

FILED

AUG -8 2012

MULTIPLE Court Exec. Officer  
SUPERIOR COURT

1 Josh Voorhees, State Bar No. 241436  
2 Troy C. Bailey, State Bar No. 277424  
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 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 MERKURY INNOVATIONS LLC; *et al.*,

18 Defendants.

) Case No.: CIV-1104147

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

) Date: July 13, 2012

) Time: 8:30 a.m.

) Dept.: E

) Judge: Hon. Faye D'Opal

1 In the above-entitled action, plaintiff John Moore and defendant Merkury Innovations LLC,  
2 having agreed that a judgment be entered pursuant to the terms of the Consent Judgment entered into  
3 by the parties, and following the issuance of an order approving this Proposition 65 settlement  
4 agreement on August 24, 2012:

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 **IT IS SO ORDERED.**

10  
11 Dated: 8/8/12

**FAYE D'OPAL**  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Josh Voorhees, State Bar No. 241436  
Troy C. Bailey, State Bar No. 277424  
2 THE CHANLER GROUP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
4 Telephone:(510) 848-8880  
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff  
6 JOHN MOORE

7 Douglas A. Winthrop, State Bar No. 183532  
ARNOLD & PORTER LLP  
8 Three Embarcadero Center  
Seventh Floor  
9 San Francisco, CA 94111- 4024  
10 Telephone:(415) 471-3174  
Facsimile: (415) 471-3400

11 Attorneys for Defendant  
12 MERKURY INNOVATIONS LLC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF MARIN  
15 UNLIMITED CIVIL JURISDICTION  
16

17 JOHN MOORE, ) Case No. CV-1104147  
18 Plaintiff, )  
19 v. ) **[PROPOSED] CONSENT JUDGMENT**  
20 MERKURY INNOVATIONS LLC; and )  
21 DOES 1-150, inclusive, ) (*Cal. Health & Safety Code § 25249.6 et seq.*)  
22 Defendants. )

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1       **1. INTRODUCTION**

2               **1.1 John Moore and Merkury Innovations LLC**

3               This Consent Judgment is entered into by and between John Moore (hereinafter “Moore” or  
4               “Plaintiff”) and Merkury Innovations LLC (hereinafter “Merkury” or “Defendant”), with Moore  
5               and Merkury collectively referred to as the “Parties.”

6               **1.2 John Moore**

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 Merkury Innovations LLC**

11              Merkury 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 Merkury has manufactured, imported, distributed, and/or sold in  
16              California cases for digital cameras containing di(2-ethylhexyl)phthalate (“DEHP”) without the  
17              requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to Proposition 65 as a  
18              chemical known to the State of California to cause birth defects and other reproductive harm.

19              **1.5 Product Description**

20              The products that are covered by this Consent Judgment are cases for digital cameras  
21              containing DEHP including, but not limited to, *Targus Universal Digital Camera Starter Kit (TGK-*  
22              *FR300, #8 44702 00128 2)*, *Small Camera Case-Red (TGC-CC425)*, *Small Camera Case-Grey*  
23              *(TGC-CC460)*, *Compact Camera Case (TGC-DC125 and TGC-DC325)*, *SLR Digital Camera Case*  
24              *(TGC-DE100)*, *Camcorder & Camera Case (TGC-EC210)*, *Sling Bag-Black (TGC-SBM200)*,  
25              *Camera Case-Black (TGC-SC610)*, *DSLR Camera Starter Kit (TG-DS500)*, *Universal Camera*  
26              *Starter (TGK-WM200)*, *Targus Essentials Kit (TG-RA1010)*, manufactured, imported, distributed,  
27              and/or sold by Merkury in California, (hereinafter “Products”), and other cases including, but not  
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1 limited to, *iPad Case with Pocket (M-IPC110)*, *iPad Case (M-IPC310)*, *iPad Case with Double*  
2 *(M-IPC610)*, *Kindle 2 Case (M-PEKC10)*, *Sony E-Reader Case (M-SPC110)*, and *Wide Shoulder*  
3 *Strap (TG-DWSS)*, manufactured, imported, distributed, and/or sold by Merkury in California,  
4 hereinafter “Additional Products.”

5 **1.6 Notice of Violation**

6 On May 4, 2011, Moore served Merkury and various public enforcement agencies with a  
7 document entitled 60-Day Notice of Violation (“Notice”) that provided the recipients with notice  
8 that alleged Merkury was in violation of Proposition 65 based on its alleged failure to warn  
9 consumers and customers that the Products exposed users in California to DEHP. To the best of  
10 the Parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

11 **1.7 Complaint**

12 On or about August 18, 2011, Moore filed a complaint in the Marin County Superior Court  
13 against Merkury Innovations LLC and Does 1 through 150, *Moore v. Merkury Innovations LLC,*  
14 *et al.*, Case No. CIV-1104147 (“Complaint” or “Action”), alleging violations of Proposition 65  
15 based on the alleged exposures to DEHP in certain cases for digital cameras manufactured,  
16 imported, distributed, and/or sold by Merkury in the State of California.

17 **1.8 No Admission**

18 Merkury denies the factual and legal allegations contained in the Notice and Complaint,  
19 and maintains that all products that it has sold in California, including the Products and Additional  
20 Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall  
21 be construed as an admission by Merkury of any fact, finding, conclusion, issue of law, or  
22 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
23 admission by Merkury of any fact, finding, conclusion, issue of law, or violation of law, such  
24 being specifically denied by Merkury. However, this Section shall not diminish or otherwise  
25 affect Merkury’s obligations, responsibilities and duties under this Consent Judgment.  
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1           **1.9 Consent to Jurisdiction**

2           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
3 jurisdiction over Merkury as to the allegations contained in the Complaint, that venue is proper in  
4 the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this  
5 Consent Judgment, pursuant to California Code of Civil Procedure § 664.6, as a full and binding  
6 resolution of all claims which were or could have been raised in the Complaint against Merkury  
7 based on the facts alleged therein and in the Notice.

8           **1.10 Effective Date**

9           For purposes of this Consent Judgment, the term “Effective Date” shall mean June 15,  
10 2012.

11 **2. INJUNCTIVE RELIEF: REFORMULATION**

12           **2.1 Reformulation Standard**

13           “Reformulated Products” shall mean Products and Additional Products containing less than  
14 1,000 parts per million (“ppm”) of DEHP, when analyzed pursuant to Environmental Protection  
15 Agency testing methodologies 3580A and 8270C, or any method allowed by any state or federal  
16 agency to assess the DEHP content by weight of a solid substance.

17           **2.2 Reformulated Products Specification Compliance Date**

18           No more than 30 days after execution of this Agreement, Merkury shall have provided the  
19 Reformulation Standard to its then-current vendors of Products and Additional Products that will be  
20 sold or offered for sale to California citizens and shall instruct each vendor to use reasonable efforts  
21 to provide Products and Additional Products that comply with the Reformulation Standard  
22 expeditiously.

23           **2.3 Reformulation Commitment**

24           All Products and Additional Products that Merkury receives into inventory on or after the  
25 Effective Date for resale by Merkury in the State of California shall qualify as Reformulated  
26 Products as defined in Section 2.1.

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1     **3.     MONETARY PAYMENTS**

2             **3.1     Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

3             Merkury shall make a payment of \$6,000 to be apportioned in accordance with Health &  
4     Safety Code § 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the  
5     State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the  
6     remaining 25% of these penalty monies earmarked for John Moore. This penalty reflects a credit  
7     of \$12,000 based on Merkury’s commitment to reformulate the Products pursuant to Section 2.1  
8     above.

9             **3.2     Reimbursement of Moore’s Fees and Costs**

10            The Parties acknowledge that Moore and his counsel offered to resolve this dispute without  
11    reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
12    issue to be resolved after the material terms of the agreement had been settled. Merkury then  
13    expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
14    been finalized. The Parties then attempted to (and did) reach an accord on the compensation due  
15    to Moore and his counsel under general contract principles and the private attorney general  
16    doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed in  
17    this matter. Under these legal principles, Merkury shall pay the amount of \$33,000 for fees and  
18    costs incurred investigating, litigating and enforcing this matter, including the fees and costs  
19    incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of this  
20    Consent Judgment in the public interest. This Section 3.2 of the Consent Judgment defines the  
21    extent to which Defendant shall have any obligation to Plaintiff and/or his counsel attorneys’ fees  
22    and costs in connection with this Action.

23            **3.3     Payment Procedures**

24            **3.3.1   Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall  
25    be delivered on or before April 17, 2012, to either The Chanler Group or the attorney of record for  
26    Merkury, and shall be held in trust pending the Court’s approval of this Consent Judgment.

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

- 2 (a) One check made payable to “The Chanler Group in Trust for  
3 OEHHA” in the amount of \$4,500;  
4 (b) One check made payable to “The Chanler Group in Trust John Moore”  
5 in the amount of \$1,500; and  
6 (c) One check made payable to “The Chanler Group in Trust” in the  
7 amount of \$33,000.

8 Payments delivered to Arnold & Porter LLP shall be made payable, as follows:

- 9 (a) One check made payable to “Arnold & Porter LLP in Trust for  
10 OEHHA” in the amount of \$4,500;  
11 (b) One check made payable to “Arnold & Porter LLP in Trust for John  
12 Moore” in the amount of \$1,500; and  
13 (c) One check made payable to “Arnold & Porter LLP in Trust for The  
14 Chanler Group” in the amount of \$33,000.

15 If Merkury elects to deliver payments to its attorney of record, such attorney of  
16 record shall: (a) confirm in writing within five days of receipt that the funds have been deposited  
17 in a trust account; and (b) within two days of the date of the hearing on which the Court approves  
18 the Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as  
19 follows:

- 20 (a) One check made payable to “The Chanler Group in Trust for  
21 OEHHA” in the amount of \$4,500;  
22 (b) One check to “The Chanler Group in Trust for John Moore” in the  
23 amount of \$1,500; and  
24 (c) One check to “The Chanler Group” in the amount of \$33,000.

25 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved and  
26 the settlement funds have been transmitted to Moore’s counsel, Merkury shall issue three separate  
27 1099 forms, as follows:  
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- (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 \$4,500;
- (b) The second 1099 shall be issued to John Moore in the amount of \$1,500, 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 \$33,000.

**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**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3, Moore, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Moore may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees but exclusive of fees and costs on appeal) of any nature whatsoever, fixed or contingent, against Defendant and each of its downstream wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliated entities under common ownership, subsidiaries, and their

1        respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and  
2        sister and parent entities (collectively "Releasees") that arise under Proposition 65, as such claims  
3        relate in any way to Defendant's alleged failure to warn about exposures to DEHP contained in the  
4        Products manufactured, imported, received into inventory, distributed, sold and/or offered by sale  
5        by Merkury before the Effective Date (collectively "claims"). Compliance with the terms of this  
6        Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP  
7        from the Products as set forth in the Notice.

8                **4.2        Moore's Individual Release of Claims**

9                Moore also, on behalf of himself and his agents, attorneys, representatives, successors and  
10              assigns, in his individual capacity only and not in his representative capacity, provides a general  
11              release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
12              actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
13              liabilities and demands of Moore of any nature, character or kind, known or unknown, suspected  
14              or unsuspected, arising out of the subject matter of this dispute including with respect to the  
15              Products and the Additional Products. Moore acknowledges that he is familiar with Section 1542  
16              of the California Civil Code, which provides as follows:

17                      A general release does not extend to claims which the creditor does not  
18                      know or suspect to exist in his or her favor at the time of executing the  
19                      release, which if known by him or her must have materially affected his  
20                      or her settlement with the debtor.

21              Moore, in his individual capacity only and not in his representative capacity, on behalf of himself  
22              and his agents, attorneys, representatives, successors and assigns, expressly waives and  
23              relinquishes any and all rights and benefits which he may have under, or which may be conferred  
24              on him by the provisions of Section 1542 of the California Civil Code as well as under any other  
25              state or federal statute or common law principle of similar effect, to the fullest extent that he may  
26              lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such  
27              intention, the release hereby given shall be and remain in effect as a full and complete release  
28              notwithstanding the discovery or existence of any such additional or different claims or facts  
                 arising out of the released matters.

1           **4.3   Merkury's Release of Plaintiff**

2           Merkury on behalf of itself, its past and current agents, representatives, attorneys, successors,  
3           and/or assignees, hereby waives any and all claims against Moore, his attorneys and  
4           other representatives, for any and all actions taken or statements made (or those that could have  
5           been taken or made) by Moore and his attorneys and other representatives, whether in the course  
6           of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter  
7           with respect to the Products.

8           **5.   COURT APPROVAL**

9           This Consent Judgment is not effective until it is approved and entered by the Court and  
10          shall be null and void if, for any reason, it is not approved and entered by the Court within one  
11          year after it has been fully executed by all Parties.

12          **6.   SEVERABILITY**

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

16          **7.   GOVERNING LAW**

17          The terms of this Consent Judgment shall be governed by the laws of the State of California  
18          and apply within the State of California. In the event that Proposition 65 is repealed, preempted,  
19          or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this  
20          Consent Judgment are rendered inapplicable by reason of law generally as to the Products and  
21          Additional Products, then Merkury shall provide written notice to Moore and shall  
22          have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
23          that, the Products and Additional Products are so affected. Nothing in this Consent Judgment  
24          shall be interpreted to relieve Merkury from any obligation to comply with any pertinent state or  
25          federal toxics control laws.

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1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to  
3 this Consent Judgment shall be sent by (i) personal delivery, (ii) first-class, registered or certified  
4 mail, return receipt requested, or (iii) overnight courier on any Party by the other Party at the  
5 following addresses:

6 To Merkury:	To Moore:
7 Douglas A. Winthrop, Esq.	Proposition 65 Coordinator
8 Arnold & Porter LLP	The Chanler Group
9 Three Embarcadero	Center 2560 Ninth Street
Seventh Floor	Parker Plaza, Suite 214
San Francisco, CA 94111-4024	Berkeley, CA 94710-2565

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

12 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

13 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,  
14 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
15 one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

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

19 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

20 The Parties agree to mutually employ their best efforts to support the entry of this agreement  
21 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
22 manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a  
23 noticed motion is required to obtain judicial approval for this Consent Judgment, which Moore  
24 shall draft and file, and Merkury shall join. If any third party objection to the  
25 noticed motion is filed, the Parties shall work together to file a joint reply and appear at any  
26 hearing before the Court. This provision is a material component of the Consent Judgment and  
27 shall be treated as such in the event of a breach.  
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**12. MODIFICATION**

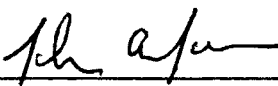
This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified consent judgment by the Court.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment 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:**

By:   
John Moore

By: \_\_\_\_\_  
Chaby Orfali, Executive Vice President  
Merkury Innovations LLC

Date: MAY 17, 2012

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

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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.

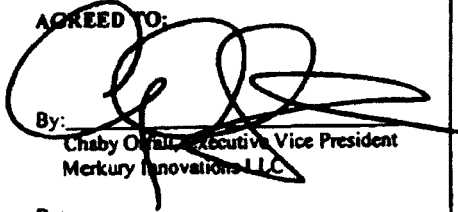
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The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**

By: \_\_\_\_\_  
John Moore

**AGREED TO:**



By: \_\_\_\_\_  
Chaby O'Neil, Executive Vice President  
Mercury Innovations LLC

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

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