

1 Clifford A. Chanler, State Bar No. 135534  
2 Brian C. Johnson, State Bar No. 235965  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone:(510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 JOHN MOORE

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**MAY 11 2011**

**CLERK OF THE SUPERIOR COURT  
By JUDY ANN WARREN  
Deputy**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION  
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14 JOHN MOORE,

15 Plaintiff,

16 v.

17 FOREMOST GROUPS, INC.; and  
18 DOES 1-150, inclusive,

19 Defendants.  
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Case No. RG10553310

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

Date: May 10, 2011

Time: 3:30 p.m.

Dept.: 510

Judge: Hon. Evelio Grillo

Reservation No.: R1163292

1 In the above-entitled action, Plaintiff JOHN MOORE and Defendant FOREMOST  
2 GROUPS, INC., having agreed through their respective counsel that a judgment be entered  
3 pursuant to the terms of the Consent Judgment entered into by the parties in resolution of  
4 this Proposition 65 action, and following the issuance of an order approving the Parties'  
5 settlement agreement on May 10, 2011.

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

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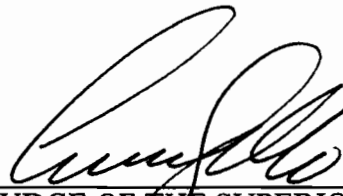
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13 **IT IS SO ORDERED.**

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16 Dated: May 11, 2011

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
EVELIO M. GRILLO

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# Exhibit 1

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

6 Attorneys for Plaintiff  
7 JOHN MOORE

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

JOHN MOORE,

Plaintiff,

v.

FOREMOST GROUPS, INC.; and DOES 1-150,  
inclusive,

Defendants.

Case No. RG10553310

~~PROPOSED~~ CONSENT  
JUDGMENT

Health & Safety Code § 25249.6

1     **1. INTRODUCTION**

2             **1.1 John Moore and Foremost Groups, Inc.**

3             This Consent Judgment is entered into by and between John Moore (“Moore”) and Foremost  
4 Groups, Inc. (“Foremost”), with Moore and Foremost 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            Foremost 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 Foremost has sold in the State of California storage furniture containing  
15 di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known  
16 to the State of California to cause birth defects or other reproductive harm. DEHP shall be referred to  
17 hereinafter as the “Listed Chemical.”

18            **1.5 Product Description**

19            The product covered by this Consent Judgment is the *Target Home Storage Ottoman, #24912*  
20 *ID059444-VCC-LE (#7 21015 72455 1)* an item of storage furniture that is manufactured, distributed  
21 and/or sold in California by Foremost. The item shall be referred to hereinafter as the “Product” or  
22 “Products.”

23            **1.6 Notice of Violation**

24            On September 1, 2010, Moore served Foremost and various public enforcement agencies with  
25 a document entitled “60-Day Notice of Violation” (“Notice”) that provided Foremost and such public  
26 enforcers with notice that Foremost was in alleged to be in violation of Proposition 65 for failing to  
27 warn consumers and customers that the Products exposed users in California to DEHP.

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1           **1.7       Complaint**

2           On December 28, 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 Foremost as a defendant and alleging violations of Proposition 65 based on  
5 the exposures to DEHP contained in the Products it manufactured, distributed, sold and/or offered for  
6 sale in California.

7           **1.8       No Admission**

8           Foremost 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 Foremost 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 Foremost of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
14 denied by Foremost. However, this section shall not diminish or otherwise affect the obligations,  
15 responsibilities, and duties of Foremost 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 Foremost as to the allegations contained in the Complaint, that venue is proper in the  
19 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this  
20 Consent Judgment.

21           **1.10      Effective Date**

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

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

24           **2.1       Reformulation Commitment**

25           After the Effective Date, Foremost shall only manufacture, distribute, sell, or offer for sale in  
26 California “Reformulated Products.” For purposes of this Consent Judgment, Reformulated Products  
27 shall mean Products – as that term is defined in Section 1.5 – containing DEHP in concentrations less  
28 than 0.1 percent (1,000 parts per million) when analyzed pursuant to Environmental Protection

1 Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or  
2 state agencies for the purpose of determining the presence of the Listed Chemical in a solid 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)(1), in settlement of all claims alleged in the  
6 Notice and Complaint, \$10,000 civil penalties comprised of combined credits and payments. For its  
7 cooperation in the settlement of this matter, its prompt response upon receipt of the Notice to  
8 investigate any alleged violations, and for its commitment to offer only Reformulated Products,  
9 thereby, ensuring that sales of Product after the Effective Date will not require a Proposition 65  
10 warning, plaintiff agrees to provide Foremost with credits totaling \$5,500. Thereafter, Foremost shall  
11 pay the remaining penalty amount of \$4,500.

12 The penalty payment is to be apportioned in accordance with California Health & Safety  
13 Code §§ 25249.12(c)(1) & (d), with seventy-five percent of the penalty amount remitted to the State  
14 of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining  
15 twenty-five percent of the penalty paid to Moore. Foremost shall issue two checks for the penalty  
16 payment: (a) one check payable to "The Chanler Group in Trust for OEHHA" in the amount of  
17 \$3,375; and (b) one check payable to "The Chanler Group in Trust for John Moore" in the amount of  
18 \$1,125. Two 1099 forms shall be issued for the above-payments to: (a) California Office of  
19 Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-  
20 0284486); and (b) John Moore, whose information shall be provided five calendar days before the  
21 payment is due. Payment of penalty payment shall be delivered in full to Moore's counsel within five  
22 days of the Effective Date at the following 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.     REIMBURSEMENT OF FEES AND COSTS**

2             **4.1     Attorney Fees and Costs**

3             The parties acknowledge that Moore and his counsel offered to resolve this dispute without  
4     reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
5     issue to be resolved after the material terms of the agreement had been settled. Foremost then  
6     expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
7     finalized. The parties then attempted to (and did) reach an accord on the compensation due to Moore  
8     and his counsel under general contract principles and the private attorney general doctrine codified at  
9     California Code of Civil Procedure ("CCP") § 1021.5, for all work performed through the mutual  
10    execution of this agreement. Defendants shall pay \$28,500 for fees and costs incurred as a result of  
11    investigating, bringing this matter to its attention, litigating, and negotiating a settlement in the public  
12    interest. This figure includes Moore's future fees and costs including attorneys' fees to be incurred in  
13    seeking judicial approval of this Consent Judgment as well as any other legal work performed after  
14    the execution of this Consent Judgment incurred in an effort to obtain finality of the case. However,  
15    in the event a third party were to appeal entry of this Consent Judgment, Plaintiff and his counsel  
16    shall be entitled to seek their reasonable attorneys' fees and costs associated with all appellate work  
17    defending the entry of judgment pursuant to CCP § 1021.5.

18            A third check for the reimbursement of a portion of plaintiff's fees and costs shall be made  
19    payable to "The Chanler Group" and delivered within five days of the Effective Date at the following  
20    address:

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

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



1     **5.     RELEASE OF ALL CLAIMS**

2             **5.1     Moore's Release of Foremost**

3             In further consideration of the promises and agreements herein contained, and for the  
4     payments to be made pursuant to Sections 3.1 and 4.1 above, Moore, on behalf of himself, his past  
5     and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the  
6     general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
7     legal action and releases all claims, including, without limitation, all actions, causes of action, suits,  
8     liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but  
9     not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether  
10    known or unknown, fixed or contingent, at law or in equity (collectively "Claims"), against Foremost  
11    and each of its past and current downstream distributors, wholesalers, licensors, licensees,  
12    auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,  
13    corporate affiliates, and subsidiaries, and their respective past and current officers, directors,  
14    principals, partners, members, attorneys, representatives, shareholders, agents, and employees, and  
15    sister and parent entities (collectively "Releasees"). This release is limited to those Claims that arise  
16    under Proposition 65, as such Claims relate to Foremost's alleged failure to warn about exposures to  
17    or identification of the Listed Chemical contained in the Products. The parties further agree that this  
18    release shall not extend upstream to any entities that manufactured the Products or any component  
19    parts thereof, or to any distributors or suppliers who sold Products or any component parts thereof to  
20    Foremost.

21             **5.2     Foremost's Release of Moore**

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

26     **6.     COURT APPROVAL**

27             This Consent Judgment is not effective until it is approved and entered by the Court and shall  
28    be null and void if, for any reason, it is not approved and entered by the Court within one year after it

1 has been fully executed by all parties, in which event any monies that have been provided to Moore  
2 or his counsel pursuant to Sections 3.1 and/or Section 4.1 above shall be refunded within fifteen (15)  
3 days after receiving written notice from Foremost that the one-year period has expired and the  
4 Consent Judgment has not been approved by the Court.

5 **7. SEVERABILITY**

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

9 **8. GOVERNING LAW**

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

17 **9. NOTICES**

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

22 For Foremost:

23 Liang Chen, Chief Administrative Officer  
24 Foremost Groups, Inc.  
25 906 Murray Road  
26 East Hanover, NJ 07936

27 with a copy to:

28 Dennis E. Raglin, Esq.  
Sedgwick, Detert, Moran & Arnold, LLP  
One Market Plaza  
Steuart Tower, Eighth Floor  
San Francisco, CA 94105

1 For Moore:

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

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

9 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

16 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

17 The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a  
18 noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of  
19 obtaining such approval, Moore and Foremost and their respective counsel agree to mutually employ  
20 their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of  
21 the Consent Judgment by the Court in a timely manner. For purposes of this section, "best efforts"  
22 shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the  
23 required motion for judicial approval.

24 **13. MODIFICATION**

25 This Consent Judgment may be modified only: (1) by written agreement of the parties and  
26 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of  
27 any party and entry of a modified consent judgment by the Court.  
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1 **14. AUTHORIZATION**

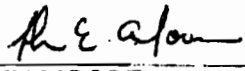
2 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
3 and agree to all of the terms and conditions hereof

4  
5 **AGREED TO:**

**AGREED TO:**

6 Date: FEBRUARY 21, 2011

Date: FEBRUARY 24, 2011

7  
8 By:   
9 JOHN MOORE

By:   
Liang Chen, Chief Administrative Officer  
FOREMOST GROUPS, INC.

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