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Plaintiff, John Moore, and defendant, M-D Building Products, 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 and 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: DEC 18 2012



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





1 Laurence D. Haveson, State Bar No. 152631  
Rachel S. Doughty, State Bar No. 255904  
2 THE CHANLER GROUP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
Berkeley, CA 94710  
4 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118  
5

6 Attorneys for Plaintiff  
JOHN MOORE  
7  
8  
9

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

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 M-D BUILDING PRODUCTS, INC.; and  
17 DOES 1-150, inclusive,

18 Defendants.  
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Case No. RG 11597931

**[PROPOSED] CONSENT JUDGMENT**

*(Cal. Health & Saf. Code § 25249.6 et seq.)*

1 **1. INTRODUCTION**

2 **1.1 John Moore and M-D Building Products, Inc.**

3 This Consent Judgment is entered into by and between John Moore ("Moore") and M-D  
4 Building Products, Inc. ("M-D"), with Moore and M-D collectively referred to as the "Parties."

5 **1.2 Plaintiff**

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

9 **1.3 Defendant**

10 Moore alleges that M-D employs ten or more persons and is a person in the course of doing  
11 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health &  
12 Safety Code section 25249.6 *et seq.* ("Proposition 65").

13 **1.4 General Allegations**

14 Moore alleges that M-D has manufactured, distributed, and/or offered for sale in California  
15 vinyl stair treads containing di(2-ethylhexyl)phthalate ("DEHP") and hand tools with grips  
16 containing lead without the requisite Proposition 65 warnings. DEHP and lead are listed pursuant  
17 to Proposition 65 as chemicals known to the State of California to cause birth defects and other  
18 reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are vinyl stair treads containing  
21 DEHP including, but not limited to, the *Stair Tread 24"* (#0 43374 75556 5) ("Tread Products"),  
22 and the *Precision Components 4" Adjustable Floor & Wall Scraper*, #172270 (#0 43374 49801 1)  
23 (the "Grip Product"), distributed or sold by M-D, directly or through others, to consumers in  
24 California (collectively, "Products").

25 **1.6 Notices of Violation**

26 On or about July 20, 2011, Moore served M-D and various California public enforcement  
27 agencies with a document entitled 60-Day Notice of Violation ("Notice") alleging that M-D was in  
28 violation of Proposition 65 for failing to warn its customers and consumers in California that its

1 Tread Products expose users in California to DEHP. On or about April 25, 2012, Moore sent a  
2 Supplemental 60-Day Notice of Violation ("Supplemental Notice") to M-D, and the same public  
3 enforcement agencies as before, alleging that M-D is in violation of Proposition 65 for failing to  
4 warn its customers and consumers in California that the Tread Products expose users to DEHP and  
5 the Grip Product exposes users to lead. The Notice and Supplemental Notice shall be referred to  
6 collectively as the "Notices."

7 **1.7 Complaint**

8 On September 30, 2011, Moore filed a complaint in Alameda County Superior Court against  
9 M-D and Does 1 through 150 (the "Complaint" or "Action"), alleging violations of Proposition 65,  
10 based on the alleged exposures to DEHP contained in Tread Products distributed or sold by M-D.  
11 The sixty-day notice period for Plaintiff's Supplemental Notice expired on or about July 5, 2012.  
12 Upon entry of this Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc* to  
13 include the Grip Product containing lead sold or distributed by Defendant in California as alleged in  
14 the Supplemental Notice, provided that no Public Enforcer has diligently prosecuted any of the  
15 allegations set forth in the Supplemental Notice.

16 **1.8 No Admission**

17 M-D denies the material factual and legal allegations contained in the Notices and  
18 Complaint and maintains that all products that it has sold or distributed in California, including the  
19 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall  
20 be construed as an admission by M-D of any fact, finding, conclusion of law, issue of law, or  
21 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
22 admission by M-D of any fact, finding, conclusion of law, issue of law, or violation of law, such  
23 being specifically denied by M-D. However, this Section shall not diminish or otherwise affect  
24 M-D's obligations, responsibilities, and duties under this Consent Judgment.

25 **1.9 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over M-D as to the allegations contained in the Complaint, that venue is proper in  
28 Alameda County, and that this Court has jurisdiction to enter and enforce the provisions of this

1 Consent Judgment, pursuant to California Code of Civil Procedure section 664.6, as a full and  
2 binding resolution of all claims that were or could have been raised in the Complaint against M-D  
3 based on the facts alleged therein and in the Notices.

4 **1.10 Effective Date**

5 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
6 judgment is entered by the Court.

7 **2. INJUNCTIVE RELIEF: REFORMULATION**

8 **2.1 Reformulation**

9 As of June 15, 2012, M-D has not and shall not purchase, manufacture, or cause to be  
10 manufactured any Product that will be sold or offered for sale to California consumers unless each  
11 accessible component (i.e., any component that can be touched, handled, or mouthed by a person  
12 during reasonably foreseeable use) contains DEHP in concentration less than 1,000 parts per million  
13 when analyzed pursuant to U.S. Environmental Protection Agency sample preparation and test  
14 methodologies 3580A and 8270C ("DEHP Standard") or other equivalent test used by the EPA,  
15 U.S. Consumer Product Safety Commission, or other federal or state regulatory agency for the  
16 purpose of determining DEHP content in a solid substance, and lead in concentration less than 100  
17 parts per million when analyzed pursuant to EPA testing methodologies 3050B and/or 6010B  
18 ("Lead Standard");

19 **2.2 Vendor Notification**

20 On or before September 14, 2012, M-D shall provide the Phthalate Standard and Lead  
21 Standard to its then-current Vendors ("Vendor" means any person or entity that manufactures,  
22 imports, distributes, or otherwise supplies any Products to M-D) of Products that will be sold or  
23 offered for sale to consumers or businesses in the United States or its territories and shall instruct  
24 each Vendor to use reasonable efforts to comply with such standards expeditiously. M-D shall not  
25 in any way encourage any Vendor to delay compliance with these standards. Upon Moore's  
26 request, within 30 days of each such request, M-D shall provide Moore by mail with copies of each  
27 such Vendor notification and any responses from any Vendor. Moore shall regard such copies as  
28 confidential business information.

1 **3. MONETARY PAYMENTS**

2 All payments made under this Consent Judgment shall be held in trust by the Chanler Group  
3 until the Court approves the Consent Judgment. All payments transmitted to the Chanler Group  
4 shall be delivered to the following address ("Payment Address"):

5 The Chanler Group  
6 Attn: Proposition 65 Controller  
7 2560 Ninth Street  
8 Parker Plaza, Suite 214  
9 Berkeley, CA 94710

10 In the alternative, payments may be made by wire transfer, instructions for which will be  
11 provided upon request.

12 **3.1 Penalties**

13 Payments of all penalties by M-D under this Agreement shall be apportioned in accordance  
14 with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d). In each instance,  
15 payments equal to 75% of the civil penalty shall be earmarked for the State of California's Office of  
16 Environmental Health Hazard Assessment ("OEHHA") made payable to "The Chanler Group in  
17 Trust for OEHHA," and the remaining 25% of the penalty monies shall be earmarked for Moore  
18 made payable to "The Chanler Group in Trust for John Moore."

19 Upon payment of each penalty, M-D shall issue two 1099 forms, one to the Office of  
20 Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-  
21 0284486) for the civil penalties payable to OEHHA, and a second to Moore, whose address and tax  
22 identification number shall be furnished upon request, for the civil penalties payable to Moore.

23 **(a) Initial Civil Penalty**

24 On or before the Effective Date M-D shall pay a penalty of \$6,000.

25 **(b) Second Civil Penalty**

26 M-D shall pay a second civil penalty of \$43,000 on or before October 1, 2012. The second  
27 civil penalty shall be waived in its entirety if an officer or director of M-D certifies, in writing, that,  
28 as of October 1, 2012, the Grip Product and all of the Tread Products that M-D distributes, ships,  
sells, or offers to ship for sale in the United States and its territories comply with the Lead Standard  
and the DEHP Standard. Such certification must be received by The Chanler Group on or before



1 October 1, 2012.

2 **3.2 Reimbursement of Plaintiff's Fees and Costs**

3 The Parties have reached an accord on the compensation to be paid to Moore and his counsel,  
4 which the parties agree is appropriate under general contract principles and the private attorney  
5 general doctrine codified at California Code of Civil Procedure section 1021.5, for all work  
6 performed in this matter, except fees that may be incurred in the event of an appeal. M-D shall pay  
7 \$43,000, on or before the Effective Date, for fees and costs incurred investigating, litigating and  
8 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,  
9 drafting, and obtaining the Court's approval of this Consent Judgment in the public interest.

10 Payments of all fees and costs by M-D under this Agreement shall be by check or wire transfer  
11 to "The Chanler Group in Trust." Upon payment of fees and costs, M-D shall issue a 1099 form to  
12 The Chanler Group (EIN: 94-3171522) for the amount of \$43,000.

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 Plaintiff's Public Release of Proposition 65 Claims**

15 Moore acting on his own behalf and in the public interest releases M-D from all claims for  
16 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the  
17 Tread Products and lead from the Grip Product. Compliance with the terms of this Consent  
18 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from  
19 Tread Products and exposures to lead from the Grip Product.

20 **4.2 Plaintiff's Individual Release of Claims**

21 Moore also, in his individual capacity only and *not* in his representative capacity, provides a  
22 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
23 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
24 liabilities, and demands of plaintiff of any nature, character or kind, whether known or unknown,  
25 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP from  
26 the Tread Products distributed or sold by M-D and exposures to lead from the Grip Product  
27 distributed or sold by M-D.

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

2           M-D 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 other  
4 representatives, for any and all actions taken or statements made (or those that could have been  
5 taken or made) by Moore and his attorneys and other representatives, whether in the course of  
6 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
7 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 year  
11 after it has been fully executed by all Parties, in which event any monies that have been provided to  
12 Moore or his counsel pursuant to Section 3 above shall be refunded within fifteen (15) days after  
13 receiving written notice from M-D that the one-year period has expired.

14           **6. SEVERABILITY**

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

18           **7. GOVERNING LAW**

19           The terms of this Consent Judgment shall be governed by the laws of the State of California  
20 and apply within the State of California.

21           **8. NOTICES**

22           Unless specified herein, all correspondence and notices required to be provided pursuant to  
23 this Consent Judgment shall be in writing and sent by (i) personal delivery, (ii) first-class, registered  
24 or certified mail, return receipt requested, or (iii) overnight courier on any party by the other party at  
25 the following addresses:

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1 For M-D:

2 William F. Tarantino, Esq.  
3 Morrison & Foerster LLP  
4 425 Market Street  
5 San Francisco, CA 94105-2482

6 For Moore:

7 Proposition 65 Coordinator  
8 The Chanler Group  
9 2560 Ninth Street  
10 Parker Plaza, Suite 214  
11 Berkeley, CA 94710

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

18 **10. POST EXECUTION ACTIVITIES**

19 Moore agrees to comply with the reporting form requirements referenced in California  
20 Health & Safety Code section 25249.7, subsection (f). In addition, the Parties acknowledge that,  
21 pursuant to California Health & Safety Code section 25249.7, a noticed motion is required to obtain  
22 judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Moore and  
23 M-D and their respective counsel agree to mutually employ their best efforts to support the entry of  
24 this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in  
25 a timely manner. For purposes of this section, best efforts shall include, at a minimum, cooperating  
26 on the drafting and filing of any papers in support of the required motion for judicial approval.

27 **11. MODIFICATION**

28 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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1 **12. AUTHORIZATION**

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

4 AGREED TO:

AGREED TO:

5 JOHN MOORE

M-D BUILDING PRODUCTS, INC.

6  
7 By:   
8 JOHN MOORE

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

9 Date: August 28, 2012

Date:

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1 **12. AUTHORIZATION**

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3 understood, and agree to all of the terms and conditions of this Consent Judgment.

4 AGREED TO:

5 JOHN MOORE

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7 By: \_\_\_\_\_  
8 JOHN MOORE

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9 Date:

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AGREED TO:

M-D BUILDING PRODUCTS, INC.

By: \_\_\_\_\_  
LARRY SANFORD

Date: August 16, 2012