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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
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14 JOHN MOORE,

15 Plaintiff,

16 v.

17 MAVERICK APPAREL LLC; *et al.*

18 Defendants.
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Case No. CGC-16-551288

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”), and
4 Maverick Apparel LLC (“Maverick Apparel”), with Moore and Maverick Apparel each individually
5 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 Maverick Apparel**

11 Plaintiff alleges, and Maverick Apparel disputes, that Maverick Apparel employs ten or more
12 individuals and is a “person in the course of doing business” for purposes of the Safe Drinking Water
13 and Toxic Enforcement Act of 1986, Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Maverick Apparel imports, sells, or distributes for sale in California
16 vinyl/PVC jackets that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the
17 exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC jackets containing DEHP that
21 are imported, sold, and/or distributed for sale in California by Maverick Apparel including, but not
22 limited to, the vinyl/PVC jacket sold as the *Miss London Jacket, RN #115366, #400118913245*,
23 hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On October 21, 2015, Moore served Maverick Apparel and the requisite public enforcement
26 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Maverick Apparel violated
27 Proposition 65 by failing to warn its customers and consumers in California of the health hazards
28 associated with exposures to DEHP from the Products. To the best of the Parties’ knowledge, no

1 public enforcer has commenced and is diligently prosecuting an action to enforce the violations
2 alleged in the Notice.

3 **1.7 Complaint**

4 On April 5, 2016, Moore filed the instant action (“Complaint”), naming Maverick Apparel as
5 a defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the
6 Notice.

7 **1.8 No Admission**

8 Maverick Apparel denies the material, factual, and legal allegations contained in the Notice
9 and Complaint, and maintains all of the products it sold and distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law, including whether
14 Maverick Apparel is a “person in the course of doing business as defined in Health and Safety Code
15 section 25249.11(b).” This Section shall not, however, diminish or otherwise affect Maverick
16 Apparel’s obligations, responsibilities, and duties under this Consent Judgment.

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Maverick Apparel as to the allegations in the Complaint, that venue is proper in the
20 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
21 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
24 the Motion for Approval of the Consent Judgment is granted by the Court.

25 **2. INJUNCTIVE RELIEF: REFORMULATION**

26 **2.1 Reformulated Products**

27 Commencing on the Effective Date and continuing thereafter, Maverick Apparel agrees to
28 only manufacture for sale, import for sale, or purchase for sale in or into California, “Reformulated

1 Products.” For purposes of this Consent Judgment, “Reformulated Products” are Products containing
2 DEHP in a maximum concentration of 1,000 parts per million (0.1%) in any accessible component
3 (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed
4 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or
5 equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP
6 content in a solid substance.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Civil Penalty Payments**

9 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims referred
10 to in the Notice, Complaint, and this Consent Judgment, Maverick Apparel shall pay \$12,000 in civil
11 penalties. Each civil penalty payment shall be allocated according to Health and Safety Code §
12 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
13 of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent
14 (25%) of the penalty retained by Moore. Moore’s counsel shall be responsible for delivering
15 OEHHA’s portion of any penalty payment(s) made under this Consent Judgment.

16 **3.1.1 Initial Civil Penalty**

17 Within five days of the Effective Date, Maverick Apparel shall make an initial civil
18 penalty payment of \$3,000, in a single check made payable to “John Moore, Client Trust Account.”

19 **3.1.2 Final Civil Penalty**

20 On January 15, 2017, Maverick Apparel shall make a final civil penalty payment of
21 \$9,000. Pursuant to title 11 California Code of Regulations, § 3203(c), Moore agrees that the final
22 civil penalty payment shall be waived in its entirety if, no later than December 31, 2016, an officer of
23 Maverick Apparel provides Moore with a signed declaration certifying that all of the Products it is
24 manufacturing for sale, selling, shipping for sale, or distributing for sale in California, as of the date
25 of its declaration, are Reformulated Products, as defined by Section 2.1, and that Maverick Apparel
26 will continue to offer only Reformulated Products for sale in California in the future. The option to
27 certify to complete reformulation in lieu of making the final civil penalty payment required by this
28 Section is a material term, and time is of the essence.

1 **3.2 Reimbursement of Attorney’s 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, the Parties negotiated the compensation due to Moore and
6 his counsel, under general contract principles and the private attorney general doctrine codified at
7 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of
8 this Consent Judgment, and through court approval of the same, but exclusive of fees and costs on
9 appeal, if any. The Parties agree that Maverick Apparel shall make four, equal installment payments
10 of \$5,625 each, for a total of \$22,500, for all fees and costs incurred by Moore in investigating,
11 bringing this matter to Maverick Apparel’s attention, litigating, and negotiating a settlement in the
12 public interest.

13 Within five days of the Effective Date, Maverick Apparel shall make the first of its three
14 installments payments in the amount of \$5,625. Maverick Apparel shall make the final three
15 installment payments of \$5,625 each, by delivering a check on or before each due date below:

- 16 • Thirty-five days after the Effective Date;
17 • Sixty-five days after the Effective Date; and
18 • Ninety-five days after the Effective Date.

19 Should Maverick Apparel fail to make any of its installment payments in a timely manner, the
20 Parties agree and understand that any and all unpaid amounts will be immediately due and owing, and
21 that Moore will be entitled to recover his reasonable costs and fees, if any, incurred in seeking to
22 enforce the monetary terms of this Consent Judgment.

23 All payments required by this Section shall be made payable to “The Chanler Group.”

24 **3.3 Payment Address**

25 All payments required by this Consent Judgment shall be delivered to:

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Moore’s Public Release of Proposition 65 Claims**

3 Moore, acting on his own behalf and in the public interest, releases Maverick Apparel and
4 its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
5 and attorneys (“Releasees”), and each entity to whom Maverick Apparel directly or indirectly
6 distributes or sells the Products including, without limitation, its downstream customers,
7 distributors, wholesalers, and retailers (“Downstream Releasees”) for any violation arising under
8 Proposition 65 pertaining to the failure to warn about exposures to DEHP from Products sold or
9 distributed for sale by Maverick Apparel prior to the Effective Date, as set forth in the Notice.
10 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
11 with respect to exposures to DEHP from Products sold or distributed for sale by Maverick Apparel
12 after the Effective Date. The Parties agree and acknowledge that the releases provided under this
13 Consent Judgment shall not extend upstream to any entity that manufactured the Products, or any
14 components part thereof, or to any entity that distributed or sold the Products, or any component
15 parts thereof, to Maverick Apparel.

16 **4.2 Moore’s Individual Release of Claims**

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

24 **4.3 Maverick Apparel’s Release of Moore**

25 Maverick Apparel, on its own behalf, and on behalf of its past and current agents,
26 representatives, attorneys, successors, and assignees, hereby waives any and all claims against
27 Moore and his attorneys and other representatives, for any and all actions taken or statements made
28

1 by Moore and his attorneys and other representatives, whether in the course of investigating claims,
2 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

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 within such additional time as the Parties may agree to in writing.

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the state of California
13 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
14 rendered inapplicable by reason of law generally or as to the Products, then Maverick Apparel may
15 provide written notice to Moore of any asserted change in the law, and shall have no further
16 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
17 Products are so affected.

18 **8. NOTICE**

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

22 For Maverick Apparel:

23 Stephen Shalam, Chief Executive Officer
24 Maverick Apparel LLC
25 112 West 34th Street, Suite 830
26 New York, NY 10120

26 with a copy to Maverick Apparel's counsel:

27 Jeffrey Margulies
28 Norton Rose Fulbright US LLP
555 South Flower Street, 41st Floor
Los Angeles, CA 90071

1 For Moore:

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
15 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
16 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
17 of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their
18 counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their
19 settlement in a timely manner. For purposes of this Section, “best efforts” shall include, at a
20 minimum, cooperating on the drafting and filing of the necessary moving papers, supporting the
21 motion, and appearing at the hearing before the Court.

22 **11. DISMISSAL OF ROSS STORES, INC.**

23 Moore agrees that, within five days of his receipt of the initial civil penalty and the fee
24 reimbursement payments, required by Sections 3.1 and 3.2, inclusive of subsections, Moore shall file
25 a request for dismissal without prejudice as to defendant Ross Stores, Inc..

26 **12. MODIFICATION**

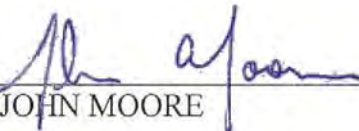
27 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
28 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
of any Party, and the entry of a modified consent judgment thereon by the Court.

1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
3 have read, understand, and agree to all of the terms and conditions contained herein.

4
5 **AGREED TO:**

6
7 Date: 8/29/2016

8
9 By: 
JOHN MOORE

5 **AGREED TO:**

6
7 Date: 8/29/16

8
9 By:  Member
[name], [title]
MAVERICK APPAREL LLC
Murray Shabot
Murray Shabot, Member