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Clifford A. Chanler, State Bar No. 135534  
Christopher M. Martin, State Bar No. 186021  
THE CHANLER GROUP  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880  
Facsimile:(510) 848-8118

Attorneys for Plaintiff  
JOHN MOORE

ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 30 2012

CLERK OF THE SUPERIOR COURT  
By PAM WILLIAMS  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,  
Plaintiff,  
v.  
UMA ENTERPRISES, INC.; *et al.*,  
Defendants.

Case No. RG11595382

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

Date: November 30, 2012  
Time: 9:30 a.m.  
Dept. 15  
Judge: Hon. Jon Tigar

Reservation No. R-1331410

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Plaintiff John Moore and Defendant UMA Enterprises, 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: Nov. 30, 2012

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

# Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534  
2 Christopher M. Martin, State Bar No. 186021  
3 THE CHANLER GROUP  
4 2560 Ninth Street, Suite 214  
5 Berkeley, CA 94710  
6 Telephone: (510) 848-8880  
7 Facsimile: (510) 848-8118

8 Attorneys for Plaintiff  
9 JOHN MOORE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

UMA ENTERPRISES, INC.; and DOES 1-150,  
inclusive,

Defendants.

Case No. RG11595382

**CONSENT JUDGMENT**

CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 John Moore and UMA Enterprises, Inc.**

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

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as: (1) ottomans  
22 containing DEHP including, but not limited to, *Ottoman, Giraffe, Item #72030 (#7.58647 01652*  
23 *5)*; (2) stools containing DEHP including, but not limited to, *Stool, Item #62241, #3575800 (#7*  
24 *54647 62241 2)*; and (3) trunks and other container boxes containing DEHP including, but not  
25 limited to, *Wood Trunk, #72776, #0930101 (#7 58647 01974 8)* and *Wd Lthr Box, Item #62242,*  
26 *#030312 (#7 58647 11033 9)*, which UMA manufactured, imported, distributed, sold and/or  
27 offered for sale in California. These ottomans, stools, trunks and other container boxes are  
28 hereinafter referred to collectively as the “Noticed Products.”

1 This Consent Judgment also covers the "Additional Products" listed by SKU number on  
2 Exhibit A to this Consent Judgment which UMA manufactured, imported, distributed, sold  
3 and/or offered for sale in California. For purposes of Sections 2, 4.2 and 4.3 of this Consent  
4 Judgment, the Noticed Products and the Additional Products are collectively referred to as the  
5 "Products."

6 **1.6 Notice of Violation**

7 On June 29, 2011, Moore served UMA and various public enforcement agencies with a  
8 document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with  
9 notice of alleged violations of Proposition 65 for failing to warn consumers that ottomans  
10 manufactured, imported, distributed, sold an/or offered for sale by UMA exposed users in  
11 California to DEHP. On or about August 31, 2012, Moore served UMA and various public  
12 enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation"  
13 ("Supplemental Notice") that provided the recipients with notice of alleged violations of  
14 Proposition 65 for failing to warn consumers that ottomans, stools, trunks and other container  
15 boxes manufactured, imported, distributed, sold and/or offered for sale by UMA exposed users in  
16 California to DEHP. The Notice and the Supplemental Notice are hereinafter referred to as the  
17 "Notices."

18 **1.7 Complaint**

19 On or about September 15, 2011, Moore, who was and is acting in the interest of the  
20 general public in California, filed a complaint ("Complaint" or "Action") in the Superior Court  
21 for the County of Alameda against UMA and Does 1 through 150, alleging, *inter alia*, violations  
22 of Proposition 65 based on the alleged exposures to DEHP contained in ottomans sold in  
23 California by UMA. In the event that no public enforcer undertakes diligent prosecution of the  
24 allegations set forth in the Supplemental Notice, and upon entry of this Consent Judgment by the  
25 Court, the Complaint shall be deemed amended to include violations of Proposition 65 based on  
26 the alleged exposure to DEHP contained in stools, trunks and other container boxes sold in  
27 California by UMA.  
28

1           **1.8 No Admission**

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

10           **1.9 Consent to Jurisdiction**

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

15           **1.10 Effective Date**

16           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date  
17 this Consent Judgment is approved by the Court.

18           **2. INJUNCTIVE RELIEF: REFORMULATION**

19           As of the Effective Date, UMA shall only import or cause to be imported or manufacture  
20 or cause to be manufactured Products for distribution and sale in California that are  
21 “Reformulated Products.” For purposes of this Consent Judgment, “Reformulated Products”  
22 shall mean Products containing Accessible Components that yield less than or equal to 1,000  
23 parts per million (0.1%) of DEHP when analyzed pursuant to EPA testing methodologies 3580A  
24 and 8270C. For purposes of this Consent Judgment, “Accessible Component” shall mean any  
25 component that may be handled, touched or mouthed by a consumer during a reasonably  
26 foreseeable use of the Products. Reformulated Products shall be deemed to comply with  
27 Proposition 65 as it relates to the presence of DEHP in the Products and shall be exempt from  
28 any Proposition 65 warning requirements regarding exposure to DEHP.

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), UMA shall pay \$47,500 in civil penalties.  
4           UMA shall pay an initial civil penalty of \$17,500 and a final civil penalty of \$30,000 on the  
5           dates provided in Section 3.3. However, the final civil penalty shall be waived in its entirety if  
6           an officer of UMA provides Moore with a written certification that, as of October 1, 2012, and  
7           continuing on into the future, UMA shall not import or cause to be imported or manufacture or  
8           cause to be manufactured any Products for distribution and sale in California that are not  
9           Reformulated Products as defined by Section 2 of this Consent Judgment. Moore must receive  
10          any such certification no later than March 15, 2013, and time is of the essence.

11          The penalty payments will be allocated according to Health & Safety Code §25249.12  
12          (c)(1) & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California  
13          Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five  
14          (25%) of the penalty amount earmarked for Moore.

15          **3.2    Reimbursement of Plaintiff’s Fees and Costs**

16          The Parties acknowledge that Moore and his counsel offered to resolve this dispute  
17          without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
18          leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
19          UMA then expressed a desire to resolve the fee and cost issue shortly after the other settlement  
20          terms had been finalized. The Parties then attempted to (and did) reach an accord on the  
21          compensation due to Moore and his counsel under general contract principles and the private  
22          attorney general doctrine codified at California Code of Civil Procedure §1021.5, for all work  
23          performed in this matter, except fees that may be incurred on appeal. Under these legal  
24          principles, UMA shall pay the amount of \$47,500 for fees and costs incurred investigating,  
25          litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred)  
26          negotiating, drafting, and obtaining the Court’s approval of this Consent Judgment in the public  
27          interest.

28          ///



1           **3.3    Payment Procedures**

2           **3.3.1    Funds Held In Trust.** The initial civil penalty payments required by  
3 Sections 3.1 and the payment required by Section 3.2 shall be delivered on or before October 11,  
4 2012, to The Chanler Group and shall be held in trust pending the Court's approval of this  
5 Consent 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 \$13,125;  
9                   (b)    One check made payable to "The Chanler Group in Trust for John  
10                           Moore" in the amount of \$4,375; and  
11                   (c)    One check made payable to "The Chanler Group in Trust" in the  
12                            amount of \$47,500.

13           **3.3.2    Final Civil Penalty.** If the final civil penalty of \$30,000 referenced in  
14 Section 3.1 above is not waived, payments shall be delivered on or before March 29, 2013, to  
15 The Chanler Group and made payable, as follows:

- 16                   (a)    One check made payable to "The Chanler Group in Trust for  
17                            OEHHA" in the amount of \$22,500;  
18                   (b)    One check made payable to "The Chanler Group in Trust for John  
19                            Moore" in the amount of \$7,500.

20           **3.3.3    Issuance of 1099 Forms.** After the Consent Judgment has been approved  
21 and the settlement funds have been transmitted to Plaintiff's counsel, UMA shall issue separate  
22 1099 forms, as follows:

- 23                   (a)    The first 1099 shall be issued to the Office of Environmental Health  
24                            Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:  
25                            68-0284486) in the amount of \$13,125;  
26                   (b)    The second 1099 shall be issued to John Moore in the amount of  
27                            \$4,375, whose address and tax identification number shall be  
28                            furnished upon request; and

- 1 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-  
2 3171522) in the amount of \$47,500.
- 3 (d) If the penalty of \$30,000 referenced in Section 3.1 above is paid,  
4 the fourth 1099 shall be issued to the Office of Environmental  
5 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814  
6 (EIN: 68-0284486) in the amount of \$22,500;
- 7 (e) If the penalty of \$30,000 referenced in Section 3.1 above is paid,  
8 the fifth 1099 shall be issued to Moore in the amount of \$7,500,  
9 whose address and tax identification number shall be furnished  
10 upon request.

11 **3.3.4 Payment Address.** All payments to the Chanler Group shall be delivered  
12 to the following payment address:

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

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1** This Consent Judgment is a full, final, and binding resolution between Moorc, on  
20 behalf of himself and in the public interest, and UMA and its parents, subsidiaries, affiliated  
21 entities, sister and related companies, directors, officers, shareholders, employees, attorneys,  
22 successors and assigns (collectively "Defendant Releasees") and each entity to whom UMA  
23 directly or indirectly distributes or sells ottomans, including but not limited to downstream  
24 distributors, wholesalers, customers, resellers, retailers, franchisees, cooperative members,  
25 licensors, and licensees (collectively "Downstream Defendant Releasees") that sold or  
26 distributed ottomans, of any violation of Proposition 65 regarding the failure to warn about  
27 exposure to DEHP from ottomans that were manufactured, sourced, distributed, sold, and/or  
28 offered for sale by UMA prior to the Effective Date.

In the event that the Complaint is deemed amended pursuant to Section 1.7 above to  
include the allegations found in the Supplemental Notice, this Consent Judgment constitutes a

1 full, final, and binding resolution between Moore, on behalf of himself and in the public interest,  
2 and UMA, Defendant Releasees and Downstream Defendant Releasees, of any violation of  
3 Proposition 65 regarding the failure to warn about exposure to DEHP in the Noticed Products  
4 manufactured, sourced, distributed, sold, and/or offered for sale by UMA prior to the Effective  
5 Date.

6 Compliance with the terms of this Consent Judgment by UMA and Defendant Releasees  
7 constitutes compliance with Proposition 65 with respect to DEHP in the Noticed Products.

8 **4.2** Moore also, in his individual capacity only and *not* in his representative capacity,  
9 provides a general release herein which shall be effective as a full and final accord and  
10 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
11 damages, losses, claims, liabilities and demands of Moore of any nature, character or kind,  
12 whether known or unknown, suspected or unsuspected, limited to and arising out of any violation  
13 of Proposition 65 regarding the failure to warn about exposure to DEHP in the Products  
14 manufactured, distributed, sold or offered for sale by Defendant Releasees and Downstream  
15 Defendant Releasees.

16 **4.3** UMA on behalf of itself, its past and current agents, representatives, attorneys,  
17 successors, and/or assignees, hereby waives any and all claims against Moore, his attorneys, and  
18 other representatives for any and all actions taken or statements made (or those that could have  
19 been taken or made) by Moore and his attorneys and other representatives, whether in the course  
20 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this  
21 matter with respect to the Products.

22 **5. COURT APPROVAL**

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

28 ///

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  
9 UMA 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 the  
16 other Party at the following addresses:

17 To UMA:

18 Brian Ledger, Esq.  
19 Gordon & Rees LLP  
20 101 W. Broadway, Suite 2000  
San Diego, CA 92101

To Moore:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

21 With a copy to:

22 Naval Bansal, President  
23 UMA Enterprises, Inc.  
660 West Artesia Boulevard  
Compton, CA 90220

24 Any Party, from time to time, may specify in writing to the other Party a change of  
25 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 agrees to comply with the reporting form requirements referenced in California  
8 Health & Safety Code §25249.7(f).

9     **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

21     **12. MODIFICATION**

22            This Consent Judgment may be modified only: (1) by written agreement of the parties and  
23 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,  
28 negotiations, commitments, and understandings related hereto. No representations, oral or

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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: 9/24/12

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

By:   
Plaintiff JOHN MOORE

By: \_\_\_\_\_  
Naval Bansal, President  
Defendant UMA ENTERPRISES, INC.

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

4 **14. AUTHORIZATION**

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

8 **AGREED TO:**

**AGREED TO:**

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

Date: 9/25/12

10

11 By: \_\_\_\_\_

Plaintiff JOHN MOORE

By: Naval Bansal

Naval Bansal, President  
Defendant UMA ENTERPRISES, INC.

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