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TMI ACQUISITION, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
MARIN COUNTY
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,
Plaintiff,
v.
TMI ACQUISITION, LLC; *et al.*,
Defendants.

Case No. CIV1704439

**[PROPOSED]
CONSENT JUDGMENT
AS TO DEFENDANT
TMI ACQUISITION, LLC**

(Health & Safety Code § 25249.5 *et seq.*, and
Cal. Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered by and between plaintiff John Moore (“Moore”), and
4 defendant TMI Acquisition, LLC, which does business as TM International, (“TMI”) with Moore and
5 TMI each individually referred to 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 to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 TMI 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 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that TMI sells and distributes for sale in California, vinyl/PVC stickers that
16 contain and expose individuals to di(2-ethylhexyl) phthalate (“DEHP”), and that it does so without
17 first providing a warning in violation of Health and Safety Code section 25249.6. DEHP is listed
18 pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

19 **1.5 Covered Products Defined**

20 For purposes of this Consent Judgment, “Covered Products” are defined as vinyl/PVC stickers
21 containing DEHP that are sold and/or distributed for sale in California by TMI including, but not
22 limited to, the *Marvel Avengers Assemble Sticker Stacks, #10 20 14, UPC #6 84364 36533 5*
23 identified in Moore’s Notices.

24 **1.6 Notices of Violation**

25 On September 12, 2017, Moore served TMI, the California Attorney General, and all other
26 requisite public enforcers with a 60-Day Notice of Violation (“September Notice”). The Notice
27 alleges that TMI violated Proposition 65 failing to warn its customers and consumers in California of
28 the health risks associated with exposures to DEHP from the Covered Products.

1 On February 14, 2018, Moore served TMI, and its retail customer in California, Hobby Lobby
2 Stores, Inc. with a supplemental 60-day notice of violation (“Supplemental Notice”). The
3 Supplemental Notice alleges that, in addition to the claims alleged in the September Notice as to TMI
4 that Hobby Lobby Stores, Inc. also violated Proposition 65 by failing to warn their customers and
5 consumers in California of the risks associated with exposures to DEHP from the Covered Products.

6 The September Notice and Supplemental Notice are referred to collectively herein as the
7 “Notices.” No public enforcer has commenced or is diligently prosecuting an action to enforce the
8 violations alleged in either of the Notices.

9 **1.7 Complaint**

10 On December 4, 2017, Moore filed the instant action (“Complaint”), naming TMI as a
11 defendant for the alleged violations that are the subject of the Notice.

12 **1.8 No Admission**

13 TMI denies the material, factual, and legal allegations contained in the Notices and
14 Complaint, and maintains that all the products that it has sold or distributed for sale in California,
15 including the Covered Products, comply with all laws. Nothing in this Consent Judgment shall be
16 construed as an admission by TMI of any fact, finding, conclusion of law, issue of law, or violation
17 of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
18 by TMI of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
19 not, however, diminish or otherwise affect TMI’s obligations, responsibilities, and duties under this
20 Consent Judgment.

21 **1.9 Jurisdiction**

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

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
3 the motion for approval of this Consent Judgment is granted by the Court, including the date of any
4 unopposed tentative ruling approving the settlement.

5 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

6 Commencing on the Effective Date, and continuing thereafter, TMI agrees to only sell or
7 distribute for sale in California “Reformulated Products.” For purposes of this Consent Judgment,
8 Reformulated Products are defined as Covered Products containing no more than 1,000 parts per
9 million (0.1%) DEHP in any component. For purposes of compliance with this reformulation
10 standard, testing samples shall be prepared and extracted using Consumer Product Safety
11 Commission (CPSC) methodology CPSC-CH-C1001.09.3 or U.S. Environmental Protection Agency
12 (EPA) methodology 3580A and analyzed using EPA methodology 8270D or 8270C, or other
13 methodologies utilized by federal or state government agencies to determine phthalate content in a
14 solid substance.

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty Payment**

17 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
18 to in this Consent Judgment, TMI shall pay \$3,100 in civil penalties. TMI’s civil penalty payment
19 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-
20 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
21 Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Moore. TMI shall
22 provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the
23 amount of \$2,325; and (b) “John Moore, Client Trust Account” in the amount of \$775. Moore’s
24 counsel shall be responsible for delivering the penalty payment to OEHHA.

25 **3.2 Reimbursement of Attorneys’ Fees and Costs**

26 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
27 reaching terms on the fees and costs to be reimbursed, thereby leaving the issue to be resolved after
28 the material terms of this Consent Judgment had been settled. Shortly after the other settlement terms

1 had been finalized, the Parties negotiated a reimbursement of the compensation due to Moore and his
2 counsel under general contract principles and the private attorney general doctrine codified at
3 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
4 execution of this Consent Judgment. Accordingly, TMI agrees to pay \$30,000 for all fees and costs
5 incurred by Moore investigating, bringing this matter to TMI's attention, litigating and negotiating a
6 settlement in the public interest, and obtaining court approval of the same.

7 **3.3 Payments Held in Trust**

8 All payments due under this Consent Judgment shall be delivered within fifteen (15) days of
9 the date that this Consent Judgment is fully executed by the Parties, and held in trust by TMI's
10 counsel until the Court grants the motion for approval of this Consent Judgment contemplated by
11 Section 5. TMI's counsel shall provide Moore's counsel with written notice following its receipt of
12 the settlement funds from TMI. Thereafter, TMI's counsel shall hold the funds in trust until, and
13 disburse the payments to Moore's counsel within five (5) days after the Effective Date.

14 **3.4 Payment Address**

15 All payments under this Consent Judgment shall be delivered to:

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

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Moore's Public Release of Proposition 65 Claims**

23 Moore, acting on his own behalf and in the public interest, releases TMI and its parents,
24 subsidiaries, affiliated entities under common ownership, directors, officers, employees,
25 shareholders and attorneys ("Releasees"), and each entity to whom TMI directly or indirectly
26 distributes or sells the Covered Products including, but not limited to, its downstream distributors,
27 wholesalers, customers, retailers (including, without limitation, Hobby Lobby Stores, Inc.),
28 franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any
violation arising under Proposition 65 based on a failure to warn about exposures to DEHP in
Covered Products manufactured, imported, sold, or distributed for sale by TMI prior to the Effective

1 Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
2 65 with respect to the alleged or actual failure to warn about exposures to DEHP in Covered
3 Products manufactured, imported, sold, or distributed for sale by TMI after the Effective Date.

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

5 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
6 release to TMI, Releasees, and Downstream Releasees which shall be effective as a full and final
7 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 any nature, character or kind,
9 whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to
10 DEHP in Covered Products manufactured, imported, sold, and/or distributed for sale by TMI before
11 the Effective Date.

12 **4.3 TMI's Release of Moore**

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

18 **4.4 Mutual Waiver of California Civil Code Section 1542**

19 The Parties each acknowledge that they are familiar with Section 1542 of the Civil Code,
20 which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
22 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
23 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

24 The Parties, each on their own behalf, and on behalf of their past and current agents,
25 representatives, attorneys, successors, and/or assignees, (but not in Moore's representative capacity)
26 expressly waive and relinquish any and all rights and benefits which they may have under, or which
27 may be conferred upon them by the provisions of Civil Code section 1542 as well as under any other
28 state or federal statute or common law principle of similar effect, to the fullest extent they may

1 lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by
2 Sections 4.1 through 4.3, above.

3 **5. COURT APPROVAL**

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

7 **6. ENFORCEMENT OF CONSENT JUDGMENT**

8 Only the Parties may enforce this Consent Judgment. In any action to enforce the terms or
9 conditions of this Consent Judgment, the prevailing party shall be entitled to its reasonable attorneys'
10 fees and costs.

11 **7. SEVERABILITY**

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

15 **8. 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. If Proposition 65 is repealed, preempted, or otherwise
18 rendered inapplicable by law, generally, or as to the Covered Products, then TMI may provide written
19 notice to Moore of any asserted change in the law, and shall have no further injunctive obligations
20 pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered Products are
21 so affected.

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1 **9. 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 For TMI:

6 Anthony Bazan, CEO
7 TMI Acquisition, LLC
8 3761 East Technical Drive
9 Tucson, AZ 85713

10 Michael O'Neil, Esq.
11 Murphy Austin Adams Schoenfeld LLP
12 555 Capitol Mall, Suite 850
13 Sacramento, CA 95814

14 For Moore:

15 Proposition 65 Coordinator
16 The Chanler Group
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710-2565

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

22 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

26 **11. POST-EXECUTION ACTIVITIES**

27 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
28 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent Judgment,
which Moore shall draft and file, and TMI shall support, including appearing at the settlement
approval appearing if requested.

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12. MODIFICATION

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

13. AUTHORIZATION

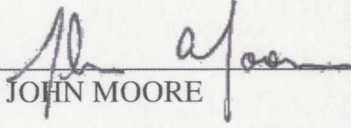
The undersigned are authorized to execute this Consent Judgment and have read, understand, and agree to all the terms and conditions contained herein.

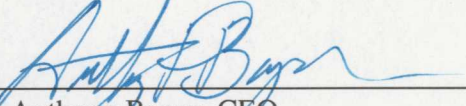
AGREED TO:

AGREED TO:

Date: 10/4/2018

Date: 12 Oct. 2018

By: 
JOHN MOORE

By: 
Anthony Bazan, CEO
TMI ACQUISITION, LLC