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THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710-2565
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6 Attorneys for Plaintiff
JOHN MOORE
7

ENDORSED
FILED
San Francisco County Superior Court

NOV - 7 2011

CLERK OF THE COURT
BY: GINA GONZALES
Deputy Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

12 JOHN MOORE,
13 Plaintiff,
14 v.
15 C2F, INC.; *et al.*,
16 Defendants.
17

Case No. CGC-10-504325

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND AMENDED
CONSENT JUDGMENT**

Date: August 22, 2011
Time: 9:30 A.M.
Dept.: 301
Judge: Hon. Peter J. Busch

Action Filed: October 1, 2011

Trial Date: Not Set

1 Plaintiff, John Moore, and defendant, C2F, Inc., having agreed that judgment be entered in
2 this Proposition 65 action pursuant to the terms of their mutually executed settlement agreement
3 in the form of an Amended Consent Judgment, and following issuance of an Order by this Court
4 approving the terms of the settlement and Consent Judgment,

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

10
11 **IT IS SO ORDERED.**

12
13 Dated: NOV 03 2011

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
JOHN MOORE

7 Christopher R. Ambrose, Esq., State Bar No. 132846
8 AMBROSE LAW GROUP, LLC
200 Buddha Building
9 312 NW 10th Ave.
Portland, OR 97209
10 Telephone: (503) 467-7209
Facsimile: (503) 467-7210

11 Attorneys for Defendant
12 C2F, INC.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SAN FRANCISCO
16 UNLIMITED CIVIL JURISDICTION
17

18 JOHN MOORE,
19 Plaintiff,
20 v.
21 C2F, INC.; and DOES 1-150, inclusive,
22 Defendants.
23
24

Case No. CGC-10-504325

**[PROPOSED] AMENDED
CONSENT JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 John Moore and C2F, Inc.**

3 This Amended Consent Judgment is entered into by and between John Moore (hereinafter
4 “Moore”) and C2F, Inc. (hereinafter “C2F”), with Moore and C2F collectively referred to as the
5 “Parties.”

6 **1.2 Plaintiff**

7 Moore is an individual who invokes private plaintiff attorney general rights under the Safe
8 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et*
9 *seq.* (“Proposition 65”).

10 **1.3 Defendant**

11 C2F employs ten or more persons and is a person in the course of doing business for purposes
12 of Proposition 65.

13 **1.4 General Allegations**

14 Moore alleges that C2F has sold in the State of California books and sketchbooks containing
15 di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical
16 identified by the State of California as known to cause birth defects or other reproductive harm.
17 DEHP is also referred to herein as the “Listed Chemical.”

18 **1.5 Product Description**

19 The products that are covered by this Consent Judgment are defined as books and
20 sketchbooks containing the Listed Chemical including, but not limited to, *Pentalic 6” x 8” a La*
21 *Modeskin Traveler’s Pocket Sketch, PTL-016163-3(#6 61670 90293 5)*. All such items shall be
22 referred to herein as the “Products.”

23 **1.6 Notice of Violation**

24 On August 9, 2010, Moore served C2F and various public enforcement agencies with a
25 document entitled “60-Day Notice of Violation” (“Notice”) that provided C2F and such public
26 enforcers with notice that C2F was alleged to be in violation of Proposition 65 for failing to warn
27 consumers and customers that the Products exposed users in California to DEHP.

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1.7 Complaint

On October 1, 2010, Moore, who alleges that he was and is acting in the interest of the general public in California, filed the instant action in the San Francisco Superior Court (“Complaint”), naming C2F as a defendant and alleging violations of Proposition 65 by C2F based on exposures to DEHP contained in the Products it sold without warning in California.

1.8 No Admission

C2F denies the material, factual, and legal allegations contained in the Notice and Complaint and maintains that all of the products that it has sold in California, including the Products, have been, and are, in compliance with all laws. C2F specifically denies (a) that it knowingly and intentionally exposed any individual to a chemical known to the state of California to cause cancer or reproductive toxicity, and (b) that the Products exceeded the safe harbor levels provided by the California Office of Environmental Health Hazard Assessment (“OEHHA”).

Nothing in this Consent Judgment shall be construed as an admission by C2F of any fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by C2F of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by C2F. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of C2F under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has specific jurisdiction over C2F as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco, and that this Court has specific jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean February 2, 2011.

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

2 **2.1 Reformulation Commitment**

3 As of April 1, 2011, C2F shall not sell or offer for sale in California any Products unless they
4 are “Reformulated Products.” For purposes of this Settlement Agreement, Reformulated Products
5 shall mean Products containing no more than 1,000 parts per million of the Listed Chemical (0.1%),
6 when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and
7 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of
8 determining the presence of the Listed Chemical in a solid sample.

9 **2.2 Requirements for Products Remaining in Inventory**

10 (a) For its remaining inventory of Products that C2F sells or offers for sale in
11 between the Effective Date and March 31, 2011, C2F agrees that, prior to selling those Products to a
12 California customer or a customer reasonably likely to resell the Products in California, it will affix a
13 warning to the packaging, labeling, or directly on each Product that states:

14 **WARNING:** This product contains DEHP, a
15 phthalate chemical known to the
16 State of California to cause birth
 defects or other reproductive harm.

17 C2F agrees that the warning is to be prominently placed with such conspicuousness as compared with
18 other words, statements, designs or devices as to render it likely to be read and understood by an
19 ordinary individual under customary conditions of purchase or use.

20 (b) For Products that were shipped, distributed, or sold by C2F prior to the
21 Effective Date to a retailer or distributor customer that are not Reformulated Products, that remain in
22 inventory with the customer, and that are known by C2F to be reasonably likely to be sold in
23 California, C2F agrees that, within thirty days of the Effective Date, it will either:

24 (i) Provide each of those retailer and/or distributor customers with a letter
25 explaining the customer’s duty to provide clear and reasonable Proposition 65 warnings for the
26 Products. In addition, C2F shall include for those customers a sufficient number of warning stickers
27 containing the following language:
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WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

The letter shall include instructions that the stickers be placed on the product packaging for those Products that remain on the sales floor of the retailer or are otherwise in inventory with the store or distribution facility. The instructions shall advise retailers and distributors that warning stickers issued for Products are to be prominently placed with such conspicuousness as compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use; or

(ii) Provide a letter requesting that the retailer or distributor return such Products, intended for distribution or sale in California, to C2F. C2F shall offer to pay the return shipping for the Products.

(c) Any letter provided under subsections 2.2(b) (i) or (ii) shall specify the product name, product or item number, and/or shop keeping unit “SKU” number, if applicable, for each Product covered by the letter.

3. **MONETARY PAYMENTS**

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

Pursuant to California Health & Safety Code § 25249.7(b), the civil penalty assessed shall be Seven Thousand Five Hundred and no/100ths Dollars (\$7,500.00). In consideration of the factors set forth in Health & Safety Code § 25249.7(b), and C2F’s immediate and cooperative efforts after receiving the Notice to investigate the alleged presence of the Listed Chemical in the Products, and to prevent further exposures from occurring by sending written notice to its California customers providing Proposition 65 warning labels and offering to accept return of unsold product, Moore will provide C2F with a credit of \$5,000 toward the total penalty amount. As a result of this credit, C2F shall pay Two Thousand Five Hundred and no/100ths Dollars (\$2,500.00) for the alleged violations of Proposition 65 that are the subject of the Notice and Complaint.

In accordance with California Health & Safety Code § 25249.12(c)(1), seventy-five percent of the penalty amount shall be remitted to the State of California’s Office of Environmental Health

1 Hazard Assessment (“OEHHA”) and apportioned pursuant to California Health & Safety Code
2 § 25192. The remaining twenty-five percent of the penalty amount shall be paid to Moore as
3 provided by California Health & Safety Code § 25249.12(d). C2F shall issue two separate checks for
4 payment as follows: (a) one check made payable to “The Chanler Group in Trust for OEHHA” in the
5 amount of One Thousand Eight Hundred Seventy-Five and no/100ths Dollars (\$1,875.00) and (b) one
6 check made payable to “The Chanler Group in Trust for John Moore” in the amount of Six Hundred
7 Twenty-Five and no/100ths Dollars (\$625.00). Two separate 1099s shall be issued for the above
8 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) John
9 Moore, whose tax information shall be provided five calendar days before the payment is due.

10 Payment shall be delivered to Moore’s counsel within five (5) days of Court approval of this
11 Consent Judgment or an unchallenged tentative ruling granting judicial approval of this Consent
12 Judgment, whichever occurs first, at the following address:

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

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

17 **4.1 Attorney Fees and Costs**

18 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
19 reaching terms on the amount of attorney fees and costs to be reimbursed to them, thereby leaving the
20 fee issue to be resolved after the material terms of the agreement had been settled. The Parties then
21 attempted, but were unable, to reach an accord on the compensation due to Moore and his counsel
22 under the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all work
23 performed through the Effective Date of the Consent Judgment and reasonably to be performed in
24 connection with the terms set forth in this Consent Judgment after the Effective Date, such as the
25 approval process set forth in Section 6 below. The Parties do agree, however, that Moore and his
26 counsel are entitled to their reasonable attorneys’ fees and costs for all work performed through the
27 Effective Date and reasonably to be performed in connection with the terms set forth in this Consent
28 Judgment after the Effective Date, such as obtaining judicial approval pursuant to Section 6, and the

1 motion for fees contemplated by Sections 4.1 and 4.2 under the prerequisites set forth by CCP §
2 1021.5.

3 **4.2 Adjudication of Moore's Attorney Fees and Costs**

4 The Parties agree to have Plaintiff's outstanding fee and cost claims adjudicated by binding
5 mediation, the cost of which shall be borne equally by the Parties. The mediation shall take place
6 within forty-five days of the Effective Date before a mutually agreeable mediator in the San
7 Francisco, California area; or, if, by February 7, 2011, the Parties are unable to agree upon and select
8 a mediator, the Parties agree to engage Judicial Arbitration and Mediation Services ("JAMS") offices
9 in San Francisco, California to provide a neutral and conduct the mediation. The Parties further agree
10 to submit all information necessary to retain the services of, and establish a file or account with, the
11 agreed upon mediator or JAMS on or before February 21, 2010, and thereafter to abide by the rules
12 set by the mediator or JAMS throughout the mediation process.

13 If the mediation is unsuccessful, the Parties have further agreed to convey the necessary
14 authority to the neutral conducting the mediation to determine a sum that he or she deems to be the
15 reasonable attorneys' fees and costs recoverable by Plaintiff. Plaintiff and C2F agree that if the
16 mediator is required to make a determination of Plaintiff's reasonable fees and costs, that
17 determination shall be final and binding upon the Parties.

18 The mediation shall continue for no more than one day, and is to be conducted by a single
19 mediator. Moore and his counsel reserve their right to seek recovery in the mediation of their fees
20 and costs incurred in connection with this ancillary process consistent with California Law.

21 **4.3 Reimbursement of Moore's Attorney Fees and Costs Following Mediation**

22 On July 25, 2011, pursuant to the agreement of the Parties in Sections 4.1 and 4.2, above,
23 Moore and C2F participated in a mediation to determine the amount of Moore's reasonable attorneys'
24 fees and costs. Lester J. Levy, Esq. a neutral retained through JAMS, San Francisco, conducted the
25 mediation. At the conclusion of the mediation, pursuant to Section 4.2, C2F shall pay \$28,500.00 for
26 Moore's attorneys' fees and costs.

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1 The payment of fees and costs shall be made payable to The Chanler Group, and delivered at
2 the below address on or before September 9, 2011. Counsel for C2F shall also provide proof of
3 deposit of this amount in his attorney-client trust account to counsel for Moore within 30 days of
4 execution of this amended Consent Judgment. WRC CSS

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Moore's Release of C2F**

10 In further consideration of the promises and agreements herein contained, and for the
11 payments to be made pursuant to Sections 3 and 4 above, Moore, on behalf of himself, his past and
12 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
13 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
14 legal action and releases all claims, including, without limitation, all actions, causes of action, suits,
15 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but
16 not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever (with the
17 exception of those attorneys' fees and costs to be determined pursuant to Sections 4.1 and 4.2 herein),
18 whether known or unknown, fixed or contingent, at law or in equity (collectively "Claims"), against
19 C2F and each of its past and current distributors, wholesalers, licensors, licensees, auctioneers,
20 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
21 affiliates, and subsidiaries, and their respective past and current officers, directors, principals,
22 partners, members, attorneys, representatives, shareholders, agents, and employees, and sister and
23 parent entities (collectively "Releasees"). This release is limited to those claims that arise under or
24 relate to Proposition 65, as such claims arise out of or relate to C2F's alleged failure to warn about
25 exposures to DEHP contained in the Products. The Parties further understand and agree that this
26 release shall not extend upstream to any entities that manufactured the Products or any component
27 parts thereof, or to any distributors or suppliers who sold Products or any component parts thereof to
28 C2F.

1 Moore also, on behalf of himself and his agents, attorneys, representatives, successors and
2 assigns, in his individual capacity only and not in his representative capacity, provides a general
3 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
4 actions, causes of action, obligations, damages, losses, claims, liabilities and demands of Moore of
5 any nature, character, or kind, known or unknown, suspected or unsuspected, and agrees not to
6 initiate, participate in, or maintain any further legal action in any judicial or administrative forum,
7 including any Claim against C2F and Releasees arising from any alleged violations of Proposition 65
8 with the exception of attorneys' fees and costs to be determined according to Sections 4.1 and 4.2.
9 Moore acknowledges that he is familiar with Section 1542 of the California Civil Code, which
10 provides as follows:

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

15 Moore, in his individual capacity only and not in his representative capacity, on behalf of
16 himself and his agents, attorneys, representatives, successors and assigns, expressly waives and
17 relinquishes any and all rights and benefits that he may have under, or that may be conferred on him
18 by, the provisions of Section 1542 of the California Civil Code as well as under any other state or
19 federal statute or common law principle of similar effect, to the fullest extent that he may lawfully
20 waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the
21 release hereby given shall be and remain in effect as a full and complete release notwithstanding the
22 discovery or existence of any such additional or different claims or facts arising out of the released
23 matters.

24 **5.2 C2F's Release of Moore**

25 C2F waives any and all claims against Moore, his attorneys and other representatives, for any
26 and all actions taken or statements made (or those that could have been taken or made) by Moore and
27 his attorneys and other representatives, whether in the course of investigating claims or otherwise
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1 seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products
2 through the date of entry of an order by the Court approving this Consent Judgment.

3 **6. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and shall
5 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
6 has been fully executed by all Parties. Moore agrees to submit this matter to the Court for its
7 approval within sixty (60) days of full execution of this Agreement.

8 **7. SEVERABILITY**

9 This Consent Judgment is expressly contingent upon Court approval of this Consent
10 Judgment in its entirety.

11 **8. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California
13 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
14 otherwise rendered inapplicable by reason of law generally, or as to the Products, then C2F may
15 provide written notice to Moore of any asserted change in the law, and shall have no further
16 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
17 so affected. Nothing in this Consent Judgment shall be interpreted to relieve C2F from any
18 obligation to comply with any pertinent state or federal toxics control laws.

19 **9. NOTICES**

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

24 For C2F:

25 William Cieslinski, President
26 C2F, Inc.
27 6600 SW 111th Avenue
28 Beaverton, OR 97008-2352

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With a copy to:

Christopher R. Ambrose, Esq.
Ambrose Law Group, LLC
200 Buddha Building
312 NW 10th Ave.
Portland, OR 97209

For Moore:

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

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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

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

12. ADDITIONAL POST EXECUTION ACTIVITIES

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 (“Motion”). In furtherance of obtaining such approval, Moore and C2F and their respective counsel agree to mutually employ their 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. Subject to C2F’s and its counsel’s compliance with the best efforts requirement of this Section 12, if C2F intends to prepare the initial draft papers required for the Motion, it shall provide notice to Moore’s counsel of its intent within ten (10) days of the Effective Date, and shall provide its draft Motion to counsel for Moore no later than March 1, 2011. Moore agrees to submit this matter to the Court for its approval within sixty (60) days of full execution of this Agreement. For purposes of this section, “best efforts” shall

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include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

13. MODIFICATION

This Consent Judgment may be modified only by a written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon.

14. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions hereof.

AGREED TO:

JOHN MOORE

John E. Moore

Date: July 25, 2011

AGREED TO:

C2F, INC.

By: _____

Its: _____

Date: _____

✓

1 include, at a minimum, cooperating on the drafting and filing of any papers in support of the required
2 motion for judicial approval.


3 **13. MODIFICATION**

4 This Consent Judgment may be modified only by a written agreement of the Parties and upon
5 entry of a modified consent judgment by the Court thereon.

6 **14. AUTHORIZATION**

7 The undersigned are authorized to execute this Consent Judgment and have read, understood,
8 and agree to all of the terms and conditions hereof.

9		
10	AGREED TO:	AGREED TO:
11	JOHN MOORE	C2F, INC.
12	_____	WR Czeslowski
13		By: <u>WILLIAM R CZESLAWSKI</u>
14	Date: _____	Its: <u>PRESIDENT & CEO</u>
15		Date: <u>July 25, 2011</u>

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18 July 25, 2011
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