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9 Attorneys for Plaintiff
10 JOHN MOORE

ENDORSED
FILED
ALAMEDA COUNTY

AUG 01 2012

CLERK OF THE SUPERIOR COURT
By *C. M. Dyate* Deputy

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

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 DIGITAL INTERACTIVE SYSTEMS
18 CORPORATION; and DOES 1-150, inclusive,

19 Defendants.

Case No. RG11564504

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

Date: April 17, 2012

Time: 9:00 a.m.

Dept.: 19

Judge: Hon. Gail Bereola

Reservation No. 1247254

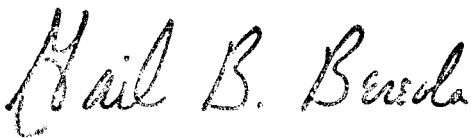
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Plaintiff, John Moore, and defendant, Digital Interactive Systems Corporation,
having agreed through their respective counsel that Judgment be entered pursuant to the
terms of their settlement agreement in the form of a Consent Judgment, and following 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: 8/1/12



JUDGE OF THE SUPERIOR COURT
GAIL B. BEREOLA

EXHIBIT 1

1 Clifford A. Chanler, State Bar No. 135534
Jennifer Henry, State Bar No. 208221
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
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,
14 Plaintiff,
15 v.
16 DIGITAL INTERACTIVE SYSTEMS
CORPORATION; and DOES 1-150, inclusive,
17 Defendants.
18

Case No. RG11564504

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

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1 **1. INTRODUCTION**

2 **1.1 John Moore and Digital Interactive Systems Corporation**

3 This Consent Judgment is entered into by and between John Moore (“Moore”) and Digital
4 Interactive Systems Corporation (“Digital”), with Moore and Digital collectively referred to as the
5 “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Digital 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 & Safety
13 Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Digital has sold in the State of California cases for CDs/DVDs containing
16 di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known
17 to the State of California to cause birth defects or other reproductive harm. DEHP is also referred to
18 herein as the “Listed Chemical.”

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as cases for CDs/DVDs
21 containing the Listed Chemical including, but not limited to, *TekNmotion For 32 CD/DVD Case*,
22 *TM-CD32B1 (#8 95693 001041)* manufactured, distributed and/or sold by Digital in California. All
23 such items shall be referred to herein as the “Products.”

24 **1.6 Notice of Violation**

25 On or about December 30, 2010, Moore served Digital and various public enforcement
26 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that alleged Digital was
27 in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed
28 users in California to DEHP.

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1.7 Complaint

On March 8, 2011, Moore, who alleges that he was and is acting in the interest of the general public in California, filed the instant action in the Alameda County Superior Court (“Complaint”), naming Digital as a defendant and alleging violations of Proposition 65 by Digital based on the alleged exposures to DEHP contained in the Products it manufactured, distributed, and/or offered for sale in California.

1.8 No Admission

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

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Digital as to the allegations contained in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean January 1, 2012.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standards

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

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

3 **2.2 Product Warnings**

4 Commencing on the Effective Date, Digital shall, for all Products other than Reformulated
5 Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b) for all
6 Product sold into California. Each warning shall be prominently placed with such conspicuousness
7 as compared with other words, statements, designs, or devices as to render it likely to be read and
8 understood by an ordinary individual under customary conditions before purchase or use. Each
9 warning shall be provided in a manner such that the consumer or user understands to which *specific*
10 Product the warning applies, so as to minimize the risk of consumer confusion.

11 **(a) Retail Store Sales.**

12 **(i) Product Labeling.** Defendant shall affix a warning to the packaging,
13 labeling, or directly on each Product sold in retail outlets in California by Defendant or any person
14 selling the Products, that states:

15 **WARNING:** This product contains DEHP, a phthalate
16 chemical known to the State of California to
cause birth defects and other reproductive harm.

17 **(ii) Point-of-Sale Warnings.** Alternatively, Defendant may provide
18 warning signs in the form below to its customers in California with instructions to post the
19 warnings in close proximity to the point of display of the Products. Such instruction sent to
20 Defendant's customers shall be sent by certified mail, return receipt requested.

21 **WARNING:** This product contains DEHP, a phthalate
22 chemical known to the State of California to
cause birth defects and other reproductive harm.

23 Where more than one Product is sold in proximity to other like items or to those that do not
24 require a warning, the following statement
25 must be used:¹

26 _____
27 ¹For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another product are
28 offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not
reasonably determine which of the two products is subject to the warning sign.

1 **WARNING:** This product contains DEHP, a phthalate
2 chemical known to the State of California to
 cause birth defects and other reproductive harm:

3 *[list products for which warning is required]*

4 **3. MONETARY PAYMENTS**

5 **3.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

6 On or before January 1, 2012, Digital shall make a payment of \$5,000 to be apportioned in
7 accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of
8 these funds earmarked for the State of California’s Office of Environmental Health Hazard
9 Assessment (“OEHHA”) and the remaining 25% of these penalty monies earmarked for Moore.

10 **3.2 Final Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

11 On or before June 1, 2012, Digital shall pay a final civil penalty of \$10,000. As an incentive
12 to reformulate the Products, however, the final civil penalty shall be waived in its entirety if an
13 Officer of Digital certifies in writing that as of June 1, 2012, Digital will sell, ship and offer for sale
14 in California only Reformulated Products. Such certification must be received by The Chanler Group
15 on or before June 1, 2012. The final civil penalty payment shall be apportioned in accordance with
16 California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA
17 and the remaining 25% of the penalty remitted to John Moore.

18 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

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

1 the Court's approval of this Consent Judgment in the public interest, in eight equal monthly
2 payments of \$2,500 starting on January 1, 2012. Each payment will be due on or before the first of
3 the month.

4 **3.3 Payment Procedures**

5 **3.3.1** All payments made under this Consent Judgment shall be held in trust until
6 the Court approves the Consent Judgment. The Parties acknowledge that Moore gave Digital the
7 option of depositing the funds into its attorney's trust account, but that Digital elected to have the
8 funds held in trust by The Chanler Group. The settlement funds shall be made payable by checks, as
9 follows:

- 10 (a) "The Chanler Group in Trust for OEHHA" in an amount equal to 75%
11 of the civil penalty;
12 (b) "The Chanler Group in Trust for Moore" in an amount equal to 25%
13 of the penalty; and
14 (c) "The Chanler Group in Trust" in an amount totaling \$20,000.

15 **3.3.2** After the Consent Judgment has been approved, Digital shall issue a 1099
16 form to each of the following entities:

- 17 (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010,
18 Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalties payable to OEHHA;
19 (b) Moore, whose address and tax identification number shall be furnished upon
20 request, for the civil penalties payable to Moore; and
21 (c) The Chanler Group (EIN: 94-3171522) for the amount of \$20,000.

22 **3.3.3** All payments transmitted to the Chanler Group shall be delivered to the
23 following address:

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

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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

3 This Consent Judgment is a full, final, and binding resolution between Moore, on behalf of
4 himself and the public, and Digital, of any violation of Proposition 65 that was or could have been
5 asserted by Moore against Digital, its parents, subsidiaries, affiliated entities that are under common
6 ownership, directors, officers, employees, attorneys, and each entity to whom Digital directly or
7 indirectly distributes or sells Products, including but not limited to downstream distributors,
8 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
9 (“Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the
10 Products that were manufactured, distributed, or sold by Digital. Compliance with this Consent
11 Judgment constitutes compliance with Proposition 65 now and after the Effective Date for Products
12 sold by Digital and the Releasees in California.

13 **4.2 Moore’s Public Release of Proposition 65 Claims**

14 In further consideration of the promises and agreements contained herein, Moore on behalf of
15 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
16 the interest of the general public in California, hereby waives all rights to institute or participate in,
17 directly or indirectly, any form of legal action and releases all claims, including, without limitation,
18 all actions and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
19 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
20 fees, and attorneys’ fees – exclusive of fees and costs on appeal, if any – (collectively “Claims”)
21 arising under Proposition 65. This release is limited to those claims that were brought or could have
22 been brought by Moore against Digital and Releasees for unwarned exposures to the Listed Chemical
23 contained in the Products sold by Digital.

24 **4.3 Moore’s Individual Release of Claims**

25 Moore, in his individual capacity only and not in his representative capacity, provides a
26 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
27 Claims, liabilities, and demands of any nature, character, or kind, whether known or unknown,
28 suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products.

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12. MODIFICATION

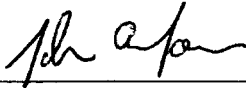
This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court

13. AUTHORIZATION

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

AGREED TO:

JOHN MOORE



Date: DECEMBER 16, 2011

AGREED TO:

DIGITAL INTERACTIVE SYSTEMS CORPORATION

By: _____

Its: _____

Date: _____

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12. MODIFICATION

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13. AUTHORIZATION

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

AGREED TO:

JOHN MOORE

Date: _____

AGREED TO:

DIGITAL INTERACTIVE SYSTEMS CORPORATION

By: Ammar Adve

Its: _____

Date: 12-21-11

PRESIDENT