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7 JOHN MOORE

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION  
12

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 UNIVERSAL BEAUTY PRODUCTS  
INCORPORATED; *et al.*,

17 Defendants.  
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Case No. CGC-18-568440

**[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 Universal Beauty Products Incorporated (“Universal Beauty”), with Moore and Universal Beauty  
5 each 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 to improve human health by reducing or eliminating hazardous substances  
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

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

19 **1.5 Product Description**

20 For purposes of this Consent Judgment, “Products” are defined as vinyl/PVC toiletry cases  
21 containing DEHP that are manufactured, imported, sold or distributed for sale, in California, by  
22 Universal Beauty, including, but not limited to the *Beard Guyz Total Beard Care Grooming*  
23 *Accessory Kit, #00452, UPC #7 46817 00452 6*, hereinafter, the “Products.”

24 **1.6 Notice of Violation**

25 On March 21, 2018, Moore served Universal Beauty and the requisite public enforcement  
26 agencies with a 60-Day Notice of Violation alleging that Universal Beauty violated Proposition 65 by  
27 failing to warn its customers and consumers in California of the health hazards associated with  
28 exposures to DEHP from the Products.”) To the best of the Parties’ knowledge, no public enforcer

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

3 **1.7 Complaint**

4 On July 27, 2018, Moore filed the instant action (“Complaint”), naming Universal Beauty as a  
5 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 Universal Beauty denies the material, factual, and legal allegations contained in the Notice  
9 and Complaint, and maintains that all of the products 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. This Section shall  
14 not, however, diminish or otherwise affect Universal Beauty’s obligations, responsibilities, and duties  
15 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 Universal Beauty as to the allegations in the Complaint, that venue is proper in the  
19 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of  
20 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 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 grants the motion for approval of the Consent Judgment contemplated by Section 5.

24 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

25 Commencing on the Effective Date and continuing thereafter, Universal Beauty shall only  
26 manufacture for sale, import for sale, sell or distribute for sale, in or into California, Reformulated  
27 Products. For purposes of this Consent Judgment, “Reformulated Products” are defined as Products  
28 containing DEHP in maximum concentrations of less than 0.1 percent (1,000 parts per million) in any

1 accessible component (i.e., any component that may be touched during a reasonably foreseeable use)  
2 when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally  
3 accrediting organization. For purposes of compliance with this reformulation standard, testing  
4 samples shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”)  
5 methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency  
6 (“EPA”) methodology 8270D, or other equivalent methodologies utilized by federal or state agencies  
7 for the purpose of determining DEHP content in a solid substance.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Civil Penalty Payments**

10 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to in  
11 the Notice, Complaint, and this Consent Judgment, Universal Beauty shall pay \$3,500 in civil  
12 penalties. The civil penalty payment shall be allocated according to Health and Safety Code section  
13 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office  
14 of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent  
15 (25%) of the penalty retained by Moore.

16 Universal Beauty shall provide its payment in two checks as follows: (1) a check made  
17 payable to OEHHA in the amount of \$2,625; and (2) a check made payable to “John Moore, Client  
18 Trust Account” in the amount of \$875. Moore’s counsel shall be responsible for delivering  
19 OEHHA’s portion of any penalty payment(s) made under this Consent Judgment.

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 were finalized, the Parties negotiated the compensation due to Moore and his  
25 counsel under general contract principles and the private attorney general doctrine, codified at  
26 California Code of Civil Procedure §1021.5, for all work performed through the mutual execution of  
27 this Consent Judgment, and court approval of the same, but exclusive of fees and costs on appeal, if  
28 any. Under these legal principles, Universal Beauty shall pay \$23,000 for all fees and costs incurred

1 by Moore in investigating, bringing this matter to Universal Beauty’s attention, litigating and  
2 negotiating a settlement in the public interest. Universal Beauty agrees to make two installment  
3 payments for attorneys’ fees and costs, in the form of two checks, payable to “The Chanler Group”  
4 and delivered to the address in Section 3.4, below, as follows: (a) the first payment of \$11,500 shall  
5 be due within five days of the Effective Date; and (b) the second payment of \$11,500 shall be due on  
6 or before May 17, 2019, pending Court approval as contemplated by Sections 1.10 and 10.

7 **3.3 Payment Timing; Payments Held in Trust**

8 All payments due under this Consent Judgment shall be held in trust until such time as the  
9 Court approves the Parties’ settlement. Within five (5) days of the date that this Consent Judgment is  
10 fully executed by the Parties, all payments due under this agreement shall be delivered to Universal  
11 Beauty’s counsel, B.H. Whang& Associates, and held in trust by B.H. Whang& Associates until the  
12 Court grants the motion for approval of this Consent Judgment as contemplated by Section 5, below.  
13 Universal Beauty’s counsel shall provide Moore’s counsel with written confirmation upon its receipt  
14 of the settlement payments. Within five (5) days of the Court’s approval of this Consent Judgment,  
15 Universal Beauty’s counsel shall deliver the civil penalty payment and the initial installment  
16 attorneys’ fee reimbursement payment to Moore’s counsel at the address in Section 2.4, supra. The  
17 final fee installment payment shall be due on or before May 17, 2019, per Section 3.2.

18 **3.4 Payment Address**

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

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

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 Moore’s Public Release of Proposition 65 Claims**

25 Moore, acting on his own behalf and in the public interest, releases Universal Beauty and its  
26 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
27 and attorneys (“Releasees”), and each entity to whom Universal Beauty directly or indirectly  
28 distributes or sells the Products including, without limitation, its downstream customers,

1 distributors, wholesalers, and retailers (“Downstream Releasees”) for any violation arising under  
2 Proposition 65 pertaining to the failure to warn about exposures to DEHP from Products sold or  
3 distributed for sale by Universal Beauty prior to the Effective Date, as set forth in the Notice.

4 **4.2 Moore’s Individual Release of Claims**

5 Moore, in his individual capacity only and *not* in any representative capacity, also provides a  
6 release to Universal Beauty, 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 in Products sold or distributed for sale by Universal Beauty prior to the Effective  
11 Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition  
12 65 with respect to exposures to DEHP from Products sold or distributed for sale by Universal Beauty  
13 after the Effective Date.

14 **4.3 Universal Beauty’s Release of Moore**

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

20 **5. COURT APPROVAL**

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

24 **6. SEVERABILITY**

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

1     **7. GOVERNING LAW**

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

8     **8. NOTICE**

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

12     For Universal Beauty:

13             Universal Beauty Products Inc.  
14             c/o Byung H. Whang,  
15             Registered Agent  
16             1100 Hicks Road  
17             Rolling Meadows, IL 60008

16     For Moore:

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

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

22     **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

26     **10. POST EXECUTION ACTIVITIES**

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

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

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 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 **12. 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:**

**AGREED TO:**

16  
17 Date: 2/20/2019

Date: 02/19/2019

18  
19 By:   
JOHN MOORE

By:   
UNIVERSAL BEAUTY PRODUCTS INC.  
Yong Park  
CEO/ PRESIDENT