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THE CHANLER GROUP  
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Parker Plaza, Suite 214  
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Attorneys for Plaintiff  
JOHN MOORE

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

MAR 21 2016

CLERK OF THE COURT  
By: ROSIE NOGUERA  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR SAN FRANCISCO COUNTY  
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,  
Plaintiff,  
v.  
SCHOOL SPECIALTY, INC.; *et al.*  
Defendants.

Case No. CGC-15-546938  
*LNK*  
~~PROPOSED~~ CONSENT JUDGMENT  
(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

7 Moore is a resident of the State of California who seeks to promote awareness of exposures  
8 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances  
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 School Specialty employs ten or more persons and is a person in the course of doing  
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
13 Health and Safety Code §25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that School Specialty manufactures, imports, sells and/or distributes for sale  
16 in California, vinyl/PVC-coated backpacks that contain di(2-ethylhexyl)phthalate (“DEHP”) and  
17 headphones with vinyl/PVC components containing DEHP, and that it does so without providing  
18 the health hazard warning that Moore alleges is required by Proposition 65. DEHP is a chemical  
19 listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive  
20 harm.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are: (a) vinyl/PVC backpacks containing  
23 DEHP, including, but not limited to, the *School Smart 15” Clear Youth Backpack*, #1336644,  
24 *Model: WBT4204-CL*, UPC #8 85634 01619 7, and all variations thereof, including Item #1336647  
25 and (b) vinyl/PVC headphone components containing DEHP, including, but not limited to, the  
26 *Califone Stereo Headphone*, *Model 3068AV*, UPC #6 10356 21300 1, all kits containing Model  
27 3068AV, and/or all other Califone products containing common parts to Model 3068AV  
28 (collectively, “Products”).

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**1.6 Notice of Violation**

On February 27, 2015, Moore served School Specialty and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that School Specialty violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

**1.7 Complaint**

On July 17, 2015, Moore commenced the instant action, naming School Specialty as the defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

**1.8 No Admission**

School Specialty denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by School Specialty of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by School Specialty of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect School Specialty’s obligations, responsibilities, and duties under this Consent Judgment. By entering into this Consent Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon School Specialty by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to affect any defenses available to School Specialty under laws other than Proposition 65.

**1.9 Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over School Specialty as to the allegations in the Complaint, that venue is proper in San

1 Francisco County, and that the Court has jurisdiction to enter and enforce the provisions of this  
2 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that  
5 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

6 **2. INJUNCTIVE SETTLEMENT TERMS**

7 **2.1 Commitment to Reformulate or Provide Warnings**

8 Commencing on January 1, 2016, and continuing thereafter, School Specialty shall only  
9 manufacture for sale or purchase for sale in California, Products that are (1) Reformulated Products  
10 as defined in Section 2.2; or (2) Products that are sold or shipped with one of the clear and  
11 reasonable warnings set forth in subsection 2.3.

12 **2.2 Reformulation Standard**

13 For purposes of this Consent Judgment, "Reformulated Products" are defined as Products  
14 with a maximum DEHP concentration of 0.1 percent (1,000 parts per million) when analyzed  
15 pursuant to the Consumer Products Safety Commission's CPSC-CH-C1001-09.3 method or other,  
16 equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP  
17 content in a solid substance.

18 **2.3 Product Warnings**

19 Commencing on January 1, 2016, for all Products other than Reformulated Products, School  
20 Specialty agrees that it will only sell or distribute such products for sale with a clear and reasonable  
21 warning in compliance with this Section. For purposes of this Consent Judgment a clear and  
22 reasonable warning shall be prominently placed with such conspicuousness as compared with other  
23 words, statements, designs or devices as to render it likely to be read and understood by an ordinary  
24 individual under customary conditions before purchase or use. Each warning shall be provided in a  
25 manner such that the consumer or user understands to which specific Product(s) the warning  
26 applies, so as to minimize the risk of consumer confusion. School Specialty shall affix a warning to  
27 the packaging, labeling or directly on any Products that are not Reformulated Products sold in  
28 California that states:

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**WARNING:** This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

or

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm).

**2.4 Grace Period for Existing Inventory of Products**

School Specialty represents that, after receiving the Notice, it implemented a health hazard warning for the Products. Moore agrees that, until it exhausts its current inventory of Products, School Specialty may continue to sell and offer for sale in California those Products labeled with (or offered with packaging containing) the following statement: "Warning: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm."

**3. MONETARY SETTLEMENT TERMS**

**3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

Pursuant to Health and Safety Code §25249.7(b)(2), and in settlement of all the claims referred to in this Consent Judgment, School Specialty shall pay \$55,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Moore. Moore's counsel shall be responsible for remitting School Specialty's penalty payment(s) under this Consent Judgment to OEHHA.

**3.1.1 Initial Civil Penalty.** School Specialty shall make an initial civil penalty payment of \$20,000. School Specialty shall provide its payment in a single check made payable to "John Moore, Client Trust Account" to be delivered to the address provided in Section 3.4, below.

**3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation.** On January 30, 2016, School Specialty shall make a final civil penalty payment of \$35,000. Pursuant to Title 11 California Code of Regulations, §3203(c), Moore agrees that the final civil penalty payment

1 shall be waived in its entirety if, no later than January 15, 2016, an officer of School Specialty  
2 provides Moore with a signed declaration certifying that all of the Products it manufactures for sale  
3 in California as of the date of the declaration are Reformulated Products, and that School Specialty  
4 will offer only Reformulated Products, or Products which were manufactured prior to the date of  
5 the declaration but which bear an approved warning label pursuant to Section 2.1, above, in  
6 California in the future. The option to certify early reformulation in lieu of making the final civil  
7 penalty payment otherwise required by this Section is a material term, and time is of the essence.  
8 To obtain a waiver of the final civil penalty, School Specialty must deliver its declaration certifying  
9 reformulation to Moore's counsel at the address provided in Section 3.4, below.

### 10 **3.2 Reimbursement of Attorneys' Fees and Costs**

11 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without  
12 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue  
13 to be resolved after the material terms of the agreement had been settled. Shortly after finalizing  
14 the other settlement terms, School Specialty expressed a desire to resolve Moore's fees and costs.  
15 The Parties then negotiated a resolution of the compensation due to Moore and his counsel as a  
16 final and independent term of this Consent Judgment pursuant to general contract principles and  
17 the private attorney general doctrine codified at California Code of Civil Procedure §1021.5. For  
18 all work performed through the mutual execution of this agreement and the Court's approval of the  
19 same, but exclusive of fees and costs on appeal, if any, School Specialty shall reimburse Moore  
20 and his counsel \$35,000. School Specialty's payment shall be delivered to the address in Section  
21 3.4 in the form of a check payable to "The Chanler Group." The reimbursement shall cover all  
22 fees and costs incurred by Moore investigating, bringing this matter to School Specialty's  
23 attention, litigating, and negotiating a settlement of the matter in the public interest.

### 24 **3.3 Payment Timing; Enforcement of Payment Terms**

25 With the exception of the final civil penalty payment required by Section 3.1.2, School  
26 Specialty shall deliver all payments required by this Consent Judgment to Moore's counsel within  
27 seven (7) business days of the Effective Date. In the event any payment required by this Consent  
28 Judgment, including the Section 3.1.2 final civil penalty, is untimely, the Parties agree and

1 acknowledge that (a) School Specialty shall be liable to Moore for 10% simple interest on any  
2 unpaid amount(s); (b) Moore may seek to enforce School Specialty's payment obligations under  
3 general contract principles and Code of Civil Procedure § 664.6; and (c) Held shall be entitled to  
4 any fees incurred recovering such settlement payments pursuant to general contract principles and  
5 Code of Civil Procedure § 1021.5.

6 The payments required under this Consent Judgment shall be made by School Specialty  
7 within seven (7) business days of the Effective Date.

8 **3.4 Payment Address**

9 All payments required by this Consent Judgment shall be delivered to the following  
10 address:

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

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Moore's Release of Proposition 65 Claims**

18 Moore, acting on his own behalf and in the public interest, releases School Specialty and its  
19 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
20 and attorneys, including but not limited to its wholly owned subsidiary Califone International, LLC,  
21 and their collective subsequent purchasers, successors and assigns ("Releasees") and each entity to  
22 whom they directly or indirectly distribute or sell the Products including, but not limited to, their  
23 downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,  
24 licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65  
25 for unwarned exposures to DEHP from Products manufactured, imported, distributed or sold by  
26 School Specialty prior to the Effective Date, as set forth in the Notice. Compliance with the terms  
27 of this Consent Judgment constitutes compliance with Proposition 65 by School Specialty with  
28 respect to the alleged or actual failure to warn about exposures to DEHP from Products  
manufactured, sold or distributed for sale by School Specialty after the Effective Date.

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**4.2 Moore's Individual Release of Claims**

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

**4.3 School Specialty's Release of Moore**

School Specialty, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Moore and his attorneys and other representatives, for any and all actions taken or statements made by Moore and his attorneys and other representatives in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**5. COURT APPROVAL**

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by the Parties. Moore and School Specialty agree to support the entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code §25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion Moore shall draft and file and School Specialty shall support, including by appearing at the hearing if so requested. If any third-party objection to the motion is filed, Moore and School Specialty agree to work together to file a reply and appear at any hearing. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.



1 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. MODIFICATION**

9 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
10 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
11 any party and the entry of a modified Consent Judgment by the Court thereon.

12 **12. AUTHORIZATION**

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

17 **AGREED TO:**

18   
19 \_\_\_\_\_  
JOHN MOORE

20 Dated: 1/8/2016

**AGREED TO:**

\_\_\_\_\_  
SCHOOL SPECIALTY, LLC

By: \_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_  
(Title)

Dated: \_\_\_\_\_

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14 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
15 Consent Judgment.

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17 **AGREED TO:**

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19 \_\_\_\_\_  
JOHN MOORE

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21 Dated: \_\_\_\_\_

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**AGREED TO:**

  
\_\_\_\_\_  
SCHOOL SPECIALTY, LLC

By: Ryan M. Bohr

Its: Chief Financial Officer and Executive Vice  
President

Dated: 12/22/2015

1 In the above-entitled action, plaintiff John Moore and defendant School Specialty, Inc.,  
2 having agreed through their respective counsel that Judgment be entered pursuant to the terms of  
3 their settlement agreement in the form of a [Proposed] Consent Judgment (“Consent Judgment”),  
4 and following this Court’s issuance of an Order approving this Proposition 65 settlement and  
5 Consent Judgment on March 21, 2016.

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

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12 **IT IS SO ORDERED.**

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14 Dated: 3/2/16



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JUDGE OF THE SUPERIOR COURT  
HAROLD KAHN