

1 Troy C. Bailey, State Bar No. 277424
Ryan C. Oca, State Bar No. 303113
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5 Attorneys for Plaintiff
6 JOHN MOORE

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

11
12 JOHN MOORE,

13 Plaintiff,

14 v.

15 WEAVER LEATHER, LLC; and DOES 1-
16 150, inclusive,

17 Defendants.

Case No. RG 16838098

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

7 Moore is a resident of the State of California who seeks to promote awareness of exposures
8 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 contained in consumer and commercial products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Moore alleges that Weaver Leather manufactures, imports, sells and/or distributes for sale in
16 California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without
17 providing the health hazard warning that Moore alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are exhibitor harnesses with vinyl/PVC
20 components including, but not limited to, *Weaver Leather Exhibitor Number Harness, T-35-8102-*
21 *BK, UPC #0 00399 54887 9* that are manufactured, imported, distributed, sold and/or offered for
22 sale in California by Weaver Leather (“Products”).

23 **1.6 Notice of Violation**

24 On May 26, 2016, Moore served Weaver Leather and the requisite public enforcement
25 agencies with a Supplemental 60-Day Notice of Violation (the “Notice”), alleging that Weaver
26 Leather violated Proposition 65 when it failed to warn its customers and consumers in California
27 that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer
28

1 has commenced and is diligently prosecuting an action to enforce the allegations set forth in the
2 Notice.

3 **1.7 Complaint**

4 On November 7, 2016, Moore commenced the instant action, naming Weaver Leather as
5 one of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

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

22 **1.10 Effective Date**

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

25 **2. INJUNCTIVE SETTLEMENT TERMS**

26 **2.1 Reformulation Standards**

27 “Reformulated Products” are defined as those Products containing DEHP in concentrations
28 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental

1 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by
2 federal or state government agencies for the purpose of determining DEHP content in a solid
3 substance.

4 **2.2 Reformulation Commitment**

5 As of the Effective Date all Products manufactured, imported, distributed, sold and/or
6 offered for sale in the State of California by Weaver Leather shall be Products that qualify as
7 Reformulated Products as defined in Section 2.1.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Civil Penalty**

10 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
11 claims referred to in this Consent Judgment, Weaver Leather shall pay civil penalties in the amount
12 of \$2,500. The penalty payments shall be allocated according to Health and Safety Code section
13 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of
14 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid
15 to Moore. Within two (2) business days of the Effective Date, Weaver Leather shall issue two
16 separate checks, the first check payable to “John Moore, Client Trust Account” in the amount of
17 \$625, and the second check payable to “OEHHA” in the amount of \$1,875. Moore’s counsel shall
18 be responsible for remitting Weaver Leather’s penalty payment under this Consent Judgment to
19 OEHHA.

20 **3.2 Reimbursement of Attorneys’ Fees and Costs**

21 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
22 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
23 to be resolved after the material terms of the agreement had been settled. Shortly after the other
24 settlement terms had been finalized, Weaver Leather expressed a desire to resolve Moore’s fees
25 and costs. The Parties then negotiated a resolution of the compensation due to Moore and his
26 counsel under general contract principles and the private attorney general doctrine codified at
27 California Code of Civil Procedure section 1021.5. For all work performed through the mutual
28 execution of this agreement and the Court’s approval of the same, but exclusive of fees and costs

1 on appeal, if any, Weaver Leather shall reimburse Moore and his counsel \$20,500. Weaver
2 Leather's payment shall be delivered to the address in Section 3.3 in the form of a check payable to
3 "The Chanler Group" within two (2) business days of the Effective Date. The reimbursement
4 shall cover all fees and costs incurred by Moore investigating, bringing this matter to Weaver
5 Leather's attention, litigating, and negotiating a settlement of the matter in the public interest.

6 **3.3 Payment Address**

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

9 The Chanler Group
10 Attn: Proposition 65 Controller
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 Moore's Release of Proposition 65 Claims**

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

25 **4.2 Moore's Individual Release of Claims**

26 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
27 release to Weaver Leather, Releasees, and Downstream Releasees which shall be effective as a full
28 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,

1 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature,
2 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
3 actual exposures to DEHP in Products manufactured, imported, distributed or sold by Weaver
4 Leather before the Effective Date.

5 **4.3 Weaver Leather's Release of Moore**

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

12 **5. COURT APPROVAL**

13 This Consent Judgment is not effective until it is approved and entered by the Court and
14 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
15 after it has been fully executed by all Parties. Moore and Weaver Leather agree to support the entry
16 of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
17 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
18 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
19 motion Moore shall draft and file and Weaver Leather shall support, appearing at the hearing if so
20 requested. If any third-party objection to the motion is filed, Moore and Weaver Leather agree to
21 work together to file a reply and appear at any hearing. This provision is a material component of
22 the Consent Judgment and shall be treated as such in the event of a breach.

23 **6. SEVERABILITY**

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

27
28

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
4 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Weaver
5 Leather may provide Moore with written notice of any asserted change in the law, and shall have no
6 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
7 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Weaver
8 Leather from its obligation to comply with any pertinent state or federal law or regulation.

9 **8. NOTICE**

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

14 To Weaver Leather:	To Moore:
15 Ricardo P. Cestero, Esq.	Attn: Proposition 65 Coordinator
16 Greenberg Glusker Fields Claman &	The Chanler Group
Machtinger LLP	2560 Ninth Street
17 1900 Avenue of the Stars, 21st Floor	Parker Plaza, Suite 214
18 Los Angeles, CA 90067	Berkeley, CA 94710-2565

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

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

22 This Consent Judgment 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, when
24 taken together, shall constitute one and the same document.

25 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

28

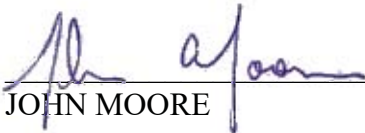
1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

9
10 **AGREED TO:**

11 
12 _____
13 JOHN MOORE

14 Dated: 5/18/17

AGREED TO:

_____ WEAVER LEATHER, LLC

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

9
10 **AGREED TO:**

11
12 _____
13 JOHN MOORE

14 Dated: _____

AGREED TO:

15
16 
17 _____
18 WEAVER LEATHER, LLC

19 By: Carlos Mullet
(Print Name)

20 Its: Chief Financial Officer
(Title)

21 Dated: 5/19/2017

22
23
24
25
26
27
28