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11 Attorneys for Plaintiff
12 JOHN MOORE

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16 UNLIMITED CIVIL JURISDICTION
17
18

19 JOHN MOORE,

20 Plaintiff,

21 v.

22 SMV INDUSTRIES, INC., *et al.*,

23 Defendants.
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Case No. CGC17557606

[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 by plaintiff John Moore (“Moore”), and SMV Industries,
4 Inc. (“SMV”), with Moore and SMV each individually referred to as a “Party” and collectively as the
5 “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 SMV 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 SMV imports, sells, and distributes for sale in California, vinyl/PVC
16 gloves that contain di(2-ethylhexyl) phthalate (“DEHP”) without first providing the exposure warning
17 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause
18 birth defects or other reproductive harm.

19 **1.5 Product Description**

20 For purposes of this Consent Judgment “Products” are defined as vinyl/PVC gloves
21 containing DEHP including, but not limited to, the *SMV Industries PVC Coated Work Gloves,*
22 *Style:7188CG, UPC#0 12947 00967 1* that are imported, sold, or distributed for sale in California by
23 SMV.

24 **1.6 Notice of Violation**

25 On December 6, 2016, Moore served SMV, and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation (“Notice”) alleging that SMV violated Proposition 65 by failing to
27 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 March 17, 2017, Moore filed the instant action (“Complaint”), naming SMV 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 SMV 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 SMV’s obligations, responsibilities, and duties under this
15 Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over SMV 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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1 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

2 **2.1 Commitment to Reformulate or Warn**

3 Commencing within 60 days of the Effective Date and continuing thereafter, SMV shall only
4 manufacture for sale, 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 SMV
6 with a clear and reasonable warning pursuant to Section 2.3.

7 **2.2 Reformulation Standards**

8 For the purposes of this Consent Judgment, “Reformulated Products” are defined as Products
9 that contain DEHP in concentrations that do not exceed 1,000 parts per million (0.1%) when analyzed
10 pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C
11 or equivalent methodologies utilized by state or federal agencies for the purpose of determining
12 DEHP content in a solid substance.

13 **2.3 Clear and Reasonable Warnings**

14 Commencing within 60 days of the Effective Date and continuing thereafter, for any Products
15 sold or offered for sale in California by SMV that are not Reformulated Products, SMV agrees to
16 only offer such Products for sale with a clear and reasonable warning in accordance with this Section.
17 SMV further agrees that any warning used will be prominently placed in relation to the Product with
18 such conspicuousness when compared with other words, statements, designs, or devices as to render
19 it likely to be read and understood by an ordinary individual under customary conditions of purchase
20 or use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products
21 satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying
22 labeling or packaging sold in California containing one of the following statements:

23 **WARNING:** This product contains DEHP, a chemical
24 that is known to the State of California to cause
25 birth defects or other reproductive harm.

26 **WARNING:** This product can expose you to chemicals
27 including DEHP, which is known to the
28 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 and Complaint, SMV 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 penalty paid to the California Office of Environmental Health
7 Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty
8 retained by Moore. SMV shall provide its payment in two checks for the following amount made
9 payable to (a) “OEHHA” in the amount of \$1,875; and (b) “John Moore, Client Trust Account” in the
10 amount of \$625. Moore’s counsel shall be responsible for delivering OEHHA’s portion of any
11 penalty payment made under this Consent Judgment.

12 **3.2 Reimbursement of Attorneys’ Fees and Costs**

13 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
14 reaching terms on the fees and costs to be reimbursed to them, thereby leaving the issue to
15 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
16 other settlement terms had been finalized, the Parties negotiated the compensation due to Moore and
17 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, and court approval of the same, but exclusive of fees and costs
20 on appeal, if any. Under these legal principles, SMV shall pay \$26,000 for all fees and costs incurred
21 by Moore investigating, bringing this matter to SMV’s attention, litigating and negotiating a
22 settlement in the public interest.

23 **3.3 Payment Timing; Payments Held in Trust**

24 All payments due under this Consent Judgment shall be Held in trust until the Effective Date.
25 Within five (5) days of the date that this Consent Judgment is fully executed by the Parties, SMV
26 shall deliver all settlement payments due under this agreement to SMV's counsel to hold in trust
27 until the Consent Judgment is approved by the Court. SMV’s counsel shall provide Moore’s counsel
28 with written confirmation upon its receipt of the settlement payments. SMV’s counsel shall deliver

1 the civil penalty and attorneys' fee reimbursement payments to Moore's counsel at the address set
2 forth in Section 3.4, below.

3 **3.4 Payment Address**

4 Within five (5) days of the Effective Date, all payments required by this Consent Judgment
5 shall be delivered to:

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

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Moore's Public Release of Proposition 65 Claims**

13 Moore, acting on his own behalf and in the public interest, releases SMV and its parents,
14 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
15 attorneys ("Releasees"), and each entity to whom SMV directly or indirectly distributes or sells the
16 Products including, without limitation, its downstream customers, distributors, wholesalers, and
17 retailers ("Downstream Releasees") for any violation arising under Proposition 65 pertaining to the
18 failure to warn about exposures to DEHP from Products sold or distributed for sale by SMV prior to
19 the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
20 constitutes compliance with Proposition 65 with respect to exposures to DEHP from Products sold
21 or distributed for sale by SMV after the Effective Date.

22 **4.2 Moore's Individual Release of Claims**

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

1 **4.3 SMV’s Release of Moore**

2 SMV, 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 SMV 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.

22 **8. NOTICE**

23 Unless specified herein, all correspondence and notice required by this Consent Judgment
24 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
25 return receipt requested; or (iii) a recognized overnight courier to the following addresses:
26 Any Party may, from time to time, specify in writing to the other, a change of address to which all
27 notices and other communications shall be sent.
28

1 For SMV:

2 Douglas Borman, President
3 SMV Industries, Inc.
4 51213 195th Street
5 Council Bluffs, IA 51501

6 Garth Ward, Esq.
7 Lewis Brisbois LLP
8 701 B Street, Suite 1900
9 San Diego, CA 92101

10 For Moore:

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

16 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

20 **10. POST EXECUTION ACTIVITIES**

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

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.

1 **12. AUTHORIZATION**


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

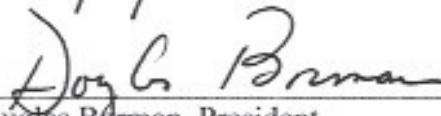
4 **AGREED TO:**

AGREED TO:

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6 Date: 8/15/2017

Date: 8/3/17

7
8 By: 
JOHN MOORE

By: 
Douglas Berman, President
SMV INDUSTRIES, INC.

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