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10 JOHN MOORE

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA  
13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 S. P. RICHARDS COMPANY et al.,

18 Defendants.

Case No. RG12625172

**[PROPOSED] CONSENT JUDGMENT**

*(Cal. Health & Saf. Code, § 25249.6 et seq.)*

1 **1. INTRODUCTION**

2 **1.1. John Moore and S. P. Richards Company**

3 This Consent Judgment is entered into by and between John Moore (“Moore” or  
4 “Plaintiff”) and S. P. Richards Company (“S. P. Richards” or “Defendant”), with Moore and S. P.  
5 Richards collectively referred to as the “Parties.”

6 **1.2. Plaintiff**

7 Moore is an individual residing in California who seeks to promote awareness of  
8 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous  
9 substances contained in consumer and commercial products.

10 **1.3. Defendant**

11 S. P. Richards employs ten or more persons and is a person in the course of doing business  
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety  
13 Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4. General Allegations**

15 Moore alleges that S. P. Richards has manufactured, imported, distributed, sold, and/or  
16 offered for sale (collectively “Sold”) in California pencil cases/pouches containing di(2-  
17 ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is a  
18 chemical known to the State of California to cause birth defects and other reproductive harm.

19 **1.5. Product Description**

20 The products that are covered by this Consent Judgment are the following two pencil  
21 cases/pouches Sold by S. P. Richards: item number SPR01606 and item number SPR01607  
22 (“Products”).

23 **1.6. Notice of Violation**

24 On or about January 19, 2012, Moore served S. P. Richards and various public  
25 enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that  
26 provided S. P. Richards and such public enforcers with notice that Moore alleged S. P. Richards  
27 was in violation of Proposition 65 for failing to warn its direct customers and end users that its  
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1 pencil cases/pouches exposed users in California to DEHP. No public enforcer has commenced  
2 and is diligently prosecuting the allegations set forth in the Notice.

3 **1.7. Complaint**

4 On April 11, 2012, Moore filed a complaint in Alameda County Superior Court against  
5 S. P. Richards and Does 1 through 150 (the “Complaint” or “Action”), alleging violations of  
6 Proposition 65, based on the alleged exposures to DEHP contained in certain pencil  
7 cases/pouches including, but not limited to, the Products, Sold by S. P. Richards.

8 **1.8. No Admission**

9 S. P. Richards denies the material factual and legal allegations contained in the Notice and  
10 Complaint and maintains that all products that it has Sold in California, including the Products,  
11 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be  
12 construed as an admission by S. P. Richards of any fact, finding, conclusion of law, issue of law,  
13 or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as  
14 an admission by S. P. Richards of any fact, finding, conclusion of law, issue of law, or violation  
15 of law, such being specifically denied by S. P. Richards. However, this Section shall not diminish  
16 or otherwise affect S. P. Richards’ obligations, responsibilities and duties under this Consent  
17 Judgment.

18 **1.9. Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
20 jurisdiction over S. P. Richards as to the allegations contained in the Complaint, that venue is  
21 proper in Alameda County, and that this Court has jurisdiction to enter and enforce the provisions  
22 of this Consent Judgment, pursuant to California Code of Civil Procedure section 664.6, as a full  
23 and binding resolution of all claims that were or could have been raised in the Complaint against  
24 S. P. Richards based on the facts alleged therein and in the Notice.

25 **1.10. Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean March 8,  
27 2013.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 As of the Effective Date, S. P. Richards shall not ship, sell, distribute, or supply any  
3 Products unless each accessible component (i.e., any component that can be touched, handled, or  
4 mouthed by a person during reasonably foreseeable use) of each Product contains DEHP in  
5 concentration less than 1,000 parts per million when analyzed pursuant to EPA sample  
6 preparation and test methodologies 3580A and 8270C (“DEHP Standard”).

7 **3. MONETARY PAYMENTS**

8 In settlement of all the claims referred to in this Consent Judgment, S.P. Richards shall  
9 pay a total of \$22,000 in civil penalties as delineated below. Each penalty payment will be  
10 allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with  
11 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment  
12 (“OEHHA”) and the remaining 25% of the penalty remitted to Moore. All penalty payments shall  
13 be delivered to the addresses listed in Section 3.3 below.

14 **3.1. Initial Civil Penalty**

15 S.P. Richards shall pay an initial civil penalty in the amount of \$5,750 on or before 10  
16 business days after the Effective Date. S.P. Richards shall issue two separate checks as follows:  
17 (a) to “OEHHA” in the amount of \$4,312.50; and (b) to “The Chanler Group in Trust for John  
18 Moore” in the amount of \$1,437.50.

19 **3.2. Final Civil Penalty**

20 S.P. Richards shall pay a final civil penalty of \$16,250 on or before July 12, 2013. S.P.  
21 Richards shall issue two separate checks for its final civil penalty payments as follows: (a) to  
22 “OEHHA” in the amount of \$12,187.50; and (b) to “The Chanler Group in Trust for John Moore”  
23 in the amount of \$4,062.50.

24 The final civil penalty shall be waived in its entirety, however, if, no later than July 1,  
25 2013, an officer of S.P. Richards provides Moore with written certification that, since the  
26 Effective Date, and continuing into the future, S.P. Richards has and will be in compliance with  
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1 Section 2. The certification in lieu of a final civil penalty payment provided by this Section is a  
2 material term, and time is of the essence.

3 **3.3. Payment Addresses**

4 (a) All payments owed to Moore and The Chanler Group shall be delivered to the following  
5 payment address:

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

11 (b) All payments owed to OEHHA, shall be delivered directly to OEHHA (Memo line “Prop  
12 65 Penalties”) at the following addresses:

13 For United States Postal Service Delivery:

14 Mike Gyrics  
15 Fiscal Operations Branch Chief  
16 Office of Environmental Health Hazard Assessment  
17 P.O. Box 4010  
18 Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery:

20 Mike Gyrics  
21 Fiscal Operations Branch Chief  
22 Office of Environmental Health Hazard Assessment  
23 1001 I Street  
24 Sacramento, CA 95814

25 **3.4. Proof of Payment**

26 A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to  
27 The Chanler Group at the address set forth above in Section 3.3(a), as proof of payment to  
28 OEHHA.

**3.5. Reimbursement of Plaintiff’s Fees and Costs**

The Parties acknowledge that Moore and his counsel offered to resolve this dispute  
without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
this fee issue to be resolved after the material terms of the agreement had been settled. S. P.  
Richards then expressed a desire to resolve the fee and cost issue shortly after the other settlement

1 terms had been finalized. The Parties then attempted to (and did) reach an accord on the  
2 compensation due to Moore and his counsel under general contract principles and the private  
3 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all  
4 work performed in this matter, except fees that may be incurred on appeal. Under these legal  
5 principles, S. P. Richards shall pay the amount of \$49,700 for fees and costs incurred  
6 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to  
7 be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in  
8 the public interest.

9 **4. CLAIMS COVERED AND RELEASED**

10 **4.1. Plaintiff's Public Release of Proposition 65 Claims**

11 Moore, acting on his own behalf and in the public interest, releases S. P. Richards and its  
12 parent, subsidiaries, divisions, past and present officers, directors, employees, attorneys, and other  
13 representatives from all claims for violations of Proposition 65 up through the Effective Date  
14 based on exposure to DEHP from the Products as set forth in the Notices. Compliance with the  
15 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to  
16 exposures to DEHP from the Products identified above in Section 1.5.

17 **4.2. Plaintiff's Individual Release of Claims.**

18 Moore also, in his individual capacity only and *not* in his representative capacity, provides  
19 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
20 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
21 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,  
22 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the  
23 Products manufactured, distributed, or sold by S. P. Richards identified above in Section 1.5.

24 **4.3. Defendant's Release of Plaintiff**

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

4 **5. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and  
6 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
7 year after it has been fully executed by the Parties, in which event any monies that have been  
8 provided to Moore or his counsel pursuant to Section 3 above shall be refunded within fifteen  
9 (15) days after receiving written notice from S. P. Richards that the one-year period has expired.

10 **6. SEVERABILITY**

11 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
12 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
13 provisions remaining shall not be adversely affected.

14 **7. GOVERNING LAW**

15 The terms of this Consent Judgment shall be governed by the laws of the State of  
16 California.

17 **8. NOTICES**

18 Unless specified herein, all correspondence and notices required to be provided pursuant  
19 to this Consent Judgment shall be in writing and sent by (i) personal delivery, (ii) first-class,  
20 registered or certified mail, return receipt requested, or (iii) overnight courier on any party by the  
21 other party at the following addresses:

22 For S. P. Richards:

23 Tina I. Mangarpan, Esq.  
24 Ford, Walker, Haggerty & Behar LLP  
25 Twenty-Seventh Floor  
26 One World Trade Center  
27 Long Beach, California 90831  
28 *Attorneys for S. P. Richards Company*

1 For Moore:

2 Proposition 65 Coordinator  
3 The Chanler Group  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

10 This Consent Judgment may be executed in counterparts and by facsimile or .pdf  
11 signature, each of which shall be deemed an original, and all of which, when taken together, shall  
12 constitute one and the same document.

13 **10. POST EXECUTION ACTIVITIES**

14 Moore agrees to comply with the reporting form requirements referenced in Health and  
15 Safety Code section 25249.7(f). In addition, the Parties acknowledge that, pursuant to Health and  
16 Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this  
17 Consent Judgment. In furtherance of obtaining such approval, Moore and S. P. Richards and their  
18 respective counsel agree to mutually employ their best efforts to support the entry of this  
19 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
20 timely manner. For purposes of this Section, best efforts shall include, at a minimum, cooperating  
21 on the drafting and filing of any papers in support of the required motion for judicial approval.

22 **11. MODIFICATION**

23 This Consent Judgment may be modified only: (1) by written agreement of the Parties  
24 and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful  
25 motion of any party and entry of a modified consent judgment by the Court.

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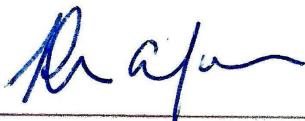



12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

By:   
JOHN MOORE

By:  Associate  
counsel  
on behalf of  
Wayne Beacham, Chief Executive Officer  
S. P. RICHARDS COMPANY

Date: March 6, 2013

Date: 2/28/13

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