

1 Christopher M. Martin, State Bar No. 186021  
2 Josh Voorhees, State Bar No. 241436  
3 Troy C. Bailey, State Bar No. 277424  
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

10 Attorneys for Plaintiff  
11 JOHN MOORE

**FILED**

SEP 25 2012  
KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: K. Yarborough, Deputy

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

15 JOHN MOORE,  
16 Plaintiff,  
17 v.  
18 MS. DEE, INC.; and DOES 1 through 150,  
19 inclusive,  
20 Defendants.

Case No. CIV1101224

~~PROPOSED~~ JUDGMENT PURSUANT  
TO TERMS OF PROPOSITION 65  
SETTLEMENT AND ~~PROPOSED~~  
CONSENT JUDGMENT AS TO  
DEFENDANT MS. DEE, INC.

Date: September 25, 2012  
Time: 9:00 a.m.  
Dept. L  
Judge: Hon. Lynn Duryee

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Plaintiff John Moore and Defendant Ms. Dee, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

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

**IT IS SO ORDERED.**

Dated: SEP 25 2012

LYNN DURYEE,  
JUDGE OF THE SUPERIOR COURT

# Exhibit 1

1 Christopher M. Martin, State Bar No. 186021  
THE CHANLER GROUP  
2 2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
3 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118  
4  
5 Attorneys for Plaintiff  
JOHN MOORE

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 FOR THE COUNTY OF MARIN  
8 UNLIMITED CIVIL JURISDICTION  
9

10 JOHN MOORE,  
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12 Plaintiff,  
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14 v.  
MS. DEE, INC.; and DOES 1 through 150,  
inclusive,  
15 Defendants.

Case No. CIV1101224

**[PROPOSED] CONSENT JUDGMENT AS  
TO DEFENDANT MS. DEE, INC.**

1     **1. INTRODUCTION**

2             **1.1 John Moore and Ms. Dee, Inc.**

3             This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or  
4     “Plaintiff”) and defendant Ms. Dee, Inc. (“Ms. Dee” 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            Ms. Dee 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 Ms. Dee manufactured, imported, distributed, sold and/or offered for  
16     sale coverings for books/journals, bracelets, and marker pouches containing di(2-  
17     ethylhexyl)phthalate (“DEHP”) in the State of California without the requisite health hazard  
18     warnings. DEHP is listed pursuant to Proposition 65 as known to the State of California to  
19     cause birth defects and other reproductive harm.

20            **1.5 Product Description**

21            The products that are covered by this Consent Judgment are defined as follows:  
22     coverings for books/journals containing DEHP including, but not limited, to the *Molly ‘n Me*  
23     *Notebook* (#0 75656 03121 0); bracelets containing DEHP including, but not limited to, the  
24     *Molly ‘n Me Bracelet*, #179J358 (#7 36515 95441 4); and marker pouches containing DEHP  
25     including, but not limited to, the *Molly ‘n Me Glitter Gel Tattoo Pens*, #650C001 (#7 36515  
26     94874 1) which Ms. Dee manufactured, imported, distributed, sold and/or offered for sale in the  
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1 State of California. All such coverings for books/journals, bracelets and marker pouches  
2 containing DEHP are referred to collectively as the “Products.”

3 **1.6 Notices of Violation**

4 On October 15, 2010, Moore served Ms. Dee and various public enforcement agencies  
5 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients  
6 with notice of alleged violations of Proposition 65 for failing to warn consumers that the  
7 coverings for books/journals manufactured, imported, distributed, sold and/or offered for sale  
8 by Ms. Dee exposed users in California to DEHP. On October 28, 2011, Moore served Ms. Dee  
9 and various public enforcement agencies with a document entitled “60-Day Notice of  
10 Violation” (“Supplemental Notice”) that provided the recipients with notice of alleged  
11 violations of Proposition 65 for failing to warn consumers that the bracelets and marker pouches  
12 manufactured, imported, distributed, sold and/or offered for sale by Ms. Dee exposed users in  
13 California to DEHP. The Notice and Supplemental Notice are hereinafter referred to as the  
14 “Notices.”

15 **1.7 Complaint**

16 On March 8, 2011, Moore, who was and is acting in the interest of the general public in  
17 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the  
18 County of Marin against Ms. Dee and Does 1 through 150, alleging violations of California  
19 Health & Safety Code §25249.6 based on the alleged exposures to DEHP contained in the  
20 coverings for books/journals. On February 1, 2012 the Complaint was amended to include  
21 allegations of violations of California Health & Safety Code §25249.6 based on alleged  
22 exposures to DEHP contained in the bracelets and marker pouches.

23 **1.8 No Admission**

24 Ms. Dee denies the material factual and legal allegations contained in Moore's Notices  
25 and Complaint, and maintains that all Products sold and distributed in California have been and  
26 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an  
27 admission by Ms. Dee of any fact, finding, issue of law, or violation of law; nor shall  
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1 compliance with this Consent Judgment constitute or be construed as an admission by Ms. Dee  
2 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied  
3 by Ms. Dee. However, this section shall not diminish or otherwise affect Ms. Dee's obligations,  
4 responsibilities, and duties under this Consent Judgment.

5 **1.9 Consent to Jurisdiction**

6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
7 jurisdiction over Ms. Dee as to the allegations contained in the Complaint, that venue is proper  
8 in the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions  
9 of this Consent Judgment.

10 **1.10 Effective Date**

11 For purposes of this Consent Judgment, the term "Effective Date" shall mean July 31,  
12 2012.

13 **2. INJUNCTIVE RELIEF: REFORMULATION**

14 **2.1 Reformulation Standards and Commitment**

15 After the Effective Date, Ms. Dee shall only manufacture, import, distribute, sell and/or  
16 offer for sale in California Products that are "Reformulated Products." For purposes of this  
17 Consent Judgment, Products that are "Reformulated Products" shall mean Products containing  
18 less than or equal to 1,000 parts per million (0.1%) of DEHP when analyzed pursuant to  
19 Environmental Protection Agency testing methodologies 3580A and 8270C or any other  
20 methodology utilized by federal and state agencies for the purpose of determining DEHP content  
21 in a solid substance. Reformulated Products shall be deemed to comply with Proposition 65 as it  
22 relates to the presence of DEHP in the Products and shall be exempt from any Proposition 65  
23 warning requirements regarding exposure to DEHP.

24 **3. MONETARY PAYMENTS**

25 **3.1 Civil Penalty**

26 Ms. Dee shall pay a civil penalty of \$2,000, to be apportioned in accordance with  
27 California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the  
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1 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the  
2 remaining 25% of the penalty remitted to Moore. Ms. Dee shall issue two separate checks for the  
3 penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of  
4 California's Office of Environmental Health Hazard Assessment ("The Chanler Group in Trust  
5 for OEHHA") in the amount of \$1,500, representing 75% of the initial civil penalty and (b) one  
6 check to "The Chanler Group in Trust for John Moore" in the amount of \$500, representing 25%  
7 of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first  
8 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486).  
9 The second 1099 shall be issued to Moore, whose address and tax identification number shall be  
10 furnished, upon request, at least five calendar days before payment is due. The payments shall be  
11 delivered on or before the Effective Date, to the following address:

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

### 17                   **3.2 Reimbursement of Plaintiff's Fees and Costs**

18                   The Parties acknowledge that Moore and his counsel offered to resolve this dispute  
19 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
20 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
21 Ms. Dee then expressed a desire to resolve the fee and cost issue shortly after the other  
22 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on  
23 the compensation due to Moore and his counsel under general contract principles and the private  
24 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all  
25 work performed in this matter, except fees that may be incurred on appeal. Under these legal  
26 principles, Ms. Dee shall pay the amount of \$23,000 for fees and costs incurred investigating,  
27 litigating and enforcing this matter, including the fees and costs incurred (and yet to be  
28 incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment  
in the public interest.



1           **3.3    Payment Procedures**

2           **3.3.1    Funds Held In Trust.** All payments required by Sections 3.1 and 3.2  
3 shall be delivered on or before the Effective Date to either The Chanler Group or the attorney of  
4 record for the Ms. Dee, and shall be held in trust pending the Court’s approval of this Consent  
5 Judgment.

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

- 7                           (a)    One check made payable to “The Chanler Group in Trust for  
8    OEHHA” in the amount of \$1,500;  
9                           (b)    One check made payable to “The Chanler Group in Trust for John  
10   Moore” in the amount of \$500; and  
11                           (c)    One check made payable to “The Chanler Group in Trust” in the  
12   amount of \$23,000.

13                   Payments delivered to Reed Smith LLP shall be made payable, as follows:

- 14                           (a)    One check made payable to “Reed Smith LLP in Trust for  
15    OEHHA” in the amount of \$1,500;  
16                           (b)    One check made payable to “Reed Smith LLP in Trust for John  
17   Moore” in the amount of \$500; and  
18                           (c)    One check made payable to “Reed Smith LLP in Trust for The  
19   Chanler Group” in the amount of \$23,000.

20           If Ms. Dee elects to deliver payments to its attorney of record, such attorney of record  
21 shall: (a) confirm in writing within five days of receipt that the funds have been deposited in a  
22 trust account; and (b) within two days of the date of the hearing on which the Court approves the  
23 Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as  
24 follows:

- 25                           (a)    One check made payable to “The Chanler Group in Trust for  
26    OEHHA” in the amount of \$1,500;  
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- (b) One check made payable to “The Chanler Group in Trust for John Moore” in the amount of \$500; and
- (c) One check made payable to “The Chanler Group” in the amount of \$23,000.

**3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved and the settlement funds have been transmitted to plaintiff’s counsel, Ms. Dee shall issue three separate 1099 forms, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,500;
- (b) The second 1099 shall be issued to John Moore in the amount of \$500, whose address and tax identification number shall be furnished upon request; and
- (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of \$23,000.

**3.3.3 Payment Address.** All payments to the Chanler Group shall be delivered to the following payment address:

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

**4. CLAIMS COVERED AND RELEASED**

**4.1 Moore’s Public Release of Proposition 65 Claims**

Moore acting on his own behalf and in the public interest releases Ms. Dee, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Ms. Dee directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), from all claims for violations of Proposition 65 up through

1 the Effective Date based on exposure to DEHP from the Products as set forth in the Notices.  
2 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
3 with respect to exposures to DEHP from the Products as set forth in the Notices.

4 **4.2 Moore's Individual Release of Claims**

5 Moore also, in his individual capacity only and *not* in his representative capacity,  
6 provides a release herein which shall be effective as a full and final accord and satisfaction, as a  
7 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,  
8 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or  
9 unknown, suspected or unsuspected, against Ms. Dee and Releasees, limited to and arising out  
10 of alleged or actual exposures to the DEHP in the Products manufactured, distributed or sold by  
11 Ms. Dee.

12 **4.3 Ms. Dee's Release of Moore**

13 Ms. Dee on behalf of itself, its past and current agents, representatives, attorneys,  
14 successors, and/or assignees, hereby waives any and all claims against Moore, his attorneys and  
15 other representatives, for any and all actions taken or statements made (or those that could have  
16 been taken or made) by Moore and his attorneys and other representatives, whether in the course  
17 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter  
18 with respect to the Products.

19 **5. COURT APPROVAL**

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

1   **6.   SEVERABILITY**

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

5   **7.   GOVERNING LAW**

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

12   **8.   NOTICES**

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

17   To Ms. Dee:

18           John E. Dittoe  
19           Reed Smith LLP  
20           101 2<sup>nd</sup> Street, Suite 1800  
              San Francisco, CA 94105

21   With a copy to:

22           Deanne Moss, President  
23           Ms. Dee, Inc.  
24           6037 Baker Road  
              Minnetonka, MN 55345

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1 To Moore:

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

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

17 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

1 **12. MODIFICATION**

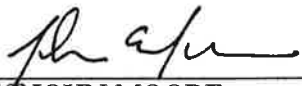
2 This Consent Judgment may be modified only: (1) by written agreement of the parties  
3 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful  
4 motion of any Party and entry of a modified Consent Judgment by the court.

5 **13. ENTIRE AGREEMENT**

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

12 **14. AUTHORIZATION**

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

	<b>AGREED TO:</b>		<b>AGREED TO:</b>
17	Date: <u>July 17, 2012</u>	Date: _____	
18			
19	By: <u></u>	By: _____	
20	Plaintiff JOHN MOORE	Defendant MS. DEE, INC.	

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**12. MODIFICATION**

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified Consent Judgment by the court.

**13. ENTIRE AGREEMENT**

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

**14. AUTHORIZATION**

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

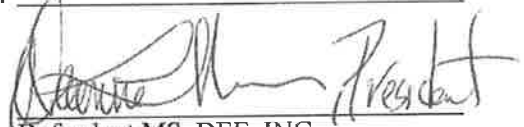
**AGREED TO:**

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

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

**AGREED TO:**

Date: 7-12-12

By:  \_\_\_\_\_  
Defendant MS. DEE, INC.