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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION

16 JOHN MOORE,
17 Plaintiff,
18 v.
19 GREEN LEAF INC., *et al.*,
20 Defendants.

Case No. CGC-17-558078

[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 defendant Green Leaf, Inc., (“Green Leaf”), with Moore and Green Leaf each individually referred to
5 as a “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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Green Leaf 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 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Green Leaf sells and distributes for sale in California, vinyl/PVC wires and
16 vinyl/PVC ball valve grips containing di(2-ethylhexyl) phthalate (“DEHP”), and that it does so
17 without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause birth defects and other
19 reproductive harm. Green Leaf denies Moore’s allegations.

20 **1.5 Product Description**

21 For purposes of this Consent Judgment, “Products” are defined as: (i) vinyl/PVC wires
22 containing DEHP, including, but not limited to the *CountyLine Wiring Harness Car Adapter &*
23 *Battery Clips*, SKU#1028394, UPC #0 23537 48161 6; and, (ii) vinyl/PVC ball valve grips
24 containing DEHP, including, but not limited to the *Green Leaf Ball Valve 2in Bolted, VX 200 FP,*
25 *UPC #0 23537 87045 8.* The Products are manufactured, imported, sold or distributed for sale in
26 California by Green Leaf.

1 **1.6 Notice of Violation**

2 On December 6, 2016, Moore served Green Leaf, the California Attorney General, and all
3 other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The
4 Notice alleges that Green Leaf violated Proposition 65 when they failed to warn their customers and
5 consumers in California that earphone cords expose users to DEHP.

6 **1.7 Complaint**

7 On or about April 7, 2017, Plaintiff filed the instant action (“Complaint”), naming Green Leaf
8 as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the
9 subject of the Notice.

10 **1.8 No Admission**

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

19 **1.9 Jurisdiction**

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

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
26 the Court approves this Consent Judgment, including any unopposed tentative ruling.
27
28

1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Commitment to Reformulate or Provide Warnings**


3 Commencing no later than thirty (30) days after the Effective Date, and continuing thereafter,
4 Green Leaf agrees to only manufacture, distribute, purchase for sale, or offer for sale in or into
5 California: (a) “Reformulated Products”, or (b) Products that are sold with a clear and reasonable
6 health hazard warning, pursuant to Section 2.2 below.

7 **2.2 Reformulated Products Defined**

8 For purposes of this Consent Judgment, “Reformulated Products” shall mean Products
9 containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any
10 component that may be touched during use) when analyzed pursuant to Environmental Protection
11 Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or
12 state agencies for the purpose of determining DEHP content in a solid substance.

13 **2.3 Clear and Reasonable Warnings Defined**

14 Commencing no later than thirty (30) days of the Effective Date and continuing thereafter, all
15 Products Green Leaf sells and/or distributes for sale in California which do not qualify as
16 Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Green
17 Leaf further agrees that the warning will be prominently placed with such conspicuousness when
18 compared with other words, statements, designs or devices as to render it likely to be read and
19 understood by an ordinary individual under customary conditions of use. For purposes of this
20 Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning
21 affixed to the packaging, label, tag, or directly to a Product sold in California and containing the
22 following statement:

23  **WARNING:** This product can expose you to chemicals
24 including DEHP, which is known to the
25 State of California to cause birth defects or
26 other reproductive harm. For more information
27 go to www.P65Warnings.ca.gov
28

1 **2.4 Grace Period For Existing Inventory**

2 Green Leaf represents that it currently affixes warnings to its Products that read:

3 “WARNING: This product contains chemicals known to the State of California to cause cancer and
4 birth defects or other reproductive harm.” For Products that are in its existing inventory prior to the
5 Effective Date, Green Leaf may continue to sell Products bearing this warning through August 30,
6 2018, or until it has exhausted its supply of Products or warnings bearing this statement, whichever
7 occurs first.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Civil Penalty Payment**

10 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all claims alleged in
11 the Notice and Complaint, and referred to in this Consent Judgment, Green Leaf shall pay a civil
12 penalty of \$3,000. Green Leaf’s payment will be allocated pursuant to Health and Safety Code
13 section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the penalty paid to the California
14 Office of Environmental Health Hazard Assessment (“OEHHA”) and remaining twenty-five percent
15 (25%) of the penalty retained by Moore. Green Leaf shall deliver its payment in two checks made
16 payable to (a) “OEHHA” in the amount of \$2,250, and (b) “John Moore, Client Trust Account” in the
17 amount of \$750. Moore’s counsel shall deliver OEHHA’s penalty payment to OEHHA.

18 **3.2 Reimbursement of 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, thereby leaving the issue to be
21 resolved after the material terms of their settlement had been finalized. Shortly after the other
22 settlement terms had been finalized, Green Leaf and Moore counsel’s negotiated a resolution of the
23 compensation due to Moore and his counsel under general contract principles and the private attorney
24 general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
25 through the mutual execution of this Consent Judgment. Under these legal principles, Green Leaf
26 agrees to pay \$32,000 for all fees and costs incurred investigating, bringing this matter to Green
27 Leaf’s attention, and litigating and negotiating a settlement in the public interest. Green Leaf shall
28 deliver its payment in a single check payable to “The Chanler Group.”

1 **3.3 Payment Procedures**

2 All settlement payments due under this Consent Judgment shall be delivered to Green Leaf’s
3 counsel within fifteen (15) days of the date that this Consent Judgment is fully executed by the
4 Parties. Green Leaf’s counsel shall provide Moore’s counsel with written confirmation upon its
5 receipt of Green Leaf’s settlement funds. Thereafter, Green Leaf’s counsel shall hold the settlement
6 payments in trust until, and disburse the payments within five days after the Effective Date.

7 **3.4 Payment Address**

8 Within five days of the Effective Date, all payments required by this Consent
9 Judgment shall be delivered to:

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

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 Moore’s Public Release of Proposition 65 Claims**

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

24 **4.2 Moore’s Individual Release of Claims**

25 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
26 release to Green Leaf, Releasees, and Downstream Releasees which shall be effective as a full and
27 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
28 attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or

1 kind, arising out of alleged or actual exposures to DEHP in Products manufactured, imported, sold or
2 distributed for sale by Green Leaf before the Effective Date.

3 **4.3 Green Leaf's Release of Moore**

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

9 **5. COURT APPROVAL**

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

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the state of California
19 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
20 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Green Leaf
21 may provide written notice to Moore of any asserted change in the law, and shall have no further
22 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
23 Products are so affected.

24 **8. NOTICE**

25 Unless specified herein, all correspondence and notice required by this Consent Judgment
26 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
27 return receipt requested; or (iii) a recognized overnight courier to the following addresses:
28

1 For Green Leaf:

2 Pete Goda, President
3 Green Leaf, Inc.
4 9490 North Baldwin Street
5 Fontanet, IN 47851

6 Eric Frey, Esq.
7 Frey Law Firm
8 401 Ohio Street, Ste B13
9 Terre Haute, IN 47807-3529

10 For Moore:

11 The Chanler Group
12 Attn: Proposition 65 Coordinator
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

22 **10. POST EXECUTION ACTIVITIES**

23 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
24 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
25 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
26 furtherance of obtaining such approval, Moore and Green Leaf agree to mutually employ their best
27 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
28 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
shall include, at a minimum, supporting the motion for approval, responding to any objection or
opposition any third-party may file or lodge, and appearing before the Court at the hearing, if so
requested.

1 **11. MODIFICATION**

2 This Consent Judgment may only be modified by: (i) a written agreement of the Parties and
3 entry of a modified consent judgment by the Court thereon; or (ii) a successful motion or application
4 of 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 and have read, understand,
7 and agree to all of the terms and conditions set forth herein.

8
9 **AGREED TO:**

AGREED TO:

10 Date: 5/3/2017

10 Date: April 24th 2017

11
12 By: 
13 JOHN MOORE

14
15 By: 
16 PETE GODA, PRESIDENT
17 GREEN LEAF, INC.