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Clifford A. Chanler, State Bar No. 135534
Christopher M. Martin, State Bar No. 186021
Stephen E. Cohen, State Bar No. 284416
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

FILED
MAY 28 2013
KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguero, Deputy

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

JOHN MOORE,
Plaintiff,
v.
PAN AM RAILWAYS, INC.; *et al.*
Defendants.

Case No. CIV1105657
**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND [PROPOSED]
CONSENT JUDGMENT**
Date: May 28, 2013
Time: 9:00 a.m.
Dept. L
Judge: Hon. M. Lynn Duryee

1 Plaintiff John Moore and Defendant Pan Am Railways, 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.

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IT IS SO ORDERED.

Dated: MAY 28 2013

LYNN DURYEE

JUDGE OF THE SUPERIOR COURT

1 Clifford A. Chanler, State Bar No. 135534
2 Christopher M. Martin, State Bar No. 186021
3 Stephen E. Cohen, State Bar No. 284416
4 THE CHANLER GROUP
5 2560 Ninth Street, Suite 214
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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 PAN AM RAILWAYS, INC.; and DOES 1-
18 150, inclusive,
19 Defendants.

Case No. CIV 1105657

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 John Moore and Pan Am Railways, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and defendant Pan Am Railways, Inc. (“Pan Am” or “Defendant”), with Plaintiff
5 and Defendant collectively referred to as the “Parties” and each individually referred to as a
6 “Party.”

7 **1.2 Plaintiff**

8 Moore represents that he is an individual residing in California who seeks to promote
9 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
10 hazardous substances in consumer products.

11 **1.3 Defendant**

12 Pan Am employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Moore alleges that Pan Am manufactured, imported, distributed, sold and/or offered for
17 sale passport covers and luggage tags containing di(2-ethylhexyl)phthalate (“DEHP”) in the
18 State of California without the requisite Proposition 65 health hazard warnings. Moore further
19 alleges that Pan Am has manufactured, distributed, sold, and/or offered for sale bags containing
20 DEHP without the requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to
21 Proposition 65 as known to the State of California to cause birth defects and other reproductive
22 harm. Pan Am denies those allegations and denies that it has or had any obligations to provide
23 warnings under Proposition 65 or otherwise, as stated more fully in Paragraph 1.8 below.

24 **1.5 Product Description**

25 The products that are covered by this Consent Judgment include: (a) passport covers
26 containing DEHP including, but not limited to, the *Originals – Passport Cover, #37SP08FB/VW*
27 and luggage tags containing DEHP including, but not limited to, the *Originals – Luggage Tag*,

1 #36SP10PAB/VW, which Pan Am allegedly manufactured, imported, distributed, sold and/or
2 offered for sale directly or indirectly in the State of California, hereinafter referred to
3 collectively as the “Initial Noticed Products;” and (b) bags containing DEHP including, but not
4 limited to, the *Pan Am Originals Explorer Bag, #15SP07 PAB/VW (#817607010598)*, which
5 Pan Am allegedly manufactured, imported, distributed, sold and/or offered for sale directly or
6 indirectly in the State of California, hereinafter referred to as the “Supplemental Noticed
7 Products.” Initial Noticed Products and Supplemental Noticed Products are collectively referred
8 to as “Covered Products.” Covered Products does not include any passport covers, luggage
9 tags, and/or bags bearing the *Paul Frank* brand name including, but not limited to, the *Paul*
10 *Frank Passport Cover*, the *Paul Frank Luggage Tag*, or the *Paul Frank Mini Explorer*.

11 As of the date this agreement is executed, Moore, through his counsel and to the best of
12 their knowledge, are unaware of any Pan Am products, other than products covered by this
13 Consent Judgment, that are manufactured, imported, distributed, sold and/or offered for sale in
14 California that violate Proposition 65.

15 **1.6 Notices of Violation**

16 On September 1, 2011, Moore served Pan Am and various public enforcement agencies
17 with a document entitled “60-Day Notice of Violation” (“Initial Notice”) that provided the
18 recipients with notice of alleged violations of Proposition 65 for failing to warn consumers that
19 the Initial Noticed Products exposed users in California to DEHP. To the best of the Parties’
20 knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set
21 forth in the Initial Notice.

22 On or about March 5, 2013, Moore served Pan Am and various public enforcement
23 agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“Supplemental
24 Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by Pan
25 Am for failing to warn consumers that the Supplemental Noticed Products exposed users in
26 California to DEHP. To the best of the Parties’ knowledge no public enforcer has commenced
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1 and is diligently prosecuting the allegations set forth in the Supplemental Notice. The Initial
2 Notice and the Supplemental Notice are collectively referred to as the “Notices.”

3 **1.7 Complaint**

4 On or about November 16, 2011, Moore, who was and is acting in the interest of the
5 general public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court
6 in and for the County of Marin against Pan Am Railways, Inc. and Does 1 through 150,
7 alleging, *inter alia*, violations of Proposition 65 based on the alleged exposures to DEHP
8 contained in the Initial Noticed Products.

9 In the event that no public enforcer undertakes diligent prosecution of the allegations set
10 forth in the Supplemental Notice, and upon entry of this Consent Judgment by the Court, the
11 Complaint shall be deemed amended to include alleged violations of Proposition 65 based on
12 the alleged exposures to DEHP contained in the Supplemental Noticed Products.

13 **1.8 No Admission**

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

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Pan Am as to the allegations contained in the Complaint as amended, that
26 venue is proper in the County of Marin, and that this Court has jurisdiction to enter and enforce
27 the provisions of this Consent Judgment under Code of Civil Procedure § 664.6, as a full, final,
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1 and binding resolution of all claims which were raised or could have been raised in the
2 Complaint against Pan Am, based on the facts alleged by Moore in the Notices and Complaint.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
5 this Consent Judgment is entered by the Court.

6 **2. INJUNCTIVE RELIEF: REFORMULATION**

7 Commencing on the Effective Date, Pan Am shall only manufacture, cause to be
8 manufactured, import, cause to be imported and/or acquire for distribution and/or sale in
9 California Covered Products that are “Reformulated Products.” For purposes of this Consent
10 Judgment, “Reformulated Products” shall mean that Accessible Components of Covered
11 Products do not contain DEHP in concentrations exceeding 1,000 parts per million (0.1%) when
12 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
13 8270C or any other reliable methodology utilized by federal or state agencies for the purpose of
14 determining DEHP content in a solid substance, and suitable for the materials comprising the
15 Covered Products.

16 “Accessible Components” as used in this Consent Judgment means a component of a
17 Covered Product that can be touched by a person during normal, intended and reasonably
18 foreseeable use of an undamaged Covered Product.

19 Reformulated Products shall be deemed to comply with Proposition 65 as it relates to the
20 presence of DEHP in the Covered Products and shall be exempt from any Proposition 65
21 warning requirements regarding DEHP. Pan Am’s compliance with the injunctive terms of this
22 Section 2 constitutes compliance with Proposition 65 by all Releasees with respect to DEHP as
23 to all Covered Products manufactured, imported and/or acquired for distribution and/or sale in
24 California by Pan Am prior to the Effective Date.

25 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

26 In settlement of all the claims referred to in this Consent Judgment, Pan Am shall pay a
27 total of \$55,000 in civil penalties in accordance with this Section. Each penalty payment will be
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1 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75%
2 of the funds remitted to the California Office of Environmental Health Hazard Assessment
3 (“OEHHA”) and the remaining 25% of the penalty remitted to Moore, as follows:

4 **3.1 Initial Civil Penalty**

5 Pan Am shall pay an initial civil penalty in the amount of \$20,000 on or before March 31,
6 2013. Pan Am shall issue two separate checks to: (a) “OEHHA” in the amount of \$15,000; and
7 (b) “The Chanler Group in Trust for John Moore” in the amount of \$5,000. All penalty payments
8 shall be delivered to the addresses listed in Section 3.3 below.

9 **3.2 Final Civil Penalty**

10 Pan Am shall pay a final civil penalty of \$35,000 on or before May 15, 2013. The final
11 civil penalty shall be waived in its entirety, however, if, no later than May 1, 2013, an officer of
12 Pan Am provides Moore with written certification that, as of the date of such certification and
13 continuing into the future, Pan Am has met the reformulation standard specified in Section 2
14 above, such that all Covered Products manufactured, caused to be manufactured, imported, caused
15 to imported, and/or acquired for distribution and/or sale in California by Pan Am are
16 Reformulated Products. The certification in lieu of a final civil penalty payment provided by this
17 Section is a material term, and time is of the essence. Pan Am shall issue two separate checks for
18 its final civil penalty payments to: (a) “OEHHA” in the amount of \$26,250; and (b) “The Chanler
19 Group in Trust for John Moore” in the amount of \$8,750.

20 **3.3 Payment Procedures**

21 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

- 22 (a) All payments owed to Moore, pursuant to Sections 3.1 through 3.2,
23 shall be delivered to the following payment address:

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

1 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
2 Sections 3.1 through 3.2, shall be delivered directly to OEHHA
3 (Memo line "Prop 65 Penalties") at the following addresses:

4 For United States Postal Service Delivery:

5 Mike Gyrics
6 Fiscal Operations Branch Chief
7 Office of Environmental Health Hazard Assessment
8 P.O. Box 4010
9 Sacramento, CA 95812-4010

10 For Non-United States Postal Service Delivery:

11 Mike Gyrics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 1001 I Street
15 Sacramento, CA 95814

16 With a copy of the checks payable to OEHHA mailed to The Chanler
17 Group at the address set forth above in 3.3.1(a), as proof of payment to
18 OEHHA.

19 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Pan Am shall issue
20 separate 1099 forms for each payment to Moore, whose address and tax identification number
21 shall be furnished upon request after this Consent Judgment has been fully executed by the
22 Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

23 **4. REIMBURSEMENT OF FEES AND COSTS**

24 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
25 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
26 this fee issue to be resolved after the material terms of the agreement had been settled. Moore
27 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
28 had been finalized. The Parties then attempted to (and did) reach an accord on the compensation
due to Moore and his counsel under general contract principles (with the sole contract being this
Consent Judgment) and the private attorney general doctrine codified at California Code of Civil
Procedure § 1021.5, for all work reasonably and actually performed in this matter, except fees that

1 may be incurred on appeal through the mutual execution of this agreement. Under these legal
2 principles Pan Am shall pay \$92,000 for all fees and costs actually incurred (and yet to be
3 incurred) investigating, bringing this matter to Pan Am's attention, litigating, negotiating a
4 settlement in the public interest and obtaining court approval thereof. Pan Am shall issue a
5 separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The
6 Chanler Group" and shall deliver payment on or before March 31, 2013 to the address listed in
7 Section 3.3.1 above.

8 **5. CLAIMS COVERED AND RELEASED**

9 **5.1 Moore's Public Release of Proposition 65 Claims**

10 Moore, acting on his own behalf and in the public interest, releases Pan Am, each person
11 that has distributed or sold and/or offered for sale Covered Products provided directly or
12 indirectly by Pan Am, including but not limited to downstream distributors, wholesalers,
13 customers, retailers, franchisees, cooperative members, licensors, and licensees, and all of their
14 predecessors and successors in interest, parent, subsidiary and affiliated entities under common
15 ownership or control, directors, officers, employees, agents, shareholders, members and attorneys
16 ("Releasees"), from all claims for violations of Proposition 65 with respect to Initial Noticed
17 Products manufactured, imported, acquired for distribution, distributed, sold, and/or offered for
18 sale, directly or indirectly, by Pan Am up through the Effective Date based on actual or alleged
19 exposure to DEHP from the Initial Noticed Products as set forth in the Initial Notice. Compliance
20 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect
21 to actual or alleged exposures to DEHP from Initial Noticed Products as set forth in the Initial
22 Notice.

23 In the event that the Complaint is deemed amended pursuant to Section 1.7 above to
24 include the allegations found in the Supplemental Notice, Moore, acting on his own behalf and in
25 the public interest, further releases Releasees from all claims for violations of Proposition 65 with
26 respect to Supplemental Noticed Products manufactured, imported, acquired for distribution,
27 distributed, sold, and/or offered for sale, directly or indirectly, by Pan Am up through the
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1 Effective Date based on actual or alleged exposure to DEHP from the Supplemental Noticed
2 Products as set forth in the Supplemental Notice. Compliance with the terms of this Consent
3 Judgment constitutes compliance with Proposition 65 with respect to actual or alleged exposures
4 to DEHP from Supplemental Noticed Products as set forth in the Supplemental Notice.

5 **5.2 Moore's Individual Release of Claims**

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

12 **5.3 Pan Am's Release of Plaintiff**

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

19 **6. COURT APPROVAL**

20 **6.1 Motion to Approve**

21 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
22 noticed motion is required to obtain judicial approval of this Consent Judgment, which Moore
23 shall file, and which Pan Am shall not oppose. The Parties agree to mutually employ their, and
24 their counsel's, reasonable best efforts to support the entry of this agreement as a Consent
25 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. If any
26 third party objection to the noticed motion is filed, Moore and Pan Am shall work together to
27 file a joint reply and appear at any hearing before the Court.

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1 **6.2 Effect of Non-Approval**

2 This Consent Judgment is not effective until it is approved and entered by the Court as a
3 final judgment. If the Superior Court denies or otherwise does not grant the motion to approve
4 this Consent Judgment, and the Parties choose not to pursue a modified Consent Judgment
5 within 30 days of said denial or other non-approval, or in the event that the Superior Court
6 approves this Consent Judgment and any person successfully appeals that approval, all
7 payments made pursuant to this Consent Judgment will be returned to Pan Am within fifteen
8 (15) days, and the Action shall return to *status quo ante* as if there had been no settlement, and
9 nothing in or about the settlement, this proposed Consent Judgment, or any act, agreement or
10 statement of Pan Am or any other Releasee related thereto shall be admissible, discoverable or
11 otherwise considered for any purpose whatsoever.

12 **7. 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 **8. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California and apply within the State of California. In the event that Proposition 65 is repealed,
19 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
20 Covered Products, then Pan Am shall have no further obligations pursuant to this Consent
21 Judgment with respect to, and to the extent that, the Covered Products are so affected.

22 **9. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant
24 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
25 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by
26 the other Party at the following addresses:
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1 To Pan Am:

To Moore:

2 Paul S. Rosenlund
3 Jessica La Londe
4 Duane Morris LLP
5 Spear Tower
6 One Market Plaza, Suite 2200
7 San Francisco, CA 94105

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

6 With a copy to:

7 Robert Culliford
8 Pan Am Railways, Inc.
9 44 Industrial Park Drive
10 Dover, NH 03820

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

12 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

17 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

20 **12. MODIFICATION**

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

24 **13. ENTIRE AGREEMENT**

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

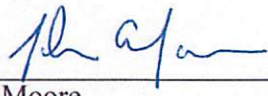
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: MARCH 19, 2013

Date: _____

By: 
John Moore

By: _____
Pan Am Railways, 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:	<u>3/14/03</u>
10			
11	By: _____	By:	<u>[Signature]</u>
12	John Moore		Pan Am Railways, Inc.

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