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

14 Plaintiff,

15 v.

16 KWDZ MANUFACTURING, LLC, *et al.*,

17 Defendants.
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Case No. CGC-17-557022

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

14 **1.4 General Allegations**

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

19 **1.5 Product Description**

20 For purposes of this Consent Judgment “Products” are defined as belts with vinyl/PVC
21 components containing DEHP that are imported, sold, or distributed for sale in California by KWDZ,
22 including, but not limited to, the *Beautees Faux Fur Vest with Belt, Style #8110913KBL59,*
23 *RN#110135.*

24 **1.6 Notice of Violation**

25 On December 6, 2016, Moore served KWDZ, and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation (“Notice”) alleging that KWDZ violated Proposition 65 by failing
27 to warn its customers and consumers in California of the health hazards associated with exposures to
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1 DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action
2 to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On February 9, 2017, Moore filed the instant action (“Complaint”), naming KWDZ as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 KWDZ 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 KWDZ’s obligations, responsibilities, and duties under
15 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 KWDZ as to the allegations in the Complaint, that venue is proper in the County of
19 San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
20 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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2 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

3 **2.1 Commitment to Reformulate or Warn**

4 Commencing within 30 days of the Effective Date and continuing thereafter, KWDZ shall
5 only manufacture for sale, purchase for sale, or import for sale in California, Products that are either:
6 (a) Reformulated Products as defined by Section 2.2, below; or (b) Products that are offered by
7 KWDZ with a clear and reasonable warning pursuant to Section 2.3.

8 **2.2 Reformulation Standard**

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

14 **2.3 Clear and Reasonable Warning**

15 Commencing within 30 days of the Effective Date and continuing thereafter, for any Products
16 offered for sale in California by KWDZ that are not Reformulated Products, KWDZ agrees to only
17 offer such Products for sale with a clear and reasonable warning in accordance with this Section.
18 KWDZ further agrees that any warning used will be prominently placed in relation to the Product
19 with such conspicuousness when compared with other words, statements, designs, or devices as to
20 render it likely to be read and understood by an ordinary individual under customary conditions of
21 purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning for the
22 Products satisfying these criteria shall consist of a warning affixed directly to a Product or its
23 accompanying labeling or packaging sold in California containing one of the following statements:

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

27 **WARNING:** This product contains DEHP, a chemical
28 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 and Safety Code section 25249.7(b), and in settlement of all the claims
4 referred to in the Notice, Complaint, and this Consent Judgment, KWDZ shall pay \$1,500 in civil
5 penalties. The penalty payment will be allocated in accordance with California Health and Safety
6 Code section 25249.12(c)(1) & (d), with payment in two checks for the following amounts made
7 payable to: (a) California Office of Environmental Health Hazard Assessment (“OEHHA”) in the
8 amount of \$1,125; and (b) “John Moore, Client Trust Account” in the amount of \$375.

9 **3.2 Reimbursement of Attorney’s Fees and Costs**

10 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
11 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
12 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
13 other settlement terms had been finalized, the Parties negotiated the compensation due to Moore and
14 his counsel under general contract principles and the private attorney general doctrine codified at
15 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
16 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs
17 on appeal, if any. Under these legal principles, KWDZ shall pay \$11,500 for all fees and costs
18 incurred by Moore investigating, bringing this matter to KWDZ’s attention, litigating and negotiating
19 a settlement in the public interest.

20 **3.3 Payment Timing; Payments Held in Trust**

21 All payments due under this Consent Judgment shall be held in trust until such time as the
22 Court approves the Parties’ settlement. Within five (5) days of the date that this Consent Judgment is
23 fully executed by the Parties, all payments due under this agreement shall be delivered to KWDZ's
24 counsel and held in trust until the Effective Date. KWDZ’s counsel shall provide Moore’s counsel
25 with written confirmation upon its receipt of the settlement payments. Within five days of the
26 Effective Date, KWDZ’s counsel shall deliver the civil penalty and attorneys’ fee reimbursement
27 payments to Moore’s counsel.
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1 **4.3 KWDZ’s Release of Moore**

2 KWDZ, 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 it is not approved and entered by the Court within one year after it has been fully
10 executed by the Parties, or by such additional time as the Parties may agree in writing.

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, or is otherwise
18 rendered inapplicable by reason of law generally or as to the Products, then KWDZ may provide
19 written notice to Moore of any asserted change in the law, and shall have no further injunctive
20 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
21 so affected.

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23 **8. NOTICE**

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

2 Vera Campbell, President
3 KWDZ Manufacturing, LLC
4 337 South Anderson Street
5 Los Angeles, CA 90033

6 with a copy to:

7 Laura P. Worsinger, Esq.
8 333 South Grand Avenue
9 Suite 2100
10 Los Angeles, CA 90071

11 For Moore:

12 Proposition 65 Coordinator
13 The Chanler Group
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710-2565

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. POST EXECUTION ACTIVITIES**

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

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11. MODIFICATION

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

12. AUTHORIZATION

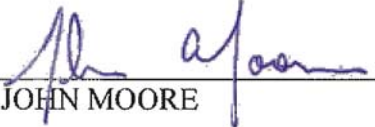
The undersigned are authorized to execute this Consent Judgment and acknowledge that they have read, understand, and agree to all of the terms and conditions contained herein.

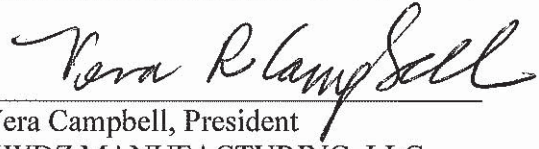
AGREED TO:

AGREED TO:

Date: 11/28/2017

Date: 11-27-2017

By: 
JOHN MOORE

By: 
Vera Campbell, President
KWDZ MANUFACTURING, LLC