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6 JOHN MOORE

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

11
12 JOHN MOORE,

13 Plaintiff,

14 v.

15 CAVALINI, INC.;

16 Defendant.
17

Case No. CIV 1601237

**STIPULATED SETTLEMENT
AGREEMENT**

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Stipulated Settlement Agreement pursuant to Section 664.6 C.C.P. (the "Settlement
4 Agreement") is entered into by and between John Moore ("Moore") and Cavalini, Inc.
5 ("Cavalini"), with Moore and Cavalini each individually referred to as a "Party" and collectively
6 as the "Parties." Moore is an individual residing in the State of California who seeks to promote
7 awareness of exposures to toxic chemicals and to improve human health by reducing or
8 eliminating hazardous substances used in consumer products. Cavalini employs ten or more
9 persons and is a person in the course of doing business for purposes of the Safe Drinking Water
10 and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.*
11 ("Proposition 65").

12 **1.2 General Allegations**

13 Moore alleges that Cavalini manufactures, sells, and/or distributes for sale in California,
14 vinyl/PVC jackets containing the phthalate chemical di(2-ethylhexyl)phthalate ("DEHP").
15 DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other
16 reproductive harm. Moore alleges Cavalini failed to provide the health hazard warning required
17 by Proposition 65 for consumer exposures to DEHP from the vinyl/PVC jackets.

18 **1.3 Product Description**

19 The products covered by this Settlement Agreement are vinyl/PVC jackets containing
20 DEHP that are imported, manufactured, distributed, wholesaled, or retailed for sale in California
21 by Cavalini, including, but not limited to, the *Ci Sono by Cavalini Jacket, Wine, Style JK9525,*
22 *#400115100013* (the "Products").

23 **1.4 Notice of Violation**

24 On October 21, 2015, Moore served Cavalini and the requisite public enforcement
25 agencies with a 60-Day Notice of Violation (the "Notice"), alleging that Cavalini violated
26 Proposition 65 when it failed to warn consumers in California of the health hazards associated
27 with exposures to DEHP from the Products. No public enforcer has commenced and is

1 diligently prosecuting an action to enforce the alleged violations that are the subject of the
2 Notice.

3 **1.5 Complaint**

4 On or about April 6, 2016, Moore commenced the instant action (“Complaint”), setting
5 forth Cavalini as a defendant for the alleged violations that are the subject of the Notice.

6 **1.6 Jurisdiction**

7 For purposes of this Settlement Agreement only, the Parties stipulate that this Court has
8 jurisdiction over Cavalini as to the allegations contained in the Complaint, that venue is proper in
9 the County of Marin, and that the Court has jurisdiction to enforce the provisions of this
10 Settlement Agreement pursuant to Code of Civil Procedure section 664.6 as to the alleged
11 violations of Proposition 65, as set forth in the Notice and Complaint.

12 **1.5 No Admission**

13 Cavalini denies the material, factual, and legal allegations contained in the 60-Day Notice
14 and in the Complaint, and maintains that all of the products that Cavalini has imported,
15 manufactured, distributed, wholesaled, or retailed for sale in California, including the Products,
16 have been and are in compliance with all laws, including but not limited to Proposition 65.

17 Nothing herein shall be construed as an admission by Cavalini of any fact, finding, issue of law,
18 or violation of law, nor shall compliance with this Settlement Agreement constitute or be
19 construed as an admission by Cavalini of any fact, finding, conclusion, issue of law, or violation
20 of law.

21 Except as expressly set forth herein, nothing in this Settlement Agreement shall
22 prejudice, waive, or impair any right, remedy, argument, complaint, or defense the Parties may
23 have in any other or future legal proceeding unrelated to this specific proceeding.

24 **1.6 Effective Date**

25 For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date
26 this Settlement Agreement is entered as a judgment by the Court, and Plaintiff provides a file
27 endorsed copy to Cavalini.

1 **2. INJUNCTIVE SETTLEMENT TERMS: REFORMULATED PRODUCTS**

2 Commencing on July 1, 2016, and continuing thereafter, Cavalini agrees to only
3 manufacture for sale or purchase for sale in or into California, "Reformulated Products." For
4 purposes of this Settlement Agreement, "Reformulated Products" shall mean products containing
5 less than or equal to 1,000 parts per million (0.1%) DEHP when analyzed pursuant to
6 Environmental Protection Agency testing methodologies 3580A and 8270C.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Civil Penalty Payments**

9 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims
10 alleged in the Notice or referred to in this Settlement Agreement, Cavalini agrees to pay \$23,000
11 in civil penalties. The penalty payment will be allocated in accordance with California Health
12 and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the
13 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
14 25% of the penalty amount paid to Moore. Cavalini shall tender its payment in a single check
15 made payable to "John Moore, Client Trust Account." Moore's counsel shall undertake and be
16 responsible for delivering OEHHA's portion of any civil penalty payment made under this
17 Settlement Agreement to OEHHA.

18 **3.1.1 Initial Civil Penalty**

19 Within five (5) business days of the Effective Date, Cavalini shall deliver a check
20 in the amount of \$3,000 for the initial civil penalty payment to "John Moore, Client Trust
21 Account." Moore will provide 75% of the payment to OEHHA in accordance with Health and
22 Safety Code section 25249.12(c)(1) and (d).

23 **3.1.2 Final Civil Penalty – Accelerated Reformulation**

24 On or before December 30, 2016, Cavalini shall make a final civil penalty payment of
25 \$20,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Moore agrees that
26 the final civil penalty payment shall be waived in its entirety if, no later than June 15, 2016, an
27 officer of Cavalini provides Moore with written certification that all of the Products purchased

1 for sale or manufactured for sale in California as of the date of such certification are
2 Reformulated Products as defined by Section 2.1, and that Cavalini will continue to offer only
3 Reformulated Products in California in the future. The option to certify to accelerated
4 reformulation in lieu of making the final civil penalty payment required by this Section is a
5 material term and time is of the essence.

6 **3.2 Attorneys' Fees and Costs**

7 The parties acknowledge that Moore and his counsel offered to resolve this dispute
8 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
9 leaving the issue to be resolved after the material terms of this Settlement Agreement had been
10 settled. Shortly after the other settlement terms had been finalized, Cavalini expressed a desire
11 to resolve Moore's fees and costs. The Parties then attempted to (and did) reach an accord on the
12 compensation due to Moore and his counsel under general contract principles and the private
13 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all
14 work performed through the mutual execution of this Settlement Agreement. Within five (5)
15 business days of the Effective Date, Cavalini shall deliver a check for \$26,000 payable to "The
16 Chanler Group" to the address found in Section 3.3 below.

17 **3.3 Payment Address**

18 All payments under this Settlement Agreement shall be delivered to:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710-2565

22 **3.4 Payment Timing; Payments Held in Trust**

23 All payments due under this Settlement Agreement, except the Final Civil Penalty, shall
24 be delivered to Cavalini's counsel within fifteen (15) days of the date that this Settlement
25 Agreement is fully executed by the Parties, and held until, and disbursed within five days after
26 the Effective Date. Plaintiff's counsel shall notify Cavalini's counsel of record of the relevant
27 hearing date to approve this Settlement Agreement, no less than twenty (20) days in advance.

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Moore's Public Release of Proposition 65 Claims**

3 Moore, acting on his own behalf and in the public interest, releases Cavalini and its
4 parents, subsidiaries, predecessors, affiliated entities, directors, officers, employees, contractors,
5 agents, and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes
6 or sells the Products, including but not limited to its downstream distributors, wholesalers,
7 customers, retailers, franchisers, cooperative members, licensors, and licensees, ("Downstream
8 Releasees") for violations arising under Proposition 65 for unwarned exposures to DEHP from
9 the Products sold by Cavalini prior to the Effective Date, as set forth in the Notice.

10 **4.2 Moore's Individual Release of Claims**

11 Moore, in his individual capacity only and not in his representative capacity, also
12 provides a release to Cavalini, Releasees, and Downstream Releasees which shall be effective as
13 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
14 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any
15 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
16 alleged or actual exposures to DEHP and other phthalates from the Products sold or distributed
17 for sale by Cavalini before the Effective Date.

18 **4.3 Cavalini Release of Moore**

19 Cavlini, on its own behalf, and on behalf of its past and current agents, representatives,
20 attorneys, successors, and assignees, hereby waives any and all claims against Moore and his
21 attorneys and other representatives, for any and all actions taken or statements made by Moore
22 and his attorneys and other representatives, whether in the course of investigating claims,
23 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the
24 Products.

1 **5. COURT APPROVAL**

2 This Settlement Agreement is not effective until it is approved and entered by the Court and shall
3 be null and void if, for any reason, it is not approved and entered by the Court within one year
4 after it has been fully executed by the Parties.

5 **6. SEVERABILITY**

6 If, subsequent to the execution of this Settlement Agreement, any provision of this
7 Settlement Agreement is held by a court to be unenforceable, the validity of the remaining
8 provisions shall not be adversely affected.

9 **7. GOVERNING LAW**

10 The terms of this Settlement Agreement shall be governed by the laws of the State of
11 California and apply within the State of California. Compliance with the terms of this Settlement
12 constitutes compliance with the requirements of Proposition 65 with respect to alleged exposures
13 to DEHP arising from the Products. In the event that Proposition 65 is repealed or is otherwise
14 rendered inapplicable by reason of law generally, or as to the Products, then Cavalini may
15 provide written notice to Moore of any asserted change in the law, and shall have no further
16 injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent
17 that, the Products are so affected.

18 **8. NOTICE**

19 Unless specified otherwise in this Settlement Agreement, all correspondence and notice
20 required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a)
21 personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a
22 recognized overnight courier on any Party by the other at the following addresses:

23 For Moore:

24 Proposition 65 Coordinator
25 The Chanler Group
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710
Ph: (510) 848-8880
Email: Warren@chanler.com

1 For Cavalini:

2 Fred Bahari, Chief Executive Officer
3 Cavalini, Inc.
4 1536 South Alameda Street
5 Los Angeles, CA 90021

6 with a copy to:

7 Thomas H. Clarke, Jr.
8 Attn: Roxana Riedell
9 Ropers, Majesky, Kohn, & Bentley, PC
10 1001 Marshall Street, Suite 500
11 Redwood City 94063-2052
12 Ph: 650-364-8200
13 Email: thomas.clarke@rmkb.com

14 For all notices and correspondence required to be provided in writing pursuant to this Settlement
15 Agreement, the Parties shall also send a courtesy notice by electronic mail and/or facsimile to
16 counsel with the correspondence or notice attached thereto. The provision of such courtesy
17 notice shall not lessen, diminish, or void the requirement noted herein regarding how actual
18 notices and correspondence are to be sent. Any Party may, from time to time, specify in writing
19 to the other Party a change of address to which all notices and other communications shall be
20 sent.

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

28 **11. POST EXECUTION ACTIVITIES**

Moore agrees to comply with the reporting form requirements referenced in Health and
Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and
Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the
settlement. In furtherance of obtaining such approval, Moore and Cavalini agree to mutually

1 employ their best efforts, and that of their counsel, to support the entry of this agreement as
2 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of
3 this Section, "best efforts" shall include, at a minimum, cooperating with the drafting and filing
4 of the necessary moving papers, and supporting the motion for judicial approval.

5 **12. MODIFICATION**

6 This Settlement Agreement may be modified only by written agreement of the Parties.

7 **13. AUTHORIZATION**

8 **13.1** Each of the Parties acknowledges that they had the right and ability to consult
9 with and seek the advice of counsel of their choice and each voluntarily has entered into this
10 Settlement.

11 **13.2** The undersigned affirmatively represent that they are authorized to execute this
12 Settlement on behalf of their respective Parties and have read, understood, and agree to all of the
13 terms and conditions of this document, and further certifies that he or she is fully authorized by
14 the Party he or she represents to execute the Settlement Agreement on behalf of the Party
15 represented and legally bind that Party.

16 **13.3** Except to the extent otherwise noted, each of the Parties shall bear its own costs
17 and fees.

18 **14. DRAFTING**

19 The terms of this Settlement Agreement have been reviewed by the respective counsel
20 for each Party prior to its signing, and each Party has had an opportunity to fully discuss the
21 terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation
22 and construction of this Settlement Agreement, no inference, assumption, or presumption shall
23 be drawn, and no provision of this Settlement Agreement shall be construed against any Party,
24 based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or
25 drafted all or any portion of the Settlement Agreement. It is conclusively presumed that all of
26 the Parties participated equally in the preparation and drafting of this Settlement Agreement.

1 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES AND ENFORCEMENT**

2 **15.1** If a dispute arises with respect to either Party's compliance with the terms of this
3 Settlement Agreement, the Parties shall meet in person or by telephone and endeavor to resolve
4 the dispute in an amicable manner prior to filing of any motion related to the terms and
5 conditions of the Settlement Agreement, for a period of at least thirty (30) days.

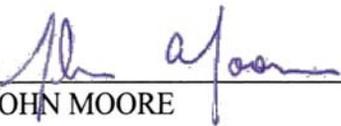
6 **15.2** For purposes of this Settlement Agreement only, the Parties stipulate that in the
7 event that enforcement of this Settlement Agreement is deemed necessary by one or both of the
8 Parties, or a dispute between the Parties arises regarding this Settlement Agreement, the Superior
9 Court of California, County of Marin, has proper jurisdiction and venue over the Parties as to the
10 terms and conditions of this Settlement Agreement, that venue is proper in the County of Marin,
11 and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this
12 Settlement Agreement.

13
14 **AGREED TO:**

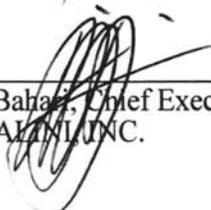
AGREED TO:

15 Date: 4/25/2016

Date: 4/12/16

16
17 By: 

18 JOHN MOORE

By: 

Fred Bahari, Chief Executive Officer
CAVALRY INC.