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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
12

13 JOHN MOORE,
14 Plaintiff,
15 v.
16 LB MARKETING, INC.; BEST BUY CO.,
17 INC.; *et al.*,
18 Defendants.

Case No. CGC-18-569699
CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

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INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff John Moore (Moore) and defendants LB Marketing, Inc. (LB Marketing) and Best Buy Co., Inc. (Best Buy), with Moore, LB Marketing, and Best Buy each referred to individually as a “Party” and collectively as the “Parties.”

1.2 Plaintiff

Moore is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer products.

1.3 Defendants

Both LB Marketing and Best Buy are, individually, a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.5 *et seq.* (Proposition 65).

1.4 General Allegations

Moore alleges that LB Marketing and/or Best Buy manufactures, imports, sells and/or distributes for sale in California vinyl headlamp cords and other portable lighting products with vinyl components containing di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard warning that Moore alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.5 Product Description

The products that are covered by this Consent Judgment are vinyl headlamp cords and other portable lighting products with vinyl components containing DEHP including, but not limited to, the *Police Security Elite Blackout Headlamp, 99434, UPC #7 04673 99434 4*, manufactured, imported, or purchased for resale by LB Marketing and distributed, sold, and/or offered for sale in the State of California (hereinafter the “Products”).

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1 **1.6 Notice of Violation**

2 On May 31, 2018, Moore served LB Marketing and Best Buy and the requisite public
3 enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that LB Marketing and
4 Best Buy violated Proposition 65 when it failed to warn its customers and consumers in California
5 that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer
6 has commenced and is diligently prosecuting an action to enforce the allegations set forth in the
7 Notice.

8 **1.7 Complaint**

9 On September 13, 2018, Moore commenced the instant action (Complaint), naming LB
10 Marketing and Best Buy, each individually, as defendants for the alleged violations of Proposition
11 65 that are the subject of the Notice.

12 **1.8 No Admission**

13 LB Marketing and Best Buy deny the material, factual and legal allegations contained in the
14 Notice and Complaint and maintain that they have not violated Proposition 65. Nothing in this
15 Consent Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute
16 or be construed as, an admission by LB Marketing or Best Buy of any fact, finding, conclusion of
17 law, issue of law, or violation of law, such being specifically denied by Defendants. This section
18 shall not, however, diminish or otherwise affect LB Marketing’s or Best Buy’s obligations,
19 responsibilities, and duties under this Consent Judgment.

20 **1.9 Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over LB Marketing and Best Buy as to the allegations contained in the Complaint, that
23 venue is proper in the County of San Francisco, and that the Court has jurisdiction to enter and
24 enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil
25 Procedure § 664.6.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
28 Consent Judgment is entered as a Judgment of the Court.

1 **INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

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

3 Commencing Effective Date and continuing thereafter, LB Marketing shall only manufacture
4 for sale, purchase for sale, or import for sale in California or to customers where the ultimate
5 customer is in California Products that are Reformulated Products as defined by Section 2.2 or sold
6 with a clear and reasonable warning in accordance with Sections 2.3 through 2.6.

7 **2.2 Reformulation Standard**

8 “Reformulated Products” are Products containing DEHP in concentrations of less than 0.1
9 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory
10 accredited by the State of California, a federal agency, or a nationally recognized accrediting
11 organization. For purposes of compliance with this reformulation standard, testing samples shall be
12 prepared and extracted using Consumer Product Safety Commission (CPSC) methodology
13 CPSC-CH-C1001.09.3 or U.S. Environmental Protection Agency (EPA) testing methodologies
14 3580A and analyzed using EPA methodology 8270D, or other equivalent methodologies utilized by
15 federal or state government agencies to determine phthalate content in a solid substance.


16 **2.3 Clear and Reasonable Warnings**


17 Commencing on or before the Effective Date, LB Marketing shall provide clear and
18 reasonable warnings for all Products provided for sale to customers in California in accordance with
19 this Section pursuant to Title 27, California Code of Regulations, § 25600, *et seq.* Each warning
20 shall be prominently placed with such conspicuousness as compared with other words, statements,
21 designs, or devices as to render it likely to be read and understood by an ordinary individual under
22 customary conditions before purchase or use and shall be provided in a manner such that it is clearly
23 associated with the specific Product to which the warning applies. Where a consumer product sign,
24 label or shelf tag used to provide a warning includes consumer information in a language other than
25 English, the warning must also be provided in that language in addition to English.

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 **Warning.** The warning shall consist of the following statement (Warning):

 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

 **Short-Form Warning.** LB Marketing may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning), and subject to the additional requirements in Sections 2.5 and 2.6, as follows:

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

2.4 Product Warnings

LB Marketing shall affix a warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, “Product label” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

2.5 Mail Order Catalog Warnings

In the event that, after the Effective Date, LB Marketing prints new catalogs and sells Products via mail order through such catalogs to customers located in California, LB Marketing shall provide a warning for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the specific Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

1 **2.6 Internet Warnings**

2 If, after the Effective Date, LB Marketing sells Products via the internet to customers located
3 in California, LB Marketing shall provide warnings for each Product both on the Product label in
4 accordance with Section 2.4, and by prominently displaying the warning to the customer prior to
5 completing the purchase or during the purchase of the Products without requiring customers to seek
6 out the warning. The Warning or a clearly marked hyperlink to the Warning using the word
7 “**WARNING**” given in conjunction with the sale of the Products via the internet shall appear either:
8 (a) on the same web page on which the Product is displayed; (b) on the same web page as the order
9 form for the Product; or (c) on one or more web pages displayed to a purchaser during the checkout
10 process. The warning shall appear in any of the above instances adjacent to or immediately
11 following the display or description of the Product for which it is given in the same type size or
12 larger than the Product description text. The internet warning may use the Short-Form Warning
13 content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-
14 Form Warning content.

15 **2.7 Products in the Stream of Commerce**

16 The requirements in Sections 2.1 through 2.6 shall not apply to any Product sold by LB
17 Marketing before the Effective Date.

18 **MONETARY SETTLEMENT TERMS**

19 **3.1 Civil Penalty Payments**

20 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to
21 in the Notice, Complaint, and this Consent Judgment, LB Marketing agrees to pay \$6,000 in civil
22 penalties. LB Marketing’s civil penalty payment will be allocated according to Health and Safety
23 Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
24 Office of Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five
25 percent (25%) of the penalty payment retained by Moore. LB Marketing shall issue its payment in
26 two checks made payable to (a) “OEHHA” in the amount of \$4,500; and (b) “John Moore, Client
27 Trust Account” in the amount of \$1,500. Moore’s counsel shall be responsible for delivering
28 OEHHA’s portion of the penalty payment.

1 employees, successors and assigns, and attorneys (collectively, Defendant Releasees) and each entity
2 to whom LB Marketing directly or indirectly distributes or sells the Products including, but not
3 limited to, its downstream distributors, wholesalers, customers, retailers (including, but not limited
4 to, Best Buy), franchisers, cooperative members, licensors and licensees (collectively, Downstream
5 Releasees) for any violations arising under Proposition 65 for unwarned exposures to DEHP from
6 the Products manufactured, imported, distributed or sold by LB Marketing prior to the Effective
7 Date, as set forth in the Notice and Complaint. Compliance with the terms of this Consent Judgment
8 constitutes compliance with Proposition 65 by LB Marketing with respect to the alleged or actual
9 failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale by
10 LB Marketing after the Effective Date.

11 **4.2 Moore's Individual Release of Claims**

12 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
13 release to LB Marketing, Defendant Releasees, and Downstream Releasees which shall be effective
14 as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
15 expenses, attorneys' fees, damages, losses, contracts, debts, rights, suits, claims, liabilities and
16 demands of Moore of any nature, character or kind, whether known or unknown, suspected or
17 unsuspected, in law or in equity, fixed or contingent, now or in the future, arising out of alleged or
18 actual exposures to DEHP in Products manufactured, imported, distributed or sold by LB Marketing
19 before the Effective Date. Nothing in Section 4 affects Moore's right to commence or prosecute an
20 action under Proposition 65 against a Releasee or Downstream Releasee that does not involve LB
21 Marketing's Products.

22 **4.3 LB Marketing's and Best Buy's Release of Moore**

23 LB Marketing, on its own behalf and on behalf of its past and current agents, representatives,
24 attorneys, successors and/or assignees, and Best Buy, on its own behalf and on behalf of its past and
25 current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all
26 claims against Moore and his attorneys and other representatives, for any and all actions taken or
27 statements made (or those that could have been taken or made) by Moore and his attorneys and other
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1 representatives in the course of investigating claims, seeking to enforce Proposition 65 against it in
2 this matter, or with respect to the Products.

3 **COURT APPROVAL**

4 This Consent Judgment shall be null and void if, for any reason, it is not approved and
5 entered by the Court within one year after it has been fully executed by all Parties. Moore, LB
6 Marketing, and Best Buy agree to support the entry of this agreement as a judgment, and to obtain
7 the Court’s approval of their settlement in a timely manner. The Parties acknowledge that, pursuant
8 to California Health and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial
9 approval of this Consent Judgment, which motion Moore shall draft and file, subject to approval by
10 LB Marketing and Best Buy. In furtherance of obtaining such approval, the Parties agree to
11 mutually employ their best efforts, and those of their counsel, to support the entry of this agreement
12 as a judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes
13 of this section, “best efforts” shall include, at a minimum, supporting the motion for approval,
14 responding to any objection that any third-party may file or lodge, and appearing at the hearing
15 before the Court if so requested.

16 If this Consent Judgment is not approved by the Court, the Parties agree to meet and confer
17 on how to proceed and if such agreement is not reached within forty-five (45) days, the case shall
18 proceed on its normal course.

19 If the Court approves this Consent Judgment and it is reversed or vacated by an appellate
20 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.
21 If, within sixty (60) days of reversal or vacation by an appellate court, the Parties do not jointly agree
22 on a course of action to take, the case shall proceed on its normal course on the trial court’s calendar.

23 **SEVERABILITY**

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

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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
4 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then LB
5 Marketing or Best Buy may provide Moore with written notice of any asserted change in the law,
6 and shall have no further injunctive obligations pursuant to this Consent Judgment, with respect to,
7 and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
8 interpreted to relieve LB Marketing or Best Buy from its obligation to comply with any pertinent
9 state or federal law or regulation.

10 **8. NOTICES**

11 Unless specified herein, all correspondence and notices required by this Consent Judgment
12 shall be in writing and sent by: (a) personal delivery, (b) first-class registered or certified mail, return
13 receipt requested; or (c) a recognized overnight courier to any Party by the other at the following
14 addresses:

- | | | | |
|----|--------------------------------|------------------------|-------------------------|
| 15 | To LB Marketing: | To Best Buy: | To Moore: |
| 16 | Douglas Kaye, CEO | ATTN: General Counsel | Attn: Proposition 65 |
| 17 | LB Marketing, Inc. | Legal Department | Coordinator |
| 18 | 8480 Holcomb Bridge Rd Ste 100 | Best Buy Co., Inc. | The Chanler Group |
| 19 | Alpharetta, GA 30022 | 7601 Penn Avenue South | 2560 Ninth Street |
| 20 | | Richfield, MN 55423 | Parker Plaza, Suite 214 |
| 21 | With a Copy To: | | Berkeley, CA 94710-2565 |
| 22 | Heather Sager, Esq. | | |
| 23 | Vedder Price (CA), LLP | | |
| 24 | 275 Battery Street, Suite 2464 | | |
| 25 | San Francisco, CA 94111 | | |
| 26 | Brett Heinrich, Esq. | | |
| 27 | Dana Mehlman, Esq. | | |
| 28 | Vedder Price LLP | | |
| | 222 North LaSalle Street | | |
| | Chicago, IL 60601 | | |

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

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1 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable
3 document format (pdf) signature, each of which shall be deemed an original and, all of which, when
4 taken together, shall constitute one and the same document.

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

6 Moore and his counsel agree to comply with the reporting form requirements referenced in
7 California Health and Safety Code § 25249.7(f).

8 **11. ENTIRE AGREEMENT**

9 This Consent Judgment contains the sole and entire agreement and understanding of the
10 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
12 therein. There are no warranties, representations, or other agreements between the Parties except as
13 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
14 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
15 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
16 exist or to bind any of the Parties hereto.

17 **12. MODIFICATION**

18 This Consent Judgment may be modified only by: (a) a written agreement of the Parties and
19 the entry of a modified Consent Judgment by the Court thereon; or (b) upon a successful motion of
20 any party and the entry of a modified Consent Judgment by the Court thereon.

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1.3. AUTHORIZATION

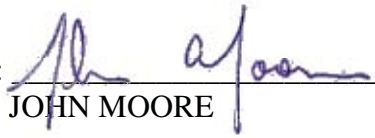
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 12/20/2018

Date: _____

By: 
JOHN MOORE

By: _____
Douglas Kaye, CEO
LB MARKETING, INC.

AGREED TO:

Date: _____

By: _____

(Please Print Name)

(Please Print Title)
BEST BUY CO., INC.

1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
4 Consent Judgment.

5
6 **AGREED TO:**

7 Date: _____

8
9 By: _____
10 JOHN MOORE

AGREED TO:

11 Date: 12-21-18

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13 
14 By: _____
15 Douglas Kaye, CEO
16 LB MARKETING, INC.

AGREED TO:

17 Date: _____

18 By: _____

19 _____
20 (Please Print Name)

21 _____
22 (Please Print Title)
23 BEST BUY CO., INC.

1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
4 Consent Judgment.

5
6 **AGREED TO:**

AGREED TO:

7 Date: _____

Date: _____

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9 By: _____
10 JOHN MOORE

By: _____
Douglas Kaye, CEO
LB MARKETING, INC.

11
12 **AGREED TO:**

13 Date: Marie Grable

14
15 By: Marie Grable

16
17 (Please Print Name)

18 VP, merchandising

(Please Print Title)

19 BEST BUY CO., INC.

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