

1 Clifford A. Chanler, State Bar No. 135534
2 Jennifer Henry, State Bar No. 208221
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, California 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 JOHN MOORE

**ENDORSED
FILED
ALAMEDA COUNTY**

SEP - 1 2010

CLERK OF THE SUPERIOR COURT
By E. Opelski-Erickson, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

INTERNATIONAL GREETINGS USA, et al.,

Defendants.

Case No. RG 10521289

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Gail Brewster Bereola

~~PROPOSED~~ JUDGMENT

Date: August 31, 2010
Time: 9:00 A.M.
Dept.: 19
Judge: Hon. Gail Brewster Bereola
Reservation: 1083810

1 Now come Plaintiff JOHN MOORE and Defendant INTERNATIONAL GREETINGS USA,
2 having agreed through their respective counsel that judgment be entered pursuant to the terms of the
3 Proposition 65 settlement agreement in the form of a Consent ~~to~~ Judgment executed by the above-
4 referenced parties, and following issuance of an order approving this Proposition 65 settlement
5 agreement on August 31, 2010.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety
7 Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is entered in accordance with
8 the terms of the Consent ~~to~~ Judgment attached hereto as Exhibit 1. By stipulation of the parties, the
9 Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

10 IT IS SO ORDERED.

11 Dated: 9/1/2010

12 Gail B. Bereola
13 Judge of the ~~San Francisco City & County~~ Superior Court
14 **Alameda**

15 **GAIL B. BEREOLA**

1 Clifford A. Chanler, State Bar No. 135534
2 Jennifer Henry, State Bar No. 208221
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 JOHN MOORE

11 Shelley Hurwitz, State Bar No. 217566
12 HOLLAND & KNIGHT
13 633 West Fifth Street, 21st Floor
14 Los Angeles CA 90071
15 Telephone: (213) 896-2400
16 Facsimile: (213) 896-2450

17 Attorneys for Defendant
18 INTERNATIONAL GREETINGS USA

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF ALAMEDA
21 UNLIMITED CIVIL JURISDICTION

22 JOHN MOORE,

23 Plaintiff,

24 v.

25 INTERNATIONAL GREETINGS USA, *et al.*,

26 Defendants.

Case No. RG 10521289

~~PROPOSED~~ CONSENT
JUDGMENT (Exhibit 1)

Health & Safety Code §25249.6

1 **1. INTRODUCTION**

2 **1.1 John Moore, and International Greetings USA**

3 This Consent Judgment is entered into by and between John Moore (hereinafter "Moore") and
4 International Greetings USA (hereinafter "International Greetings"), with Moore and International
5 Greetings collectively referred to 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 Defendants**

11 International Greetings employs ten or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code §25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Moore alleges that International Greetings has manufactured, distributed and/or sold in the
16 State of California gift bags with handles that contain phthalates, including di(2-ethylhexyl)phthalate
17 ("DEHP"), without the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65
18 as a chemical known to the State of California to cause birth defects and other reproductive harm.
19 DEHP is referred to herein as the "Listed Chemical."

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: gift bags with
22 handles containing the Listed Chemical such as, but not limited to, *Design Focus by Glitterwrap Gift*
23 *Bag, Birthday Monkey, TB18Q0266T (#0 98016 01159 2) and Fun Type Happy Birthday Gift Bag,*
24 *TB18H0186T.* All such gift bags with handles containing the Listed Chemical are referred to
25 hereinafter as the "Products".

26 ///

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1 **1.6 Notice of Violation**

2 On or about December 15, 2009 and April 15, 2010, Moore served International Greetings,
3 Designer Greetings, Inc., Glitterwrap, Inc. and various public enforcement agencies with documents
4 entitled "60-Day Notice of Violation" and "Supplemental 60-Day Notice of Violation" (collectively
5 the "Notice") that provided International Greetings, Designer Greetings, Inc. and Glitterwrap, Inc.
6 and public enforcers with notice of alleged violations of Proposition 65 for failing to warn consumers
7 that the Products that Designer Greetings, Inc. sold exposed users in California to the Listed
8 Chemical. To the best of the parties' knowledge, no public enforcer has diligently prosecuted the
9 allegations set forth in the Notices.

10 **1.7 Complaint**

11 On or about May 28, 2010, Moore, who was and is acting in the interest of the general public
12 in California, in the Superior Court in and for the County of Alameda, filed a complaint against
13 International Greetings USA alleging violations of Proposition 65 by International Greetings based
14 on the alleged exposures to the Listed Chemical contained in the Products manufactured, distributed
15 and/or offered for sale in California by International Greetings ("Complaint").

16 **1.8 No Admission**

17 International Greetings denies the material, factual and legal allegations contained in Moore's
18 Notice and maintains that all Products that it has manufactured, sold and/or distributed in California
19 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed
20 as an admission by International Greetings or Designer Greetings of any fact, finding, issue of law, or
21 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
22 admission by International Greetings of any fact, finding, conclusion, issue of law, or violation of
23 law, such being specifically denied by International Greetings. However, this section shall not
24 diminish or otherwise affect International Greetings' obligations, responsibilities, or duties under this
25 Consent Judgment.

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1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the parties stipulate that this Court has
3 jurisdiction over International Greetings as to the allegations contained in the Complaint, that venue
4 is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
5 provisions of this Consent Judgment.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term "Effective Date" shall mean June 21, 2010.

8 **2. INJUNCTIVE RELIEF: REFORMULATION**

9 **2.1 Reformulation Commitment**

10 International Greetings hereby commits that one hundred percent (100%) of the Products that
11 it manufactures, sells or ships after the Effective Date for sale in California, shall qualify as
12 Reformulated Products. Reformulated Products are defined as those Products containing less than or
13 equal to 1,000 parts per million ("ppm") of the Listed Chemical.

14 **3. MONETARY PAYMENTS**

15 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

16 In settlement of all the claims referred to in this Consent Judgment, International Greetings
17 shall pay \$2,250 in civil penalties to be apportioned in accordance with California Health & Safety
18 Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental
19 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to John
20 Moore, as provided by California Health & Safety Code § 25249.12(d). International Greetings shall
21 issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler
22 Group in Trust For OEHHA" in the amount of \$1,687.50, representing 75% of the total penalty; and
23 (b) one check to "The Chanler Group in Trust for John Moore" in the amount of \$562.50,
24 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments:
25 (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore,
26 whose information shall be provided five (5) calendar days before the payment is due.
27
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1 Payment shall be delivered to Moore's counsel on or before June 25, 2010 at the following
2 address:

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

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8 **4. REIMBURSEMENT OF FEES AND COSTS**

9 **4.1 Attorney Fees and Costs.**

10 The parties reached an accord on the compensation due to Moore and his counsel under the
11 private attorney general doctrine and principles of contract law. Under these legal principles,
12 International Greetings shall reimburse Moore's counsel for fees and costs, incurred as a result of
13 investigating, bringing this matter to International Greetings' attention, negotiating a settlement in the
14 public interest, and obtaining court approval of the settlement. International Greetings shall pay
15 Moore and his counsel \$30,750 for all attorneys' fees, expert and investigation fees, and related costs.
16 The payment shall be issued in a third separate check made payable to "The Chanler Group" and
17 shall be delivered on or before June 30, 2010, at the following address:

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

21 International Greetings shall issue a separate 1099 for fees and cost paid in the amount of \$30,750 to
22 The Chanler Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California, 94710 (EIN:
23 20-3929984).

24 **5. RELEASE OF ALL CLAIMS**

25 **5.1 Moore's Release of International Greetings**

26 In further consideration of the promises and agreements herein contained, and for the
27 payments to be made pursuant to Sections 3 and 4 above, Moore on behalf of himself and in his
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1 representative capacity, his past and current agents, representatives, attorneys, successors, and/or
2 assignees, and in the interest of the general public, hereby waives all rights to institute or participate
3 in, directly or indirectly, any form of legal action and releases all claims, including, without
4 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
5 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees,
6 expert fees, and attorney's fees) of any nature whatsoever, whether known or unknown, fixed or
7 contingent (collectively "claims"), against International Greetings, Designer Greetings, Inc. and
8 Glitterwrap, Inc., and each of their wholesalers, licensors, licensees, auctioneers, retailers,
9 distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies,
10 predecessors, successors, corporate affiliates, subsidiaries, and their respective officers, directors,
11 attorneys, representatives, shareholders, agents, and employees, (collectively "Releasees") that arise
12 under Proposition 65, as such claims relate to International Greetings' and/or the Releasees' alleged
13 failure to warn about exposures to the Listed Chemical contained in the Products.
14

15
16 Moore, in his individual capacity and not his representative capacity, hereby releases all
17 claims which he now has or may have in the future against International Greetings, Designer
18 Greetings, Inc. and Glitterwrap, Inc., irrespective of the subject matter, of all character, kind and
19 nature, whether said claims are known or unknown or are suspected or unsuspected and Moore
20 expressly waives any and all rights and benefits which he now has, or in the future may have, under
21 California Civil Code § 1542, which provides as follows:
22

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE
25 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
26 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.
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1 **5.2 International Greetings' Release of Moore**

2 International Greetings, on behalf of itself and its Releasees, waives any and all claims against
3 Moore, his attorneys, and other representatives for any and all actions taken by Moore and his
4 attorneys and other representatives, whether in the course of investigating claims or otherwise
5 seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the
6 Products.

7 **6. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court and shall
9 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
10 has been fully executed by all parties, in which event any monies that have been provided to Moore,
11 or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days
12 after receiving written notice from International Greetings that the one-year period has expired.

13 **7. SEVERABILITY**

14 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
15 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
16 remaining shall not be adversely affected.

17 **8. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of California
19 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
20 otherwise rendered inapplicable by reason of law generally, or as to the Products specifically, then
21 International Greetings may provide written notice to Moore of any asserted change in the law, and
22 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
23 that, the Products are so affected.

24 **9. NOTICES**

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

2 For International Greetings:

3 Shelley Hurwitz, Esq.
4 Holland & Knight
5 633 West Fifth Street, 21st Floor
6 Los Angeles CA 90071

6 For Moore:

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

12 Any party, from time to time, may specify in writing to the other party a change of address to
13 which all notices and other communications shall be sent. The Parties intend and agree that this
14 Consent Judgment shall be given full effect for purposes of precluding claims regarding the Products
15 against International Greetings or the Releasees under Proposition 65 as covered under the release in
16 Section 5 of this Agreement.

15 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

19 **11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

20 Moore agrees to comply with the reporting form requirements referenced in California Health
21 & Safety Code §25249.7(f).

22 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

23 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
24 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
25 approval, Moore and International Greetings and their respective counsel agree to mutually employ
26 their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of
27 the Consent Judgment by the Court in a timely manner. Moore shall prepare and file all documents
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1 necessary to obtain court approval of this Consent Judgment. For purposes of this paragraph, best
2 efforts shall include, at a minimum, cooperating on the drafting and filing any papers in support of
3 the required motion for judicial approval.

4 **13. MODIFICATION**

5 This Consent Judgment may be modified only: (1) by written agreement of the parties and
6 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
7 any party and entry of a modified consent judgment by the Court.

8 **14. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
10 parties and have read, understood, and agree to all of the terms and conditions hereof.

12 **AGREED TO:**

13 Date: JUNE 8th 2010

15 By: [Signature]
16 John Moore

AGREED TO:

Date: JUNE 3rd 2010

By: [Signature]
Lawrence Louis, President
INTERNATIONAL GREETINGS USA

18 **IT IS SO ORDERED.**

19
20 Date: 9/1/2010

[Signature]
JUDGE OF THE SUPERIOR COURT

GAIL B. BEREOLA

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