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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
12

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 U.S. JACLEAN, INC., *et al.*

17 Defendants.
18

Case No. RG16830928

[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 U.S. Jaclean, Inc. (“U.S. Jaclean”), with Moore and U.S. Jaclean each individually referred to as a
5 “Party” and 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 U.S. Jaclean employs ten or more individuals and is a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
13 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that U.S. Jaclean has imported, sold or distributed for sale in California,
16 exercise balls that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure
17 warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known
18 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 exercise balls containing DEHP that are
21 manufactured, imported, sold, or distributed for sale in California by U.S. Jaclean including, but not
22 limited to, *U.S. Jaclean, Inc. Exercise Ball, USJ-772, UPC #0 45656 00900 7*, hereinafter the
23 “Products.”

24 **1.6 Notice of Violation**

25 On or about June 14, 2016, Moore served U.S. Jaclean, and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that U.S. Jaclean
27 violated Proposition 65 by failing to warn its customers and consumers in California that the Products
28

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

3 **1.7 Complaint**

4 On September 13, 2016, Moore filed the instant action (“Complaint”) naming U.S. Jaclean as
5 a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject
6 of the Notice.

7 **1.8 No Admission**

8 U.S. Jaclean 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 U.S. Jaclean’s obligations, responsibilities, and duties
15 under 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 U.S. Jaclean as to the allegations contained in the Complaint, that venue is proper in
19 the 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 Court approves this Consent Judgment, including any unopposed tentative ruling granting
24 approval of this Consent Judgment.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Commitment to Reformulate or Warn**

3 Commencing no later than thirty (30) days after the Effective Date and continuing thereafter,
4 U.S. Jaclean shall only purchase for sale, or import for sale in California, Products that are either: (a)
5 Reformulated Products as defined by Section 2.2, below; or (b) Products that are offered by U.S.
6 Jaclean with a clear and reasonable warning pursuant to Section 2.3.

7 **2.2 Reformulation Standard**

8 For the purposes of this Consent Judgment, “Reformulated Products” are defined as Products
9 that contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed
10 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other
11 methodology utilized by federal or state government agencies for the purpose of determining DEHP
12 content in a solid substance.

13 **2.3 Clear and Reasonable Warning**

14 Commencing no later than thirty (30) days after the Effective Date and continuing thereafter,
15 for any Products offered for sale in California by U.S. Jaclean that are not Reformulated Products,
16 U.S. Jaclean agrees to only offer such Products for sale with a clear and reasonable warning in
17 accordance with this Section. U.S. Jaclean further agrees that any warning used will be prominently
18 placed in relation to the Product with such conspicuousness when compared with other words,
19 statements, designs, or devices as to render it likely to be read and understood by an ordinary
20 individual under customary conditions of purchase or use. For purposes of this Consent Judgment, a
21 clear and reasonable warning for the Products satisfying these criteria shall consist of a warning
22 affixed directly to a Product or its accompanying labeling or packaging sold in California containing
23 one of the following statements:

24
25 **WARNING:** This product can expose you to chemicals
26 including DEHP, which is known to the
27 State of California to cause cancer and birth
28 defects or other reproductive harm.

WARNING: This product contains DEHP, a chemical
known to the State of California to cause
birth defects or other reproductive harm.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health & Safety Code section 25249.7(b), in settlement of all the claims referred
4 to in this Consent Judgment, U.S. Jaclean shall pay \$2,500 in civil penalties. The civil penalty
5 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with
6 seventy-five percent (75%) of the funds paid to the California Office of Environmental Health
7 Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Moore.
8 U.S. Jaclean shall provide its payment in two checks for the following amounts made payable to: (a)
9 “OEHHA” in the amount of \$1,875; and (b) “John Moore, Client Trust Account” in the amount of
10 \$625; as set forth in Sections 3.3 and 3.4.

11 **3.2 Reimbursement of Attorney’s Fees and Costs**

12 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
13 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
14 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
15 other settlement terms had been finalized, U.S. Jaclean expressed a desire to resolve Moore’s fees
16 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Moore
17 and his counsel under general contract principles and the private attorney general doctrine codified at
18 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
19 execution of this Consent Judgment. On or before the Effective Date, U.S. Jaclean shall pay \$26,000
20 for the fees and costs incurred by Moore investigating, bringing this matter to U.S. Jaclean’s
21 attention, litigating and negotiating a settlement in the public interest.

22 **3.3 Payments Held in Trust**

23 All payments due under this agreement shall be delivered within two (2) weeks of the date
24 that this Consent Judgment is fully executed by the Parties, and held in trust by U.S. Jaclean’s
25 counsel until the Court grants the motion for approval of this Consent Judgment. U.S. Jaclean’s
26 counsel shall confirm receipt of settlement funds in writing to Moore’s counsel and, thereafter, hold
27 the amounts paid in trust until the Effective Date. Within two business days of the Court’s approval
28 of this Consent Judgment, U.S. Jaclean’s counsel shall tender the civil penalty payment and

1 attorneys' fee and costs reimbursements required by Sections 3.1 and 3.2.

2 **3.4 Payment Address**

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

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Moore's Public Release of Proposition 65 Claims**

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

20 **4.2 Moore's Individual Release of Claims**

21 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
22 release to U.S. Jaclean, Releasees, and Downstream Releasees which shall be effective as a full and
23 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
24 attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or
25 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
26 exposures to DEHP in the Products sold or distributed for sale by U.S. Jaclean before the Effective
27 Date.

1 **4.3 U.S. Jaclean’s Release of Moore**

2 U.S. Jaclean, on its own behalf, and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims against Moore and his
4 attorneys and other representatives, for any and all actions taken or statements made by Moore and
5 his attorneys and other representatives, whether in the course of investigating claims, otherwise
6 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

7 **5. COURT APPROVAL**

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

11 **6. SEVERABILITY**

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

15 **7. GOVERNING LAW**

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

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1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice 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 **U.S. Jaclean**

6 Minoru Kogure, President
7 U.S. Jaclean, Inc.
8 1816 West 135th Street
9 Gardena, CA 90249

Alvin B. Sherron, Esq.
Law Offices of Alvin B. Sherron
1055 Wilshire Blvd., Suite 1702
Los Angeles, CA 90017
LawOfcsABS@aol.com

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 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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1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

8 **AGREED TO:**

AGREED TO:

9
10 Date: 7/6/2017

Date: 6/30/2017

11 By: 
12 JOHN MOORE

By: 
13 Minoru Kogure, President
14 U.S. JACLEAN, INC.

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