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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 JOHN MOORE,
17 Plaintiff,
18
19 v.
20 L.D.F. INDUSTRIES, INC., *et al.*,
21 Defendants.
22

23 Case No. CCG-16-555157
24 **CONSENT JUDGMENT**
25 (Health & Safety Code § 25249.6 *et seq.* and
26 Code of Civil Procedure § 664.6)
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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore, (“Moore”) and
4 defendant L.D.F. Industries, Inc.(“L.D.F.”), with Moore and L.D.F. each referred to individually as
5 a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 L.D.F. employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5*et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that L.D.F. manufactures, imports, sells and/or distributes for sale in
16 California, vinyl/PVC rainsuits containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so
17 without providing the health hazard warning that Moore alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are vinyl/PVC rainsuits containing DEHP,
20 including, but not limited to, the *Comfi-Wear 3-Piece P.V.C. Heavy Duty Rainsuit with Super*
21 *Strong Polyester Lining, Style RW-300, #14-384, UPC #7 43153 14384 1, #7 93770 22314 3*
22 (collectively, “Products”).

23 **1.6 Notice of Violation**

24 On August 8, 2016, Moore served L.D.F. and the requisite public enforcement agencies with
25 a 60-Day Notice of Violation (“Notice”), alleging that L.D.F. violated Proposition 65 when it failed
26 to warn its customers and consumers in California that the Products expose users to DEHP. To the
27 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an
28 action to enforce the allegations set forth in the Notice.

1 **1.7 Complaint**

2 On November 2, 2016, Moore commenced the instant action, naming L.D.F., among others,
3 as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

5 L.D.F. denies the material, factual, and legal allegations contained in the Notice and
6 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
7 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
8 Judgment shall be construed as an admission by L.D.F. of any fact, finding, conclusion of law, issue
9 of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
10 construed as an admission by L.D.F. of any fact, finding, conclusion of law, issue of law, or
11 violation of law. This Section shall not, however, diminish or otherwise affect L.D.F.’s obligations,
12 responsibilities, and duties under this Consent Judgment.

13 **1.9 Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over L.D.F. as to the allegations contained in the Complaint, that venue is proper in the
16 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
17 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
20 the Court approves this Consent Judgment, including any unopposed tentative ruling granting
21 approval of this Consent Judgment.


22 **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

23 **2.1 Commitment to Reformulate or Warn**


24 Commencing on the Effective Date and continuing thereafter, LDF shall only manufacture
25 for sale, purchase for sale, or import for sale in California, Products that are either: (a)
26 Reformulated Products as defined by Section 2.2, below; or (b) Products that are offered by LDF
27 with a clear and reasonable warning pursuant to Section 2.3.
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1 The designated symbol must appear on the same page and in close proximity to the
2 display and/or description of the Product. On each page where the designated symbol appears,
3 Home Essentials must provide a header or footer directing the consumer to the warning language
4 and definition of the designated symbol.

5 **(ii) Internet Website Warning.** A warning shall be given in
6 conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on
7 the same web page on which a Product is displayed; (b) on the same web page as the order form for
8 a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
9 displayed to a purchaser during the checkout process. The following warning statement shall be
10 used and shall appear in any of the above instances adjacent to or immediately following the
11 display, description, or price of the Product for which it is given in the same type size or larger than
12 the Product description text:

13
14  **WARNING:** This product contains DEHP, a chemical
15 known to the State of California to cause birth
16 defects and other reproductive harm.

17 Alternatively, the designated symbol may appear adjacent to or immediately
18 following the display, description, or price of the Product for which a warning is being given,
19 provided that the following warning statement also appears elsewhere on the same web page, as
20 follows:

21  **WARNING:** This product contains DEHP, a chemical
22 known to the State of California to cause birth defects
23 and other reproductive harm.

24 **3. MONETARY SETTLEMENT TERMS**

25 **3.1 Civil Penalty Payment Pursuant to Health and Safety Code § 25249.7(b)(2)**

26 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
27 claims referred to in this Consent Judgment, L.D.F. shall pay \$2,000 in civil penalties in accordance
28 with this Section. This penalty payment will be allocated in accordance with California Health &

1 Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
2 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
3 remitted to Moore. Moore’s counsel shall be responsible for remitting L.D.F.’s penalty payment(s)
4 under this Consent Judgment to OEHHA. Within 5 days of the Effective Date, L.D.F. shall provide
5 the penalty payment as follows: (1) a check in the amount of \$1,500 payable to “OEHHA;” and (2)
6 a check in the amount of \$500 payable to “John Moore Client Trust Account.”

7 **3.2 Reimbursement of Attorneys’ Fees and Costs**

8 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
10 to be resolved after the material terms of the agreement had been settled. Shortly after the other
11 settlement terms had been finalized, L.D.F. expressed a desire to resolve Moore’s fees and costs.
12 The Parties then negotiated a resolution of the compensation due to Moore and his counsel under
13 general contract principles and the private attorney general doctrine codified at California Code of
14 Civil Procedure § 1021.5 for all work performed through the mutual execution of this Consent
15 Judgment. L.D.F. shall reimburse Moore and his counsel \$18,000. L.D.F.’s payment shall be
16 delivered to the address in Section 3.4 in the form of a check payable to “The Chanler Group.” The
17 reimbursement shall cover all fees and costs incurred by Moore investigating, bringing this matter
18 to L.D.F.’s attention, litigating, and negotiating a settlement of the matter in the public interest.

19 **3.3 Payment Timing; Payments Held in Trust**

20 L.D.F. shall deliver all payments required by this Consent Judgment to its counsel within
21 one week of the date that this agreement is fully executed by the Parties. L.D.F.’s counsel shall
22 confirm receipt of settlement funds in writing to Moore’s counsel and, thereafter, hold the amounts
23 paid in trust until the Effective Date. Within five (5) days of the Effective Date, L.D.F.’s counsel
24 shall mail all settlement payments it has held in trust to Moore’s counsel at the address provided in
25 Section 3.4.
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1 **3.4 Payment Address**

2 Within five days of the Effective Date, all payments required by this Consent Judgment
3 shall be delivered to the following address:

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

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Moore’s Release of Proposition 65 Claims**

9 Moore, acting on his own behalf and in the public interest, releases L.D.F. and their parents,
10 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
11 attorneys (“Releasees”) and each entity to whom they directly or indirectly distribute or sell the
12 Products including, but not limited to, their downstream distributors, wholesalers, customers,
13 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
14 any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
15 manufactured, imported, distributed or sold by L.D.F. prior to the Effective Date, as set forth in the
16 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
17 Proposition 65 by L.D.F. with respect to the alleged or actual failure to warn about exposures to
18 DEHP from Products manufactured, sold or distributed for sale by L.D.F. after the Effective Date.

19 **4.2 Moore’s Individual Release of Claims**

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

1 **4.3 L.D.F.’s Release of Moore**

2 L.D.F., on its own behalf and on behalf of its past and current agents, representatives,
3 attorneys, successors and/or 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 (or those that
5 could have been taken or made) by Moore and his attorneys and other representatives in the course
6 of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to
7 the Products.

8 **5. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and
10 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
11 after it has been fully executed by the Parties. Moore and L.D.F. agree to support the entry of this
12 agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely manner.
13 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
14 noticed motion is required for judicial approval of this Consent Judgment, which motion Moore
15 shall draft and file and L.D.F. shall support, including by appearing at the hearing if so requested.
16 If any third-party objection to the motion is filed, Moore and L.D.F. agree to work together to file a
17 reply and appear at any hearing. This provision is a material component of the Consent Judgment
18 and shall be treated as such in the event of a breach.

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
26 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then L.D.F.
27 may provide Moore with written notice of any asserted change in the law, and shall have no further
28 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the

1 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve L.D.F.
2 from its obligation to comply with any pertinent state or federal law or regulation.

3 **8. NOTICE**

4 Unless specified herein, all correspondence and notice required by this Consent Judgment
5 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
6 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
7 following addresses:

8 **To L.D.F.:**

9 Lazar Follman, President
10 L.D.F. Industries, Inc.
11 30 Warsoff Place
12 Brooklyn, NY 11205

To Moore:

Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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14 A simultaneous copy of any notice to L.D.F. shall be sent to Avrom R. Vann, Esquire, AVROM R.
15 VANN, P.C., 1211 Avenue of the Americas, 40th Floor, New York, New York 10036-8718.

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

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

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

22 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

23 Moore and his counsel agree to comply with the reporting form requirements referenced in
24 California Health and Safety Code section 25249.7(f).

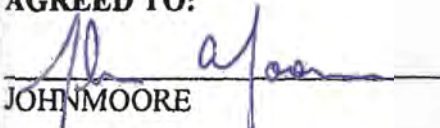
25 **11. MODIFICATION**

26 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
27 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
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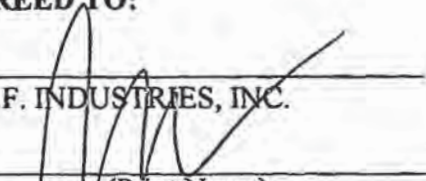
1 any party upon notice to the other party of a minimum of twenty five (25) days, and the entry of a
2 modified Consent Judgment by the Court thereon.

3 **12. AUTHORIZATION**

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

8 **AGREED TO:**
9 
10 JOHN MOORE

11 Dated: 9/11/2017

AGREED TO:
L.D.F. INDUSTRIES, INC.
By: 
(Print Name)
Its: Adam Lee
(Title)
Dated: 8.28.17

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