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2 Brian C. Johnson, State Bar No. 235965  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
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6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 JOHN MOORE

ENDORSED  
FILED  
San Francisco County Superior Court

JUN 13 2011

CLERK OF THE COURT  
BY: GINA GONZALES  
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO  
13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 PIONEER PHOTO ALBUMS, INC.; and  
18 DOES 1-150, inclusive,

19 Defendants.

Case No. CGC-10-503423

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

Date: June 13, 2011  
Time: 9:30 a.m.  
Dept.: 301  
Judge: Hon. Peter J. Busch

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1 Plaintiff John Moore and Defendant Pioneer Photo Albums, Inc., having agreed  
2 through their respective counsel that a judgment be entered pursuant to the terms of the  
3 Consent Judgment entered into by the parties in resolution of this Proposition 65 action,  
4 and following the issuance of an order approving the Parties' settlement agreement on June  
5 10, 2011.

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

11  
12  
13 **IT IS SO ORDERED.**

14  
15 Dated: 6/13/11

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17 \_\_\_\_\_  
18 JUDGE OF THE SUPERIOR COURT  
19 PETER J. BUSCH  
20  
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# 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  
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6 Attorneys for Plaintiff  
JOHN MOORE

7  
8 Michael J. Stiles, State Bar No. 179214  
STILES LAW GROUP  
800 E. Colorado Blvd., Suite 210  
9 Pasadena, CA 91101  
Telephone: (626) 243-5599  
10 Facsimile: (626) 389-0599

11 Attorneys for Defendant  
PIONEER PHOTO ALBUMS, INC.

12  
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.

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22 1-150, inclusive,

23 Defendants.

Case No. CGC-10-503423

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 John Moore, and Pioneer Photo Albums, Inc.**

3 This Consent Judgment is entered into by and between John Moore (“Moore”) and Pioneer  
4 Photo Albums, Inc. (“Pioneer”), with Moore and Pioneer collectively referred to as the “Parties.”

5 **1.2 Plaintiff**

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

9 **1.3 Defendant**

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

13 **1.4 General Allegations**

14 Moore alleges that Pioneer has sold in the State of California books with soft covers  
15 containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a  
16 chemical known to the State of California to cause birth defects or other reproductive harm. DEHP is  
17 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 with soft covers  
20 containing the Listed Chemical including, but not limited to, *Frame Cover Album, Style No. KZ-46*  
21 *(#0 23602 02402 1)*. All such items shall be referred to herein as the “Products.”

22 **1.6 Notice of Violation**

23 On June 17, 2010, Moore served Pioneer and various public enforcement agencies with a  
24 document entitled “60-Day Notice of Violation” (“Notice”) that provided Pioneer and such public  
25 enforcers with notice that alleged Pioneer was in violation of Proposition 65 for failing to warn  
26 consumers and customers that the Products exposed users in California to DEHP.

27 ///

28 ///

1           **1.7       Complaint**

2           On September 10, 2010, Moore, who alleges that he was and is acting in the interest of the  
3 general public in California, filed the instant action in the San Francisco Superior Court  
4 (“Complaint”), naming Pioneer as a defendant and alleging violations of Proposition 65 by Pioneer  
5 based on the alleged exposures to DEHP contained in the Products it manufactured, distributed,  
6 and/or offered for sale in California.

7           **1.8       No Admission**

8           Pioneer denies the material, factual, and legal allegations contained in the Notice and  
9 Complaint and maintains that all of the products that it has sold in California, including the Products,  
10 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be  
11 construed as an admission by Pioneer of any fact, finding, conclusion, issue of law, or violation of  
12 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by  
13 Pioneer of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
14 denied by Pioneer. However, this section shall not diminish or otherwise affect the obligations,  
15 responsibilities, and duties of Pioneer under this Consent Judgment.

16           **1.9       Consent to Jurisdiction**

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

21           **1.10      Effective Date**

22           For purposes of this Consent Judgment, the term “Effective Date” shall mean April 1, 2011.

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

24           **2.1       Reformulation Commitment**

25           After the Effective Date, Pioneer shall only distribute, sell, or offer for sale in California  
26 “Reformulated Products.” For purposes of this Consent Judgment, Reformulated Product shall mean  
27 Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when  
28 analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or

1 equivalent methodologies utilized by federal or state agencies for the purpose of determining the  
2 presence of the Listed Chemical in a given sample.

3 **3. MONETARY PAYMENTS**

4 **3.1 Payments Pursuant to California Health & Safety Code § 25249.7(b)**

5 Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all claims alleged in the  
6 Notice and Complaint and referred to in this Consent Judgment, Pioneer shall pay civil penalties in  
7 the amount of \$10,000 in combined penalty payments and credits. Because of Pioneer's cooperation  
8 in the resolution of this action, and its commitment to only offer Reformulated Products pursuant to  
9 Section 2.1 above, Moore agrees to apply an automatic credit of \$5,500 to the total civil penalty.  
10 Thereafter, Pioneer agrees to pay the sum of \$4,500. The penalty shall be apportioned in accordance  
11 with California Health & Safety Code §§ 25249.12(c)(1) & (d), with seventy-five percent of the  
12 amount remitted to the State of California's Office of Environmental Health Hazard Assessment  
13 ("OEHHA") and the remaining twenty-five percent paid to Moore.

14 Pioneer shall issue two checks for the penalty payment: (a) one check made payable to "The  
15 Chanler Group in Trust for OEHHA" in the amount of \$3,375; and (b) one check to The Chanler  
16 Group in Trust for John Moore in the amount of \$1,125. Two 1099 forms shall also be issued for the  
17 above-payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010,  
18 Sacramento, CA 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall be  
19 provided upon request five days before the payment is due.

20 The penalty payment shall be delivered to Moore's counsel within five days of the Effective  
21 Date at the following address:

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

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

28 **4.1 Attorney Fees and Costs**

The Parties acknowledge that Moore and his counsel offered to resolve this dispute without  
reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee

1 issue to be resolved after the material terms of the agreement had been settled. Pioneer then  
2 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
3 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Moore  
4 and his counsel under general contract principles and the private attorney general doctrine codified at  
5 California Code of Civil Procedure (“CCP”) § 1021.5, for all work performed through the mutual  
6 execution of this Agreement. Defendants shall pay \$30,000 for fees and costs incurred by Moore as a  
7 result of investigating, bringing this matter to its attention, and negotiating a settlement in the public  
8 interest. This figure includes Moore’s future fees and costs including attorney’s fees to be incurred in  
9 seeking judicial approval of this Consent Judgment as well as any other legal work performed after  
10 the execution of this Consent Judgment incurred in an effort to obtain finality of the case. However,  
11 in the event a third party were to appeal entry of this Consent Judgment, Plaintiff and his counsel  
12 shall be entitled to seek their reasonable attorney’s fees and costs associated with all appellate work  
13 defending the entry of judgment pursuant to CCP § 1021.5.

14 The payment for reimbursement of fees and costs shall be made payable to “The Chanler  
15 Group” and shall be delivered within five days of the Effective Date at the following address:

16 The Chanler Group  
17 Attn: Proposition 65 Controller  
18 2560 Ninth Street  
19 Parker Plaza, Suite 214  
20 Berkeley, CA 94710

21 A third 1099 form shall be issued to “The Chanler Group” (EIN: 94-3171522) for the reimbursement  
22 of Plaintiff’s fees and costs pursuant to this Section.

## 23 **5. RELEASE OF ALL CLAIMS**

### 24 **5.1 Moore’s Release of Pioneer**

25 In further consideration of the promises and agreements herein contained, and for the  
26 payments to be made pursuant to Sections 3.1 and 4.1 above, Moore, on behalf of himself, his past  
27 and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the  
28 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
legal action and releases all claims, including, without limitation, all actions, causes of action, suits,  
liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but

1 not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether  
2 known or unknown, fixed or contingent, at law or in equity (collectively "Claims"), against Pioneer  
3 and each of its past and current downstream distributors, wholesalers, licensors, licensees,  
4 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,  
5 corporate affiliates, and subsidiaries, and their respective past and current officers, directors,  
6 principals, partners, members, attorneys, representatives, shareholders, agents, and employees, and  
7 sister and parent entities (collectively "Releasees"). This release is limited to those Claims that arise  
8 under Proposition 65, as such Claims relate to Pioneer's alleged failure to warn about exposures to or  
9 identification of the Listed Chemical contained in the Products. The Parties further agree that this  
10 release shall not extend upstream to any entities that manufactured the Products or any component  
11 parts thereof, or to any distributors or suppliers who sold Products or any component parts thereof to  
12 Pioneer.

#### 13 **5.2 Pioneer's Release of Moore**

14 Pioneer waives any and all claims against Moore, his attorneys and other representatives, for  
15 any and all actions taken or statements made (or those that could have been taken or made) by Moore  
16 and his attorneys and other representatives, whether in the course of investigating claims or otherwise  
17 seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

#### 18 **6. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
20 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
21 has been fully executed by all Parties, in which event any monies that have been provided to Moore  
22 or his counsel pursuant to Sections 3.1 and/or Section 4.1 above shall be refunded within fifteen (15)  
23 days after receiving written notice from Pioneer that the one-year period has expired and the Consent  
24 Judgment has not been approved by the Court.

#### 25 **7. SEVERABILITY**

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

1 **8. GOVERNING LAW**

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

9 **9. NOTICES**

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

14 For Pioneer:

15 Michael J. Stiles, Esq.  
16 Stiles Law Group  
17 800 Colorado Boulevard, Suite 210  
Pasadena, CA 91101

18 For Moore:

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

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

24 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

25 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall  
26 be deemed an original, and all of which, when taken together, shall constitute one and the same  
27 document.  
28

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

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

4 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

5 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a  
6 noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of  
7 obtaining such approval, Moore and Pioneer and their respective counsel agree to mutually employ  
8 their "best efforts" to support the entry of this agreement as a Consent Judgment and obtain approval  
9 of the Consent Judgment by the Court in a timely manner. For purposes of this section, "best efforts"  
10 shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the  
11 required motion for judicial approval.

12 **13. MODIFICATION**

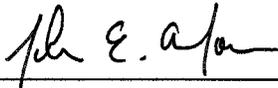
13 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
14 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of  
15 any party and entry of a modified consent judgment by the Court

16 **14. AUTHORIZATION**

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

19  
20 **AGREED TO:**

21 JOHN MOORE

22 

23 \_\_\_\_\_  
24 Date: MARCH 28, 2011

**AGREED TO:**

PIONEER PHOTO ALBUMS, INC.

25 By: \_\_\_\_\_

26 Its: \_\_\_\_\_

27 Date: \_\_\_\_\_

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18 and agree to all of the terms and conditions hereof.

19  
20 **AGREED TO:**

21 JOHN MOORE

22 \_\_\_\_\_  
23

24 Date: \_\_\_\_\_  
25

**AGREED TO:**

PIONEER PHOTO ALBUMS, INC.

22 By: *Shell Plutsky*  
23

24 Its: PRESIDENT

25 Date: 3/30/11  
26  
27  
28