

1 Christopher M. Martin, State Bar No. 186021
2 Troy C. Bailey, State Bar No. 277424
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4 THE CHANLER GROUP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710
8 Telephone: (510) 848-8880
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10 Attorneys for Plaintiff
11 JOHN MOORE

**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 30 2013

**CLERK OF THE SUPERIOR COURT
BY Michelle Pope, Deputy**

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 CM INTERNATIONAL, INC.; CMC
19 WORLDWIDE, INC.; *et al.*,

20 Defendants.

Case No. RG 11-595381

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT AS TO DEFENDANT CMC
WORLDWIDE, INC.**

Date: January 30, 2013

Time: 9:00 a.m.

Dept. 520

Judge: Hon. Ioana Petrou

Reservation No. R-1346030

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

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

10
11 **IT IS SO ORDERED.**

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13
14 Dated: _____

JAN 30 2013

Ioana Petrou

JUDGE OF THE SUPERIOR COURT

Ioana Petrou

EXHIBIT 1 TO JUDGMENT

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9 Attorneys for Plaintiff
10 JOHN MOORE

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

14 JOHN MOORE,
15 Plaintiff,
16 v.
17 CM INTERNATIONAL, INC.; CMC
18 WORLDWIDE, INC.; and DOES 1-150,
19 inclusive,
20 Defendants.

Case No. RG 11-595381

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 John Moore and CMC Worldwide, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and defendant CMC Worldwide, Inc. (“CMC” 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 CMC 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 CMC manufactured, imported, distributed, sold and/or offered for
16 sale furniture containing di(2-ethylhexyl)phthalate (“DEHP”) in the state of California without
17 the requisite health hazard warnings. DEHP is listed pursuant to Proposition 65 as known to the
18 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 defined as children’s
21 furniture containing DEHP including, but not limited to, the *Taylor Kid’s Chair, #7008-ESP (#7*
22 *84082 08834 6)*, which CMC manufactured, imported, distributed, sold and/or offered for sale,
23 directly or indirectly, in the state of California, hereinafter referred to as the “Covered
24 Products.”

25 **1.6 Notice of Violation**

26 On June 29, 2011, Moore served CM International, Inc. and various public enforcement
27 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the
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1 recipients with notice of alleged violations of Proposition 65 for failing to warn consumers that
2 the Covered Products exposed users in California to DEHP. On February 28, 2012, Moore
3 served CM International, Inc., CMC and various public enforcement agencies with a document
4 entitled “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that provided the
5 recipients with notice of alleged violations of Proposition 65 for failing to warn consumers that
6 the Covered Products exposed users in California to DEHP. The Notice and Supplemental
7 Notice are hereinafter referred to as the “Notices.” To the best of the Parties’ knowledge, no
8 public enforcer has commenced and is diligently prosecuting the allegations set forth in the
9 Notices.

10 **1.7 Complaint**

11 On or about September 15, 2011, Moore, who was and is acting in the California public
12 interest, filed a complaint in the Superior Court in and for the County of Alameda against CM
13 International, Inc. and Does 1 through 150, alleging, *inter alia*, violations of Proposition 65
14 based on the alleged exposures to DEHP contained in the Covered Products. On or about June
15 7, 2012, Moore, who was and is acting in the California public interest, filed a First Amended
16 Complaint in the Superior Court in and for the County of Alameda, which added CMC as a
17 defendant to the action, and alleged, *inter alia*, violations of Proposition 65 based on the alleged
18 exposures to DEHP contained in the Covered Products. The Complaint and First Amended
19 Complaint are collectively referred to herein as “Complaint” or “Action.”

20 **1.8 No Admission**

21 CMC denies the material, factual, and legal allegations contained in Moore's Notices and
22 Complaint and maintains that all Covered Products it has produced, sold or distributed, directly
23 or indirectly, in California have been and are in compliance with all laws, including Proposition
24 65. Nothing in this Consent Judgment shall be construed as an admission by CMC or any other
25 party released by this Consent Judgment of any fact, finding, conclusion, issue of law, or
26 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
27 an admission by CMC of any fact, finding, conclusion, issue of law, or violation of law, such
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1 being specifically denied by CMC. However, this section shall not diminish or otherwise affect
2 CMC's obligations, responsibilities, and duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

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

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date
10 this Consent Judgment is approved by the Court.

11 **2. INJUNCTIVE RELIEF: REFORMULATION**

12 After the Effective Date, CMC shall not sell or offer for sale in California, or ship to a
13 third-party distributor or retailer for sale in California, any Covered Product that is not "DEHP
14 Free." For purposes of this Consent Judgment, "DEHP Free" shall mean that Accessible
15 Components of Covered Products do not contain DEHP in concentrations exceeding 1,000 parts
16 per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing
17 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies
18 for the purpose of determining DEHP content in a solid substance, and suitable for the materials
19 comprising the Covered Products.

20 "Accessible Component" as used in this Consent Judgment means a component of a
21 Covered Product that can be touched by a person during normal, intended and foreseeable use of
22 the Covered Product.

23 DEHP Free Products shall be deemed to comply with Proposition 65 as it relates to the
24 presence of DEHP in the Covered Products and shall be exempt from any Proposition 65
25 warning requirements regarding exposure to DEHP.
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1 **3. MONETARY PAYMENTS**

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

3 Pursuant to Health & Safety Code § 25249.7(b), CMC shall pay \$20,000 in civil
4 penalties. CMC shall pay an initial civil penalty of \$5,000 and a final civil penalty of \$15,000 on
5 the dates provided in Section 3.3. However, the final civil penalty shall be waived in its entirety
6 if an officer of CMC provides Moore with a written certification that, as of October 1, 2012, and
7 continuing on into the future, CMC has sold and will continue to sell only DEHP Free Covered
8 Products as defined by Section 2 of this Consent Judgment. Moore must receive any such
9 certification no later than March 15, 2013, and time is of the essence.

10 The penalty payments will be allocated according to Health & Safety Code §§ 25249.12
11 (c)(1) & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California
12 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five
13 (25%) of the penalty amount earmarked for Moore.

14 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

15 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
16 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
17 leaving the fee and cost issue to be resolved after the material terms of the agreement had been
18 settled in principle, and subject to CMC’s final agreement to all terms of this agreement and its
19 overall impact on CMC. The Parties then expressed a desire to resolve the fee and cost issue
20 shortly after the other settlement terms had been finalized in principle. The Parties then
21 attempted to (and did) reach an accord on the compensation due to Moore and his counsel under
22 the contractual obligations created by this Consent Judgment and the private attorney general
23 doctrine codified at California Code of Civil Procedure §1021.5, for all work reasonably and
24 actually performed in this matter, except fees that may be incurred on appeal. Under these legal
25 principles, CMC shall pay the amount of \$40,000 for all fees and costs reasonably and actually
26 incurred investigating, litigating and enforcing this matter, including the fees and costs incurred
27 (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of this Consent
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1 Judgment in the public interest.

2 **3.3 Payment Procedures**

3 **3.3.1 Funds Held In Trust.** The initial civil penalty payment required by
4 Section 3.1 and the payment required by Section 3.2 shall be delivered on or before November
5 15, 2012 to The Chanler Group and shall be held in trust pending the Court's approval of this
6 Consent Judgment.

7 Payments shall be made payable, as follows:

- 8 (a) One check made payable to "The Chanler Group in Trust for
9 OEHHA" in the amount of \$3,750;
- 10 (b) One check made payable to "The Chanler Group in Trust for John
11 Moore" in the amount of \$1,250; and
- 12 (c) One check made payable to "The Chanler Group in Trust" in the
13 amount of \$40,000.

14 **3.3.2 Final Civil Penalty.** If the final civil penalty of \$15,000 referenced in
15 Section 3.1 above is not waived, payments shall be delivered on or before March 29, 2013, to
16 The Chanler Group and made payable, as follows:

- 17 (a) One check made payable to "The Chanler Group in Trust for
18 OEHHA" in the amount of \$11,250; and
- 19 (b) One check made payable to "The Chanler Group in Trust for John
20 Moore" in the amount of \$3,750.

21 **3.3.3 Issuance of 1099 Forms.** After the Consent Judgment has been approved
22 and the settlement funds have been transmitted to Plaintiff's counsel, CMC shall issue separate
23 1099 forms, as follows:

- 24 (a) The first 1099 shall be issued to the Office of Environmental
25 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA
26 95814 (EIN: 68-0284486) in the amount of \$3,750;

- 1 (b) The second 1099 shall be issued to John Moore in the amount of
2 \$1,250, whose address and tax identification number shall be
3 furnished upon request;
- 4 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
5 3171522) in the amount of \$40,000;
- 6 (d) If the penalty of \$15,000 referenced in Section 3.1 above is paid,
7 the fourth 1099 shall be issued to the Office of Environmental
8 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814
9 (EIN: 68-0284486) in the amount of \$11,250; and
- 10 (e) If the penalty of \$15,000 referenced in Section 3.1 above is paid,
11 the fifth 1099 shall be issued to Moore in the amount of \$3,750,
12 whose address and tax identification number shall be furnished
13 upon request.

14 **3.3.4 Payment Address.** All payments to the Chanler Group shall be delivered
15 to the following payment address:

16 The Chanler Group
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Moore's Public Release of Proposition 65 Claims**

23 Moore, acting on his own behalf and in the public interest releases CMC, each person
24 that has distributed or sold Covered Products provided directly or indirectly by CMC, including
25 but not limited to downstream distributors, wholesalers, customers, retailers, franchisees,
26 cooperative members, licensors, and licensees, and all of their predecessors and successors in
27 interest, parent, subsidiary and affiliated entities under common ownership or control, directors,
28 officers, employees, agents, shareholders, members and attorneys ("Releasees") from all claims
for violations of Proposition 65 up through the Effective Date, including but not limited to claims

1 arising from Covered Products shipped by or on behalf of CMC to a third party prior to the
2 Effective Date, based on actual or alleged exposure to DEHP from the Covered Products as set
3 forth in the Notices. Compliance with the terms of this Consent Judgment constitutes
4 compliance with Proposition 65 with respect to actual or alleged exposures to DEHP from the
5 Covered Products as set forth in the Notices.

6 **4.2 Moore's Individual Release of Claims**

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

13 **4.3 CMC's Release of Plaintiff**

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

20 **5. COURT APPROVAL**

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

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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 Covered Products,
9 then CMC shall provide written notice to Moore of any asserted change in the law, and shall
10 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
11 that, the Covered 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 CMC:

18 Paul S. Rosenlund, Esq.
19 Jessica La Londe, Esq.
20 Duane Morris LLP
21 Spear Tower
22 One Market Plaza, Suite 2200
23 San Francisco, CA 94105

17 To Moore:

18 Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
21 Parker Plaza, Suite 214
22 Berkeley, CA 94710

22 With a copy to:

23 Su Hsun Hsiao, President
24 CMC Worldwide, Inc.
25 14650 Meyer Canyon Road
26 Fontana, CA 92336

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

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1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

7 Moore shall comply with the reporting form requirements referenced in California
8 Health & Safety Code § 25249.7(f) and as otherwise provided by law.

9 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

10 The Parties agree to mutually employ their, and their counsel’s, reasonable best efforts
11 to support the entry of this agreement as a Consent Judgment and obtain approval of the
12 Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to
13 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial
14 approval of this Consent Judgment, which Moore shall file, and which CMC shall not oppose.
15 If any third party objection to the noticed motion is filed, Moore and CMC shall work together
16 to file a joint reply and appear at any hearing before the Court. If the Superior Court does not
17 approve the motion to approve this Consent Judgment, and the Parties choose not to pursue a
18 modified Consent Judgment within 30 days of said denial, or in the event that the Superior
19 Court approve this Consent Judgment and any person successfully appeals that approval, all
20 payments made pursuant to this Consent Judgment will be returned to CMC.

21 **12. MODIFICATION**

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

25 **13. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement and understanding of the
27 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
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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:

AGREED TO:

Date: November 15, 2012

Date: _____

By: 
Plaintiff JOHN MOORE

By: _____
Defendant CMC WORLDWIDE, INC.

1 negotiations, commitments, and understandings related hereto. No representations, oral or
2 otherwise, express or implied, other than those contained herein have been made by any party
3 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
4 deemed to exist or to bind any of the Parties.

5 **14. AUTHORIZATION**

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

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AGREED TO:	AGREED TO:
Date: _____	Date: <u>11/09/12</u>
By: _____ Plaintiff JOHN MOORE	By: <u>[Signature]</u> Defendant CMC WORLDWIDE, INC.

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