHP. To the best of the Parties’ knowledge, no public enforcer has
27 commenced and is diligently prosecuting an action to enforce the allegations set forth in the
28 Notice.

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1.7 Complaint

On February 11, 2016, SPFC commenced the instant action, naming Sunlight as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 No Admission

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

1.9 Jurisdiction

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

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

2. INJUNCTIVE RELIEF

As of the Effective Date, all Covered Products that Sunlight manufactures for sale in California shall: be “Reformulated Covered Products.” “Reformulated Covered Products” shall contain less than or equal to 1,000 parts per million (“ppm”) of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies

1 utilized by federal or state agencies for the purpose of determining DEHP content in a solid
2 substance.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

5 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
6 claims referred to in this Consent Judgment, Sunlight shall pay \$1,000.00 as a civil penalty
7 within 10 days of the effective date in accordance with this Section. The penalty payment will
8 be allocated in accordance with California Health & Safety Code § 25249.12(c)(l) & (d), with
9 75% of the funds remitted to the California Office of Environmental Health Hazard
10 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to SPFC.

11 Accordingly, Sunlight shall remit to SPFC’s counsel two checks, one in the sum of \$750.00,
12 payable to OEHHA, and one in the sum of \$250.00, payable to “Moore Law Firm, P.C., Trust
13 Account.” SPFC’s counsel shall be responsible for remitting Sunlight’s penalty payment under
14 this Consent Judgment to SPFC and OEHHA.

15 **3.2 Reimbursement of Attorneys’ Fees and Costs**

16 The Parties acknowledge that SPFC and its counsel agreed to resolve this dispute
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
18 leaving the issue to be resolved after the material terms of the agreement had been settled.
19 Shortly after the other settlement terms had been finalized, Sunlight expressed a desire to
20 resolve SPFC’s fees and costs. The Parties then negotiated a resolution of the compensation
21 due to SPFC and its counsel under general contract principles and the private attorney general
22 doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed
23 through the mutual execution of this agreement and the Court’s approval of the same, but
24 exclusive of fees and costs on appeal, if any, Sunlight shall reimburse SPFC and its counsel
25 \$24,000.00. Sunlight’s payment shall be due within ten calendar days of the Effective Date,
26 and delivered to the address in Section 3.5 in the form of a check payable to “Moore Law Firm,
27 P.C., Trust Account.” The reimbursement shall cover all fees and costs incurred by SPFC
28 investigating, bringing this matter to Sunlight’s attention, litigating (including providing

1 required notifications to the Attorney General and seeking and obtaining approval of the
2 Court), and negotiating a settlement of the matter in the public interest.

3 **3.3 Payment Procedures**

4 All payments pursuant to Sections 3.1 and 3.2 shall be delivered to the following
5 payment address:

6 Moore Law Firm, P.C.
7 Attn: Proposition 65 (SPFC)
8 332 North Second Street
9 San Jose, California 95112

9 If for any reason this Consent Judgment is not entered by the Court within nine (9)
10 months of the date the Consent Judgment is executed by all parties, SPFC shall meet and
11 confer with Sunlight about mutually agreeable steps the parties can take to ensure entry of the
12 Consent Judgment.

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 SPFC's Release of Proposition 65 Claims**

15 SPFC, acting on its own behalf and in the public interest, releases Sunlight and its
16 parents, subsidiaries, affiliated entities under common ownership, directors, officers,
17 employees, and attorneys ("Releasees") and each entity to whom Sunlight directly or indirectly
18 distributes or sells the Products including, but not limited to, its downstream distributors,
19 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
20 ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned
21 exposures to DEHP from the Products manufactured, imported, distributed or sold by Sunlight
22 prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this
23 Consent Judgment constitutes compliance with Proposition 65 by Sunlight with respect to the
24 alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold
25 or distributed for sale by Sunlight after the Effective Date.

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4.2 SPFC’s Individual Release of Claims

SPFC, in its own capacity only and *not* in its representative capacity, also provides a release to Sunlight, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of SPFC of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold by Sunlight before the Effective Date.

4.3 Sunlight’s Release of SPFC

Sunlight, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against SPFC and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by SPFC and its attorneys and other representatives in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all Parties. SPFC and Sunlight agree to support the entry of this agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion SPFC shall draft and file and Sunlight shall support, appearing at the hearing if so requested.

6. SEVERABILITY

If, subsequent to the Court’s approval and entry of this Consent Judgment as a 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
3 California and apply within the State of California. In the event that Proposition 65 is repealed,
4 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
5 Products, then Sunlight may provide SPFC with written notice of any asserted change in the
6 law, and shall have no further obligations pursuant to this Consent Judgment, with respect to,
7 and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
8 interpreted to relieve Sunlight from its obligation to comply with any pertinent state or federal
9 law or regulation.

10 **8. NOTICE**

11 Unless specified herein, all correspondence and notice required by this Consent
12 Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or
13 certified mail, return receipt requested; or (iii) a recognized overnight courier to any Party by
14 the other at the following addresses:

15 To Sunlight:

16 Adams Nye Becht LLP
17 Attn: Bruce Nye
18 222 Kearny Street, Suite 700
19 San Francisco, CA 94108

To SPFC:

Moore Law Firm, P.C.
Attn: Proposition 65 (SPFC)
332 North Second Street
San Jose, California 95112

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

22 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

26 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

27 SPFC and its counsel agree to comply with the reporting form requirements referenced
28 in California Health and Safety Code section 25249.7(f).

1 **11. MODIFICATION**

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

5 **12. OTHER TERMS**

6 **12.1 Sole and Entire Agreement of the Parties**

7 This Consent Judgment contains the sole and entire agreement and understanding of the
8 Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and
9 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
10 deemed merged. There are no warranties, representations, or other agreements between the
11 Parties except as expressly set forth in this Consent Judgment. No representations, oral or
12 otherwise, express or implied, other than those specifically referred to in this Consent
13 Judgment have been made by any Party. No other agreements not specifically contained or
14 referenced in this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any
15 of the Parties. No supplementation, modification, waiver, or termination of this Consent
16 Judgment shall be binding unless executed in writing by the Party to be bound. No waiver of
17 any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of
18 any of the other provisions whether or not similar, nor shall such waiver constitute a continuing
19 waiver. Nothing in this Consent Judgment shall release, or in any way affect any rights that
20 Sunlight might have against any other party.

21 **12.2 Joint Preparation of Consent Judgment**

22 The Parties, including their counsel, have participated in the preparation of this Consent
23 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
24 Consent Judgment was subject to revision and modification by the Parties and has been
25 accepted and approved as to its final form by all Parties and their Counsel. Accordingly, any
26 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
27 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
28 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are

1 to be resolved against the drafting Party should not be employed in the interpretation of this
2 Consent Judgment and, in this regard the Parties hereby waive California Civil Code section
3 1654.

4 **13. AUTHORIZATION**

5 The undersigned are authorized to execute this Consent Judgment on behalf of their
6 respective Parties and have read, understood, and agree to all of the terms and conditions of
7 this Consent Judgment.

8
9 **AGREED TO:**

AGREED TO:

10
11 
12 _____
Safe Products for Californians, LLC

Sunlight Supply, Inc.

13 By: Kenneth Randolph Moore
14 (Print Name)

By: _____
(Print Name)

15 Its: Operating Manager
16 (Title) and Secretary

Its: _____
(Title)

17
18 Dated: 8-24-16

Dated: _____

1 to be resolved against the drafting Party should not be employed in the interpretation of this
2 Consent Judgment and, in this regard the Parties hereby waive California Civil Code section
3 1654.

4 **13. AUTHORIZATION**

5 The undersigned are authorized to execute this Consent Judgment on behalf of their
6 respective Parties and have read, understood, and agree to all of the terms and conditions of
7 this Consent Judgment.

8
9 **AGREED TO:**


10
11 _____
12 Safe Products for Californians, LLC

13 By: _____
14 (Print Name)

15 Its: _____
16 (Title)

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18 Dated: _____
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AGREED TO:

_____ 
Sunlight Supply, Inc.

By: Craig R Hargreaves
(Print Name)

Its: president
(Title)

Dated: 8/23/2016