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10 JOHN MOORE

FILED

OCT 23 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Yarborough, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 BELL SPORTS, INC.; BELL SPORTS CORP.;
18 CAP BARBELL, INC.; CENTURY, LLC; CHI
19 HSIN IMPLEX, INC.; EASTON-BELL
20 SPORTS, INC.; GAIAM, INC.; GOFIT, L.L.C.;
21 ICON HEALTH & FITNESS, INC.;
22 MCCRANE, INC.; MOHAWK INDUSTRIES,
23 INC.; NATCO PRODUCTS CORPORATION;
24 RCR INTERNATIONAL, INC.; SAP
25 ACQUISITION COMPANY, LLC; SPRI
26 PRODUCTS, INC.; SUPERIOR AMERICAN
27 PLASTICS, INC.; TARGET CORPORATION;
28 THE SPORTS AUTHORITY, INC.; TKO
SPORTS GROUP USA LIMITED; WAL-MART
STORES, INC.; W.J. DENNIS & COMPANY;
and DOES 1-150,

Defendants.

Case No. CIV 1002842

ku
~~[PROPOSED]~~ JUDGEMENT UPON
PROPOSITION 65 SETTLEMENT

1 In the above-entitled action, Plaintiff John Moore and Defendants The Sports Authority
2 and Savvier LP, having agreed through their respective counsel that a judgment be entered
3 pursuant to the terms of the Consent To Judgment entered into by the parties in resolution of
4 this Proposition 65 action, and following the issuance of an order approving the Parties' Consent
5 to Judgment on this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant
6 to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby
7 entered in accordance with the terms of the Consent To Judgment attached hereto as Exhibit A.
8 By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under
9 Code of Civil Procedure § 664.6.
10

11 IT IS SO ORDERED.

12
13 Dated: OCT 23 2012

14 LYNN DURYEE
15 JUDGE OF THE SUPERIOR COURT
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EXHIBIT A

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Attorneys for Plaintiff
John Moore

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

BELL SPORTS, INC.; BELL SPORTS CORP.;
CAP BARBELL, INC.; CENTURY, LLC; CHI
HSIN IMPLEX, INC.; EASTON-BELL
SPORTS, INC.; GAIAM, INC.; GOFIT, L.L.C.;
ICON HEALTH & FITNESS, INC.;
MCCRANE, INC.; MOHAWK INDUSTRIES,
INC.; NATCO PRODUCTS CORPORATION;
RCR INTERNATIONAL, INC.; SAP
ACQUISITION COMPANY, LLC; SPRI
PRODUCTS, INC.; SUPERIOR AMERICAN
PLASTICS, INC.; TARGET CORPORATION;
THE SPORTS AUTHORITY, INC.; TKO
SPORTS GROUP USA LIMITED; WAL-MART
STORES, INC.; W.J. DENNIS & COMPANY;
and DOES 1-150, inclusive,

Defendant.

Case No. CIV 1002842

**CONSENT TO JUDGMENT AS TO
DEFENDANT THE SPORTS
AUTHORITY, INC. AND SAVVIER
LP**

1 **1. INTRODUCTION**

2 1.1 John Moore, The Sports Authority, Inc. and Savvier LP

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and defendants The Sports Authority, Inc. (“TSA” or “Sports Authority”) and Savvier
5 LP (“Savvier”) (collectively “Settling Defendants”), with Moore, Settling Defendants collectively
6 referred to as the “Parties.”

7 1.2 Plaintiff.

8 Moore is an individual residing in the State of California who seeks to promote awareness
9 of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
10 substances contained in consumer products.

11 1.3 **Settling Defendants.**

12 Each Settling Defendant employs ten or more persons and is a person in the course of
13 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code §25249.5 et seq. (“Proposition 65”).

15 1.4 **General Allegations.**

16 Moore alleges that TSA has manufactured, distributed and/or sold exercise/fitness mats,
17 sauna suits and Bender balls containing di(2-ethylhexyl)phthalate (“DEHP”) for use in the State
18 of California without the requisite health hazard warnings. Moore further alleges that TSA has
19 manufactured, distributed and/or sold dumbbell handles containing di-n-butyl phthalate (“DBP”)
20 for use in the State of California without the requisite health hazard warnings. Moore further
21 alleges that Savvier manufactured, distributed and/or sold Bender balls containing
22 di(2-ethylhexyl)phthalate (“DEHP”) for use in the State of California without the requisite health
23 hazard warnings. DBP and DEHP are listed pursuant to Proposition 65 as chemicals known to
24 the State of California to cause birth defects and other reproductive harm.

25 1.5 **Notices of Violation.**

26 1.5.1 On February 12, 2010 Moore served TSA and various public enforcement
27 agencies with a document entitled “60-Day Notice of Violation” that alleged that TSA
28

1 violated Proposition 65 by failing to warn consumers that exercise/fitness mats exposed
2 users in California to DEHP.

3 1.5.2 On June 17, 2010, Moore served TSA and various public enforcement
4 agencies with a document entitled "Supplemental 60-Day Notice of Violation" that
5 alleged that TSA violated Proposition 65 by failing to warn consumers that
6 exercise/fitness mats and Bender balls exposed users in California to DEHP.

7 1.5.3 On November 12, 2010 Moore served TSA and various public enforcement
8 agencies with a document entitled "60-Day Notice of Violation" that alleged that TSA
9 violated Proposition 65 by failing to warn consumers that dumbbell handles exposed users
10 in California to DBP.

11 1.5.4 On May 11 2011, Moore served TSA and various public enforcement
12 agencies with a document entitled "Supplemental 60-Day Notice of Violation" that
13 alleged that TSA violated Proposition 65 by failing to warn consumers that training and
14 sauna fitness suits exposed users in California to DEHP.

15 1.5.5 On January 31, 2012, Moore served Savvier and various public
16 enforcement agencies with a document entitled "60-Day Notice of Violation" that alleged
17 that Savvier violated Proposition 65 by failing to warn consumers that Bender balls
18 exposed users in California to DEHP.

19 1.5.6 The February 12, 2010 Notice, June 17, 2010 Supplemental Notice,
20 November 12, 2010 Notice, May 11, 2011 Supplemental Notice and January 31, 2012
21 Notice shall be collectively referred to as "Notices".

22 **1.6 Complaint.**

23 1.6.1 On July 2, 2010, Moore filed a First Amended Complaint in this action
24 ("Complaint"), naming TSA as a defendant, alleging violations of Health & Safety Code §
25 25249.6 based on the alleged exposures to DEHP contained in exercise/fitness mats
26 manufactured, distributed, or sold by TSA.

27 1.6.2 As part of, and upon execution of, this Consent Judgment, the parties
28 stipulate and agree that the First Amended Complaint shall and will be amended to

1 include the parties, recitals, and allegations against Settling Defendants of Moore's
2 Noticed claims relating to DBP in dumbbell handles and DEHP in exercise/fitness mats,
3 Bender balls and Sauna suits as identified in the February 12, 2010, June 17, 2010,
4 November 2, 2010, and May 11, 2011, 60-Day Notices served by Moore upon TSA and as
5 identified in the January 31, 2012, 60-Day Notice served by Moore upon Savvier.

6 1.6.3 The Parties agree that this stipulated amendment to the Complaint
7 ("Amendment") will be presented for approval to the Court as part of and in conjunction
8 with the motion to approve this Consent Judgment. Settling Defendants stipulate and
9 agree to waive service of the Amendment to the Complaint except as part of the
10 anticipated motion to approve this settlement and approve the Amendment. Settling
11 Defendants further stipulate to waive any response to such Complaint as amended by the
12 Amendment, stipulate that the Complaint as amended by the Amendment shall be deemed
13 at issue as to Settling Defendants upon approval of the Amendment and stipulate that this
14 Court may and shall immediately enter judgment on the Complaint, as amended by the
15 Amendment, against Settling Defendants pursuant to these stipulations and this Consent
16 Judgment.

17 1.7 **No Admission.** The Parties enter into this Consent Judgment as a full and final
18 settlement of all claims that were raised in the Complaint or that could have been raised in the
19 Complaint, arising out of the facts or conduct alleged therein. By execution of this Consent
20 Judgment and agreeing to comply with its terms, Settling Defendants do not admit any facts or
21 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
22 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
23 requirements relating to DEHP and/or DBP in Covered Products. Nothing in this Consent
24 Judgment shall be construed as an admission by Settling Defendants of any fact, conclusion of
25 law, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute
26 or be construed as an admission by Settling Defendants of any fact, conclusion of law, issue of
27 law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any
28 right, remedy, argument or defense Settling Defendants may have in this or any other or future

1 legal proceedings. This Consent to Judgment is the product of negotiation and compromise and is
2 accepted by Settling Defendants for purposes of settling, compromising, and resolving issues
3 disputed in this action. However, this section shall not diminish or otherwise affect the
4 obligations, responsibilities and duties of Settling Defendants under this Consent Judgment.

5 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, each
6 Settling Defendant stipulates that this Court has jurisdiction over the Settling Defendant as to the
7 allegations contained in the Complaint, that venue is proper in the County of Marin and that this
8 Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 As to Sports Authority, "Covered Products" means exercise/fitness mats, sauna
11 suits and dumbbell handles.

12 2.2 As to Savvier, "Covered Products" means Bender balls.

13 2.3 "Listed Chemical" means DEHP with regard to exercise/fitness mats, sauna suits
14 and Bender balls and means DBP with regard to dumbbell handles.

15 **3. INJUNCTIVE RELIEF: REFORMULATION**

16 3.1 Commencing on June 1, 2012, TSA shall not manufacture, cause to be
17 manufactured, purchase, or otherwise obtain for sale in California any Covered Product that bears
18 a private label with a brand or trademark owned or licensed for use by TSA and/or a Defendant
19 Releasee (as defined in Section 6.1) (a "Private Label Covered Product") containing a Listed
20 Chemical in concentrations exceeding 0.1 percent (1,000 parts per million ("ppm")) when
21 analyzed pursuant to any methodology utilized by federal or state agencies for the purpose of
22 determining Listed Chemical content in a solid substance.

23 3.2 Commencing on June 1, 2012, Savvier shall not manufacture, cause to be
24 manufactured, purchase or otherwise obtain for sale or distribution in California, any Bender Ball
25 containing DEHP in concentrations exceeding 0.1 percent (1,000 parts per million ("ppm")) when
26 analyzed pursuant to any methodology utilized by federal or state agencies for the purpose of
27 determining DEHP content in a solid substance.

28

1 3.3 Within 45 days of the date of entry of this Consent Judgment, TSA shall send, to
2 each vendor of Covered Products, a written request that all vinyl or other PVC components of
3 Covered Products supplied by that vendor to TSA do not contain DEHP in concentrations
4 exceeding 0.1 percent (1,000 parts per million (“ppm”). This Section 3.3 shall not apply to
5 Private Label Covered Products.

6 3.4 For every Covered Product other than the Bender ball manufactured, caused to be
7 manufactured, purchased or otherwise obtained for sale in California after June 1, 2012, TSA
8 shall maintain copies of any testing of such Covered Products performed for the purpose of
9 demonstrating compliance with Section 3.1 for two (2) years from date of testing and shall
10 produce copies of such testing relating to an alleged noncompliance with Section 3.1 to Moore
11 within 30 days of receiving a notice pursuant to Section 4.1.

12 3.5 After April 1, 2012, for the Bender ball only, Savvier shall maintain copies of all
13 testing of such Covered Products demonstrating compliance with Section 3.2, shall maintain
14 copies of such testing for two (2) years from date of testing and shall produce all retained copies
15 of such testing to Moore within fifteen (15) days of any written request.

16 **4. ENFORCEMENT OF CONSENT JUDGMENT**

17 4.1 **General Enforcement Provisions.** Any Party may, by motion or application for
18 an order to show cause before the Superior Court of the County of Marin, enforce the terms and
19 conditions contained in this Consent Judgment. A Party may file such a motion or application
20 only after that Party first provides 30 days notice to the Party allegedly failing to comply with the
21 terms and conditions of this Consent Judgment and attempts to resolve such Party’s failure to
22 comply in an open and good faith manner for a period of no less than 30 days.

23 **5. MONETARY PAYMENTS**

24 5.1 **Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

25 5.1.1 Sports Authority shall make a payment of \$16,500 to be apportioned in
26 accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with
27 75% of these funds earmarked for the State of California’s Office of Environmental
28

1 Health Hazard Assessment (“OEHHA”) and the remaining 25% of these penalty monies
2 earmarked for Moore.

3 5.1.2 Savvier shall make a payment of \$10,000 to be apportioned in accordance
4 with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of
5 these funds earmarked for the State of California’s Office of Environmental Health
6 Hazard Assessment (“OEHHA”) and the remaining 25% of these penalty monies
7 earmarked for Moore.

8 **5.2 Reimbursement of Plaintiff’s Fees and Costs**

9 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
11 this fee issue to be resolved after the material terms of the agreement had been settled. Sports
12 Authority then expressed a desire to resolve the fee and cost issue shortly after the other
13 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
14 the compensation due to Moore and his counsel under general contract principles and the private
15 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
16 work performed in this matter through Approval of the Consent to Judgment, except fees that
17 may be incurred on appeal. Under these legal principles, Settling Defendants shall pay the
18 amount of \$78,500 for fees and costs incurred investigating, litigating and enforcing this matter,
19 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining
20 the Court’s approval of this Consent Judgment in the public interest.

21 **5.3 Payment Procedures**

22 5.3.1 **Funds Held In Trust:** All payments required by Sections 5.1 and 5.2
23 shall delivered within ten (10) days of execution of this Consent Judgment, to Fulbright &
24 Jaworski L.L.P., and shall be held in trust pending the Court’s approval of this Consent
25 Judgment. Fulbright & Jaworski shall: (a) confirm in writing within five days of receipt
26 that the funds have been deposited in a trust account; and (b) within two days of the date
27 of the hearing on which the Court approves the Consent Judgment, deliver the payment to
28 The Chanler Group in three separate checks, as follows:

1 (a) One check made payable to "The Chanler Group in Trust for
2 OEHHA" in the amount of \$19,875;

3 (b) One check to "The Chanler Group in Trust for Moore" in the
4 amount of \$6,625; and

5 (c) One check to "The Chanler Group" in the amount of \$78,500.

6 **5.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
7 and the settlement funds have been transmitted to plaintiff's counsel, Fulbright &
8 Jaworski shall issue three separate 1099 forms, as follows:

9 (a) The first 1099 shall be issued to the Office of Environmental Health
10 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the
11 amount of \$19,875;

12 (b) The second 1099 shall be issued to Moore in the amount of \$6,625,
13 whose address and tax identification number shall be furnished upon request; and

14 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
15 3171522) in the amount of \$78,500.

16 **5.3.3 Payment Address:** All payments to the Chanler Group shall be delivered
17 to the following payment address:

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

22 **6. CLAIMS COVERED AND RELEASE**

23 **6.1 Full, Final and Binding Resolution of Proposition 65 Allegations.** This
24 Consent Judgment is a full, final and binding resolution between Plaintiff, on behalf of himself
25 and the public, and Settling Defendants and their parents, divisions, subdivisions, subsidiaries,
26 partners, affiliated entities and their successors and assigns ("Defendant Releasees") and each
27 entity to whom Settling Defendants directly or indirectly distribute or sell Covered Products,
28 including but not limited to downstream distributors, wholesalers, customers, retailers,

1 franchisees, cooperative members, licensors, and licensees (“Downstream Releasees”), of any
2 violation of Proposition 65 that was or could have been asserted by Plaintiff against Settling
3 Defendants, Defendant Releasees, or Downstream Releasees based on their failure to warn about
4 alleged exposures to the Listed Chemical contained in the Covered Products that were sold by
5 Settling Defendants.

6 6.2 This release is expressly limited to those claims that arise under Proposition 65, as
7 such claims relate to Settling Defendants’, Defendant Releasees’ and Downstream Releasees
8 actual or alleged failures to warn about exposures to or identification of the Listed Chemicals
9 contained in the Covered Products and as such claims are identified in the Notices to Settling
10 Defendants. The Parties further understand and agree that this release shall not extend upstream
11 to any entities, other than Settling Defendants, that manufactured the Covered Products or any
12 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
13 component parts thereof to Settling Defendants.

14 6.3 Compliance with the terms of this Consent to Judgment by Settling Defendants
15 and Defendant Releasees constitutes compliance with Proposition 65 with respect to Listed
16 Chemicals in the Covered Products.

17 **6.4 Plaintiff’s Public Release of Proposition 65 Claims.** In further consideration of
18 the promises and agreements herein contained, Plaintiff on behalf of himself, his past and current
19 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
20 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
21 legal action and releases all claims, including, without limitation, all actions, and causes of action,
22 in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses,
23 or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys’ fees, but
24 exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to
25 the Listed Chemicals in the Covered Products manufactured, distributed or sold by Settling
26 Defendants (collectively “Claims”), that were or could have been brought by Plaintiff based upon
27 the Notices and Complaint against Settling Defendants, Defendant Releasees, and Downstream
28 Releasees.

1 **6.5 Plaintiff's Individual Release of Claims.** Plaintiff also, in his individual capacity
2 only and *not* in his representative capacity, provides a release herein which shall be effective as a
3 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
4 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of plaintiff of any
5 nature, character or kind, whether known or unknown, suspected or unsuspected, that were or
6 could have been brought by Plaintiff based upon the Notices and Complaint against Settling
7 Defendants, Defendant Releasees, and Downstream Releasees, limited to and arising out of
8 alleged or actual exposures to the Listed Chemicals in the Covered Products manufactured,
9 distributed or sold by Settling Defendants.

10 Moore also provide a general release herein which shall be effective as a full and final
11 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
12 attorneys' fees, damages, losses, claims, liabilities and demands of Sports Authority or Savvier of
13 any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
14 subject matter of the Action as contained in the Notices to each defendant. Moore acknowledges
15 that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
17 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
18 EXIST IN HIS OR HER FAVOR AT THE TIME OF
19 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
20 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
21 SETTLEMENT WITH THE DEBTOR.

22 Moore expressly waives and relinquishes any and all rights and benefits which it may have under,
23 or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as
24 well as under any other state or federal statute or common law principle of similar effect, to the
25 fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.
26 In furtherance of such intention, the release hereby given shall be and remain in effect as a full
27 and complete release notwithstanding the discovery or existence of any such additional or
28 different claims or facts arising out of the released matters.

1 **6.6 Settling Defendants' Release of Plaintiff.** Settling Defendants, each on behalf of
2 itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby
3 waives any and all claims against Plaintiff, his attorneys and other representatives, for any and all
4 actions taken or statements made (or those that could have been taken or made) by Plaintiff and
5 his attorneys and other representatives, whether in the course of investigating claims or otherwise
6 seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.
7 Settling Defendants also provide a general release herein which shall be effective as a full and
8 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
9 attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character
10 or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the
11 Action. Settling Defendants acknowledge that each is familiar with Section 1542 of the
12 California Civil Code, which provides as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
14 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
15 EXIST IN HIS OR HER FAVOR AT THE TIME OF
16 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
17 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
18 SETTLEMENT WITH THE DEBTOR.

19 Settling Defendants expressly waive and relinquish any and all rights and benefits which it may
20 have under, or which may be conferred on it by the provisions of Section 1542 of the California
21 Civil Code as well as under any other state or federal statute or common law principle of similar
22 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the
23 released matters. In furtherance of such intention, the release hereby given shall be and remain in
24 effect as a full and complete release notwithstanding the discovery or existence of any such
25 additional or different claims or facts arising out of the released matters.

26 **7. COURT APPROVAL**

27 7.1 By this Consent Judgment and upon its approval, the Parties waive their right to
28 trial on the merits, and waive rights to seek appellate review of any and all interim rulings,
including all pleading, procedural, and discovery orders.

1 7.2 Plaintiff shall file a motion seeking approval of this Consent Judgment pursuant to
2 California Health & Safety Code §25249.7(f) and approval of the Amendment to the Complaint
3 and Settling Defendants shall support approval of the Amendment and the entry of this Consent
4 Judgment and entry of Judgment thereupon.

5 7.3 If this Consent Judgment is not approved by the Court within 180 days of its
6 execution, or any longer period agreed upon by the Parties or Ordered by the Court, (a) this
7 Consent Judgment and any and all prior agreements between the parties as to the Notices or
8 Complaint referenced herein shall terminate and become null and void, and the action shall revert
9 to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this
10 Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or
11 aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be
12 admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the
13 parties agree to meet and confer to determine whether to modify the terms of the Consent
14 Judgment and to resubmit it for approval.

15 **8. ATTORNEYS' FEES**

16 8.1 Except as specifically provided in Section 5.2, or if a third party elects to appeal
17 the approval of the Consent Judgment, each Party shall bear its own costs and attorney's fees in
18 connection with this action. However, a Party who unsuccessfully brings or contests an action
19 arising out of this Consent To Judgment shall be required to pay the prevailing Party's reasonable
20 attorneys' fees and costs unless the unsuccessful Party has acted with substantial justification.
21 For purposes of this Consent To Judgment, the term substantial justification shall carry the same
22 meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

23 **9. GOVERNING LAW**

24 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California, and shall apply only to Covered Products offered for sale in the State of California. In
26 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
27 generally, or as to the Covered Products, then Settling Defendants may provide written notice to
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1 Moore of any asserted change in the law, and shall have no further obligations pursuant to this
2 Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

3 9.2 The Parties, including their counsel, have participated in the preparation of this
4 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
5 Consent Judgment was subject to revision and modification by the Parties and has been accepted
6 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
7 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
8 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
9 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
10 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
11 this regard, the Parties hereby waive California Civil Code § 1654.

12 **10. NOTICES**

13 10.1 Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
15 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
16 Party by the other Party at the following addresses:

17 To Sports Authority:
18 Douglas Garrett
19 TSA Corporate Services, Inc.
20 1050 West Hampden Ave
Englewood, CO 80110

21 With a copy to:
22 Jeffrey B. Margulies, Esq.
23 Fulbright & Jaworski LLP
24 555 South Flower Street
41st Floor
25 Los Angeles, California 90071
213-892-9286
213-892-9494 fax
26 jmarginulies@fulbright.com
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To Savvier:
Savvier L.P.
5790 Fleet Street, Suite 130
Carlsbad, CA 92008

With a copy to:
Joseph B. Costa, Esq.
Costa Abrams & Coate LLP
1221 Second Street, Third Floor
Santa Monica, California 90401
310-576-6161
310-576-6160
jcosta@caclip.com

To Moore:
Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

11. MODIFICATION

11.1 **Modification.** This Consent Judgment may be modified by written agreement of the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a modified Consent Judgment by the court.

11.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the Listed Chemical content of Covered Products sold in California, any Party shall be entitled to request that the Court modify the reformulation standard of Section 3.1 of this Consent Judgment for good cause shown.

11.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

12. ENTIRE AGREEMENT

12.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,

1 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
2 and therein. No supplementation, modification, waiver, or termination of this Consent Judgment
3 shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of
4 the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
5 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
6 waiver.

7 **13. RETENTION OF JURISDICTION**


8 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
9 Consent Judgment.

10 **14. COUNTERPARTS; FACSIMILE SIGNATURES**

11 14.1 This Consent Judgment may be executed in counterparts and by facsimile or
12 portable document format (pdf), each of which shall be deemed an original, and all of which,
13 when taken together, shall constitute one and the same document.

14 **15. AUTHORIZATION**

15 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of
16 their respective Parties and have read, understood, and agree to all of the terms and conditions of
17 this Consent Judgment.

<p>18</p> <p>19 AGREED TO:</p> <p>20 Date: _____</p> <p>21</p> <p>22 By: _____</p> <p>23 Plaintiff JOHN MOORE</p> <p>24</p>	<p>19 AGREED TO:</p> <p>20 Date: <u>7/10/12</u></p> <p>21 </p> <p>22 By: _____</p> <p>23 Defendant THE SPORTS AUTHORITY, INC.</p> <p>24</p>
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4 the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
5 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
6 waiver.

7 **13. RETENTION OF JURISDICTION**

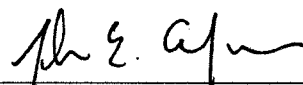
8 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
9 Consent Judgment.

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12 portable document format (pdf), each of which shall be deemed an original, and all of which,
13 when taken together, shall constitute one and the same document.

14 **15. AUTHORIZATION**

15 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of
16 their respective Parties and have read, understood, and agree to all of the terms and conditions of
17 this Consent Judgment.

AGREED TO:	AGREED TO:
Date: <u>July 5, 2012</u>	Date: _____
By: <u></u> Plaintiff JOHN MOORE	By: _____ Defendant THE SPORTS AUTHORITY, INC.

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	AGREED TO: Date: <u>July 12, 2012</u> By:  <u>Defendant SAVVIER LP</u>
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