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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN MATEO
15 UNLIMITED CIVIL JURISDICTION

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 NADY SYSTEMS, INC., *et al.*,

20 Defendants.

Case No. 17CIV02734

[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 plaintiff John Moore (“Moore”) and
4 defendant Nady Systems, Inc., (“Nady”), with Moore and Nady each individually referred to as a
5 “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 Defendant**

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

14 **1.4 General Allegations**

15 Moore alleges that Nady sells and distributes for sale in California, vinyl/PVC microphone
16 pouches and vinyl/PVC microphone cords containing di(2-ethylhexyl) phthalate (“DEHP”), and that
17 it does so without first providing the exposure warning required by Proposition 65. DEHP is listed
18 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and
19 other reproductive harm. Nady denies Moore’s allegations.

20 **1.5 Product Description**

21 For purposes of this Consent Judgment, “Products” are defined as: (i) vinyl/PVC microphone
22 pouches containing DEHP, and, (ii) vinyl/PVC microphone cords containing DEHP that are
23 manufactured, sold or distributed for sale in California by Nady, including, but not limited to the cord
24 and pouch components of the *Nady Studio Condenser Microphone, SCM-700, UPC #6 34343 28565*
25 *9*.

26 **1.6 Notice of Violation**

27 On December 6, 2016, Moore served Nady, the California Attorney General, and all other
28 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice

1 alleges that Nady violated Proposition 65 when they failed to warn their customers and consumers in
2 California that the Products expose users to DEHP.

3 **1.7 Complaint**

4 On or about June 20, 2017, Plaintiff filed the instant action (“Complaint”), naming Nady as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Nady denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products that it has 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, the same being
14 specifically denied by Nady. This Section shall not, however, diminish or otherwise affect Nady’s
15 obligations, responsibilities, and duties under this Consent Judgment.

16 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
23 the Court approves this Consent Judgment, including any unopposed tentative ruling.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Commitment to Reformulate or Provide Warnings**

3 Commencing no later than thirty (30) days after the Effective Date, and continuing thereafter,
4 Nady agrees to only manufacture, distribute, purchase for sale, or offer for sale in or into California:
5 (a) "Reformulated Products", or (b) Products that are sold with a clear and reasonable health hazard
6 warning, pursuant to Section 2.2 below.

7 **2.2 Reformulated Products Defined**

8 For purposes of this Consent Judgment, "Reformulated Products" shall mean Products
9 containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any
10 component that may be touched during use) when analyzed pursuant to Environmental Protection
11 Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or
12 state agencies for the purpose of determining DEHP content in a solid substance.

13 **2.3 Clear and Reasonable Warnings Defined**

14 Commencing no later than thirty (30) days after the Effective Date, and continuing thereafter,
15 all Products Nady sells and/or distributes for sale in California which do not qualify as Reformulated
16 Products, will bear a clear and reasonable warning pursuant to this Section. Nady further agrees that
17 the warning will be prominently placed with such conspicuousness when compared with other words,
18 statements, designs or devices as to render it likely to be read and understood by an ordinary
19 individual under customary conditions of use. For purposes of this Settlement Agreement, a clear
20 and reasonable warning for the Products shall consist of a warning affixed to the packaging, label,
21 tag, or directly to a Product sold in California and containing the following statement:

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

25 **3. MONETARY SETTLEMENT TERMS**

26 **3.1 Civil Penalty Payment**

27 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all claims alleged in
28 the Notice and Complaint, and referred to in this Consent Judgment, Nady shall pay a civil penalty of
\$2,000. Nady's payment will be allocated pursuant to Health and Safety Code section 25249.12(c)(1)

1 and (d) with seventy-five percent (75%) of the penalty paid to the California Office of Environmental
2 Health Hazard Assessment (“OEHHA”) and remaining twenty-five percent (25%) of the penalty
3 retained by Moore. Within five (5) days of the Effective Date, Nady shall deliver its payment in two
4 checks made payable to (a) “OEHHA” in the amount of \$1,500, and (b) “John Moore, Client Trust
5 Account” in the amount of \$500. Moore’s counsel shall deliver OEHHA’s penalty payment to
6 OEHHA.

7 **3.2 Reimbursement of 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, thereby leaving the issue to be
10 resolved after the material terms of their settlement had been finalized. Shortly after the other
11 settlement terms had been finalized, Nady and Moore’s negotiated a resolution of the compensation
12 due to Moore and his counsel under general contract principles and the private attorney general
13 doctrine codified at California Code of Civil Procedure section 1021.5. For all work performed
14 through the mutual execution of this agreement and the Court’s approval of the same, Nady shall
15 reimburse Wozniak and his counsel \$18,000 to be delivered in three (3) installments according to the
16 following schedule: (1) \$6,000 due within five (5) days of the Effective Date; (2) \$6,000 within thirty
17 (30) days of the Effective Date; and (3) \$6,000 within sixty (60) days of the Effective Date. Each
18 payment shall be in the form of a check payable to “The Chanler Group.” The reimbursement shall
19 cover all fees and costs incurred by Moore investigating, bringing this matter to Nady’s attention,
20 litigating, and negotiating a settlement of the matter in the public interest.

21 **3.3 Payment Timing**

22 In the event that any payment required by this Consent Judgment is untimely, the Parties
23 agree and acknowledge that (a) Nady shall be liable to Moore for 10% simple interest per annum on
24 any unpaid amount(s); (b) Moore may seek to enforce Nady’s payment obligations under general
25 contract principles and Code of Civil Procedure section 664.6; and (c) Moore shall be entitled to
26 reasonable fees incurred recovering such settlement payments pursuant to general contract principles
27 and Code of Civil Procedure section 1021.5.
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3 **3.4 Payment Address**

4 Within five days of the Effective Date, all payments required by this Consent Judgment shall
5 be delivered to:

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

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Moore’s Public Release of Proposition 65 Claims**

13 Moore, acting on his own behalf and in the public interest, releases Nady and its parents,
14 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
15 attorneys (“Releasees”) and each entity to whom Nady directly or indirectly distributes or sells the
16 Products including, but not limited to, its downstream distributors, wholesalers, customers
17 (including, without limitation, Fry’s Electronics, Inc.) , retailers, franchisers, cooperative members,
18 licensors, and licensees (“Downstream Releasees”) for any violation arising under Proposition 65
19 alleging a failure to warn about exposures to DEHP in Products sold by Nady prior to the Effective
20 Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
21 compliance with Proposition 65 with respect to the failure to about exposures to DEHP in Products
22 sold by Nady after the Effective Date.

23 **4.2 Moore’s Individual Release of Claims**

24 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
25 release to Nady, Releasees, and Downstream Releasees which shall be effective as a full and final
26 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
27 attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or
28 kind, arising out of alleged or actual exposures to DEHP in Products manufactured, imported, sold or
distributed for sale by Nady before the Effective Date.

29 **4.3 Nady’s Release of Moore**

1 Nady, on its own behalf, and on behalf of its past and current agents, representatives,
2 attorneys, successors, and assignees, hereby waives all claims against Moore and his attorneys and
3 other representatives, for any actions taken or statements made, whether in the course of
4 investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to
5 the Products.

6 **4.4 Mutual Waiver of California Civil Code Section 1542**

7 The Parties each acknowledge that they are familiar with Section 1542 of the Civil Code,
8 which provides as follows:

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

13 The Parties, each on their own behalf, and on behalf of their past and current agents,
14 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all
15 rights and benefits which they may have under, or which may be conferred upon them by the
16 provisions of Civil Code section 1542 as well as under any other state or federal statute or common
17 law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits
18 pertaining to the released matters, as specifically defined by Sections 4.1 through 4.3, above.

19 **5. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and shall
21 be null and void if it is not approved and entered by the Court within one year after it has been fully
22 executed by the Parties, or by such additional time to which the Parties may agree in writing.

23 **6. AGREEMENT TO DISMISS RETAIL CUSTOMER**

24 Moore agrees that within 10 days of the Effective Date or his receipt of the settlement
25 payments required by Sections 3.1 and 3.2 from Nady, whichever is later, he will file a request for
26 dismissal with prejudice as to defendant Fry's Electronics, Inc.
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1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the state of California
7 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
8 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Nady may
9 provide written notice to Moore of any asserted change in the law, and shall have no further
10 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
11 Products are so affected.

12 **9. NOTICE**

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

16 For Nady:

17 John Nady, President
18 Nady Systems, Inc.
19 870 Harbour Way South
 Richmond, CA 94804

20 For Moore:

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

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

26 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

27 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
28 which shall be deemed an original, and all of which, when taken together, shall constitute one and the

1 same document.

2 **11. POST EXECUTION ACTIVITIES**

3 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
4 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
5 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
6 furtherance of obtaining such approval, Moore and Nady agree to mutually employ their best efforts,
7 and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
8 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
9 include, at a minimum, supporting the motion for approval, responding to any objection or opposition
10 any third-party may file or lodge, and appearing before the Court at the hearing, if so requested.

11 **12. MODIFICATION**

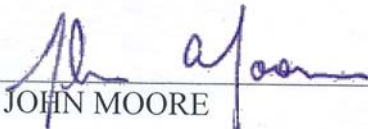
12 This Consent Judgment may only be modified by: (i) a written agreement of the Parties and
13 entry of a modified consent judgment by the Court thereon; or (ii) a successful motion or application
14 of any Party, and the entry of a modified consent judgment by the Court thereon.

15 **13. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment and have read, understand,
17 and agree to all of the terms and conditions set forth herein.

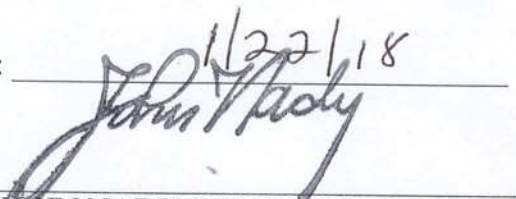
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19 **AGREED TO:**

20 Date: 1/25/2018

21
22 By: 
23 JOHN MOORE

AGREED TO:

20 Date: 1/22/18

21
22 By: 
23 JOHN NADY, PRESIDENT
24 NADY SYSTEMS, INC.