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JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,
Plaintiff,
v.
VALLEY INDUSTRIES, LLP; *et al.*,
Defendants.

Case No. 18CV321393
[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 Valley Industries, LLP (“Valley Industries”), with Moore and Valley Industries 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 Defendant**

11 Valley Industries 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 Valley Industries manufactures, imports, sells, or distributes for sale in
16 California vinyl/PVC hose grips 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 hoses and
21 sprayers, including the component parts thereof, that contain DEHP and are manufactured, imported,
22 sold or distributed for sale, in California, by Valley Industries, including, but not limited to the *High*
23 *Pressure Hose, Part #PK-85256126, UPC #8 16403 00009 3*, hereinafter, the “Products.”

1 **1.6 Notice of Violation**

2 On September 28, 2017, Moore served Valley Industries and the requisite public enforcement
3 agencies with a 60-Day Notice of Violation alleging that Valley Industries violated Proposition 65 by
4 failing to warn its customers and consumers in California of the health hazards associated with
5 exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has
6 commenced and is diligently prosecuting an action to enforce the violations alleged in the Notices.

7 **1.7 Complaint**

8 On January 3, 2018, Moore filed the instant action ("Complaint"), naming Valley Industries
9 as a defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of
10 the Notice.

11 **1.8 No Admission**

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

20 **1.9 Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Valley Industries as to the allegations in the Complaint, that venue is proper in the
23 County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this
24 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
27 the Court grants the motion for approval of the Consent Judgment contemplated by Section 5.
28

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

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

3 Commencing on the Effective Date and continuing thereafter, Valley Industries shall only
4 manufacture for sale, import for sale, sell or distribute for sale, in California, Products that are either:
5 (a) Reformulated Products, as defined in Section 2.2; or (b) Products bearing a clear and reasonable
6 warning, as detailed in Sections 2.3 and 2.4.

7 **2.2 Reformulated Products Defined**

8 For purposes of this Consent Judgment, "Reformulated Products" are defined as Products
9 containing DEHP in a maximum concentration of 1,000 parts per million in any accessible
10 component (i.e., any component that may be touched during a reasonably foreseeable use) when
11 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
12 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of
13 determining DEHP content in a solid substance.

14 **2.3 Clear and Reasonable Warnings**

15 Commencing on the Effective Date and continuing thereafter, Valley Industries shall
16 provide clear and reasonable warnings as set forth in this section for all Products manufactured,
17 imported, sold or distributed for sale in California that do not qualify as Reformulated Products.
18 Each warning shall be prominently placed with such conspicuousness as compared with other words,
19 statements, designs, or devices as to render it likely to be read and understood by an ordinary
20 individual under customary conditions before purchase or use. Each warning shall be provided in a
21 manner such that the consumer or user understands to which specific Product the warning applies, so
22 as to minimize the risk of consumer confusion. The warning shall be accompanied by a symbol
23 consisting of a black exclamation point in a bold yellow equilateral triangle, outlined in black and
24 appearing to the left of the word "WARNING" in all caps and bold print. The text of the
25 accompanying warning shall be in a type size no smaller than the word "WARNING."

26 For purposes of this Consent Judgment, a clear and reasonable warning displayed or
27 transmitted according the above criteria, and containing the following statement, shall satisfy these
28 requirements:

1
2 △ **WARNING:** This product can expose you to chemicals,
3 including DEHP, which is known to the State
4 of California to cause cancer and birth defects
or other reproductive harm. For more
information go to www.P65Warnings.ca.gov

5 Or, if placed directly on a Product or the Product's packaging and/or labeling, Valley
6 Industries may use the following short-form warning statement, provided it appears in a type size no
7 smaller than the largest type size used for other consumer information on the Product's label and in
8 no case smaller than 6-point type:

9 △ **WARNING:** Cancer and Reproductive Harm –
10 www.P65Warnings.ca.gov/product

11 **2.4 Internet Product Warnings**

12 In the event Valley Industries sells Products that do not qualify as Reformulated Products via
13 the internet to customers located in California, a warning that complies with Section 2.3, supra, must
14 be provided by including: (a) either the warning or a clearly marked hyperlink using the word
15 "WARNING" on the product display page; or (b) by otherwise prominently displaying the warning to
16 the purchaser prior to completing the purchase. If Valley Industries utilizes the short-form warning
17 on the Products' labels, the warning provided on the website may use the same content. A warning is
18 not prominently displayed if the purchaser must search for it in the general content of the website.

19 **3. MONETARY SETTLEMENT TERMS**

20 **3.1 Civil Penalty Payments**

21 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to in
22 the Notice, Complaint, and this Consent Judgment, Valley Industries shall pay \$2,500 in civil
23 penalties. The civil penalty payment shall be allocated according to Health and Safety Code section
24 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
25 of Environmental Health Hazard Assessment ("OEHHHA"), and the remaining twenty-five percent
26 (25%) of the penalty retained by Moore.
27
28

1 Valley Industries shall provide its payment in two checks as follows: (1) a check made
2 payable to OEHHA in the amount of \$1,875; and (2) a check made payable to "John Moore, Client
3 Trust Account" in the amount of \$625. Moore's counsel shall be responsible for delivering
4 OEHHA's portion of any penalty payment(s) made under this Consent Judgment.

5 **3.2 Reimbursement of Attorney's Fees and Costs**

6 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
8 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
9 other settlement terms were finalized, the Parties negotiated the compensation due to Moore and his
10 counsel under general contract principles and the private attorney general doctrine, codified at
11 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of
12 this Consent Judgment, and court approval of the same, but exclusive of fees and costs on appeal, if
13 any. Under these legal principles, Valley Industries shall pay \$26,000 for all fees and costs incurred
14 by Moore in investigating, bringing this matter to Valley Industries' attention, litigating and
15 negotiating a settlement in the public interest. Valley Industries shall provide its payment in a check
16 payable to "The Chanler Group."

17 **3.3 Payment Timing; Payments Held in Trust**

18 All payments due under this Consent Judgment shall be held in trust until such time as the
19 Court approves the Parties' settlement. Within ten (10) business days of the date that this Consent
20 Judgment is fully executed by the Parties, all payments due under this agreement shall be delivered
21 to Valley Industries' counsel, Barg Coffin Lewis & Trapp, LLP, and held in trust by Barg Coffin
22 Lewis & Trapp, LLP, until the Court grants the motion for approval of this Consent Judgment as
23 contemplated by Section 5, below. Valley Industries' counsel shall provide Moore's counsel with
24 written confirmation upon its receipt of the settlement payments. Within five (5) business days of
25 the Court's approval of this Consent Judgment, Valley Industries' counsel shall deliver the civil
26 penalty and attorneys' fee reimbursement payments to Moore's counsel.

27 **3.4 Payment Address**

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

1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Moore's Public Release of Proposition 65 Claims**

8 Moore, acting on his own behalf and in the public interest, releases Valley Industries and its
9 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
10 and attorneys ("Releasees"), and each entity to whom Valley Industries directly or indirectly
11 distributes or sells the Products including, without limitation, its downstream customers,
12 distributors, wholesalers, and retailers ("Downstream Releasees") for any violation arising under
13 Proposition 65 pertaining to the failure to warn about exposures to DEHP from Products sold or
14 distributed for sale by Valley Industries prior to the Effective Date, as set forth in the Notice.

15 **4.2 Moore's Individual Release of Claims**

16 Moore, in his individual capacity only and *not* in any representative capacity, also provides a
17 release to Valley Industries, Releasees, and Downstream Releasees, which shall be effective as a
18 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
19 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature,
20 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
21 actual exposures to DEHP in Products sold or distributed for sale by Valley Industries prior to the
22 Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with
23 Proposition 65 with respect to exposures to DEHP from Products sold or distributed for sale by
24 Valley Industries after the Effective Date.

25 **4.3 Valley Industries' Release of Moore**

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

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

4 **5. COURT APPROVAL**

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

8 **6. SEVERABILITY**

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

12 **7. GOVERNING LAW**

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

19 **8. NOTICE**

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

23 For Valley Industries:

24 Jeff Savage, President
25 Valley Industries, LLP
26 123 Industrial Loop East
27 Paynesville, MN 56362
28

1 With a copy to:

2 Julia Graeser
3 Barg Coffin Lewis & Trapp, LLP
4 600 Montgomery St., Suite 525
5 San Francisco, CA 94111

6 For Moore:

7 Proposition 65 Coordinator
8 The Chanler Group
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710-2565

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

18 **10. POST EXECUTION ACTIVITIES**

19 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
20 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
21 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which motion
22 Moore shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
23 employ their best efforts, and those of their counsel, to support the entry of this agreement as
24 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this
25 Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to
26 any objection that any third-party may file or lodge, and appearing at the hearing before the Court if
27 so requested.

28 **11. MODIFICATION**

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
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.

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12. AUTHORIZATION

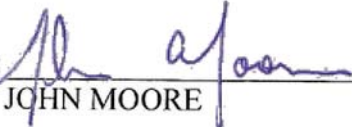
The undersigned are authorized to execute this Consent Judgment and acknowledge that they have read, understand, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 8/31/2018

Date: 8/31/2018

By: 
JOHN MOORE

By: 
JEFF SAVAGE, PRESIDENT
VALLEY INDUSTRIES, LLP