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9 Attorneys for Plaintiff
10 JOHN MOORE

11 ENDORSED
12 FILED
13 ALAMEDA COUNTY

14 MAY 31 2013

15 By SHANICA MONROE

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF ALAMEDA

18 UNLIMITED CIVIL JURISDICTION

19 JOHN MOORE,

20 Plaintiff,

21 v.

22 INDIAN INDUSTRIES INC.; *et al.*,

23 Defendants.

24 Case No. RG12653761
25 ^{RBM}

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

Date: May 31, 2013

Time: 9:00 a.m.

Dept. 25

Judge: Hon. Ronni MacLaren

Reservation No. R-1388237

APR 10 2013

1 Plaintiff John Moore and Defendant Indian Industries 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 the Proposition 65 settlement and Consent Judgment,

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

10 **IT IS SO ORDERED.**

11
12 Dated: May 31, 2013


13 JUDGE OF THE SUPERIOR COURT

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EXHIBIT I

1 Brian C. Johnson, State Bar No. 235965
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5 Parker Plaza, Suite 214
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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 ESCALADE, INCORPORATED; INDIAN
18 INDUSTRIES INC.; *et al.*,

19 Defendants.

Case No. RG12653761

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, John Moore (“Moore”), and
4 defendant, Indian Industries Inc. (“Indian”), with Moore and Indian each individually referred to as a
5 “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Indian 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, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Indian sold billiard table covers and ping pong table covers containing
16 di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable warning
17 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the
18 State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are billiard table covers and ping
21 pong table covers containing DEHP that are imported, manufactured, sold, or distributed for sale by
22 Indian in California including, but not limited to, the *Mizerak Deluxe Billiard Table Cover, Item No.*
23 *P0863 (#7 54806 06451 2)* and the *Stiga Deluxe Table Cover, Item No. T1585 (#7 54806 12564 0)*
24 (collectively, “Products”).

25 **1.6 Notices of Violation**

26 On March 29, 2012, Moore served Indian and certain requisite public enforcement agencies
27 with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Moore’s
28

1 allegation that Indian was in violation of Proposition 65 for failing to warn its customers and
2 consumers in California that the Products expose users to DEHP.

3 On September 21, 2012, Moore served Indian, Indian's retail customer Sports Authority, Inc.
4 ("Sports Authority"), and certain requisite public enforcement agencies with a "Supplemental Notice
5 of Violation" ("Supplemental Notice"), alleging that Indian and Sports Authority were in violation of
6 Proposition 65 with respect to their unwarned sales of the Products. The Notice and the
7 Supplemental Notice are referred to collectively as the "Notices."

8 **1.7 Complaint**

9 On October 26, 2012, Moore filed the instant action against Indian ("Complaint") for the
10 alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notices.

11 **1.8 No Admission**

12 Indian denies the material, factual and legal allegations contained in the Notices and
13 Complaint, and it maintains that all of the products that it has sold and distributed in California,
14 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
15 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
16 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
17 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
18 not, however, diminish or otherwise affect Indian's obligations, responsibilities, and duties under this
19 Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Indian as to the allegations in the Complaint, that venue is proper in Alameda
23 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
24 Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
27 Court grants the motion for judicial approval of this Consent Judgment contemplated by section 5.
28

1 Moore. Indian agrees to provide Moore's counsel with IRS 1099 forms for its penalty payments to
2 Moore and OEHHA. All payments made under this Consent Judgment shall be delivered to the
3 payment addresses provided in section 3.3.1.

4 **3.1.1 Initial Civil Penalty**

5 Within 10 days of the Effective Date, Indian shall pay an initial civil penalty of
6 \$6,000. Indian shall deliver payment in the form of two checks made payable to: (a) "OEHHA" in
7 the amount of \$4,500; and (b) "The Chanler Group in Trust for John Moore" in the amount of \$1,500.

8 **3.1.2 Final Civil Penalty; Waiver on Certification**

9 On November 1, 2013, Indian shall pay the remaining penalty portion of \$8,000,
10 except that the remaining portion of the penalty shall be waived in its entirety if, on or before October
11 15, 2013, an officer of Indian certifies in writing to Moore's counsel that, as of September 1, 2013,
12 one hundred percent of the Products manufactured for sale or purchased for in California by Indian
13 are Reformulated Products as defined by section 2.1, and that Indian will only offer Reformulated
14 Products in California in the future.

15 **3.1.3 Products Sold Prior to Effective Date**

16 Provided that Escalade has complied with the injunctive terms required by section 2,
17 including Reformulated Products and warnings, sales of Products purchased, imported,
18 manufactured, or supplied to unaffiliated third parties prior to the Effective Date shall not be
19 considered a violation of this Consent Judgment, and shall not be separately actionable in another
20 case brought pursuant to Section 25249.7(d) of the Health and Safety Code alleging unwarned
21 exposures to DEHP under Proposition 65.

22 **3.2 Reimbursement of Moore's Fees and Costs**

23 The Parties reached an accord on the compensation due to Moore and his counsel under
24 general contract principles and the private attorney general doctrine codified at Code of Civil
25 Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Indian
26 shall pay \$36,000 for all fees and costs incurred investigating, bringing this matter to the attention of
27 Indian's management, and negotiating a settlement in the public interest. Within 10 days of the
28 Effective Date, Indian shall provide Moore's counsel with a third check payable to "The Chanler

1 Group,” and issue a separate 1099 for the reimbursement of fees and costs under this section to The
2 Chanler Group (EIN: 94-3171522).

3 **3.3 Payment Procedures**

4 **3.3.1. Payment Addresses**

5 (a) All payments to Moore and The Chanler Group shall be delivered to the
6 following address:

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

12 (b) All payments to OEHHA (EIN: 68-0284486) made pursuant to section 3.1,
13 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following address:

14 Mike Gyrics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010
18 Sacramento, CA 95812-4010

19 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address payment
20 address provided in section , as proof of payment to OEHHA.

21 **3.3.2 Required Tax Documentation**

22 (a) For each penalty payment to OEHHA, a 1099 shall be issued to the Office of
23 Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-
24 0284486) in the amount of 75% of the total penalty payment;

25 (b) For each penalty payment to Moore, a 1099 shall be issued to “John Moore,”
26 whose address and tax identification number shall be furnished upon request after this Consent
27 Judgment is fully executed by the Parties; and

28 (b) For the reimbursement of fees and costs pursuant to section 3.3, Indian shall
issue a separate 1099 form to “The Chanler Group” (EIN: 94-3171522).

29 **4. CLAIMS COVERED AND RELEASED**

30 **4.1 Moore’s Public Release of Proposition 65 Claims**

Moore, acting on his own behalf and in the public interest, releases Indian and its parents,

1 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
2 attorneys (“Releasees”) and each entity to whom they directly or indirectly distribute or sell the
3 Products, including but not limited to its downstream distributors, wholesalers, customers
4 (including, without limitation, Sports Authority, Inc.), retailers, franchisers, cooperative members,
5 licensors and licensees (“Downstream Releasees”) for any violations arising under Proposition 65
6 for unwarned exposures to DEHP contained in the Products sold by Indian prior to the Effective
7 Date, as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes
8 compliance with Proposition 65 with respect to exposures to DEHP from the Products sold by
9 Indian before the Effective Date, as set forth in the Notices.

10 **4.2 Moore’s Individual Release of Claims**

11 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
12 release to Indian, Releasees, and Downstream Releasees which shall be effective as a full and final
13 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
14 attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature, character
15 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
16 exposures to DEHP in the Products sold or distributed for sale by Indian before the Effective Date.

17 **4.3 Indian’s Release of Moore**

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

24 **5. COURT APPROVAL**

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

1 **6. SEVERABILITY**

2 If, subsequent to the Court's approval of this Consent Judgment, any provision of this
3 Consent Judgment is held by a court to be unenforceable, the validity of the remaining provisions
4 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 California
7 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
8 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Indian may
9 provide written notice to Moore of any asserted change in the law, and shall have no further
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
11 so affected.

12 **8. NOTICES**

13 Unless specified herein, all correspondence and notices required by this Consent Judgment
14 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
15 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

16 For Indian:

17 Robert Keller, President
18 Indian Industries Inc.
19 817 Maxwell Avenue
20 Evansville, IN 47711

21 with a copy to:

22 Stephen L. Marsh, Esq.
23 McKenna Long & Aldridge LLP
24 600 W. Broadway, Suite 2600
25 San Diego, CA 92101

26 For Moore:

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

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

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9. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. POST EXECUTION ACTIVITIES

Moore agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, Moore and Indian agree to mutually employ their best efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of the settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers, and supporting the motion for judicial approval.

12. MODIFICATION

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

13. AUTHORIZATION

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

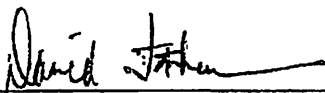
AGREED TO:

AGREED TO:

Date: MARCH 19, 2013

Date: March 15, 2013

By: 
JOHN MOORE

By: 
David Fetherman, President
INDIAN INDUSTRIES INC.

CLERK'S CERTIFICATE OF SERVICE BY MAIL
CCP 1013a(3)

CASE NAME: **Moore vs. Indian Industries, Inc., et. al.**

ACTION NO.: **R612653761**

I certify that, I am not a party to the within action. I served the foregoing JUDGMENT
PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT
JUDGMENT by depositing a true copy thereof in the United States mail in Oakland, California
in a sealed envelope with postage fully prepaid thereon addressed to:

**Brian Johnson
The Chanler Group
2560 Ninth Street
Park Plaza, Suite 214
Berkeley, CA 94710-2565**

**Stephen L. Marsh
McKenna Long & Aldridge LLP
600 West Broadway, Suite 2600
San Diego, CA 92101-3372**

I declare under penalty of perjury that the following is true and correct

Executed on May 31, 2013 at Oakland, California.

Leah T. Wilson,
Executive Officer/Clerk

by *Shanika Monroe*
Deputy Clerk

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