

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
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

FILED

DEC 07 2011
KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: A. Garcia, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 AGE GROUP LTD.; *et al.*,

18 Defendants.

) Case No.: CIV-1102261

) ~~PROPOSED~~ JUDGMENT PURSUANT
) TO TERMS OF PROPOSITION 65
) SETTLEMENT AND ~~PROPOSED~~
) CONSENT JUDGMENT

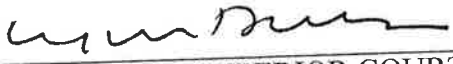
) Date: December 6, 2011
) Time: 9:00 a.m.
) Dept.: L
) Judge: Hon. Lynn Duryee

1 In the above-entitled action, Plaintiff JOHN MOORE and Defendant AGE GROUP LTD.
2 having agreed 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, and
4 following the issuance of an order approving the Parties' settlement agreement on December 6, 2011.

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

10 **IT IS SO ORDERED.**

11
12 Dated: 12/7/11



13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
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

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

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 AGE GROUP LTD., *et al.*,

18 Defendant.

) Case No. CIV-1102261

) **[PROPOSED] CONSENT JUDGMENT**

) Dept:

) Judge:

) Date: None set

) Complaint Filed:

1 **1. INTRODUCTION**

2 **1.1 John Moore and Age Group Ltd.**

3 This Consent Judgment is entered into by and between John Moore (“Moore”) and Age
4 Group Ltd. (“Age Group”), with Moore and Age Group collectively referred to as the “Parties.”
5 Moore is an individual residing in California who seeks to promote awareness of exposures to toxic
6 chemicals, and to improve human health by reducing or eliminating hazardous substances contained
7 in consumer products. Age Group employs ten or more persons and is a person in the course of
8 doing business for purposes of Safe Drinking Water and Toxic Enforcement Act of 1986, California
9 Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

10 **1.2 General Allegations**

11 Moore alleges that Age Group has manufactured, imported, distributed, and/or sold in the
12 State of California footwear containing di-n-butyl phthalate (“DBP”). DBP is listed pursuant to the
13 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §
14 25249.5 *et seq.* (“Proposition 65”), as a chemical known to the State of California to cause birth
15 defects and other reproductive harm.

16 **1.3 Product Description**

17 The products that are covered by this Consent Judgment are defined as follows: footwear
18 containing DBP that are manufactured, imported, distributed, and/or sold in California by, or on
19 behalf of, Age Group, including, but not limited to, *Hello Kitty Flip Flops, SIL-34012*. All such
20 items are referred to herein as the “Products.”

21 **1.4 Notice of Violation**

22 On or about October 29, 2010, Moore served Age Group and various public enforcement
23 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided recipients
24 with notice that Age Group was alleged to be in violation of California Health & Safety Code §
25 25249.6 for failing to warn consumers that the Products exposed users in California to DBP. No
26 public enforcer has diligently prosecuted the allegations set forth in the October 29, 2010 Notice.

1 **1.5 Complaint**

2 On May 4, 2011, Moore filed a complaint in the Superior Court in and for the County of
3 Marin against Age Group Ltd. and Does 1 through 150, *Moore v. Age Group Ltd., et al.*, Case
4 No. CIV-1102261 (the “Complaint”), alleging violations of California Health & Safety Code
5 § 25249.6, based on the alleged exposures to DBP contained in certain footwear sold by Age Group.

6 **1.6 No Admission**

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

15 **1.7 Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the parties stipulate that this Court has
17 jurisdiction over Age Group as to the allegations contained in the Complaint, that venue is proper in
18 the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment.

20 **1.8 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” shall mean August 15,
22 2011.

23 **2. INJUNCTIVE RELIEF: REFORMULATION**

24 **2.1 Reformulation Standards**

25 “Reformulated Products” are defined as those Products containing DBP in concentrations
26 less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed
27 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any
28

1 other methodology utilized by federal or state agencies for the purpose of determining DBP content
2 in a solid substance.

3 **2.2 Reformulation Commitment**

4 As of the Effective Date all Products manufactured, imported, distributed, sold or offered for
5 sale in the State of California by Age Group shall be Products that qualify as Reformulated Products
6 as defined in section 2.1 above.

7 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

8 In settlement of all the claims referred to in this Consent Judgment, Age Group shall pay
9 \$2,000 in civil penalties. This civil penalty reflects a credit of \$3,000 due to Age Group's
10 commitment to reformulate the Products pursuant to Section 2.2 above. Civil penalties are to be
11 apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of
12 these funds remitted to the State of California's Office of Environmental Health Hazard Assessment
13 ("OEHHA") and the remaining 25% of the penalty remitted to Moore. Age Group shall issue two
14 separate checks for the penalty payment: (a) one check made payable to The Chanler Group in
15 Trust for the State of California's Office of Environmental Health Hazard Assessment ("The
16 Chanler Group in Trust for OEHHA") in an amount of \$1,500, representing 75% of the total penalty
17 and (b) one check made payable to "The Chanler Group in Trust for Moore" in the amount of \$500
18 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments:
19 The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
20 0284486). The second 1099 shall be issued to Moore, whose address and tax identification number
21 shall be furnished, upon request, at least five calendar days before payment is due. The payments
22 shall be delivered on or before August 30, 2011, to 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
28

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

2 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 issue to be resolved after the material terms of the agreement had been settled. Age Group then
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
6 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
7 Moore and his counsel under general contract principles and the private attorney general doctrine
8 codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the
9 mutual execution of this agreement. Age Group shall collectively pay the total amount of \$21,000
10 for fees and costs incurred as a result of investigating, bringing this matter to the Age Group’s
11 attention, and negotiating a settlement in the public interest. Age Group shall issue a separate 1099
12 for fees and costs (EIN: 94-3171522), shall make the check payable to “The Chanler Group” and
13 shall deliver payment on or before August 30, 2011, to the following address:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

17 **5. CLAIMS COVERED AND RELEASED**

18 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

19 This Consent Judgment is a full, final and binding resolution between Moore, on behalf of
20 himself and the general public, and Age Group, of any violation of Proposition 65 that was or could
21 have been asserted by Moore against Age Group, its parents, subsidiaries, affiliated entities that are
22 under common ownership, directors, officers, employees, attorneys, and each entity to whom Age
23 Group directly or indirectly distributes or sell Products, including but not limited to downstream
24 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and
25 licensees (“releasees”), based on their failure to warn about alleged exposures to DBP contained in
26 the Products that were manufactured, distributed or sold by Age Group. Age Group’s compliance
27 with this Consent Judgment’s reformulation commitment shall constitute compliance with
28 Proposition 65 with respect to DBP in the Products.

1 **5.2 Moore’s Public Release of Proposition 65 Claims**

2 In further consideration of the promises and agreements herein contained, Moore on behalf
3 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and
4 in the interest of the general public, hereby waives all rights to institute or participate in, directly or
5 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
6 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,
7 fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees,
8 and attorneys’ fees -- arising under Proposition 65 with respect to DBP in the Products sold by Age
9 Group (collectively “claims”), against Age Group and the releasees.

10 **5.3 Moore’s Individual Release of Claims**

11 Moore also, in his individual capacity only and *not* in his representative capacity, provides a
12 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
13 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
14 liabilities and demands of Moore of any nature, character or kind, whether known or unknown,
15 suspected or unsuspected, limited to and arising out of alleged or actual exposures to any chemicals
16 listed under Proposition 65 in the Products manufactured, distributed or sold by Age Group.

17 **5.4 Age Group’s Release of Moore**

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

24 **6. 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 year
27 after it has been fully executed by all parties.
28

1 **7. 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 provisions
4 remaining shall not be adversely affected.

5 **8. GOVERNING LAW**

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

13 **9. NOTICES**

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

18 For Age Group:

19 Harold Ebani, President
20 Age Group Ltd.
21 180 Madison Avenue, 4th Floor
22 New York, NY 10016

23 For Moore:

24 Proposition 65 Coordinator
25 The Chanler Group
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710-2565

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

1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

8 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

9 Moore and Age Group agree to mutually employ their best efforts to support the entry of
10 this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in
11 a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code
12 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
13 Moore shall draft and file, and Defendants shall join. If any third party objection to the noticed
14 motion is filed, Moore and Age Group shall work together to file a joint reply and appear at any
15 hearing before the Court. This provision is a material component of the Consent Judgment and
16 shall be treated as such in the event of a breach.

17 **13. MODIFICATION**

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

21
22
23
24
25
26
27
28

1 **14. AUTHORIZATION**

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

5
6 AGREED TO:

 AGREED TO:

7
8 Date: _____

 Date: _____

9
10 By: _____
 Plaintiff, John Moore

 By: _____
 Harold Ebani on behalf of
 Defendants, Age Group Ltd.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. AUTHORIZATION

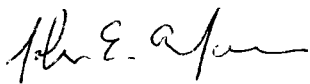
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: SEPTEMBER 8, 2011

Date: _____

By: 
Plaintiff, John Moore

By: _____
Harold Ebani on behalf of
Defendants, Age Group Ltd.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

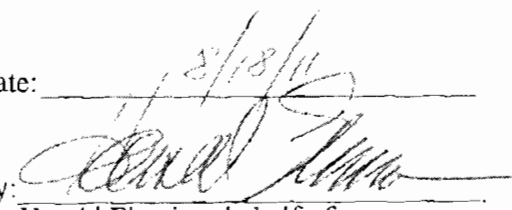
AGREED TO:

AGREED TO:

Date: _____

Date: 8/18/11

By: _____
Plaintiff, John Moore

By: 
Harold Ebani on behalf of
Defendants, Age Group Ltd.