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8 Attorneys for Plaintiff
9 JOHN MOORE

FILED

JAN 18 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Bond, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF MARIN

12 UNLIMITED CIVIL JURISDICTION

13
14 JOHN MOORE,

15 Plaintiff,

16 v.

17 STAMINA PRODUCTS, INC.; OK-1
18 MANUFACTURING COMPANY; ALTUS
19 ATHLETIC MANUFACTURING CO.; and
20 DOES 1-150, inclusive,

21 Defendants.

Case No. CIV1004177

**~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND ~~PROPOSED~~
CONSENT JUDGMENT AS TO
DEFENDANT STAMINA PRODUCTS,
INC.**

Date: October 11, 2011

Time: 9:00 a.m.

Dept. L

Judge: Hon. M. Lynn Duryee

1 Plaintiff John Moore and Defendant Stamina Products, Inc., having agreed through
2 their respective counsel that Judgment be entered pursuant to the terms of their settlement
3 agreement in the form of a Consent Judgment, and following this Court's issuance of an
4 Order approving this Proposition 65 settlement and Consent Judgment,

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

10
11 **IT IS SO ORDERED.**

12
13
14 Dated: JAN 1 8 2012

LYNN DURYEE

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Christopher M. Martin, State Bar No. 186021
THE CHANLER GROUP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710
Telephone: (510) 848-8880
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5 Attorneys for Plaintiff
JOHN MOORE

6 Bruce Nye, State Bar No. 77608
7 ADAMS NYE BECHT LLP
222 Kearny Street, 7th floor
8 San Francisco, California 94108
Telephone: (415) 982-8855
9 Facsimile: (415) 982-2042

10 Attorneys for Defendant
STAMINA PRODUCTS, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION
15

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 STAMINA PRODUCTS, INC.; OK-1
20 MANUFACTURING COMPANY; ALTUS
21 ATHLETIC MANUFACTURING COMPANY;
and DOES 1 through 150, inclusive,

22 Defendants.

Case No. CIV1004177

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT STAMINA PRODUCTS,
INC.**

1 **1. INTRODUCTION**

2 **1.1 John Moore and Stamina Products, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (hereinafter
4 “Moore” or “Plaintiff”) and defendant Stamina Products, Inc. (hereinafter “Stamina Products”
5 or “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties” and each
6 individually referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Moore alleges that Stamina Products manufactured, distributed and/or sold sauna fitness
17 suits containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the State of California
18 without the requisite health hazard warnings. DEHP is listed pursuant to Proposition 65 as
19 known to the State of California to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: sauna
22 fitness suits containing DEHP, manufactured, distributed, and/or sold in the State of California
23 by Defendant, including, but not limited to the *Gold's Gym Sauna Suit #05-401GG (#0 22634*
24 *90401)* . All such sauna fitness suits containing DEHP are referred to hereinafter as the
25 “Products.”

26 **1.6 Notice of Violation**

27 On May 7, 2010, Moore served Stamina Products and various public enforcement
28 agencies with a document entitled “60-Day Notice of Violation” (hereinafter “Notice”) that

provided the recipients with notice of alleged violations of California Health & Safety Code §25249.6 for failing to warn consumers that the Products exposed users in California to DEHP.

1.7 Complaint

On August 9, 2010, Moore, who was and is acting in the interest of the general public in California, filed a complaint (hereinafter "Complaint" or "Action") in the Superior Court in and for the County of Marin against Stamina Products, Inc., OK-1 Manufacturing Company, Altus Athletic Manufacturing Company and Does 1 through 150, alleging, *inter alia*, violations of California Health & Safety Code §25249.6 based on the alleged exposures to DEHP contained in the Products.

1.8 No Admission

Stamina Products denies the material factual and legal allegations contained in Moore's Notice and Complaint, and maintains that all Products sold and distributed in California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Stamina Products of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Stamina Products of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Stamina Products. However, this section shall not diminish or otherwise affect Stamina Products' obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Stamina Products as to the allegations contained in the Complaint, that venue is proper in the County of Marin, and that this Court has 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 May 15, 2011.

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

2 **2.1 Reformulation Standards and Commitment**

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

8 As of October 1, 2011, Stamina Products shall manufacture, import, distribute sell
9 and/or offer for sale in California, only Products that qualify as Reformulated Products,
10 provided, however, that Stamina Products may continue to sell Products that are currently in
11 Stamina Products' inventory and that contained the interim warning labels on or before the
12 Effective Date as set forth in Section 2.2 below.

13 **2.2 Interim Product Warnings**

14 As of the Effective Date, Stamina Products shall, for all Products other than Reformulated
15 Products, provide clear and reasonable warnings as set forth in Sections 2.3 and 2.4 below. The
16 parties hereby acknowledge and agree that Stamina has already implemented a labeling program
17 that uses the following language:

18 **WARNING:** This product contains a chemical known to the
19 State of California to cause cancer or birth
20 defects or other reproductive harm.

21 Therefore, the parties agree that Stamina may continue to use the above as interim
22 warning language on all Products that have the interim warning language applied on or before
23 the Effective Date. However, Stamina Products shall, for all Products that did not contain the
24 interim warning language above on or before the Effective Date, use the specific language
25 provided in Sections 2.3 and 2.4 below. In all cases each warning shall be prominently placed
26 with such conspicuousness as compared with other words, statements, designs, or devices as to
27 render it likely to be read and understood by an ordinary individual under customary conditions
28 and shall otherwise comply with Proposition 65 and its implementing regulations.

1 **2.3 Interim Warnings For Retail Sales**

2 Except as provided in Section 2.2 above, Stamina Products shall perform its warning
3 obligation by affixing a warning to the packaging of, or, if no packaging exists, directly on, each
4 Product sold in retail outlets in California that states:

5 **WARNING:** This product contains DEHP, a
6 chemical known to the State of California to cause
 birth defects and other reproductive harm.

7 **2.4 Interim Warnings For Mail Order Catalog and Internet Sales**

8 Stamina Products may satisfy its warning obligations for Products it sells via its mail
9 order catalog and/or the internet to California residents by providing a warning: (i) in its mail
10 order catalog; and (ii) on its website. Warnings given in the mail order catalog and on its
11 website shall identify the specific Product to which the warning applies as further specified in
12 subsections (a) and (b) below.

13 **(a) Mail Order Catalog Warning.** Any warning Stamina Products provides
14 in its mail order catalog must be in the same type size or larger than the Product description text
15 within the catalog. The following warning shall be provided on the same page and in the same
16 location as each display of the Product:

17 **WARNING:** This product contains DEHP, a
18 chemical known to the State of California to cause
 birth defects and other reproductive harm.

19 If Stamina Products elects to sell one or more Products to consumers via mail order
20 catalog after the Effective Date, then the warnings shall be included in all catalogs containing
21 the Products which are printed for distribution in California on or after the Effective Date.

22 **(b) Internet Website Warning.** A warning may be given in conjunction with
23 the sale of the Product by Stamina Products to a California consumer via the internet, provided
24 it appears either: (a) on the same web page on which the Product is displayed; (b) on the same
25 web page as the order form for the Product; (c) on the same page as the price for any Product; or
26 (d) on one or more web pages displayed to a purchaser during the checkout process. The
27 following warning statement shall be used and shall appear in any of the above instances
28

1 adjacent to or immediately following the display, description, or price of the Product for which
2 it is given in the same type size or larger than the product description text:

3 **WARNING:** This product contains DEHP, a
4 chemical known to the State of California to
5 cause birth defects and other reproductive
6 harm.

7 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

8 **3.1 Civil Penalty.** Stamina Products shall pay a civil penalty of \$42,500 to be
9 apportioned in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with
10 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
11 Assessment and the remaining 25% of the initial civil penalty to John Moore, as provided by
12 California Health & Safety Code § 25249.12(d). This initial civil penalty reflects a credit of
13 \$70,000 based on Stamina Products' commitment to reformulate the Products pursuant to
14 Section 2.1 above. Stamina Products shall issue two separate checks for the penalty payment: (a)
15 one check made payable to "The Chanler Group in Trust For OEHHA" in an amount
16 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for John
17 Moore" in an amount representing 25% of the total penalty. Two separate 1099s shall be issued
18 for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-
19 0284486); and (b) John Moore, whose information shall be provided five calendar days before
20 the payment is due.

21 The payments shall be delivered to Moore's counsel on or before the Effective Date.
22 Moore's counsel shall deposit the payments in its client trust account and shall distribute the
23 funds as provided above following approval of the Consent Judgment by the Court. Stamina
24 Products shall deliver the payments to the following address:

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

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

2 **4.1 Attorney's Fees and Costs**

3 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
4 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this fee
5 issue to be resolved until after the other material terms of the agreement had been settled. The
6 Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual
9 execution of this agreement. Stamina Products shall reimburse Moore and his counsel \$78,000
10 for fees and costs incurred to date, as a result of investigating, bringing this matter to its attention,
11 and negotiating a settlement in the public interest. Stamina Products shall also reimburse Moore
12 and his counsel \$12,000 for future anticipated fees and costs including, but not limited to,
13 attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as well as any
14 other legal work performed after the execution of this Consent Judgment incurred in an effort to
15 obtain finality of the case. However, in the event a third party were to appeal entry of this
16 Consent Judgment, Moore and his counsel shall be entitled to seek their reasonable attorney's fees
17 and costs associated with all appellate work defending the entry of judgment pursuant to CCP §
18 1021.5.

19 One check for reimbursement of fees and costs, in the amount of \$90,000 shall be made
20 payable to "The Chanler Group" and shall be delivered on or before the Effective Date.
21 Moore's counsel shall deposit the payment in The Chanler Group trust account and shall
22 distribute the funds following approval of the Consent Judgment by the Court. Stamina
23 Products shall deliver the payment to the following address:

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

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

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

3 This Consent Judgment is a full, final and binding resolution between Plaintiff, on behalf
4 of himself and the public, and Defendant, of any violation of Proposition 65 that was or could
5 have been asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated entities that
6 are under common ownership, directors, officers, employees, attorneys, and each entity to whom
7 Defendant directly or indirectly distributes or sells Products, including but not limited to
8 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
9 licensors, and licensees ("Releasees"), based on their failure to warn about alleged exposures to
10 DEHP contained in the Products that were sold by Defendant.

11 **5.2 Plaintiff's Public Release of Proposition 65 Claims.**

12 In further consideration of the promises and agreements herein contained, Plaintiff on
13 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
14 assignees, and in the interest of the general public, hereby waives all rights to institute or
15 participate in, directly or indirectly, any form of legal action and releases all claims, including,
16 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
17 demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not
18 limited to, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on
19 appeal -- limited to and arising under Proposition 65 with respect to DEHP in the Products sold
20 by Defendant (collectively "claims"), against Defendant and Releasees.

21 **5.3 Plaintiff's Individual Release of Claims.**

22 Plaintiff also, in his individual capacity only and *not* in his representative capacity,
23 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
24 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
25 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or
26 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
27 DEHP in the Products manufactured, distributed or sold by Defendant.

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1 **5.4 Defendant's Release of Plaintiff.**

2 Defendant on behalf of itself, its past and current agents, representatives, attorneys,
3 successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys
4 and other representatives, for any and all actions taken or statements made (or those that could
5 have been taken or made) by Plaintiff and his attorneys and other representatives, whether in the
6 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
7 matter with respect to the Products.

8 **6. COURT APPROVAL**

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

15 **7. SEVERABILITY**

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

19 **8. GOVERNING LAW**

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

26 **9. NOTICES**

27 Unless specified herein, all correspondence and notices required to be provided pursuant
28 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,

(registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

To Stamina Products:

Bruce Nye
ADAMS NYE BECHT LLP
222 Kearny Street, 7th floor
San Francisco, California 94108

With a copy to:

Jeffrey Hutchens
Stamina Products, Inc.
2040 North Alliance Avenue
Springfield, MO 65803

To Moore:

Proposition 65 Coordinator
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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 Health & Safety Code § 25249.7, a Motion to Approve the Agreement ("Noticed Motion") is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Moore, Stamina Products, 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

1 a timely manner. For purposes of this Paragraph, best efforts shall include at a minimum that
2 Stamina Products join in or file a joinder in the Noticed Motion and participate in any oral
3 argument before the Court on the hearing of the Noticed Motion.

4 **13. MODIFICATION**

5 This Consent Judgment may be modified only: (1) by written agreement of the parties
6 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
7 motion of any party and entry of a modified Consent Judgment by the court. Moore shall be
8 entitled to his reasonable fees and costs incurred in the modification process under CCP §1021.5
9 if Stamina Products seeks to modify the terms of this Consent Judgment.

10 **14. AUTHORIZATION**

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

14 **AGREED TO:**

AGREED TO:

15 Date: May 19, 2011

Date: _____

16
17 By: 
18 Plaintiff JOHN MOORE

By: _____
Defendant STAMINA PRODUCTS, INC.

1 a timely manner. For purposes of this Paragraph, best efforts shall include at a minimum that
2 Stamina Products join in or file a joinder in the Noticed Motion and participate in any oral
3 argument before the Court on the hearing of the Noticed Motion.

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6 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
7 motion of any party and entry of a modified Consent Judgment by the court. Moore shall be
8 entitled to his reasonable fees and costs incurred in the modification process under CCP §1021.5
9 if Stamina Products seeks to modify the terms of this Consent Judgment.

10 **14. AUTHORIZATION**

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

14 **AGREED TO:**

AGREED TO:

15 Date: _____

15 Date: 5-18-11

16
17 By: _____
18 Plaintiff JOHN MOORE

17 By: 
18 Defendant STAMINA PRODUCTS, INC.