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Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
THE CHANLER GROUP
3 2560 Ninth Street
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4 Berkeley, CA 94710
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6 Attorneys for Plaintiff
JOHN MOORE
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MARIN

11 UNLIMITED CIVIL JURISDICTION
12

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 E&B GIFTWARE LLC; and DOES 1 through
17 150, inclusive,

18 Defendants.
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Case No. CIV1005560

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

Date: August 22, 2012

Time: 8:30 a.m.

Dept. B

Judge: Hon. Roy O. Chernus

FILED

AUG 22 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Praguera, Deputy

1 Plaintiff John Moore and Defendant E&B Giftware LLC, 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: _____

AUG 22 2012

ROY O. CHERNUS

JUDGE OF THE SUPERIOR COURT

1 Christopher M. Martin, State Bar No. 186021
2 THE CHANLER GROUP
3 2560 Ninth Street
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8 Attorneys for Plaintiff
9 JOHN MOORE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

E&B GIFTWARE LLC; and DOES 1 through
150, inclusive,

Defendants.

Case No. CIV1005560

[PROPOSED] CONSENT JUDGMENT

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 John Moore and E&B Giftware LLC**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and defendant E&B Giftware LLC (“E&B” or “Defendant”), with Plaintiff and
5 Defendant collectively referred to as the “Parties” and each individually referred to as a “Party.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Moore alleges that E&B manufactured, distributed and/or sold training and sauna fitness
16 suits containing di(2-ethylhexyl)phthalate (“DEHP”) and exercise equipment with handle grips
17 containing lead in the state of California without the requisite health hazard warnings. DEHP
18 and lead are listed pursuant to Proposition 65 as known to the state of California to cause birth
19 defects and other reproductive harm. DEHP and lead are hereinafter referred to as “Listed
20 Chemicals.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: vinyl
23 exercise clothing, training and sauna fitness suits containing DEHP manufactured, distributed
24 and/or sold in the state of California by E&B, including, but not limited to, the *BodyFit Sauna*
25 *Suit, Style# BF3612BK, SKU 25569018 (#6 54602 93612 2)* (“DEHP Products”) and exercise
26 equipment with handle grips containing lead manufactured, distributed and/or sold in the state
27 of California by E&B, including, but not limited to, the *Everlast Duo Wheel, EX2413SL17EVN*
28

1 (#6 54602 22413 7) ("Lead Products.") The DEHP Products and the Lead Products are
2 hereinafter referred to collectively as the "Products."

3 **1.6 Notices of Violation**

4 On June 17, 2010, Moore served E&B and various public enforcement agencies with a
5 document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with
6 notice of alleged violations of Proposition 65 for failing to warn consumers that the DEHP
7 Products exposed users to DEHP. On May 11, 2011, Moore served E&B and various public
8 enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation"
9 ("Supplemental Notice") that provided recipients with notice of alleged violations of
10 Proposition 65 for failing to warn consumers that the Lead Products exposed users to lead and
11 that the DEHP Products exposed users to DEHP. The Notice and Supplemental Notice are
12 hereinafter referred to as the "Notices."

13 **1.7 Complaints**

14 On or about October 20, 2010, Moore, who was and is acting in the interest of the
15 general public in California, filed a complaint ("Complaint" or "Action") in the Superior Court
16 in and for the County of Marin against E&B Giftware LLC and Does 1 through 150, alleging,
17 *inter alia*, violations of California Health & Safety Code §25249.6 based on the alleged
18 exposures to DEHP contained in the DEHP Products. On or about September 7, 2011, Moore,
19 who was and is acting in the interest of the general public in California, filed a first amended
20 complaint ("First Amended Complaint") in the Superior Court in and for the County of Marin
21 against E&B Giftware LLC and Does 1 through 150, alleging, *inter alia*, violations of
22 California Health & Safety Code §25249.6 based on the alleged exposures to DEHP contained
23 in the DEHP Products and to lead contained in the Lead Products. The Complaint and the First
24 Amended Complaint are hereinafter referred to as the "Complaints."

25 **1.8 No Admission**

26 E&B denies the material factual and legal allegations contained in Moore's Notices and
27 Complaints, and maintains that all Products sold and distributed in California have been and are
28 in compliance with all laws. Nothing in this Consent Judgment shall be construed as an

1 admission by E&B of any fact, finding, issue of law, or violation of law; nor shall compliance
2 with this Consent Judgment constitute or be construed as an admission by E&B of any fact,
3 finding, conclusion, issue of law, or violation of law, such being specifically denied by E&B.
4 However, this section shall not diminish or otherwise affect E&B's obligations, responsibilities,
5 and duties under this Consent Judgment.

6 **1.9 Consent to Jurisdiction**

7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
8 jurisdiction over E&B as to the allegations contained in the Complaints, that venue is proper in
9 the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of
10 this Consent Judgment.

11 **1.10 Effective Date**

12 For purposes of this Consent Judgment, the term "Effective Date" shall mean June 30,
13 2012.

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

15 **2.1 Reformulation Standards**

16 As of the Effective Date, E&B shall only manufacture, distribute, sell and/or offer for
17 sale in California Products that are "Phthalate Free" and "Lead Free," or include warnings in
18 accordance with Section 2.2 below. For purposes of this Consent Judgment, "Phthalate Free"
19 Products are Products containing DEHP in concentrations less than or equal to 0.1 percent
20 (1,000 ppm), in each component that may be handled, touched or mouthed by a consumer
21 ("Accessible Component"), when analyzed pursuant to U.S. Environmental Protection Agency
22 testing methodologies 3580A and 8270C or any testing methodology selected by E&B that is
23 acceptable to state or federal government agencies in determining phthalate content in consumer
24 products. Additionally, "Lead Free" Products shall mean Products containing Accessible
25 Components which yield less than 1.0 microgram of lead when using a wipe test pursuant to
26 NIOSH Test Method 9100, and yield less than 100 parts per million ("ppm") lead when
27 analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent
28 methodologies utilized by federal or state agencies for the purpose of determining lead content

1 in a solid substance. Products that are Lead Free and Phthalate Free are hereinafter referred to
2 as "Reformulated Products."

3 **2.2 Warning Requirement**

4 Commencing on the Effective Date, E&B shall, for all Products sold in California that are
5 not Reformulated Products, provide clear and reasonable warnings as set forth in subsections
6 2.2(a) and (b). Each warning shall be prominently placed with such conspicuousness, as
7 compared with other words, statements, designs, or devices as to render it likely to be read and
8 understood by an ordinary individual under customary conditions before purchase or use. Each
9 warning shall be provided in a manner such that the consumer or user understands to which
10 *specific* Product the warning applies, so as to minimize the risk of consumer confusion. Each
11 warning for Lead Products shall specify that the product contains lead, whereas each warning for
12 DEHP Products shall specify that the product contains DEHP by including the specific chemical
13 that applies from each bracketed term in Sections 2.2 (a) and (b) below.

14 The parties hereby acknowledge and agree that E&B has already implemented a labeling
15 program that uses the following language or language substantially similar to it:

16 **CALIFORNIA PROPOSITION 65 WARNING:**
17 This product contains chemicals known to the State
18 of California to cause cancer, birth defects and/or
other reproductive harm.

19 Therefore, the parties agree that E&B may continue to sell Products that are currently in
20 E&B's inventory and that contain the above warning label as of the Effective Date. However,
21 E&B shall, for all Products that do not contain the warning language above on or before the
22 Effective Date, use the specific language provided in Sections 2.2(a) and (b), below.

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

24 **(i) Product Labeling.** E&B shall affix a warning to the packaging,
25 labeling, or directly on each Product known to contain [DEHP or Lead] sold in retail outlets in
26 California by E&B or any person selling the Products, that states:

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(ii) **Point-of Sale Warnings.** Alternatively, E&B may provide the form below to its customers in California with instructions to post the proximity to the point of display of the Products. Such instruction sent to all be sent by certified mail, return receipt requested.

This product contains chemicals including [DEHP or Lead], known to the State of California to cause birth defects and other reproductive harm.

The following products contain chemicals including [DEHP or Lead], known to the State of California to cause birth defects and other reproductive harm.

(b) Mail Order Catalog and Internet Sales.

¹ For purposes of the Consent Judgment, “sold in proximity” shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
2 order catalog must be in the same type size or larger than the Product description text within the
3 catalog. The following warning shall be provided on the same page and in the same location as
4 the display and/or description of the Product:

5 **CALIFORNIA PROPOSITION 65 WARNING:**

6 This product contains chemicals including [DEHP or
7 Lead], known to the State of California to cause birth
8 defects and other reproductive harm.

9 If E&B elects to provide warnings in the mail order catalog, then the warnings must be
10 included in all catalogs offering to sell one or more Products printed for distribution in
11 California after the Effective Date.

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

20 **CALIFORNIA PROPOSITION 65 WARNING:**

21 This product contains chemicals including [DEHP or
22 Lead], known to the State of California to cause birth
23 defects and other reproductive harm.

24 **3. MONETARY PAYMENTS**

25 **3.1 Initial Civil Penalty**

26 E&B shall pay an initial civil penalty of \$14,000 to be apportioned in accordance with
27 California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to
28 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and
the remaining 25% of the initial civil penalty to Moore, as provided by California Health &
Safety Code § 25249.12(d).

1 **3.2 Final Civil Penalty (Lead)**

2 E&B shall pay a final civil penalty (lead) of \$5,000 on or before January 31, 2013 to be
3 apportioned in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with
4 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
5 Assessment and the remaining 25% of the final civil penalty (lead) to Moore, as provided by
6 California Health & Safety Code § 25249.12(d).

7 However, the Final Civil Penalty (Lead) shall be waived in its entirety if E&B certifies
8 in writing, via a signed declaration from an appropriate E&B employee, that all Lead Products
9 sold and/or shipped into California from December 31, 2012 and after shall be Lead Free
10 Products as defined in Section 2.1, above.

11 **3.3 Final Civil Penalty (DEHP)**

12 E&B shall pay a final civil penalty (DEHP) of \$5,000 on or before January 31, 2013 to be
13 apportioned in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with
14 75% of these funds remitted to the state of California's Office of Environmental Health Hazard
15 Assessment and the remaining 25% of the final civil penalty (DEHP) to Moore, as provided by
16 California Health & Safety Code § 25249.12(d).

17 However, the Final Civil Penalty (DEHP) shall be waived in its entirety if E&B certifies
18 in writing, via a signed declaration from an appropriate E&B employee, that all DEHP Products
19 sold and/or shipped into California from December 31, 2012 and after shall be DEHP Free as
20 defined in Section 2.1, above.

21 **3.4 Reimbursement of Plaintiff's Fees and Costs**

22 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
23 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
24 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
25 E&B then expressed a desire to resolve the fee and cost issue shortly after the other settlement
26 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
27 compensation due to Moore and his counsel under general contract principles and the private
28 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all

1 work performed in this matter, except fees that may be incurred on appeal. Under these legal
2 principles, E&B shall pay the amount of \$65,000 for fees and costs incurred investigating,
3 litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred)
4 negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public
5 interest.

6 **3.5 Payment Procedures**

7 (a) **Funds Held In Trust.** All payments required by Sections 3.1 and 3.4
8 shall be delivered on or before May 15, 2012, to either The Chanler Group or the attorney of
9 record for E&B, and shall be held in trust pending the Court's approval of this Consent
10 Judgment.

11 Payments delivered to The Chanler Group shall be made payable, as follows:

- 12 (i) One check made payable to "The Chanler Group in Trust for
13 OEHHHA" in the amount of \$10,500;
- 14 (ii) One check made payable to "The Chanler Group in Trust for
15 Moore" in the amount of \$3,500; and
- 16 (iii) One check made payable to "The Chanler Group in Trust" in the
17 amount of \$65,000.

18 Payments delivered to Lewis Brisbois Bisgaard & Smith LLP shall be made payable, as
19 follows:

- 20 (i) One check made payable to "Lewis Brisbois Bisgaard & Smith
21 LLP in Trust for OEHHHA" in the amount of \$10,500;
- 22 (ii) One check made payable to "Lewis Brisbois Bisgaard & Smith
23 LLP in Trust for Moore" in the amount of \$3,500; and
- 24 (iii) One check made payable to "Lewis Brisbois Bisgaard & Smith
25 LLP in Trust for The Chanler Group" in the amount of \$65,000.

26 If E&B elects to deliver payments to its attorney of record, the attorney of record shall
27 confirm, in writing within five days of deposit, that the funds have been deposited in a trust
28 account.

1 Within five days of receipt of notice of the Court's approval of the Consent Judgment, the
2 payments being held in trust by the attorney of record for E&B shall be delivered to The Chanler
3 Group in three separate checks payable, as follows:

- 4 (i) One check made payable to "The Chanler Group in Trust for
5 OEHHA" in the amount of \$10,500;
- 6 (ii) One check made payable to "The Chanler Group in Trust for
7 Moore" in the amount of \$3,500; and
- 8 (iii) One check made payable to "The Chanler Group" in the amount of
9 \$65,000.

10 If the penalty payments required by Section 3.2 and 3.3 above are not waived, payments
11 shall be delivered to The Chanler Group made payable, as follows:

- 12 (i) One check made payable to "The Chanler Group in Trust for
13 OEHHA" in the amount of \$3,750 for Final Civil Penalty (Lead);
- 14 (ii) One check made payable to "The Chanler Group in Trust for
15 Moore" in the amount of \$1,250 for the Final Civil Penalty (Lead);
- 16 (iii) One check made payable to "The Chanler Group in Trust for
17 OEHHA" in the amount of \$3,750 for the Final Civil Penalty
18 (DEHP);
- 19 (iv) One check made payable to "The Chanler Group in Trust for
20 Moore" in the amount of \$1,250 for the Final Civil Penalty
21 (DEHP).

22 (b) **Issuance of 1099 Forms.** After the Consent Judgment has been approved
23 and the settlement funds have been transmitted to plaintiff's counsel, E&B shall issue seven
24 separate 1099 forms, as follows:

- 25 (i) The first 1099 shall be issued to the Office of Environmental
26 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA
27 95814 (EIN: 68-0284486) in the amount of \$10,500;
- 28 (ii) The second 1099 shall be issued to Moore in the amount of \$3,500,

- 1 whose address and tax identification number shall be furnished
2 upon request;
- 3 (iii) The third 1099 shall be issued to The Chanler Group (EIN: 94-
4 3171522) in the amount of \$65,000;
- 5 (iv) If the Final Civil Penalty (Lead) in Section 3.2 above is paid, the
6 fourth 1099 shall be issued to the Office of Environmental Health
7 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
8 68-0284486) in the amount of \$3,750;
- 9 (v) If the Final Civil Penalty (Lead) in Section 3.2 above is paid, the
10 fifth 1099 shall be issued to Moore in the amount of \$1,250, whose
11 address and tax identification number shall be furnished upon
12 request.
- 13 (vi) If the Final Civil Penalty (DEHP) in Section 3.3 above is paid, the
14 sixth 1099 shall be issued to the Office of Environmental Health
15 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
16 68-0284486) in the amount of \$3,750;
- 17 (vii) If the Final Civil Penalty (DEHP) in Section 3.3 above is paid, the
18 seventh 1099 shall be issued to Moore in the amount of \$1,250,
19 whose address and tax identification number shall be furnished
20 upon request.

21 (c) **Payment Address.** All payments to The Chanler Group shall be delivered
22 to the following payment address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710
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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Plaintiff's Public Release of Proposition 65 Claims**

3 Moore acting on his own behalf and in the public interest releases E&B from all claims
4 for violations of Proposition 65 up through the Effective Date based on exposure to DEHP
5 contained in the DEHP Products and exposure to Lead in the Lead Products as set forth in the
6 Notices. Compliance with the terms of this Consent Judgment constitutes compliance with
7 Proposition 65 with respect to exposures to DEHP in the DEHP Products and with respect to
8 Lead in the Lead Products as set forth in the Notices.

9 **4.2 Plaintiff's Individual Release of Claims**

10 Moore also, in his individual capacity only and *not* in his representative capacity,
11 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
12 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
13 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or
14 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
15 DEHP in the DEHP Products and Lead in the Lead Products manufactured, distributed or sold
16 by E&B.

17 **4.3 Defendant's Release of Plaintiff**

18 E&B on behalf of itself, its past and current agents, representatives, attorneys,
19 successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys
20 and other representatives, for any and all actions taken or statements made (or those that could
21 have been taken or made) by Moore and his attorneys and other representatives, whether in the
22 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
23 matter with respect to the Products.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the court and
26 shall be null and void if, for any reason, it is not approved and entered by the court within one
27 year after it has been fully executed by all Parties, in which event any monies that have been
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provided to Moore or his counsel pursuant to Section 3 above, shall be refunded within fifteen (15) days receiving written demand from E&B for return of such funds.

6. SEVERABILITY

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

7. GOVERNING LAW

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

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant 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 E&B:

Paul A. Desrochers, Esq.
Lewis Brisbois Bisgaard & Smith LLP
One Sansome Street, Suite 1400
San Francisco, CA 94104

Christopher S. Nickson, Esq.
Wilder & Linderball, LLP
730 Brisbane Building
403 Main at Court Street
Buffalo, NY 14203

With a copy to:

Steve Bringham
E&B Giftware LLC
4 Executive Plaza
Yonkers, NY 10701

1 To Moore:

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile or portable
9 document format (".pdf") signature, each of which shall be deemed an original, and all of which,
10 when taken together, shall constitute one and the same document. A facsimile or .pdf signature
11 shall be as valid as the original.

12 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to
17 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
18 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
19 Health and Safety Code section 25249.7, a noticed motion is required to obtain judicial approval
20 of this Consent Judgment, which Moore shall file, and which E&B shall not oppose. If any third
21 party objection to the noticed motion is filed, Moore and E&B shall work together to file a joint
22 reply and appear at any hearing before the Court. This provision is a material component of the
23 Consent Judgment and shall be treated as such in the event of a breach. If the Superior Court
24 does not approve the motion to approve this Consent Judgment, and the Parties choose not to
25 pursue a modified Consent Judgment within 30 days of said denial, or in the event that the
26 Superior Court approve this Consent Judgment and any person successfully appeals that
27 approval, all payments made pursuant to this Consent Judgment will be returned to E&B.

1 **12. MODIFICATION**

2 **12.1 Modification**

3 This Consent Judgment may be modified by written agreement of the Parties and upon
4 entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a
5 modified Consent Judgment by the court.

6 **12.2 Subsequent Legislation**

7 If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the
8 DEHP or lead content of Products sold in California, any Party shall be entitled to request that
9 the Court modify the reformulation standard of Section 2.1 of this Consent Judgment for good
10 cause shown.

11 **12.3 Notice; Meet and Confer**

12 Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet
13 and confer with the other Party prior to filing a motion to modify the Consent Judgment. Any
14 party receiving notice under this section shall respond promptly, but in no event more than 30
15 days from receipt of said notice, with its reply to any proposed modification to this Consent
16 Judgment. Failure to promptly respond shall be deemed a non-objection to the proposed
17 modification for purposes of submitting the proposed modification to the Court for approval.

18 **13. AUTHORIZATION**

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

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1 **14. ENTIRE AGREEMENT**

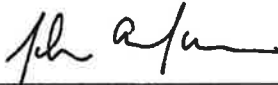
2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or
5 otherwise, express or implied,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

8 **AGREED TO:**

AGREED TO:

9 Date: 5/9/12

Date: _____

10
11 By: 
12 Plaintiff JOHN MOORE

By: _____
Defendant E&B GIFTWARE LLC

1 **14. ENTIRE AGREEMENT**

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

8 **AGREED TO:**

9 Date: _____

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11 By: _____
12 Plaintiff JOHN MOORE

AGREED TO:

Date: April 19, 2012

13 By: [Signature]
14 Defendant E&B GIFTWARE LLC
15 Steven P. Brigham
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