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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION
12
13

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 INTEGRATED SUPPLY NETWORK, LLC;
18 *et al.*,

19 Defendants.
20

Case No. CIV1600121

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between John Moore (“Moore”) and defendant
4 Integrated Supply Network, LLC (“ISN” or “Settling Defendant”). Moore and ISN may be each
5 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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendants**

11 Plaintiff alleges that Settling Defendant employs ten or more persons and are each a “person
12 in the course of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act
13 of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Settling Defendant manufactures, imports, sells, or distributes for sale in
16 California, gloves with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”),
17 without first providing the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition
18 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive
19 harm.

20 **1.5 Product Description**

21 The Settling Defendant’s products that are covered by this Consent Judgment are defined as
22 gloves with vinyl/PVC components containing DEHP including, but not limited to, *Mountain Tech*
23 *Supreme Glove, MTN80200L, UPC #8 72857 00832 0*, which are manufactured, sold or distributed
24 for sale in California by Settling Defendant (the “Products”).

25 **1.6 Notice of Violation**

26 On or about October 21, 2015, Moore served ISN, and certain requisite public enforcement
27 agencies with a 60-Day Notice of Violation (“Notice”) alleging that ISN was in violation of
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1 Proposition 65 for failing to warn its customers and consumers in California that the Products expose
2 users to DEHP.

3 **1.7 Complaint**

4 On January 12, 2016, Moore filed the instant action (“Complaint”), naming ISN as a
5 defendant for the alleged violations of Health and Safety Code section 25249.5 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
9 were raised in the Notice and Complaint, or that could have been raised in the Complaint, arising out
10 of the facts and/or conduct alleged therein. ISN denies the material factual and legal allegations
11 contained in the Notice and Complaint, and maintains that all of the products that it has
12 manufactured, imported, sold and distributed for sale in California, including the Products, have
13 been, and are, in compliance with all laws, and are completely safe for their intended use. Nothing in
14 this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
15 issue of law, or violation of law, nor shall compliance with the terms of this Consent Judgment
16 constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or
17 violation of law. This Section shall not, however, diminish or otherwise affect ISN’s obligations,
18 responsibilities, and duties under this Consent Judgment.

19 **1.9 Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over ISN as to the allegations in the Complaint, that venue is proper in the County of
22 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
23 Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means the date this Consent
26 Judgment is approved by the Court.

1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Reformulation Commitment**

3 Commencing on the Effective Date, and continuing thereafter, ISN shall only manufacture,
4 ship, distribute, sell and/or offer for sale in California “Reformulated Products,” or Products with a
5 clear and reasonable health hazard warning, as set forth in Section 2.2, below. For purposes of this
6 Consent Judgment, “Reformulated Products” are products that contain DEHP in concentrations of
7 less than 0.1 percent (1,000 parts per million) in accessible components when analyzed pursuant to
8 any methodology utilized by federal or state agencies for the purpose of determining the DEHP
9 content in a solid substance.

10 **2.2 Product Warnings**

11 ISN represents that as of the Effective Date the Products will no longer be sold or distributed
12 by ISN in California. However, in the unlikely event that ISN sells or distributes the Products in
13 California in the future, they shall qualify as Reformulated Products, or shall carry health hazard
14 warnings as set forth below. ISN shall provide clear and reasonable warnings as set forth in
15 subsections 2.2(a) and (b), for all Products that do not currently have warnings and that do not qualify
16 as Reformulated Products. Each warning shall be prominently placed with such conspicuousness as
17 compared with other words, statements, designs, or devices as to render it likely to be read and
18 understood by an ordinary individual under customary conditions before purchase or use. Each
19 warning shall be provided in a manner such that the consumer or user understands to which *specific*
20 Product the warning applies, so as to minimize the risk of consumer confusion.

21 **(a) Retail Store Sales.**

22 **(i) Product Labeling.** ISN shall affix a warning to the packaging, labeling, or
23 directly on each of the Products provided for sale in retail outlets in California that states:

24 **WARNING:** This product contains a chemical
25 known to the State of California to cause
26 birth defects and other reproductive harm.

26 **(ii) Point-of-Sale Warnings.** Alternatively, ISN may provide warning signs in the
27 form below to its customers in California with instructions to post the warnings in close proximity to
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1 the point of display of the Products. Such instruction sent to ISN's customers shall be sent by
2 certified mail, return receipt requested.

3 **WARNING:** This product contains a chemical
4 known to the State of California to cause
5 birth defects and other reproductive harm.

6 Where more than one Product is sold in proximity to other like items or to those that do not
7 require a warning (e.g., Reformulated Products as defined in Section 2.1), the following statement
8 shall be used:¹

9 **WARNING:** The following products contain a chemical
10 known to the State of California to cause birth defects
11 and other reproductive harm:
12 [*list products for which warning is required*]

13 **(b) Mail Order Catalog and Internet Sales.** In the event that ISN sells Products via
14 mail order catalog and/or the internet, to customers located in California, after the Effective Date, that
15 are not Reformulated Products, ISN shall provide warnings for such Products sold via mail order
16 catalog or the internet to California residents. Warnings given in the mail order catalog or on the
17 internet shall identify the *specific* Product to which the warning applies as further specified in
18 Sections 2.2(b)(i) and (ii).

19 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog
20 shall be in the same type size or larger than the Product description text within the catalog. The
21 following warning shall be provided on the same page and in the same location as the display and/or
22 description of the Product:

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

26 Where it is impracticable to provide the warning on the same page and in the same location as
27 the display and/or description of the Product, ISN may utilize a designated symbol to cross reference
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¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 the applicable warning and shall define the term “designated symbol” with the following language on
2 the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

3 **WARNING:** Certain products identified with this symbol ▼
4 and offered for sale in this catalog contain a
5 chemical known to the State of California to cause
6 birth defects and other reproductive harm.

7 The designated symbol must appear on the same page and in close proximity to the display
8 and/or description of the Product. On each page where the designated symbol appears, ISN must
9 provide a header or footer directing the consumer to the warning language and definition of the
10 designated symbol.

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

18 **WARNING:** This product contains a chemical
19 known to the State of California to cause
20 birth defects and other reproductive harm.

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

24 **WARNING:** This product contains a chemical
25 known to the State of California to cause
26 birth defects and 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), in complete settlement of all the
4 claims referred to in this Consent Judgment, ISN shall pay civil penalties as described in sections
5 3.1.1 and 3.1.2 below. Each civil penalty payment shall be allocated according to Health and Safety
6 Code section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the
7 California Office of Environmental Health Hazard Assessment (“OEHHA”) and twenty-five percent
8 (25%) of the funds remitted to Moore.

9 **3.1.1 Initial Civil Penalty**

10 ISN shall deliver a check for its initial civil penalty payment in the amount of \$2,000
11 to The Chanler Group within five days following the Effective Date. ISN shall issue the check for
12 the initial civil penalty payment to “John Moore, Client Trust Account.” Moore will have the sole
13 responsibility for providing the required 75% of the initial civil penalty payment to OEHHA in
14 accordance with Health and Safety Code section 25249.12(c)(1) and (d).

15 **3.1.2 Final Civil Penalty**

16 On or before August 15, 2016, unless waived pursuant to this paragraph, ISN shall
17 make a final civil penalty payment of \$10,000. Pursuant to title 11 California Code of Regulations,
18 section 3203(c), Moore agrees that the final \$10,000 civil penalty payment shall be waived in its
19 entirety if, no later than August 1, 2016, officers of ISN provide Moore with written certification that
20 all of the Products manufactured for sale, distributed, imported for sale, or sold in California as of the
21 date of such certification are Reformulated Products as defined by Section 2.1, and that Settling
22 Defendant will continue to manufacture, ship, distribute, sell and/or offer for sale, only Reformulated
23 Products in California in the future, or no longer sell Products in California. Moore will have the sole
24 responsibility for providing the required 75% of any final civil penalty payment hereunder to
25 OEHHA in accordance with Health and Safety Code section 25249.12(c)(1) and (d). The option to
26 certify reformulation in lieu of making the final civil penalty payment required by this Section is a
27 material term and time is of the essence.
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1 **3.2 Reimbursement of Fees and Costs**

2 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
4 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
5 other settlement terms had been finalized, ISN expressed a desire to resolve Moore’s fees and costs.
6 The Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
9 execution of this Consent Judgment, and yet to be performed in connection with seeking court
10 approval and entry of this Consent Judgment, including but not limited to, preparing and filing a
11 motion seeking court approval of this Consent Judgment. ISN shall, within five (5) days following
12 the Effective Date, issue a check payable to “The Chanler Group,” in the amount of \$15,700, to the
13 address found in Section 3.3 below.

14 **3.3 Payment Addresses**

15 All payments required by ISN 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 ISN and its parents,
24 subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, and
25 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributed or sold the
26 Products, including but not limited to their downstream distributors, wholesalers, customers,
27 retailers, franchisers, franchisees, cooperative members, licensors, and licensees (“Downstream
28 Releasees”) for any alleged violations arising under Proposition 65 for unwarned exposures to
DEHP from the Products manufactured, distributed, sold or offered for sale by ISN prior to the

1 Effective Date, as set forth in the Notice and Complaint. Compliance with the terms of this Consent
2 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the
3 Products manufactured, distributed, sold or offered for sale by ISN 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 Settling Defendant, Releasees, and Downstream Releasees which shall be effective as a full
7 and final 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 Moore of any nature, character or
9 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
10 exposures to DEHP from the Products manufactured, distributed, sold or offered for sale by ISN
11 before the Effective Date.

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

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

18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and shall
20 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
21 has been fully executed by the Parties. Moore and ISN agree to support the entry of this agreement
22 as a Consent Judgment and to seek approval of the Consent Judgment by the Court in a timely
23 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
24 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
25 motion Moore shall draft and file and ISN shall support. If any third-party objection to the motion is
26 filed, Moore and ISN agree to work together to file a reply and appear at any hearing, with Moore
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1 agreeing to take the lead on any further filing required. This provision is a material component of the
2 Consent Judgment and shall be treated as such in the event of a breach.

3 If the Court does not approve the Consent Judgment, the Parties shall meet and confer as to
4 whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course of
5 action to take, then the case shall proceed in its normal course on the Court's trial calendar. If the
6 Court's approval is ultimately overturned by an appellate court, the Parties shall meet and confer as to
7 whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course
8 of action to take, then the case shall proceed in its normal course on the Court's trial calendar. In the
9 event that this Consent Judgment is entered by the Court and subsequently overturned by any
10 appellate court or not approved by the Court, any monies that have been provided to OEHHA, Moore
11 or his counsel pursuant to Section 3, above, shall be refunded within 15 days of the appellate decision
12 becoming final.

13 **6. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the state of California
15 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
16 otherwise rendered inapplicable by reason of law generally, or as to the Products, then ISN may
17 provide written notice to Moore of any asserted change in the law, and shall have no further
18 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
19 so affected. Nothing in this Consent Judgment shall be interpreted to relieve ISN from any obligation
20 to comply with any other pertinent state or federal toxics control laws.

21 **7. NOTICE**

22 Unless specified herein, all correspondence and notice required by this Consent Judgment
23 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
24 return receipt requested; or (iii) a recognized overnight courier to the following addresses:
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1 For Settling Defendant:

2 Steven T. Kowalke
3 Integrated Supply Network LLC
4 2727 Interstate Drive
5 Lakeland, FL 33805

6 With a copy to:

7 Aaron Allan, Esq.
8 Glaser Weil Fink Howard Avchen & Shapiro, LLP
9 10250 Constellation Blvd. 19th Floor
10 Los Angeles, CA 90067

11 For Moore:

12 The Chanler Group
13 Attn: Proposition 65 Coordinator
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

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

19 **8. RETENTION OF JURISDICTION**

20 This Court shall retain jurisdiction of this matter to implement or modify the Consent
21 Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision hereof,
22 under C.C.P. §664.6.

23 **9. NOTICE AND MEET AND CONFER**

24 Any Party, after meeting and conferring, may enforce the terms and conditions contained in
25 this Consent Judgment. Any action to enforce the terms of this Consent Judgment shall first comply
26 with the terms of this Section.

27 **9.1** No action to enforce this Consent Judgment may be commenced, and no notice of
28 violation related to the Products may be served against ISN, unless the party seeking enforcement or
alleging violation notifies the other party of the specific acts alleged to breach this Consent Judgment
at least 60 days before serving or filing any action or Notice of Violation and the entity receiving the
notice fails to comply with the requirements set forth in Section 10.3 below.

9.2 Any notice to ISN, or the Releasees, must contain (a) the name of the Product, (b)
specific dates when the Product was sold after the Effective Date in California without reformulation,

1 (c) the store or other place at which the Product was available for sale to consumers, and (d) any
2 other evidence or other support for the allegations

3 **9.3** Within 30 days of receiving the notice described in Section 10.2, ISN shall either
4 (1) send the store or other place at which the Product was available for sale to the public a letter
5 directing that the offending Product be immediately removed from inventory and returned to ISN for
6 full credit, including shipping costs, or (2) refute the information provided under Section 10.2.

7 **9.4** In addition to the corrective action, ISN shall reimburse Moore for his attorneys'
8 fees and costs in the amount of \$10,000 unless ISN, prior to receiving and accepting for distribution
9 or sale the Products identified in the notice pursuant to Section 9.2, obtained test results (a) from a
10 domestic accredited laboratory, (b) done before the first distribution or sale of the Products, (c)
11 demonstrating that all of the accessible components of the Products identified in the notice pursuant
12 to Section 9.2 complied with the Section 2.1 above.

13 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

17 **11. POST EXECUTION ACTIVITIES**

18 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
19 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
20 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
21 furtherance of obtaining such approval, Moore and ISN agree to mutually employ their best efforts,
22 and that of their counsel, to support the entry of this agreement as a judgment, and to obtain judicial
23 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
24 include, at a minimum, cooperating with the drafting and filing of the necessary moving papers, and
25 supporting the motion for judicial approval.
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1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
3 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
4 Party, and the entry of a modified consent judgment by the Court. The parties agree to meet and
5 confer in good faith prior to the filing of any motion or application to modify this Consent Judgment.

6 **13. AUTHORIZATION**

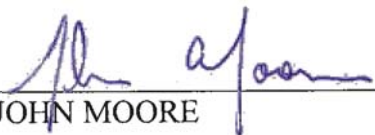
7 The undersigned are authorized to execute this Consent Judgment and have read, understood,
8 and agree to all of the terms and conditions contained herein.

9
10 **AGREED TO:**

AGREED TO:

11 Date: 3/30/2016

Date: _____

12
13 By: 
14 JOHN MOORE

Name: _____

Title: _____

15 By: _____
16 Defendant Integrated Supply Network, LLC.

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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. The parties agree to meet and confer in good faith prior to the filing of any motion or application to modify this Consent Judgment.

13. AUTHORIZATION

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

AGREED TO:

AGREED TO:


Date: _____

Date: 31 MAR 16

By: _____
JOHN MOORE

Name: Steven T. Kowalke

Title: VP of Category Management

By: 
Defendant Integrated Supply Network, LLC.