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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 METRA ELECTRONICS CORPORATION;
18 *et al.*,

19 Defendants.

Case No. RG15754185

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between John Moore (“Moore”) and Metra
4 Electronics Corporation (“Metra”), with Moore and Metra each individually referred to as a “Party”
5 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 Defendant**

11 Metra employs ten or more persons and, for purposes of this Consent Judgment only,
12 acknowledges it is a “person in the course of doing business” for purposes of the Safe Drinking
13 Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.*
14 (“Proposition 65”).

15 **1.4 General Allegations**

16 Moore alleges that Metra manufactures, sells, and/or distributes for sale, in California, tools
17 with vinyl/PVC grips that contain the chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed
18 pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.
19 Moore alleges that Metra failed to provide the health hazard warning required by Proposition 65 for
20 exposures to DEHP from its tool grips.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are tools with vinyl/PVC grips containing
23 DEHP that are manufactured, sold, or distributed for sale in California by Metra, including, without
24 limitation, those tools with vinyl/PVC grips offered in connection with the Bay Installation Hardware
25 Complete Install Kit, IBR 36, #3339120612, UPC# 0 8642917047 0. All such tools with grips are
26 referred to collectively hereinafter as the “Products.”

27
28

1 **1.6 Notice of Violation**

2 On or about September 30, 2014, Moore served Metra, the California Attorney General, and
3 other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging
4 that Metra violated Proposition 65 when it failed to warn in California of the health hazards
5 associated with exposures to DEHP from the Products. To the best of the Parties’ knowledge, no
6 public enforcer has commenced and is diligently prosecuting an action to enforce the violations
7 alleged in the Notice.

8 **1.7 Complaint**

9 On January 9, 2015, Moore filed the instant action (“Complaint”), naming Metra as a
10 defendant for the violations of Health and Safety Code section 25249.6 that are the subject of the
11 Notice.

12 **1.8 No Admission**

13 Metra denies the material, factual, and legal allegations contained in the Notice and
14 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
15 including but not limited to the Products, have been, and are, in compliance with all laws. Nothing in
16 this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
17 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
18 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.
19 This Section shall not, however, diminish or otherwise affect Metra’s obligations, responsibilities,
20 and duties under this Consent Judgment.

21 **1.9 Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Metra as to the allegations in the Complaint, that venue is proper in the Alameda
24 County and that this Court has jurisdiction to enter and enforce the provisions of this Consent
25 Judgment pursuant to Proposition 65 and California Code of Civil Procedure section 664.6.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” means the date that the
28 Court grants the motion for approval of this Consent Judgment contemplated by Section 10.

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

2 **2.1 Reformulation Standard**

3 Commencing on the Effective Date and continuing thereafter, Metra shall only sell in
4 California or distribute for sale in California, (a) “Reformulated Products”; or (b) Products that
5 contain a clear and reasonable warning pursuant to Section 2.2. For purposes of this Consent
6 Judgment, the term “Reformulated Products” shall refer to Products containing a maximum of 1,000
7 ppm (0.1%) DEHP content in any vinyl/PVC grip component analyzed pursuant to EPA testing
8 methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for
9 purposes of determining DEHP content in a solid substance.

10 **2.2 Clear and Reasonable Warnings**

11 Commencing on the Effective Date and continuing thereafter, for all Products that are not
12 Reformulated Products, Metra agrees that it will only sell or distribute such Products for sale in
13 California with a clear and reasonable warning pursuant to this Section. Metra further agrees that the
14 warning will be prominently placed with such conspicuousness when compared with other words,
15 statements, designs, or devices as to render it likely to be read and understood by an ordinary
16 individual under customary conditions before potential exposure. For purposes of this Consent
17 Judgment, a clear and reasonable warning shall consist of a warning affixed to the packaging, label,
18 tag, or directly to a Product sold in California and contain the following statement:

19 **WARNING:** This product contains chemicals known to the
20 State of California to cause [cancer and¹] birth
21 defects or other reproductive harm.

22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Civil Penalty Payments**

24 Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all the claims referred to
25 in this Consent Judgment, Metra shall pay \$9,000 in civil penalties, as provided by this Section. Each
26 civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1)

27 ¹ While Moore has only alleged Metra failed to warn about exposures to DEHP requiring a
28 warning due to the risk of reproductive harm, the bracketed “cancer and” may be incorporated into
the warning statement for Products that cause an exposure to a Proposition 65-listed carcinogen.

1 and (d) with seventy-five percent (75%) of the penalty paid to the California Office of Environmental
2 Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) paid to Moore. Moore’s
3 counsel shall be responsible for delivering OEHHA’s portion of any penalty payment(s) made to
4 OEHHA.

5 **3.1.1 Initial Civil Penalty**

6 On or before January 15, 2015, Metra shall make an initial civil penalty payment of
7 \$3,000. Metra shall provide its payment in a single check made payable to “John Moore, Client Trust
8 Account”, and Moore shall deliver OEHHA’s portion of the penalty payment (75% or \$2,250) to
9 OEHHA.

10 **3.1.2 Final Civil Penalty**

11 On or before the Effective Date, Metra shall make a final civil penalty payment of
12 \$6,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Moore agrees that the
13 final civil penalty payment shall be waived in its entirety if, no later than May 15, 2015, an officer of
14 Metra provides Moore with written certification that all of the Products it manufactures for sale or
15 purchases for sale in California as of the date if its certification are Reformulated Products, and that
16 Metra will continue to offer only Reformulated Products in California in the future or, alternatively,
17 an officer of Metra provides Moore with written certification that Metra is no longer selling the
18 Products in California as of the date of its certification and, if Metra thereafter elects to sell the
19 Products in California, Metra will offer only Reformulated Products in California. The option to
20 certify reformulation or not selling of Products in California in lieu of making the final civil penalty
21 payment otherwise required by this Section is a material term, and time is of the essence.

22 **3.2 Reimbursement of Fees and Costs**

23 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
24 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
25 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
26 other settlement terms had been finalized, Metra expressed a desire to resolve Moore’s fees and costs.
27 The Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
28 counsel under general contract principles and the private attorney general doctrine codified at

1 California Code of Civil Procedure section 1021.5 for all work performed in this matter, including
2 obtaining the Court's approval of the settlement, but exclusive of fees and costs on appeal, if any.
3 Within five days of the Effective Date, Metra shall pay \$29,500 in the form of a check made payable
4 to "The Chanler Group" for all fees and costs incurred by Moore investigating, bringing this matter to
5 Metra's attention, and negotiating a settlement in the public interest.

6 **3.3 Payment Procedures**

7 All payments due under this Consent Judgment are to be held in trust by Metra's counsel
8 until such time as the Court approves the Consent Judgment. Funds are to be tendered to Metra's
9 counsel no later than forty-five (45) days after this Consent Judgment is fully executed by the
10 Parties.

11 **3.3.1 Payment Address**

12 All payments under this Consent Judgment shall be delivered to:

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

18 **3.4 Approval Prerequisite to Payment/Disbursement**

19 As more fully set forth in Section 5, this Consent Judgment is not effective unless and until it
20 has been approved and entered by the Court. In the event approval of the Consent Judgment is not
21 granted, Moore and his counsel agree that any amounts paid by Metra to Moore or his counsel, or
22 being held in trust by Metra's counsel shall be returned to Metra within 10 days of Moore's counsel
23 receiving written notice from Metra requesting a reimbursement of such amounts as a result of the
24 Consent Judgment not having been approved by the Court within a reasonable time.

25 **4. CLAIMS COVERED AND RELEASED**

26 **4.1 Moore's Public Release of Proposition 65 Claims**

27 Moore, acting on his own behalf and in the public interest, releases Metra and its parents,
28 subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents,
attorneys and other representatives ("Releasees") and each entity to whom it directly or indirectly
distributes or sells the Products, including, but not limited to, its downstream distributors,

1 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
2 (“Downstream Releasees”) for violations arising under Proposition 65 for alleged or actual
3 exposures to DEHP from Products sold by Metra prior to the Effective Date, as set forth in the
4 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
5 Proposition 65 with respect to the failure to warn about exposures to DEHP in Products sold by
6 Metra before the Effective Date.

7 **4.2 Moore’s Individual Release of Claims**

8 Moore, in his individual capacity only and *not* in his representative capacity, and on behalf
9 of his past and current agents, attorneys, other representatives, successors, and assignees, also
10 provides a release to Metra, Releasees, and Downstream Releasees which shall be effective as a full
11 and final accord and satisfaction, as a bar to all actions, claims, causes of action, obligations, costs,
12 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature,
13 character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
14 actual exposures to DEHP in Products sold or distributed for sale by Metra before the Effective
15 Date.

16 **4.3 Metra’s Release of Moore**

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

22 **4.4 Mutual California Civil Code Section 1542 Waiver**

23 The Parties each acknowledge that he/it is familiar with Section 1542 of Civil Code, which
24 provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
26 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
27 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
28 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

1 The Parties, each on his/its own behalf, and on behalf of his/its past and current agents,
2 representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all
3 rights and benefits which he/it may have under, or which may be conferred on him/it by the
4 provisions of Civil Code section 1542 as well as under any other state or federal statute or common
5 law principle of similar effect, to the fullest extent that he/it may lawfully waive such rights or
6 benefits pertaining to the released matters.

7 **5. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court and shall
9 be null and void if, for any reason, it is not approved and entered by the Court after it has been fully
10 executed by the Parties. Moore and Metra agree that if the Consent Judgment is not approved by the
11 Court, they will meet and confer to determine whether to revise and/or resubmit the Consent
12 Judgment to the Court, or to appeal any ruling denying approval. Moore and Moore's counsel further
13 agree that if the Consent Judgment is not approved within a reasonable time any monies paid to
14 Moore or Moore's counsel or being held in trust by Metra's counsel shall be returned to Metra
15 pursuant to Section 3.4, and the case will return to its status prior to the execution of the Consent
16 Judgment on the Court's trial calendar.

17 **6. SEVERABILITY**

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

21 **7. GOVERNING LAW**

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

1 **8. NOTICE**

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

6 For Metra:

7 Mr. Tony Guidice, CFO
8 Metra Electronics Corporation
9 460 Walker Street
10 Holly Hill, FL 32117

11 with copies to both:

12 Michael D. Abraham, Esq.
13 Bartko, Zankel, Bunzel & Miller
14 One Embarcadero Center, Suite 800
15 San Francisco, CA 94111

16 Chobbee Ebbets, Esq.
17 Ebbets, Armstrong & Traster
18 210 South Beach Street, Suite 200
19 Daytona Beach, FL 32114
20 (386) 253-2288

21 For Moore:

22 The Chanler Group
23 Attn: Proposition 65 Coordinator
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

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

29 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

33 **10. POST EXECUTION ACTIVITIES**

34 Moore agrees to comply with the reporting form requirements of Health and Safety Code
35 section 25249.7(f). In addition to the payment and other obligations addressed more fully herein, the


1 Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed
2 motion is required to obtain judicial approval of their settlement. In furtherance of obtaining such
3 approval, Moore and Metra agree to mutually employ their best efforts, and that of their counsel, to
4 support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in
5 a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum,
6 cooperating with the drafting and filing of the necessary moving papers, and supporting the motion
7 for judicial approval.

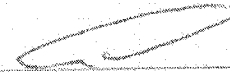
8 **11. MODIFICATION**

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

12 **12. AUTHORIZATION**

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

15 **AGREED TO:**
16
17 Date: JANUARY 26, 2015
18
19 By: 
20 JOHN MOORE

AGREED TO:
Date: JANUARY 23, 2015
METRA ELECTRONICS CORPORATION
By: 
Its: CF

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