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Josh Voorhees, State Bar No. 241436  
Harris A. Weinstein, State Bar No. 282166  
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

(ENDORSED)  
**FILED**  
MAY 19 2014  
DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY \_\_\_\_\_ DEPUTY

J. Paura

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA  
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,  
  
Plaintiff,  
  
v.  
  
TRUDEAU CORPORATION (AMERICA)  
INC.; *et al.*,  
  
Defendants.

) Case No.: 1-13-CV-243624  
)  
) **[PROPOSED] JUDGMENT**  
) **PURSUANT TO TERMS OF**  
) **PROPOSITION 65 SETTLEMENT**  
) **AND CONSENT JUDGMENT**  
) *2-11-14*  
) Date: ~~January 14, 2014~~  
) Time: 9:00 a.m.  
) Dept.: 5  
) Judge: Hon. Carol W. Overton

1 In the above-entitled action, plaintiff John Moore and defendant Trudeau  
2 Corporation (America) Inc., having agreed through their respective counsel that Judgment  
3 be entered pursuant to the terms of their settlement agreement in the form of a Consent  
4 Judgment, and following this Court's issuance of an Order approving this Proposition 65  
5 settlement and Consent Judgment on January 14, 2014:

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

11  
12 **IT IS SO ORDERED.**

13  
14 Dated:           MAY 19 2014          

Carol Overton

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

**Signed Pursuant  
To 635 CCP.**

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# **EXHIBIT A**

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Attorneys for Plaintiff  
JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA  
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,  
  
Plaintiff,  
  
v.  
  
TRUDEAU CORPORATION (AMERICA)  
INC.; and DOES 1-150, inclusive,  
  
Defendants.

) Case No. 113CV243624

) **[PROPOSED] CONSENT JUDGMENT**

) Dept:  
) Judge:  
) Date: None set

) Action Filed: March 26, 2013

1           **1. INTRODUCTION**

2           **1.1 John Moore and Trudeau Corporation (America) Inc.**

3           This Consent Judgment is entered into by and between plaintiff John Moore ("Moore" or  
4 "Plaintiff") and defendant Trudeau Corporation (America) Inc. ("Trudeau" or "Defendant"), with  
5 Plaintiff and Defendant collectively referred to as the "parties."

6           **1.2 John Moore**

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

10           **1.3 Trudeau Corporation (America) Inc.**

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

14           **1.4 General Allegations**

15           Moore alleges that Trudeau has manufactured, imported, distributed and/or sold in the State  
16 of California forks with grips containing di(2-ethylhexyl)phthalate ("DEHP"). DEHP is listed  
17 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and  
18 other reproductive harm.

19           **1.5 Product Description**

20           The products that are covered by this Settlement Agreement are defined as forks with grips  
21 containing DEHP including, but not limited to, *Trudeau Flower Forks, #0829306 (#0 63562 52073*  
22 *7)*, which are manufactured, imported, distributed, sold and/or offered for sale by Trudeau in the  
23 State of California, hereinafter the "Products."

1           **1.6    Notice of Violation**

2           On May 10, 2012, Moore served Trudeau and various public enforcement agencies with a  
3 document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with notice  
4 that Trudeau was in violation of California Health & Safety Code § 25249.6 for failing to warn  
5 consumers that its forks with grips exposed users in California to DEHP.

6           **1.7    Complaint**

7           On March 26, 2013, Moore filed a complaint in the Superior Court in and for the County of  
8 Santa Clara against Trudeau and Does 1 through 150, *Moore v. Trudeau Corporation (America)*  
9 *Inc., et al.*, Case No. 113CV243624 (the "Action"), alleging violations of California Health &  
10 Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain forks with  
11 grips sold by Trudeau in the State of California.

12           **1.8    No Admission**

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

21           **1.9    Consent to Jurisdiction**

22           For purposes of this Consent Judgment only, the parties stipulate that this Court has  
23 jurisdiction over Trudeau as to the allegations contained in the Complaint, that venue is proper in  
24 the County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of  
25 this Consent Judgment.

26           **1.10 Effective Date**

27           For purposes of this Consent Judgment, the term "Effective Date" shall mean July 1, 2013.  
28

1     **2.     INJUNCTIVE RELIEF: REFORMULATION**

2             **2.1     Reformulation Standards**

3             "Reformulated Products" are defined as those Products and Additional Products containing  
4     DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to  
5     U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other  
6     methodology utilized by federal or state government agencies for the purpose of determining DEHP  
7     content in a solid substance.

8             **2.2     Reformulation Commitment**

9             As of the Effective Date all Products manufactured, imported, distributed, sold, or offered  
10     for sale in the State of California by Trudeau shall be Products that qualify as Reformulated  
11     Products as defined in Section 2.1 above.

12     **3.     MONETARY PAYMENTS**

13             In settlement of all the claims referred to in this Consent Judgment, Trudeau shall pay a total  
14     of \$16,250 in civil penalties in accordance with this Section. Each penalty payment will be  
15     allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of  
16     the funds remitted to the California Office of Environmental Health Hazard Assessment  
17     ("OEHHA") and the remaining 25% of the penalty remitted to Moore, as follows:

18             **3.1     Initial Civil Penalty**

19             Trudeau shall pay an initial civil penalty in the amount of \$3,250 on or before July 1, 2013.  
20     Trudeau shall issue two separate checks to: (a) "OEHHA" in the amount of \$2,437.50; and (b) "The  
21     Chanler Group in Trust for John Moore" in the amount of \$812.50. All penalty payments shall be  
22     delivered to the addresses listed in Section 3.3 below.

23             **3.2     Final Civil Penalty**

24             Trudeau shall pay a final civil penalty of \$13,000 on or before October 30, 2013. The final  
25     civil penalty shall be waived in its entirety, however, if, no later than October 15, 2013, an officer of  
26     Trudeau provides Moore with written certification that, as of the date of such certification and  
27     continuing into the future, Trudeau has met the reformulation standard specified in Section 2 above,  
28     such that all Products manufactured, imported, distributed, sold and offered for sale in California by

1 Trudeau are Reformulated Products. Moore must receive any such certification on or before  
2 October 15, 2013. The certification in lieu of a final civil penalty payment provided by this Section  
3 is a material term, and time is of the essence. Moore acknowledges that Trudeau has furnished a  
4 draft copy of a declaration that meets the requirements for written certification of this section, so as  
5 to qualify for waiver of the final civil penalty, and that if Trudeau furnishes Moore with an executed  
6 copy of such certification on or before October 15, 2013, the final civil penalty shall be waived in  
7 its entirety. In the event Trudeau does not furnish such executed written certification, Trudeau shall  
8 issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of  
9 \$9,750; and (b) "The Chanler Group in Trust for John Moore" in the amount of \$3,250.

10 **3.3 Payment Procedures**

11 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

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

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

19 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections  
20 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop  
21 65 Penalties") at the following addresses:

22 For United States Postal Service Delivery:

23 Mike Gyrics  
24 Fiscal Operations Branch Chief  
25 Office of Environmental Health Hazard Assessment  
26 P.O. Box 4010  
27 Sacramento, CA 95812-4010

28 For Non-United States Postal Service Delivery:

Mike Gyrics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814



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

4 3.3.2 **Issuance of 1099 Forms.** After each penalty payment, Trudeau shall issue  
5 separate 1099 forms for each payment to Moore, whose address and tax identification number shall  
6 be furnished upon request after this Consent Judgment has been fully executed by the Parties, and  
7 OEHHA at the addresses listed in Section 3.3.1 above.

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

9 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without  
10 reaching an agreement on the amount of fees and costs to be reimbursed to them, thereby leaving  
11 this fee issue to be resolved after the material terms of the agreement had been settled, and the  
12 agreement signed. The Parties then attempted, but were unable, to reach an accord on the  
13 compensation due to Moore and his counsel under the private attorney general doctrine codified at  
14 Code of Civil Procedure ("CCP") § 1021.5 for all work performed through the Effective Date of  
15 this Consent Judgment and for all work reasonably to be performed in connection with the terms set  
16 forth in this Consent Judgment after the Effective Date. The parties do agree, however, that Moore  
17 and his counsel are entitled to their reasonable attorneys' fees and costs under the prerequisites set  
18 forth by CCP § 1021.5 including their time incurred in this alternative dispute resolution process.

19 In an effort to save resources, the Parties have agreed to have the outstanding fee and cost  
20 issue adjudicated by mediation. If the mediation is unsuccessful, the Parties have further agreed to  
21 convey the necessary authority to the neutral conducting the mediation to determine a sum that it  
22 deems to be the reasonable attorneys' fees and costs recoverable by plaintiff. Moore and Trudeau  
23 agree that if the mediator is required to make a determination of Moore's reasonable fees and costs,  
24 that determination shall be final and binding upon the Parties. Trudeau agrees to pay the fees and  
25 costs of the mediation.

26 The mediation shall take place through the American Arbitration Association or JAMS  
27 Resolution Services in San Francisco on or before September 15, 2013, with payment to occur  
28 within 10 days of the date the mediator awards attorney's fees and costs or the date that the Parties

1 negotiate a fixed sum under the mediation, whichever is sooner. The payment shall be made  
2 payable to The Chanler Group at the address in Section 3.3.1(a) of this Consent Judgment.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 Moore's Public Release of Proposition 65 Claims**

5 Moore acting on his own behalf and in the public interest releases Trudeau from all claims  
6 for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the  
7 Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes  
8 compliance with Proposition 65 with respect to exposures to DEHP from the Products as set forth in  
9 the Notice.

10 **5.2 Moore's Individual Release of Claims**

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

17 **5.3 Trudeau's Release of Moore**

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

24 **6. COURT APPROVAL**

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

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

8. **GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Trudeau shall provide written notice to Moore of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Trudeau from any obligation to comply with any pertinent state or federal toxics control law.

9. **NOTICES**

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

To Trudeau:

Philippe Trudeau, President  
Trudeau Corporation (America)  
Inc.  
10440 Woodward Avenue  
Woodbridge, IL 60517

To John Moore:

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

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

1       **10. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

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

6               Moore and his attorneys agree to comply with the reporting form requirements referenced in  
7 California Health & Safety Code § 25249.7(f).

8       **12. ADDITIONAL POST EXECUTION ACTIVITIES**

9               Moore and Trudeau agree to mutually employ their best efforts to support the entry of this  
10 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
11 timely manner. The parties acknowledge that, pursuant to California Health & Safety Code  
12 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which  
13 Moore shall draft and file, and Trudeau shall join. If any third party objection to the noticed motion  
14 is filed, Moore and Trudeau shall work together to file a joint reply and appear at any hearing before  
15 the Court. This provision is a material component of the Consent Judgment and shall be treated as  
16 such in the event of a breach.

17       **13. MODIFICATION**

18               This Consent Judgment may be modified only: (1) by written agreement of the parties and  
19 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
20 of any party and entry of a modified Consent Judgment by the Court.

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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: August 1, 2013

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

By:   
John Moore

By: \_\_\_\_\_  
Philippe Trudeau, President  
Trudeau Corporation (America) Inc.

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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: \_\_\_\_\_

Date: JUNE 25<sup>TH</sup> 2013

By: \_\_\_\_\_  
John Moore

By:   
Philippe Trudeau, President  
Trudeau Corporation (America) Inc.