

1 Clifford A. Chanler, State Bar No. 135534  
Gregory M. Sheffer, State Bar No. 173124  
2 Josh Voorhees, State Bar No. 241436  
THE CHANLER GROUP  
3 2560 Ninth Street  
Parker Plaza, Suite 214  
4 Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff  
JOHN MOORE

**FILED**

**JAN 13 2011**

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

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11  
12 JOHN MOORE,

13 Plaintiff,

14 v.

15 BELL SPORTS, INC., *et al.*,

16 Defendants.  
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Case No.: CIV-10002842

~~[PROPOSED]~~ <sup>cc</sup> JUDGMENT  
PURSUANT TO TERMS OF  
PROPOSITION 65 SETTLEMENT  
AND CONSENT JUDGMENT

Date: January 13, 2011

Time: 8:30 a.m.

Dept.: J

Judge: Hon. Verna A. Adams

1 In the above-entitled action, Plaintiff JOHN MOORE and Defendant MOHAWK  
2 INDUSTRIES, INC., having agreed through their respective counsel that judgment be entered  
3 pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment (“Consent  
4 Judgment”) entered into by the parties, and following issuance of an order approving this Proposition  
5 65 settlement agreement on January 13, 2011.

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 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.

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11 **IT IS SO ORDERED.**

12 Dated: JAN 13 2011

13 LYNN DURYEE  
14 JUDGE OF THE SUPERIOR COURT  
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# Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534  
2 Gregory M. Sheffer, State Bar No. 173124  
3 Josh Voorhees, State Bar No. 241436  
4 THE CHANLER GROUP  
5 2560 Ninth Street  
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10 Attorneys for Plaintiff  
11 JOHN MOORE

12 Kurt Weissmuller, State Bar No. 117187  
13 ALSTON + BIRD, LLP  
14 333 S. Hope St. 16th Fl.  
15 Los Angeles, CA 90071  
16 Telephone: (213) 576-1000  
17 Facsimile: (213) 576-1100

18 Attorneys for Defendant  
19 MOHAWK INDUSTRIES, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 FOR THE CITY AND COUNTY OF MARIN  
22 UNLIMITED CIVIL JURISDICTION

23 JOHN MOORE,

24 Plaintiff,

25 v.

26 BELL SPORTS, INC., *et al.*,

27 Defendants.

28 Case No.: CIV-10002842

**[PROPOSED] CONSENT JUDGMENT AS  
TO MOHAWK INDUSTRIES, INC.**



1           **1.6 Notice of Violation**

2           On April 9, 2010, Moore served Mohawk and various public enforcement agencies with a  
3 document entitled “60-Day Notice of Violation” (the “Notice”) that provided Mohawk and public  
4 enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for failing  
5 to warn consumers that the Products that Mohawk sold, exposed users in California to the Listed  
6 Chemical. To the best of the parties’ knowledge, no public enforcer has prosecuted the allegations  
7 set forth in the Notice.

8           **1.7 Complaint**

9           On June 2, 2010, Moore filed a complaint in the Superior Court in and for the County of  
10 Marin against Natco Products Corporation and Does 1 through 150, *Moore v. Natco, et al.*, Case  
11 No. CIV-1002842 (the “Action”), alleging violations of California Health & Safety Code § 25249.6,  
12 based on the alleged exposures to the Listed Chemical contained in vinyl flooring sold by Natco.

13           On July 2, 2010, Moore filed a First Amended Complaint (the “Complaint”) in the Action,  
14 renaming it as *Moore v. Bell Sports, Inc., et al.*, alleging additional violations of California Health &  
15 Safety Code § 25249.6 based on the alleged exposures to the Listed Chemical contained in products  
16 sold by Mohawk and others.

17           **1.8 Answer**

18           On August 19, 2010, Mohawk responded to the Complaint by filing a general denial and  
19 affirmative defenses, denying all claims alleged by Plaintiff.

20           **1.9 No Admission**

21           Mohawk denies the material, factual and legal allegations contained in Moore’s Notice and  
22 Complaint and maintain that all products that it has sold, manufactured and/or distributed in  
23 California, including the Products, have been and are in compliance with all laws. Nothing in this  
24 Consent Judgment shall be construed as an admission by Mohawk of any fact, finding, issue of law,  
25 or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as  
26 an admission by Mohawk of any fact, finding, conclusion, issue of law, or violation of law, such  
27

1 being specifically denied by Mohawk. However, this section shall not diminish or otherwise affect  
2 Mohawk's obligations, responsibilities, and duties under this Consent Judgment.

3 **1.10 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
5 jurisdiction over Mohawk as to the allegations contained in the Complaint, that venue is proper in  
6 the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this  
7 Consent Judgment.

8 **1.11 Purpose of Consent Judgment**

9 In order to avoid continued and protracted litigation, the parties wish to resolve completely  
10 and finally the issues raised by the Notice and the Complaint pursuant to the terms and conditions  
11 described herein. By entering into this Consent Judgment, the parties recognize that this Consent  
12 Judgment is a full and final settlement of all claims related to the Listed Chemical in the Products  
13 that were raised, or could have been raised, in the Complaint as a result of the issuance of the April  
14 9, 2010, Notice.

15 **1.12 Effective Date**

16 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 15,  
17 2010.

18 **2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS**

19 **2.1 Compliant Products**

20 Compliant Products are defined as those Products containing DEHP in concentrations less  
21 than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection  
22 Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or  
23 state agencies for the purpose of determining DEHP content in a solid substance. After the  
24 Effective Date, Mohawk shall only ship, sell or offer to be shipped for sale in California Compliant  
25 Products.

1           **3.     CIVIL PENALTY PAYMENTS**

2                   **3.1     Civil Penalty**

3                   In settlement of all the claims referred to in this Consent Judgment, Mohawk shall pay a  
4                   civil penalty of \$60,000, to be apportioned in accordance with California Health & Safety Code §§  
5                   25249.12 (c) and (d), with 75% of these funds remitted to the State of California's Office of  
6                   Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty  
7                   remitted to John Moore. Due to Mohawk's commitment to ship, sell or offer to be shipped for sale  
8                   in California only Compliant Products by the Effective Date however, Moore has agreed to waive  
9                   \$23,000 of the civil penalty. Further, an additional \$18,000 of the civil penalty will be waived,  
10                  providing an officer of Mohawk certifies in writing, that as of October 25, 2010, all Products that  
11                  are not Compliant Products have been removed from all California retailers, at no expense to said  
12                  retailers. Such certification shall be delivered to Moore's counsel, at the address below, on or  
13                  before October 25, 2010. Mohawk shall issue two separate checks for the penalty payment: (a) one  
14                  check made payable to "The Chanler Group in Trust For OEHHA" representing 75% of the total  
15                  penalty; and (b) one check to "The Chanler Group in Trust for John Moore" representing 25% of the  
16                  total penalty. The payments shall be delivered on or before November 1, 2010, to the following  
17                  address:

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

23                  Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010,  
24                  Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall be  
25                  provided within five calendar days of payment delivery.

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

27                   **4.1     Attorney's Fees and Costs**

28                  The parties reached an accord on the compensation due to Moore and his counsel under  
                  general contract principles and the private attorney general doctrine codified at California Code of

1 Civil Procedure (CCP) §1021.5. Mohawk shall reimburse Moore and his counsel \$56,000 for fees  
2 and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a  
3 settlement in the public interest. This figure includes Moore's future fees and costs including  
4 attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as well as any  
5 other legal work performed after the execution of this Consent Judgment incurred in an effort to  
6 obtain finality of the case. However, in the event this Consent Judgment is approved by the Court  
7 and a third party files an appeal thereof, Plaintiff may seek, and the parties agree to discuss,  
8 additional reasonable attorney's fees and costs associated with defending such an appeal.

9 The payment for reimbursement of fees and costs shall be made payable to "The Chanler  
10 Group" and shall be delivered on or before November 1, 2010, to the following address:

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

16 A separate 1099 shall be issued to "The Chanler Group" (EIN: 94-3171522) for the amount  
17 of the reimbursement of Plaintiff's fees and costs.

## 18 **5. RELEASE OF ALL CLAIMS**

### 19 **5.1 Moore's Release of Mohawk**

20 In further consideration of the promises and agreements herein contained, and for the  
21 payments to be made pursuant to Sections 3 and 4, Moore, on behalf of himself, his past and current  
22 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general  
23 public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or  
24 participate in, directly or indirectly, any form of legal action and releases all claims, including,  
25 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,  
26 obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or  
27 expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of any  
28 nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against

1 Mohawk and each of their wholesalers, licensors, licensees, auctioneers, retailers including, but not  
2 limited to Wal-Mart Stores and its corporate affiliates and subsidiaries, distributors, franchisees,  
3 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,  
4 and their respective officers, directors, attorneys, representatives, shareholders, agents, and  
5 employees, and sister and parent entities, (collectively "Releasees") that arise under Proposition 65,  
6 as such claims relate to Mohawk's alleged failure to warn about exposures to the Listed Chemical  
7 contained in the Products.

8 **5.2 Mohawk's Release of Moore**

9 Mohawk, on behalf of itself and its corporate affiliates and subsidiaries, franchisees,  
10 owners, parent companies, and their respective officers, directors, attorneys, representatives,  
11 shareholders, agents, and employees, and sister and parent entities, waives any and all claims against  
12 Moore, his attorneys, and other representatives for any and all actions taken by Moore and his  
13 attorneys and other representatives, whether in the course of investigating claims or otherwise  
14 seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

15 **6. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and  
17 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
18 after it has been fully executed by all parties.

19 **7. SEVERABILITY**

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

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California  
25 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or  
26 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this  
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1 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or  
2 preemption or rendered inapplicable by reason of law generally as to the Products, then Mohawk  
3 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
4 extent that, the Products are so affected.

5 **9. NOTICES**

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

10 To Mohawk:

11 Joe Foye, Esq.  
12 Mohawk Industries, Inc.  
13 1975 West Oak Circle  
14 Marietta, GA 30062

With a Copy to:

Kurt Weissmuller, Esq.  
Alston + Bird, LLP  
333 S. Hope St.  
16th Floor  
Los Angeles, CA 90071

14 To Moore:

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

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

22 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

27 Moore and his attorneys agree to comply with the reporting form requirements referenced in  
28 California Health & Safety Code § 25249.7(f).

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**12. ADDITIONAL POST EXECUTION ACTIVITIES**

Moore and Mohawk agree to mutually employ their, and their counsel's, best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner and defend any appellate review of the Court's approval. The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment which Moore shall draft and file, and Mohawk shall join. If any third party objection to the noticed motion is filed, Moore and Mohawk shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach. If the Superior Court does not approve the motion to approve this Consent Judgment, and the parties choose not to pursue a modified Consent Judgment within 30 days of said denial, all payments made by Mohawk shall be immediately returned to counsel for Mohawk. Should the Superior Court approve this Consent Judgment and any person successfully appeals that approval, upon remittitur, all payments made pursuant to this Consent Judgment will be returned to counsel for Mohawk.

**13. MODIFICATION**

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

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**14. AUTHORIZATION**

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

AGREED TO:

AGREED TO:

Date: \_\_\_\_\_

Date: 10/26/2010

By: \_\_\_\_\_  
Plaintiff, John Moore

By: [Signature]  
Defendant, Mohawk Industries, Inc.

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

1 **14. AUTHORIZATION**

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

5  
6 AGREED TO:

AGREED TO:

7 Date: October 15, 2010

Date: \_\_\_\_\_

8 By: *John E. Moore*

By: \_\_\_\_\_

9 Plaintiff, John Moore

Defendant, Mohawk Industries, Inc.

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11  
12 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

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14  
15 Dated: \_\_\_\_\_

\_\_\_\_\_  
16 Judge of the Superior Court