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9 Attorneys for Plaintiff
10 JOHN MOORE

FILED

OCT 28 2011

KLING STUBBS
Court
MARIN COUNTY SUPERIOR COURT
By: E. [unclear]

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 AMERICAN ATHLETIC, INC.; FRUIT OF
18 THE LOOM, INC.; RUSSELL BRANDS,
19 LLC; *et al.*,

20 Defendants.

) Case No.: CIV1005197

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

) Date: October 28, 2011

) Time: 8:30 a.m.

) Dept.: E

) Judge: Hon. Faye D'Opal

1 In the above-entitled action, Plaintiff JOHN MOORE and Defendants AMERICAN
2 ATHLETIC, INC., FRUIT OF THE LOOM, INC., and RUSSELL BRANDS, LLC, having agreed
3 through their respective counsel that a judgment be entered pursuant to the terms of the Consent
4 Judgment entered into by the parties in resolution of this Proposition 65 action, and following the
5 issuance of an order approving the Parties' settlement agreement on 10-28, 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 Dated: OCT 28 2011

13 **FAYE D'OPAL**
14 _____
15 JUDGE OF THE SUPERIOR COURT

Exhibit 1

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

5 Attorneys for Plaintiff
JOHN MOORE

6 Kurt Weissmuller, State Bar No. 117187
7 ALSTON & BIRD LLP
333 South Hope Street, Sixteenth Floor
8 Los Angeles, CA 90071
Telephone: (213) 576-1003
9 Facsimile: (213) 576-1100

10 Attorneys for Defendants
AMERICAN ATHLETIC, INC.,
11 FRUIT OF THE LOOM, INC. and
RUSSELL BRANDS, LLC
12

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

16 JOHN MOORE,) Case No. CIV-1005197
17)
Plaintiff,)
18) [PROPOSED] CONSENT JUDGMENT
v.)
19)
AMERICAN ATHLETIC, INC.; FRUIT OF)
20 THE LOOM, INC.; RUSSELL BRANDS,)
LLC; *et. al.*,)
21)
22 Defendants.) Dept:
Judge:
Date:
Complaint Filed: September 30, 2010
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1 **I. INTRODUCTION**

2 **A. John Moore and Defendants**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”) on
4 the one hand, and defendants Russell Brands, LLC and American Athletic, Inc. (collectively
5 “Russell”) and Fruit of the Loom, Inc.¹ (with Russell and Fruit of the Loom referred to hereinafter
6 collectively as “Defendants”), on the other hand, with Moore and Defendants collectively referred
7 to as the “Parties.” Moore is an individual residing in the State of California who seeks to
8 promote awareness of exposure to toxic chemicals and improve human health by reducing or
9 eliminating hazardous substances contained in consumer and commercial products. Moore
10 alleges that Defendants each employ ten or more persons and that each is a person in the course
11 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
12 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

13 **B. General Allegations**

14 Moore has alleged that Defendants manufactured, imported, distributed and/or offered for
15 sale exercise/fitness mats which contain phthalates, including di(2ethylhexyl)phthalate (“DEHP”)
16 without the requisite Proposition 65 warnings. DEHP and other phthalates such as butyl benzyl
17 phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”) are listed under Proposition 65 as chemicals
18 known to cause birth defects and other reproductive harm. (Collectively, DEHP, BBP and DBP
19 are referred to herein as the “Listed Chemicals.”)

20 **C. Covered Products**

21 The products that are covered by this Consent Judgment are defined as exercise/fitness
22 mats containing DEHP, manufactured, imported, distributed and/or offered for sale in California
23 by Defendants, referred to hereinafter as the “Products.” Additional Products shall be defined as
24 the following, but shall only be applicable to Defendants to the extent denominated for them on
25 Exhibit A: (i) sports and exercise balls; (ii) equipment used for balance or strength improvement
26 or core stability; (iii) bands/cables/ropes/straps used for exercise; (iv) barbells/weights and

27 ¹ By way of clarification, American Athletic, Inc. is now a division of Russell Brands, LLC, Fruit of the
28 Loom, Inc. is a Delaware corporation.

1 associated weight-lifting related accessories (including benches, bars, and ankle cuffs) and (v)
2 sports or exercise-related belts, gloves, bags/totes, helmets, wristwraps, and hand grips.
3 Specifically excluded from the definition of Additional Products are sporting goods and exercise
4 equipment containing the Listed Chemicals for which Defendants have, prior to February 1, 2011,
5 received a 60-Day Notice of Violation, vinyl flooring, and all clothing (other than items specified
6 in (v) above) containing poly vinyl chloride or other soft plastic, vinyl, or synthetic leather,
7 including, but not limited to, sauna suits.

8
9 **D. Notice of Violation**

10 On or about June 3, 2010, Moore served Defendants and various public enforcement
11 agencies with a document entitled “60-Day Notice of Violation”, along with the requisite
12 Certificate of Merit, (the “Notice”) that provided recipients with notice of alleged violations of
13 Proposition 65 for failing to warn consumers that the Products that Defendants sold in California
14 exposed users to DEHP. Although more than 60-days, plus service time, has passed from the date
15 of the Notice, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

16 **E. Complaint**

17 On September 30, 2010, Moore filed a complaint in the Superior Court in and for the
18 County of Marin against American Athletic, Inc., Fruit of the Loom, Inc. and Russell Brands,
19 LLC and Does 1 through 150, *Moore v. American Athletic, et al.*, Case No. CIV-1005197 (the
20 “Action”), alleging violations of California Health & Safety Code § 25249.6, based on the alleged
21 exposures to DEHP contained in certain exercise mats manufactured, imported, distributed and/or
22 sold by Defendants.

23 **F. Answer**

24 On January 10, 2011, Defendants responded to the Complaint by filing a general denial
25 and affirmative defenses, denying all claims alleged by Moore.

26 **G. No Admission**

27 Defendants deny the material, factual and legal allegations contained in Moore’s Notice
28 and Complaint and maintain that all Products they have sold and distributed in California have

1 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as
2 an admission by Defendants of any fact, finding, issue of law, or violation of law, nor shall
3 compliance with this Settlement Agreement constitute or be construed as an admission by
4 Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this
5 section shall not diminish or otherwise affect Defendants' obligations, responsibilities, and duties
6 under this Consent Judgment.

7
8 **H. Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean, as to the
10 Products, May 15, 2011. As to Additional Products, the term "Effective Date" shall mean
11 December 31, 2011.

12 **II. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

13 **A. Obligations as to the Products**

14 As of the Effective Date, Defendants shall only manufacture, or accept from a
15 manufacturer or other supplier, Products to be offered for sale in California that (1) are "Phthalate
16 Free" or (2) carry a clear and reasonable Proposition 65 warning pursuant to Section II.C below.
17 For purposes of this Settlement Agreement, "Phthalate Free" products shall mean products
18 containing less than or equal to 1,000 parts per million ("ppm") each of DEHP, BBP and DBP in
19 components that are reasonably likely to be handled, touched or mouthed during ordinary use or
20 handling, when analyzed pursuant to U.S. Environmental Protection Agency testing
21 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies
22 for the purpose of determining DEHP, BBP and/or DBP content in a solid substance.

23 **B. Obligations as to Additional Products**

24 As of the Effective Date, Defendants shall only manufacture, or accept from a
25 manufacturer or other supplier, Additional Products to be offered for sale in California that: (1)
26 are Phthalate Free, as defined in Section II.A.; or (2) carry a clear and reasonable Proposition 65
27 warning pursuant to Section II.C below. Any warning issued for Additional Products pursuant to
28 this Consent Judgment, shall be prominently placed with such conspicuousness as compared with

1 other words, statements, designs or devices as to render it likely to be read and understood by an
2 ordinary individual under customary conditions before purchase or, for Additional Products
3 shipped directly to an individual in California, before use.

4 **C. Warnings**

5 To the extent they do not address their obligations under Section II.A or II.B through
6 timely reformulation, Defendants shall address their warning obligation under Section II.A and
7 II.B by affixing a warning to the packaging of, or, if no packaging exists, directly on, each
8 Product and/or Additional Product sold in California that states:

9 **WARNING:** This product contains chemicals known to
10 the State of California to cause cancer, birth
11 defects and other reproductive harm.

12 For Products and/or Additional Products sold by catalog or via the internet or by
13 telephone, the preceding warning statement must be supplemented with written information
14 advising the consumer, in a conspicuous manner, that he or she may return the Product and/or
15 Additional Product for a full refund (including shipping costs for both the receipt and the return
16 of the product) within fifteen (15) days of his or her receipt of the Product and/or Additional
17 Product.

18 **D. Warning Exceptions**

19 The warning requirements set forth in Section II.C shall not apply to:

- 20 (i) Products and/or Additional Products received by Russell before
21 their respective Effective Dates (as defined in Section I.H); or
22 (ii) Products and/or Additional Products which are Phthalate Free (as
23 defined in Section II.A).

24 **III. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

25 **A. Initial Civil Penalty**

26 In settlement of all the claims referred to in this Consent Judgment, Russell, on behalf of
27 Defendants collectively, shall pay an initial civil penalty in the amount of \$15,000, to be
28 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these
funds remitted to the State of California's Office of Environmental Health Hazard Assessment

1 (“OEHHA”) and the remaining 25% of the penalty remitted to John Moore, as provided by
2 California Health & Safety Code § 25249.12(d).

3 Russell, on behalf of Defendants collectively, shall issue two separate checks for the
4 penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in an
5 amount representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust
6 for John Moore” in an amount representing 25% of the total penalty. Two separate 1099s shall be
7 issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-
8 0284486); and (b) John Moore, whose information shall be provided by email or other means
9 within five (5) calendar days of Defendants’ execution and delivery of this Consent Judgment
10 document to Moore’s counsel.

11 Payment shall be delivered to Moore’s counsel on or before April 11, 2011, at the
12 following address:

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

17 **B. Additional Civil Penalty**

18 Russell, on behalf of Defendants collectively, shall pay an additional civil penalty of
19 \$58,000 on March 30, 2012. As an incentive to reformulate the Products and Additional Products
20 however, this additional civil penalty shall be waived in its entirety if an officer of the Defendants
21 certifies in writing that, as of March 1, 2012, they will only manufacture, or accept from a
22 manufacturer or other supplier, for sale in California, Products and Additional Products which are
23 Phthalate Free. Such certification must be received by The Chanler Group on or before March
24 15, 2012. In the event that the Defendants are only able to certify that particular Products or
25 Additional Products (that have been selected on Exhibit A) have been reformulated, Defendants
26 shall receive a credit of \$8,000 for the Products or each category of Additional Products so
27 certified. However, to the extent Defendants reformulate a certain percentage of the Products or a
28 category of Additional Products, they will be credited with a portion of the \$8,000 that coincides

1 with the percentage number of reformulations within each group. An officer of the Defendants
2 must certify as to the percentage of the Products and/or Additional Products that have been
3 reformulated and shall provide adequate documentation supporting the reformulation percentages
4 to Moore. Any such certification will be treated as confidential settlement communications.
5 Agreement by Moore as to the adequacy of the documentation shall not be unreasonably
6 withheld.

7
8 **C. Payment Allocation**

9 Additional civil penalty payments required pursuant to Section III. B shall be apportioned
10 in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to
11 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
12 remaining 25% of the penalty remitted to John Moore, as provided by California Health & Safety
13 Code § 25249.12(d). Russell, on behalf of Defendants collectively, shall issue two separate
14 checks for the final civil penalty payment: (a) one check made payable to "The Chanler Group in
15 Trust For OEHHA" in an amount representing 75% of the total penalty; and (b) one check to
16 "The Chanler Group in Trust for John Moore" in an amount representing 25% of the total penalty.
17 Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010,
18 Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall be
19 provided by email or other means at least thirty (30) calendar days before the payment is due.

20 Payment shall be delivered to Moore's counsel at the following address:

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

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

27 The Parties reached an accord on the compensation due to Moore and his counsel under
28 the private attorney general doctrine and principles of contract law. Under these legal principles,
Defendants shall collectively reimburse Moore's counsel for fees and costs, incurred as a result of
investigating, bringing this matter to their attention, and negotiating a settlement and consent

1 judgment in the public interest. Russell, on behalf of Defendants collectively shall pay Moore
2 and his counsel \$60,000 for all attorneys' fees, expert and investigation fees, and related costs.

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

9 The payment shall be issued in a check made payable to "The Chanler Group" and shall
10 be delivered on or before April 11, 2011, to the following address:

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

15 Russell, on behalf of Defendants collectively, shall issue a 1099 for all attorney's fees and
16 costs paid pursuant to this paragraph to: The Chanler Group, 2560 Ninth Street, Parker Plaza,
17 Suite 214, Berkeley, California 94710 (EIN: 94-3171522).

18 **V. RELEASE OF ALL CLAIMS**

19 **A. Moore's Release of Defendants**

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

1 licensors, licensees, auctioneers, distributors, franchisees, dealers, customers, owners, purchasers,
2 users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors,
3 attorneys, representatives, shareholders, agents, and employees, and sister and parent entities,
4 (collectively "Releasees"), that arise under Proposition 65, as such claims relate to Defendants'
5 alleged failure to warn about exposures to DEHP contained in the Products identified in the
6 Notice it previously received from Moore. The Parties understand and agree that this release
7 shall not extend upstream to any entities that manufactured the Products or any component parts
8 thereof, or any distributors or suppliers who sold the Products or any component parts thereof to
9 Defendants.

10 While Moore, on behalf of himself and his past and current agents, representatives,
11 attorneys, successors, and/or assignees and *not* in his representative capacity, also agrees to
12 release Defendants as to Proposition 65 claims relating to BBP or DBP in the Products, the
13 Parties understand and agree that this further release does not extend to a release on behalf of the
14 general public. Nevertheless, compliance with the terms of Section II.A of this Consent
15 Judgment by Defendants shall be deemed to achieve compliance with Proposition 65 with respect
16 to Listed Chemicals in the Products.

17 In addition, Moore on behalf of himself and his past and current agents, representatives,
18 attorneys, successors, and/or assignees and *not* in his representative capacity, hereby waives all
19 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
20 claims for failure to warn under Proposition 65 as to Listed Chemicals in the Additional Products.
21 The Parties understand and agree that this further release also does not extend to a release on
22 behalf of the general public. Nevertheless, compliance with the terms of Section II.B of this
23 Consent Judgment by Defendants shall be deemed to achieve compliance with Proposition 65
24 with respect to Listed Chemicals in the Additional Products.

25 **B. Defendant's Release of Moore**

26 Defendants, on behalf of themselves and their Releasees, waive any and all claims against
27 Moore, his attorneys, and other representatives for any and all actions taken by Moore and his
28

1 attorneys and other representatives, whether in the course of investigating claims or otherwise
2 seeking enforcement of Proposition 65 against it in this matter, and/or with respect to any of the
3 Listed Chemicals in the Products or Additional Products.

4 **VI. ADDITIONAL ENFORCEMENT FOR NONCONFORMING NON-COVERED**
5 **PRODUCTS**

6 **A.** If, on or after March 31, 2011, Moore alleges that Defendants offered for retail sale to
7 California consumers, or to a distributor for the purpose of retail sales in California, a product that
8 is not a Product or an Additional Product for Defendants as specified on Exhibit A; does not fall
9 within the product categories of (i) sauna suits, (ii) window coverings or curtains, or (iii) vinyl
10 flooring; that contains one or more Listed Chemicals in an amount that exceeds the amount this
11 Consent Judgment deems as Phthalate Free (“Nonconforming Non-Covered Product”); and for
12 which Covered Product does not fall within the product category of exercise/fitness mats and for
13 which Defendants have not already received a 60-Day Notice of Violation, then prior to serving a
14 60-Day Notice under Proposition 65 on Defendants, Moore shall provide notice to Defendants
15 and the parties shall then proceed pursuant to this Section VI.

16 **B.** The notice shall contain the following information: (a) the date the alleged violation
17 was observed and the product was purchased; (b) the location or website at which the product was
18 offered for sale; (c) a description of the product, including a picture thereof and any identifying
19 information on tags and labels; and (d) data obtained by Moore regarding the product such as
20 laboratory results associated with the testing of the product. Within 30 days of receiving a notice
21 pursuant to Section VI, Defendants shall serve a Notice of Election on Moore. The Notice of
22 Election shall:

23 1. Identify to Plaintiff (by proper name, address of principal place of business and
24 telephone number) the person or entity that sold the Nonconforming Non-Covered Product to
25 Defendants;

1 **2.** Identify the manufacturer and other distributors in the chain of distribution of
2 the Nonconforming Non-Covered Product, provided that such information is reasonably available
3 to Defendants; and

4 **3.** Include either: (i) a statement that Defendants elect not to proceed under this
5 Section VI, in which case Moore may take further action including issuance of a 60-Day Notice
6 under Proposition 65; (ii) a statement that Defendants elect to proceed under this Section VI, or
7 (iii) a statement that Defendants contend that the Nonconforming Non-Covered Product is
8 released from liability by a Qualified Settlement under Section VI.D.1 below along with a copy of
9 such Qualified Settlement.

10 **C.** Defendants' disclosure pursuant to this Section VI of any (i) test reports, (ii)
11 confidential business information, or (iii) other information that may be subject to a claim of
12 privilege or confidentiality, shall not constitute a waiver of any such claim of privilege or
13 confidentiality, provided that the party disclosing such information shall clearly designate it as
14 confidential. Any party receiving information designated as confidential pursuant to this Section
15 VI.C shall not disclose such information to any unrelated person or entity, and shall use such
16 information solely for purposes of resolving any disputes under this Consent Judgment.

17 **D.** No further action is required of Defendants under this Consent Judgment, and Moore
18 shall not serve a 60-Day Notice on Defendants regarding the Nonconforming Non-Covered
19 Product, if either:

20 **1.** The Nonconforming Non-Covered Product is otherwise released from liability
21 for alleged violations of Proposition 65 with respect to the Listed Chemicals in the
22 Nonconforming Non-Covered Product by the terms of a separate settlement agreement or consent
23 judgment entered into under Health and Safety Code § 25249.7 and, if an authorized public
24 prosecutor of Proposition 65 is not a party, reported to the California Attorney General's Office
25 ("Qualified Settlement"); or

26 **2.** At least one of the person(s) identified by Defendants pursuant to Section VI.B
27 is a person in the course of doing business as defined in Health & Safety Code § 25249.11(b) and
28

1 (ii) has a principal place of business located within the United States; and is not a Defendant in
2 this matter.

3 E. If Defendants elect not to proceed under Section VI.B, then neither Defendants nor
4 Moore have any further duty under this Section VI and either may pursue any available remedies
5 under Proposition 65 or otherwise.

6 F. If Defendants elect to proceed under this Section VI and are not relieved of liability
7 under Section VI.D, Defendants shall within thirty (30) days: (i) terminate their further
8 distribution for sale of the Nonconforming Non-Covered Product in California, (ii) pay a statutory
9 penalty in the amount of \$4,000 pursuant to Health and Safety Code Section 25249.7(b) of which
10 25% shall be paid to Moore and 75% shall be paid to the State of California's Office of
11 Environmental Health Hazard Assessment, and (iii) pay \$25,800 in reimbursement of attorneys'
12 fees and costs incurred by Moore with respect to the notice.

13 G. If Defendant makes payments pursuant to Section VI.F and at a later date Moore
14 resolves the alleged violation with the direct or indirect vendor of the Nonconforming Non-
15 Covered Product, Moore shall notify that Defendant and that Defendant shall be entitled to a
16 refund of the lesser amount of its contribution or the settlement amount paid by such vendor. If
17 the settlement or consent judgment between Moore and the direct or indirect vendor of the
18 Nonconforming Non-Covered Product does not provide for the refund to be paid directly by the
19 vendor to Defendant, then Moore shall pay the refund to Defendant within 15 days of receiving
20 the vendor's settlement payment.

21 H. Nothing in this Section VI affects Moore's right to issue a 60-Day Notice under
22 Proposition 65 against any entity other than the Defendants, except as to Defendants' customer of
23 a product Defendants have elected to address pursuant to Section VI.B.

24 **VII. SEVERABILITY**

25 If, subsequent to the execution of this Settlement Agreement, any of the provisions of this
26 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
27 provisions remaining shall not be adversely affected.
28

1 **VIII. GOVERNING LAW**

2 The terms of this Settlement Agreement shall be governed by the laws of the State of
3 California and apply within the State of California.

4 **IX. NOTICES**

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

9 To Defendants:

10 David Whitaker, Esq.
11 Fruit of the Loom
12 Legal Department
13 One Fruit of the Loom Drive
14 P.O. Box 90015
15 Bowling Green, KY 42102-9015

14 With a copy to:

15 Kurt Weissmuller, Esq.
16 Alston & Bird LLP
17 333 South Hope Street, Sixteenth Floor
18 Los Angeles, CA 90071

17 To Plaintiff:

18 Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
21 Parker Plaza, Suite 214
22 Berkeley, CA 94710-2565

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

23 **X. COUNTERPARTS; FACSIMILE SIGNATURES**

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

28

1 **XI. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

2 Moore and his attorneys agree to comply with the requirements referenced in California
3 Health & Safety Code § 25249.7(f).

4 **XII. MODIFICATION AND ATTORNEY'S FEES**

5 **A. Modification**

6 This Consent Judgment may be modified only by stipulation of the Parties and an order of
7 the Court or upon a motion by any Party that is granted by the Court.

8 **B. Attorney's Fees**

9 **1.** Should Moore prevail on any motion, application for an order to show
10 cause, or other proceeding to enforce a violation of this Consent Judgment, Moore shall be
11 entitled to his reasonable attorney's fees and costs incurred as a result of such motion or
12 application, consistent with CCP § 1021.5. Should Defendants prevail on any motion or
13 application for an order to show cause or other proceeding, Defendants may be awarded their
14 reasonable attorney's fees and costs as a result of such motion or application upon a finding by
15 the court that Moore's prosecution of the motion or application lacked substantial justification.
16 For purposes of this Consent Judgment, the term substantial justification shall carry the same
17 meaning as used in Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

18 **2.** Except as specifically provided in Section IV and XII.B1. above, each
19 Party shall bear its own costs and attorney's fees in connection with this action. Nothing in this
20 Section XII shall preclude a Party from seeking an award of sanctions pursuant to law.

21 **XIII. ADDITIONAL POST-EXECUTION ACTIVITIES**

22 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
23 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
24 obtaining such approval, Moore's counsel shall prepare a motion for this Consent Judgment's
25 approval by the Court, and Moore and Defendants, and their respective counsel, agree to mutually
26 employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain
27 approval of the Consent Judgment by the Court in a timely manner. If, for any reason: (a) the
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1 Superior Court does not approve the motion to approve this Consent Judgment, and if the parties
2 choose not to pursue a modified Consent Judgment within 45 days after the Court's denial of the
3 motion to approve; and/or (b) this Consent Judgment is not approved and entered by the Court
4 within one year after it has been fully executed by all parties, all payments made pursuant to this
5 Consent Judgment shall be returned to counsel for Defendants.

6 **XIV. ENTIRE AGREEMENT**

7 This Consent Judgment contains the sole and entire agreement and understanding of the
8 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
9 negotiations, commitments, and understandings related hereto. No representations, oral or
10 otherwise, express or implied, other than those contained herein have been made by any Party
11 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
12 deemed to exist or to bind any of the Parties.

13 **XV. AUTHORIZATION**

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

17
18 **AGREED TO:**

19 Dated: April 7, 2011

By: 

John Moore

21 **AGREED TO:**

22 Dated: 4-12-11

By: 

Russell Brands, LLC, including its
American Athletic/ AAI Division

AND

26 Dated: 4-12-11

By: 

Fruit of the Loom, Inc.

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Exhibit A

Name of Settling Defendant: Russell Brands, LLC, including its American Athletic / AAI Division.

Participating as to:

- Balls
- Balance/Strength/Core Improvement Equipment
- Exercise Bands/Cables/Ropes/Straps
- Weight Lifting Equipment/Accessories
- Sports-Related Belts, Gloves, Bags, Helmets, Wristwraps, Grips