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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
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14 JOHN MOORE,

15 Plaintiff,

16 v.

17 ALTADIS U.S.A. INC.; *et al.*,

18 Defendants.
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Case No. CGC-16554908

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 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 Altadis U.S.A. Inc. (“Altadis”), with Moore and Altadis each individually referred to as a “Party”
5 and, collectively, as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

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

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are golf accessory bags with vinyl/PVC
22 components, containing DEHP, that are manufactured, imported, distributed, sold, and/or offered
23 for sale, in California, by Altadis, including, but not limited to, the vinyl/PVC components of the
24 *Romeo Y Julieta, 1875 Toro GWP-Golf Set, UPC #0 76452 36204 1* golf accessory bag,
25 hereinafter the “Products.”

26 **1.6 Notice of Violation**

27 On June 14, 2016, Moore served Altadis and the requisite public enforcement agencies
28 with a “60-Day Notice of Violation” (“Notice”), alleging that Altadis violated Proposition 65 by

1 failing to warn its customers and consumers in California of the health hazards associated with
2 exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer
3 has commenced and is diligently prosecuting an action to enforce the violations alleged in the
4 Notice.

5 **1.7 Complaint**

6 On October 14, 2016, Moore filed the instant action ("Complaint"), naming Altadis as a
7 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the
8 Notice.

9 **1.8 No Admission**

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

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Altadis as to the allegations in the Complaint, that venue is proper in the County
21 of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this
22 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on
25 which the Motion for Approval of the Consent Judgment is granted by the Court.

26 **2. INJUNCTIVE RELIEF: REFORMULATION**

27 Commencing on the Effective Date and continuing thereafter, Altadis agrees to only
28 manufacture for sale, import for sale, distribute for sale, purchase for sale or sell in or into

1 California, “Reformulated Products.” For purposes of this Consent Judgment, “Reformulated
2 Products” are defined as Products containing DEHP in a maximum concentration of 1,000 parts
3 per million (0.1%) in any accessible component (i.e., any component that may be touched during a
4 reasonably foreseeable use) when analyzed pursuant to U.S. Environmental Protection Agency
5 testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state
6 agencies for the purpose of determining DEHP content in a solid substance.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Civil Penalty Payment**

9 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in
10 the Notice and referred to in this Consent Judgment, Altadis agrees to pay \$2,000 in civil
11 penalties. The civil penalty payment shall be allocated according to Health and Safety Code §§
12 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
13 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five
14 percent (25%) of the penalty paid to Moore. Altadis shall issue its payment in two checks for the
15 following amounts: (a) “OEHHA” in the amount of \$1,500; and (b) “John Moore, Client Trust
16 Account” in the amount of \$500. Moore’s counsel shall be responsible for delivering OEHHA’s
17 portion of any penalty payment made under this Settlement Agreement.

18 **3.2 Reimbursement of Attorneys’ Fees and Costs**

19 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
21 to be resolved after the material terms of this Consent Judgment had been settled. After the Parties
22 reached an agreement as to all other settlement terms, the Parties then reached an accord on the
23 compensation due to Moore and his counsel, under general contract principles and the private
24 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
25 performed through the mutual execution of this Consent Judgment. Under these legal principles,
26 Altadis agrees to pay \$25,000 to Moore and his counsel for all fees and costs incurred in
27 investigating, bringing this matter to the attention of Altadis’ management, and negotiating a
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1 settlement in the public interest. Altadis' payment shall be delivered in the form of a check
2 payable to "The Chanler Group."

3 **3.3 Payment Timing; Payments Held in Trust**

4 All payments due under this Consent Judgment shall be held in trust until such time as the
5 Court approves the Parties' settlement. Within five (5) days of the date this Consent Judgment is
6 fully executed by the Parties, all payments due under this agreement shall be delivered to and
7 held in trust by Altadis' counsel, until the Court grants the motion for approval of this Consent
8 Judgment, as contemplated by Section 5. Altadis' counsel shall confirm in writing to Moore's
9 counsel when it receives Altadis' payments. Within five (5) days of the Court's approval of this
10 Consent Judgment, Altadis' counsel shall deliver all payments due under this agreement to
11 Moore's counsel.

12 **3.4 Payment Address**

13 All payments required by this Consent Judgment shall be delivered to:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Moore's Public Release of Proposition 65 Claims**

19 Moore, acting on his own behalf and in the public interest, releases Altadis and its
20 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
21 and attorneys ("Releasees"), and each entity to whom Altadis directly or indirectly distributes or
22 sells the Products, including, without limitation, its downstream customers, distributors,
23 wholesalers, and retailers ("Downstream Releasees"), for any violation arising under Proposition
24 65 pertaining to the failure to warn about exposures to DEHP from Products sold or distributed
25 for sale by Altadis prior to the Effective Date, as set forth in the Notice. Compliance with the
26 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
27 exposures to DEHP from Products sold or distributed for sale by Altadis after the Effective Date.
28 The Parties agree and acknowledge that the releases provided under this Consent Judgment shall

1 not extend upstream to any entity that manufactured the Products, or any components part
2 thereof, or to any entity that distributed or sold the Products, or any component parts thereof, to
3 Altadis.

4 **4.2 Moore's Individual Release of Claims**

5 Moore, in his individual capacity only and *not* in his representative capacity, also provides
6 a release to Altadis, Releasees, and Downstream Releasees which shall be effective as a full and
7 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
8 attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character
9 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
10 exposures to DEHP in Products sold or distributed for sale by Altadis prior to the Effective Date.

11 **4.3 Altadis' Release of Moore**

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

18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court, and it
20 shall be null and void if it is not approved and entered by the Court within one year after it has
21 been fully executed by the Parties, or within such additional time as the Parties may agree to in
22 writing.

23 **6. SEVERABILITY**

24 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
25 any provision is held by a court to be unenforceable, the validity of the remaining provisions shall
26 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, or
4 is otherwise rendered inapplicable by reason of law generally or as to the Products, then Altadis
5 may provide written notice to Moore of any asserted change in the law, and shall have no further
6 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that,
7 the Products are so affected.

8 **8. NOTICE**

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

12 For Altadis:

13 Gary Ellis, President
14 Altadis U.S.A. Inc.
15 5900 North Andrews Avenue, Suite 1100
16 Fort Lauderdale, FL 33309

17 with a copy to Altadis' counsel:

18 Jeff Polsky, Counsel
19 Fox Rothschild LLP
20 345 California Street, Suite 2200
21 San Francisco, CA 94104

22 For Moore:

23 Proposition 65 Coordinator
24 The Chanler Group
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

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

29 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

30 This Consent Judgment may be executed in counterparts and by facsimile signature, each
31 of which shall be deemed an original, and all of which, when taken together, shall constitute one
32 and the same document.

1 **10. POST-EXECUTION ACTIVITIES**

2 Moore agrees to comply with the reporting form requirements referenced in Health and
3 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
4 Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
5 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
6 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
7 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
8 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
9 supporting the motion, and appearing at the hearing before the Court.

10 **11. MODIFICATION**

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

14 **12. AUTHORIZATION**


15 The undersigned are authorized to execute this Consent Judgment and acknowledge that
16 they have read, understand, and agree to all of the terms and conditions contained herein.


17 **AGREED TO:**

AGREED TO:

18
19 Date: April 27, 2017

Date: 4.26.17

20
21 By: 
JOHN MOORE

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21 By: 
Rob Wilkey, EVP, General Counsel
ALTADIS U.S.A. INC.