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9 Attorneys for Plaintiff
10 JOHN MOORE

FILED

JUN 01 2011

CLIFFORD A. CHANLER
Court Clerk
MARIN COUNTY SUPERIOR COURT
By: A. Garcia, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

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

18 Defendants.

) Case No.: CIV-1002842

) **[PROPOSED] JUDGMENT PURSUANT**
) **TO TERMS OF PROPOSITION 65**
) **SETTLEMENT AND CONSENT**
) **JUDGMENT AS TO ICON HEALTH &**
) **FITNESS, INC.**

) Date: June 7, 2011

) Time: 9:00 a.m.

) Dept.: L

) Judge: Hon. Lynn Duryee

5011 JUN 07 2011

1 In the above-entitled action, Plaintiff JOHN MOORE and Defendant ICON HEALTH &
2 FITNESS, INC. having agreed through their respective counsel that a judgment be entered pursuant
3 to the terms of the Consent Judgment entered into by the parties in resolution of this Proposition 65
4 action, and following the issuance of an order approving the Parties' settlement agreement on June 7,
5 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 hereby entered in accordance
8 with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties,
9 the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.
10

11 **IT IS SO ORDERED.**

12
13 Dated: 6/1/11


14 JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
2 Laurence D. Haveson, State Bar No. 152631
3 Josh Voorhees, State Bar No. 241436
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11 JOHN MOORE

12 Stephen H. Smith, State Bar No. 101377
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14 Yoka & Smith, LLP
15 777 South Figueroa Street
16 Suite 4200
17 Los Angeles, CA 90017
18 Telephone: (213) 427-2300
19 Facsimile: (213) 427-2330

20 Attorneys for Defendant
21 ICON HEALTH & FITNESS, INC.

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 FOR THE CITY AND COUNTY OF MARIN
24 UNLIMITED CIVIL JURISDICTION

25 JOHN MOORE,

26 Plaintiff,

27 v.

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

Defendants.

) Case No. CIV-1002842

) UNLIMITED JURISDICTION

) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO ICON HEALTH & FITNESS,**
) **INC.**

) Dept:

) Judge:

) Date: None set

) Complaint Filed: June 2, 2010

1 **1. INTRODUCTION**

2 **1.1 John Moore and ICON Health & Fitness, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and ICON Health & Fitness, Inc. (“ICON” or “Defendant”), with Plaintiff and
5 Defendant collectively referred to as the “parties.”

6 **1.2 John Moore**

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

10 **1.3 ICON Health & Fitness, Inc.**

11 Moore alleges that ICON 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 ICON has manufactured, imported, distributed and/or sold exercise balls
16 that contain phthalates, including di(2-ethylhexyl)phthalate (“DEHP”), without the requisite
17 Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause birth defects and
18 other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows: exercise
21 balls containing DEHP including, but not limited to, *Reebok Anti-Burst Stay Ball, #RSB5508 (#0*
22 *74345 85016 3), #RESB5507, #RESB6506, #RSB6507, #RSB5608, and #RSB7508*, manufactured,
23 imported, distributed and/or sold by ICON. All such exercise balls containing DEHP are referred to
24 hereinafter as the “Products.”

25 **1.6 Notice of Violation**

26 On April 9, 2010, Moore served ICON and various public enforcement agencies, with a
27 document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with
28

1 notice of alleged violations of California Health & Safety Code § 25249.6 based on ICON's alleged
2 failure to warn consumers that the Products, exposed users in California to DEHP. To the best of
3 the parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On June 2, 2010, Moore filed a complaint in the Superior Court in and for the County of
6 Marin against Natco Products Corporation and Does 1 through 150, *Moore v. Natco, et al.*, Case
7 No. CIV-1002842 (the "Action"), alleging violations of California Health & Safety Code § 25249.6,
8 based on the alleged exposures to DEHP contained in certain vinyl flooring products sold by Natco.
9 On July 2, 2010, Moore filed a First Amended Complaint (the "Complaint") in the Action,
10 renaming it as *Moore v. Bell Sports, Inc., et al.*, adding ICON and other companies as defendants,
11 alleging additional violations of California Health & Safety Code § 25249.6 based on the alleged
12 exposures to DEHP contained in Products sold by ICON.

13 **1.8 No Admission**

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

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the parties stipulate that this Court has
24 jurisdiction over ICON as to the allegations contained in the Complaint, that venue is proper in the
25 County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
26 Consent Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date upon
3 which ICON receives written notice of the Court’s approval of this Consent Judgment.

4 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

5 **2.1 Reformulation Standards**

6 Reformulated Products are defined as those Products containing DEHP in concentrations
7 less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed
8 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or
9 any other methodology utilized by federal or state agencies for the purpose of determining the
10 DEHP content in a solid substance.

11 **2.2 Product Warnings**

12 Commencing on the Effective Date, ICON shall, for all Products other than Reformulated
13 Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). Each
14 warning shall be prominently placed with such conspicuousness as compared with other words,
15 statements, designs, or devices as to render it likely to be read and understood by an ordinary
16 individual under customary conditions before purchase or use. Each warning shall be provided in a
17 manner such that the consumer or user understands to which *specific* Product the warning applies,
18 so as to minimize the risk of consumer confusion.

19 **(a) Retail Store Sales.**

20 **(i) Product Labeling.** Defendant shall affix a warning to the packaging,
21 labeling, or directly on each Product sold in retail outlets in California by Defendant or any person
22 selling the Products, that states:

23 **WARNING:** This product contains one or more chemicals
24 known to the State of California to cause cancer,
25 birth defects and other reproductive harm,
 including DEHP, a phthalate chemical.

26 **(ii) Point-of-Sale Warnings.** Alternatively, Defendant may provide
27 warning signs in the form below to its customers in California with instructions to post the
28 warnings in close proximity to the point of display of the Products. Such instruction sent to

1 as the display and/or description of the Product, Defendant may utilize a designated symbol to cross
2 reference the applicable warning and shall define the term “designated symbol” with the following
3 language on the inside of the front cover of the catalog or on the same page as any order form for
4 the Product(s):

5 **WARNING:** Certain products identified with this symbol
6 ▼ and offered for sale in this catalog contain
7 one or more chemicals known to the State of
8 California to cause cancer, birth defects and
 other reproductive harm, including DEHP, a
 phthalate chemical.

9 The designated symbol must appear on the same page and in close proximity to the display
10 and/or description of the Product. On each page where the designated symbol appears, Defendant
11 must provide a header or footer directing the consumer to the warning language and definition of
12 the designated symbol.

13 (ii) **Internet Website Warning.** A warning may be given in conjunction
14 with the sale of the Products via the internet, provided it appears either: (a) on the same web page
15 on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on
16 the same page as the price for any Product; or (d) on one or more web pages displayed to a
17 purchaser during the checkout process. The following warning statement shall be used and shall
18 appear in any of the above instances adjacent to or immediately following the display, description,
19 or price of the Product for which it is given in the same type size or larger than the Product
20 description text:

21 **WARNING:** This product contains one or more chemicals
22 known to the State of California to cause cancer,
 birth defects and other reproductive harm,
 including DEHP, a phthalate chemical.

23 Alternatively, the designated symbol may appear adjacent to or immediately following the
24 display, description, or price of the Product for which a warning is being given, provided that the
25 following warning statement also appears elsewhere on the same web page, as follows:

26 **WARNING:** Products identified on this page with the
27 following symbol ▼ contain one or more
 chemicals known to the State of California to
 cause cancer, birth defects and other
28 reproductive harm, including DEHP, a
 phthalate chemical

1 **3. PAYMENT OF PENALTIES**

2 **3.1 Initial Civil Penalty**

3 In settlement of all the claims referred to in this Consent Judgment, ICON shall pay \$37,000
4 in initial civil penalties, to be apportioned in accordance with California Health & Safety Code §
5 25249.12(c) & (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. In determining the initial civil penalty, Plaintiff took into account, among
8 other things, ICON's representations that it ceased distributing the *Reebok Anti-Burst Stay Ball*,
9 *#RSB5508 (#0 74345 85016 3)*, *#RESB5507*, *#RESB6506*, *#RSB6507*, *#RSB5608*, and *#RSB7508*
10 *identified in paragraph 1.5, above*, to California after receipt of the Notice and that it will not
11 distribute any Products into California unless they comply with Section 2.1 or 2.2 above. ICON's
12 attorneys, through its clients' trust account, shall issue two separate checks for the penalty payment:
13 (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of
14 \$27,750 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust
15 for John Moore" in the amount of \$9,250, representing 25% of the total penalty. Two separate
16 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814
17 (EIN: 68-0284486); and (b) John Moore, whose information shall be provided five calendar days
18 before the payment is due.

19 The funds for payment of the initial civil penalty shall be delivered to ICON's counsel and
20 held in a client trust account within 30 days of Plaintiff and Defendant executing this consent
21 judgment. No later than three days after receiving written notice of the Court's approval of this
22 Consent Judgment, ICON's counsel shall deliver payment to Moore's counsel at the following
23 address:

24 The Chanler Group
25 Attn: Proposition 65 Controller
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710

1 **3.2 Final Civil Penalty**

2 ICON shall pay a final civil penalty of \$40,000, on December 31, 2011. As incentive to
3 reformulate the Products, however, the final civil penalty shall be waived in its entirety if an
4 Officer of ICON certifies in writing that as of December 31, 2011, ICON has sold, shipped and
5 offered for sale in California only Reformulated Products and that it will continue to sell, ship and
6 offer for sale in California only Reformulated Products. Such certification must be received by
7 The Chanler Group on or before December 31, 2011. The final civil penalty payment shall be
8 apportioned in
9 accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds
10 remitted to the State of California’s Office of Environmental Health Hazard Assessment
11 (“OEHHA”) and the remaining 25% of the penalty remitted to John Moore. ICON shall issue two
12 separate checks for the final civil penalty payment: (a) one check made payable to “The Chanler
13 Group in Trust For OEHHA” in the amount of \$30,000, representing 75% of the total penalty;
14 and (b) one check to “The Chanler Group in Trust for John Moore” in the amount of \$10,000,
15 representing 25% of the total penalty. Two separate 1099s shall be issued for the above
16 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b)
17 John Moore, whose information shall be provided five calendar days before the payment is due (if
18 different than the information already provided to ICON under Section 3.1 above).

19 Payment shall be delivered to Moore’s counsel at the following address:

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

23 **4. REIMBURSEMENT OF ATTORNEY’S FEES AND COSTS**

24 The parties reached an accord on the compensation due to Moore and his counsel under
25 general contract principles and the private attorney general doctrine codified at California Code of
26 Civil Procedure (CCP) §1021.5. ICON shall reimburse Moore and his counsel \$47,000 for fees and
27 costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a
28 settlement in the public interest. This figure includes Moore’s future fees and costs including

1 attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as well as any
2 other legal work performed after the execution of this Consent Judgment incurred in an effort to
3 obtain finality of the case. However, in the event a third party were to appeal entry of this Consent
4 Judgment, either party and their respective counsel shall be entitled to seek their reasonable
5 attorney's fees and costs associated with all appellate work defending the entry of judgment
6 pursuant to CCP §1021.5.

7 The funds required for payment pursuant to this Section 4 shall be delivered to ICON's
8 counsel and held in a client trust account within 30 days of Plaintiff and Defendant executing this
9 consent judgment. No later than three days after receiving written notice of the Court's approval of
10 this Consent Judgment, ICON's counsel shall deliver payment to Moore's counsel at the following
11 address:

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

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

19 **5. RELEASE OF ALL CLAIMS**

20 **5.1 Moore's Release of ICON**

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

1 ICON and each of its downstream wholesalers, licensors, licensees, auctioneers, retailers,
2 distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
3 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
4 shareholders, agents, and employees, and sister and parent entities, (collectively "Releasees") that
5 arise under Proposition 65, as such claims relate to ICON's alleged failure to warn about exposures
6 to DEHP contained in the Products.

7 **5.2 ICON's Release of Moore**

8 ICON, on behalf of itself and its Releasees, waives any and all claims against
9 Moore, his attorneys, and other representatives for any and all actions taken by Moore and his
10 attorneys and other representatives, whether in the course of investigating claims or otherwise
11 seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

12 **6. COURT APPROVAL**

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

16 **7. SEVERABILITY**

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

20 **8. GOVERNING LAW**

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

1 **9. NOTICES**

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

6 To ICON:

7 Everett Smith, Esq.
8 ICON Health & Fitness, Inc.
9 1500 South 1000 West
 Logan, Utah 84321

To Moore:

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

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

12 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

19 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

20 Moore and ICON agree to mutually employ their, and their counsel's, best efforts to support
21 the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by
22 the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety
23 Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
24 which Moore shall draft and file, and ICON shall join. If any third party objection to the noticed
25 motion is filed, Moore and ICON shall work together to file a joint reply and appear at any hearing
26 before the Court. This provision is a material component of the Consent Judgment and shall be
27 treated as such in the event of a breach.
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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.

14. **AUTHORIZATION**

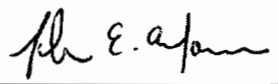
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: MARCH 22, 2011

Date: 22 March 2011

By: 
Plaintiff, John Moore

By: 
Defendant, ICON Health & Fitness, Inc.