



1 In the above-entitled action, Plaintiff JOHN MOORE and Defendant ENCHANTE  
2 ACCESSORIES INC., having agreed through their respective counsel that Judgment be entered  
3 pursuant to the terms of the Proposition 65 settlement agreement in the form of a Consent Judgment,  
4 and following issuance of an Order approving this Proposition 65 settlement agreement and entering  
5 the Consent Judgment,

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.

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11 **IT IS SO ORDERED.**

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13 Dated: JUN 24 2011

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JUDGE OF THE SUPERIOR COURT

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# EXHIBIT

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

6 Attorneys for Plaintiff  
JOHN MOORE  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 THE COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

12 JOHN MOORE,  
13 Plaintiff,  
14 v.  
15 ENCHANTE ACCESSORIES INC.; and  
DOES 1-150, inclusive,  
16 Defendants.  
17

Case No. RG11561293

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6

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1 **1. INTRODUCTION**

2 **1.1 John Moore and Enchante Accessories Inc.**

3 This Consent Judgment is entered into by and between John Moore (hereinafter "Moore")  
4 and Enchante Accessories, Inc. (hereinafter "Enchante"), with Moore and Enchante collectively  
5 referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Moore alleges that Enchante has manufactured, distributed, and/or offered for sale in  
16 California coverings for books/albums containing di(2-ethylhexyl)phthalate ("DEHP") without the  
17 requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known  
18 to the State of California to cause birth defects and other reproductive harm (hereinafter the "Listed  
19 Chemical").

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are books/albums with covers  
22 containing the Listed Chemical, including but not limited to: *Photo Albums (Live Laugh Love, Sku*  
23 *Nos. 400047539011, 400053106900, 400053155502, 400053728454, 400045535855,*  
24 *400055612607, 400056243411)* manufactured, distributed and/or sold in California by Enchante  
25 (hereinafter "Products").

26 **1.6 Notice of Violation**

27 On October 15, 2010, Moore served Enchante and various public enforcement agencies with  
28 a document entitled "60-Day Notice of Violation" that provided Enchante and such public enforcers

1 with notice that alleged that Enchante was in violation of Proposition 65 for failing to warn  
2 consumers and customers that the Products exposed users in California to the Listed Chemical.

3 **1.7 Complaint**

4 On February 15, 2011, Moore, who alleges that he was and is acting in the interest of the  
5 general public in California, filed a complaint in the Alameda Superior Court (the "Complaint"),  
6 naming Enchante as a defendant and alleging violations of Proposition 65 based on Defendant's  
7 alleged failure to give clear and reasonable warnings before allegedly causing exposures to the  
8 Listed Chemical contained in the Products

9 **1.8 No Admission**

10 Enchante denies the factual and legal allegations contained in the Notice and Complaint, and  
11 maintains that all products that it has sold in California have been and are in compliance with all  
12 laws, including, without limitation, Proposition 65. Nothing in this Consent Judgment shall be  
13 construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation  
14 of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission  
15 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
16 specifically denied by Defendant. However, this Section shall not diminish or otherwise affect  
17 Defendant's obligations, responsibilities and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
20 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in  
21 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of  
22 this Consent Judgment, pursuant to California Code of Civil Procedure §664.6, as a full and binding  
23 resolution of all claims which were or could have been raised in the Complaint against Defendant  
24 based on the facts alleged therein and in the Notice.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean March 25,  
27 2011.

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1     **2.     INJUNCTIVE RELIEF**

2             **2.1     Reformulation**

3             As of the Effective Date, Enchante shall not ship, sell or offer to be shipped for sale in  
4 California any Products unless they are "Reformulated Products." For purposes of this Consent  
5 Judgment, Reformulated Products shall mean Products containing less than 1,000 parts per million  
6 of DEHP, when analyzed pursuant to Environmental Protection Agency ("EPA") testing  
7 methodologies 3580A and 8270C.

8     **3.     MONETARY PAYMENTS**

9             In settlement of all the claims referred to in this Consent Judgment against it, Enchante shall  
10 make payments and receive credits totaling \$12,000, in civil penalties, as follows:

11            3.1     Enchante shall make an initial payment of \$4,000 to be apportioned in accordance  
12 with Health & Safety Code § 25249.12 (c)(1) and (d), with 75% of these funds remitted to the State  
13 of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining  
14 25% of these penalty monies remitted to Moore as provided by Health & Safety Code  
15 § 25249.12(d). Enchante shall issue two separate checks for the penalty payment: (a) one check  
16 made payable to "The Chanler Group in Trust for OEHHA" in the amount of \$3,000, representing  
17 75% of the total penalty, and (b) one check to "The Chanler Group in Trust for John Moore" in the  
18 amount of \$1,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the  
19 above payments. The first 1099 shall be issued to the Office of Environmental Health Hazard  
20 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$3,000.  
21 The second 1099 shall be issued to Moore in the amount of \$1,000, whose address and tax  
22 identification number shall be furnished upon request. The payments shall be delivered on or before  
23 April 15, 2011, at the address set forth in Section 3.4.

24            3.2     Enchante shall receive an automatic credit of \$4,000, for its commitment to  
25 reformulate its Products pursuant to Section 2, above.

26            3.3     Enchante shall pay a second civil penalty of \$4,000, on or before April 15, 2011, to  
27 be apportioned in accordance with Health & Safety Code § 25249.12 (c)(1) and (d) as described  
28 above, which penalty shall be waived in its entirety, if, by April 1, 2011, Enchante certifies in

1 writing that all Products in its inventory and the inventory of its downstream customers have been  
2 removed from the market.

3 3.4 All payments, unless waived, shall be delivered to the following address:

4 The Chanler Group  
5 Attn: Proposition 65 Controller  
6 2560 Ninth Street  
7 Parker Plaza, Suite 214  
8 Berkeley, CA 94710

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

8 **4.1 Attorney Fees and Costs**

9 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without  
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
11 issue to be resolved after the material terms of the agreement had been settled. Enchante then  
12 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
13 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
14 Moore and his counsel under general contract principles and the private attorney general doctrine  
15 codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed in this  
16 matter. Under these legal principles, Enchante shall pay the amount of \$32,000 for fees and costs  
17 incurred as a result of investigating, bringing this matter to Enchante' attention, and negotiating a  
18 settlement in the public interest. Enchante shall issue a separate 1099 for fees and costs (EIN: 94-  
19 3171522) and shall make the check payable to "The Chanler Group" and shall be delivered on or  
20 before April 15, 2011, 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

24 **5. RELEASE OF ALL CLAIMS**

25 **5.1 Moore's Release of Enchante**

26 In further consideration of the promises and agreements herein contained, and for the  
27 payments to be made pursuant to Sections 3 and 4 above, Moore, on behalf of himself, his past and  
28 current agents, representatives, attorneys, including, without limitation, The Chanler Group,



1 successors and/or assignees, and in the interest of the general public, hereby waives all rights to  
2 institute or participate in, directly or indirectly, any form of legal action and releases all claims,  
3 including, without limitation, all actions and causes of action, in law or in equity, suits, liabilities,  
4 demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited  
5 to, investigation fees, expert fees and attorney's fees) of any nature whatsoever fixed or contingent  
6 (collectively "Claims"), that were brought or could have been brought against Enchante;  
7 subsidiaries or affiliates, and each of its past and current downstream customers, distributors,  
8 wholesalers, suppliers, licensors, licensees, auctioneers, retailers, or any other person in the course  
9 of doing business, and the successors and assigns of any of them, who may use, maintain,  
10 manufacture, distribute, advertise, market or sell Products, and the officers, directors, managers,  
11 employees, members, shareholders, agents, insurers and representatives of each of them  
12 (collectively "Releasees"), based on their failure to warn about alleged exposures to the Listed  
13 Chemical contained in the Products that were manufactured, distributed, or sold by Defendant. The  
14 Parties further understand and agree that this release shall not extend upstream to any third parties  
15 that manufactured the Products or any component parts thereof, or any distributors or suppliers who  
16 sold the Products or any component parts thereof to Defendant.

17 Compliance with the terms of this Consent Judgment resolves any issue, now and in the  
18 future, concerning compliance by Enchante and its Releasees with the requirements of Proposition 65  
19 with respect to alleged exposure to the Listed Chemical from the Products distributed or sold by  
20 Enchante.

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

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

1     **6.     COURT APPROVAL**

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

7     **7.     SEVERABILITY**

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

11    **8.     GOVERNING LAW**

12             The terms of this Consent Judgment shall be governed by the laws of the State of California  
13 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or  
14 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Enchante  
15 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
16 extent that, the Products are so affected.

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 Enchante:

23             Ezra Erani, President  
24             Enchante Accessories, Inc.  
25             4 East 34<sup>th</sup> Street, Floor 4  
26             New York, NY 10016

27    with a copy to:

28             Betsy McDaniel, Esq.  
              Sheppard Mullin Richter & Hampton LLP  
              Four Embarcadero Center  
              Seventeenth Floor  
              San Francisco, CA 94111

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  
8 to which 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 or .pdf signature,  
11 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
12 one and the same document.

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

14 Moore agrees to comply with the reporting form requirements referenced in California  
15 Health & 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 Enchante and their respective counsel agree to mutually  
20 employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain  
21 approval of the Consent Judgment by the Court in a timely manner. For purposes of this section,  
22 best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in  
23 support of the 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. The Attorney General shall be  
28 served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days  
in advance of its consideration by the Court.

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**14. AUTHORIZATION**

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

**AGREED TO:**

**AGREED TO:**

By: *John E. Moore*  
JOHN MOORE

By: \_\_\_\_\_  
EZRA ERANI, PRESIDENT  
Enchante Accessories Inc.

Date: JUNE 1, 2011

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

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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**14. AUTHORIZATION**

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

**AGREED TO:**

**AGREED TO:**

By: \_\_\_\_\_  
JOHN MOORE

By:   
GABRIEL KHEZRIE, Vice President  
Enchante Accessories Inc.

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

Date: JUNE 10, 2011

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT