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JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

JOHN MOORE

Plaintiff,

v.

SHAGHAL LTD; FRY'S ELECTRONICS,
INC., and DOES 1-150,

Defendants.

Case No. CGC-15-547580

[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 Shaghal Ltd. d/b/a Ematic (“Shaghal”), with Moore and Shaghal 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 to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Shaghal 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 Shaghal imports, sells, or distributes for sale in California, headphones
16 with vinyl/PVC cords 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. Fry’s Electronics (“Fry’s”) is a
19 retail customer of Shaghal’s in California.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are headphones with vinyl/PVC cords
22 containing DEHP that are imported, sold, or distributed for sale in California by Shaghal in
23 connection with the *Ematic E6 Jr. MP3 Player, EM654VID, UPC #817717 01127 3*, hereinafter the
24 “Products.”

25 **1.6 Notice of Violation**

26 On or about February 27, 2015, Moore served Shaghal, Fry’s, and the requisite public
27 enforcement agencies with a “60-Day Notice of Violation” (“Notice”), alleging that Shaghal and
28 Fry’s had violated Proposition 65 by failing to warn their customers and consumers in California of

1 the health hazards associated with exposures to DEHP from the Products. To the best of the Parties'
2 knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the
3 violations alleged in the Notice.

4 **1.7 Complaint**

5 On August 25, 2015, Moore filed the instant action ("Complaint") naming Shaghal and Fry's
6 as defendants for the alleged violations of Health and Safety Code section 25249.6 that are the
7 subject of the Notice.

8 **1.8 No Admission**

9 Shaghal denies the material, factual, and legal allegations contained in the Notice and
10 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
11 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
12 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
13 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
14 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
15 not, however, diminish or otherwise affect Shaghal's obligations, responsibilities, and duties under
16 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 Shaghal as to the allegations contained in the Complaint, that venue is proper in the
20 San Francisco Superior Court, and that the Court has jurisdiction to enter and enforce the provisions
21 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 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 Commitment Reformulate Products or Provide Warnings**

27 Shaghal agrees that as of the Effective Date, all Products it sells or distributes for sale in
28 California will either (a) meet the definition of Reformulated Products established by this Section; or

(b) bear a clear and reasonable warning pursuant to Section 2.2, below. For purposes of this Consent Judgment, "Reformulated Products" are defined as Products with a maximum DEHP concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.2 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by Shaghal that are not Reformulated Products, Shaghal will only offer such Products for sale with a clear and reasonable warning in accordance with this Section. Shaghal further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying labeling or packaging sold in California containing the following statement:

WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

In the event that Shaghal sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided that the warning statement also appears elsewhere on the same web page.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims referred to in the Notice, Complaint, and this Consent Judgment, Shaghal shall pay \$10,000 in civil

1 penalties. Each civil penalty payment shall be allocated according to Health and Safety Code section
2 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of
3 Environmental Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds
4 remitted to Moore. Moore’s counsel shall be responsible for delivering OEHHA’s portion of any
5 penalty payment(s) made under this Consent Judgment to OEHHA.

6 **3.1.1 Initial Civil Penalty**

7 Shaghal shall make an initial civil penalty payment of \$2,500 within five days of the
8 Effective Date. Shaghal shall provide its payment in a single check made payable to “John Moore,
9 Client Trust Account.”

10 **3.1.2 Final Civil Penalty**

11 On May 15, 2016, Shaghal shall make a final civil penalty payment of \$7,500.
12 Pursuant to title 11 California Code of Regulations, section 3203(c), Moore agrees that the final civil
13 penalty payment shall be waived in its entirety if, no later than May 1, 2016, an officer of Shaghal
14 provides Moore with a signed declaration certifying that all of the Products it is selling or distributing
15 for sale in California as of the date of its declaration are Reformulated Products as defined by Section
16 2.1 or provided with warnings as defined by Section 2.2, and that Shaghal will continue to offer only
17 Reformulated Products or products with warnings for sale in California in the future. The option to
18 certify to complete reformulation in lieu of making the final civil penalty payment required by this
19 Section is a material term, and time is of the essence.

20 **3.2 Reimbursement of Attorney’s Fees and Costs**

21 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
22 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
23 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
24 other settlement terms had been finalized, the Parties negotiated the compensation due to Moore and
25 his counsel under general contract principles and the private attorney general doctrine codified at
26 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
27 execution of this Consent Judgment, and through court approval of the same, but exclusive of fees
28 and costs on appeal, if any. Shaghal shall pay \$22,500 for all fees and costs incurred by Moore

1 investigating, bringing this matter to Shaghal's attention, litigating, and negotiating a settlement in
2 the public interest.

3 **3.3 Payment Timing**

4 Shaghal shall pay the initial civil penalty payment (\$2,500) required by Section 3.1.1 **and**
5 one-half of the attorneys' fee reimbursement amount required by Section 3.2 (\$11,250) within five
6 days of the Effective Date. Thereafter, within 90 days of the Effective Date, Shaghal shall pay the
7 second half of the attorneys' fee reimbursement payment required by Section 3.2 (\$11,250). In the
8 event that the final civil penalty payment required by subsection 3.1.2 has not been waived and
9 becomes due prior to the Effective Date, the penalty payment shall be tendered to Shaghal's counsel
10 when due, held in trust until, and disbursed within five days after the Effective Date.

11 **3.4 Payment Address**

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

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

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Moore's Public Release of Proposition 65 Claims**

18 Moore, acting on his own behalf and in the public interest, releases Shaghal and its parents,
19 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
20 attorneys ("Releasees") for any violation arising under Proposition 65 pertaining to the failure to
21 warn about exposures to DEHP from Products sold or distributed for sale by Shaghal prior to the
22 Effective Date, as set forth in the Notice. This release shall also extend to Shaghal's distributors
23 and retailers, including but not limited to Fry's ("Downstream Releasees"). Compliance with the
24 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
25 exposures to DEHP from Products sold or distributed for sale by Shaghal after the Effective Date.
26 The Parties agree and acknowledge that the releases provided under this Consent Judgment shall not
27 extend upstream to any entity that manufactured the Products, or any components part thereof, or to
28 any entity that distributed or sold the Products, or any component parts thereof, to Shaghal.

1 **4.2 Moore's Individual Release of Claims**

2 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
3 release to Shaghal and Releasees which shall be effective as a full and final accord and satisfaction,
4 as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
5 claims, liabilities and demands of Moore of any nature, character or kind, whether known or
6 unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in Products
7 sold or distributed for sale by Shaghal before the Effective Date.

8 **4.3 Shaghal's Release of Moore**

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

14 **5. COURT APPROVAL**

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

18 **6. SEVERABILITY**

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

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the state of California
24 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
25 rendered inapplicable by reason of law generally or as to the Products, then Shaghal may provide
26 written notice to Moore of any asserted change in the law, and shall have no further injunctive
27 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
28 so affected.

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 to the following addresses:

5 For Shaghal:

6 Asi Rayn, President
7 Shaghal Ltd
8 2231 Colby Avenue
9 Los Angeles, CA 90025

10 with a copy to:

11 John Epperson, Esq.
12 Cooper White & Cooper LLP
13 201 California Street, 17th Floor
14 San Francisco, CA 94111

15 For Moore:

16 Proposition 65 Coordinator
17 The Chanler Group
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710-2565

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

27 **10. DISMISSAL OF FRY'S ELECTRONICS, INC.**

28 Moore agrees that, within ten days of the Effective Date or his receipt of Shaghal's payment
of the first fee reimbursement installment required Section 3.3, whichever is later, he will file and
serve a request for dismissal as to defendant Fry's Electronics, Inc.

11. **POST EXECUTION ACTIVITIES**

Moore agrees to comply with the reporting form requirements referenced in Health and Safety
Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code

7

1 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
2 motion Moore shall draft and file. In furtherance of obtaining such approval, the Parties agree to
3 mutually employ their best efforts, and those of their counsel, to support the entry of this agreement
4 as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of
5 this Section, "best efforts" shall include, at a minimum, supporting the motion for approval of the
6 settlement, responding to any third-party objection which may be made, and appearing at the hearing
7 before the Court if so requested.

8 **12. MODIFICATION**

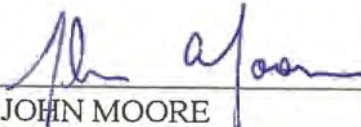
9 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
10 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
11 of any Party, and the entry of a modified consent judgment thereon by the Court.

12 **13. AUTHORIZATION**

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

15 **AGREED TO:**

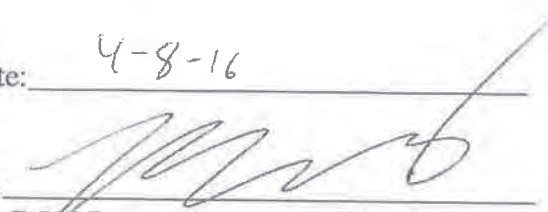
16
17 Date: 4/19/2016

18
19 By: 

20 JOHN MOORE

AGREED TO:

21
22 Date: 4-8-16

23
24 By: 

25 ROY RAYN, General Manager
26 SHAGHAL LTD
27
28