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JOHN MOORE

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Attorneys for Defendant
THE ZONDERVAN CORPORATION L.L.C.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,)
)
Plaintiff,)
)
v.)
)
THE ZONDERVAN CORPORATION L.L.C.,)
and DOES 1 through 150, inclusive,)
)
Defendants.)
_____)

Case No. CIV 1003365

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 John Moore and The Zondervan Corporation L.L.C.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and The Zondervan Corporation L.L.C. (“Zondervan” or “Defendant”), with Plaintiff
5 and Defendant collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 The Zondervan Corporation L.L.C.**

11 Plaintiff alleges that Defendant 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 Defendant has manufactured, distributed and/or sold zippered book
16 covers which contain phthalates, including di(2-ethylhexyl)phthalate (hereinafter the “Listed
17 Chemical”), without the requisite Proposition 65 warnings. The Listed Chemical is on the
18 Proposition 65 list as known to cause cancer as well as birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows: zippered
21 book covers containing the Listed Chemical such as, but not limited to, *ZonderKids Book and Bible*
22 *Cover, Larry the Cucumber Plush (#0 25986 80645 3)*. All such zippered book covers containing
23 the Listed Chemical are referred to hereinafter as the “Products.”

24 **1.6 Notice of Violation**

25 On December 15, 2009, Moore served Zondervan, and various public enforcement agencies
26 with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Defendant and
27 public enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for
28 failing to warn consumers that the Products that Defendant sold exposed users in California to the

1 Listed Chemical. To the best of the parties' knowledge, no public enforcer has prosecuted the
2 allegations set forth in the Notice.

3 **1.7 Complaint**

4 On June 28, 2010, Moore, acting in the interest of the general public in California, filed a
5 complaint ("Complaint" or "Action") in the Superior Court in and for the County of Marin against
6 The Zondervan Corporation L.L.C., and Does 1 through 150, alleging violations of California
7 Health & Safety Code § 25249.6 based on the alleged exposures to the Listed Chemical contained in
8 the Products sold by Defendant.

9 **1.8 Answer**

10 Defendant responded to the Complaint by filing a general denial and affirmative defenses,
11 denying all claims alleged by Plaintiff.

12 **1.9 No Admission**

13 Defendant 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 and/or distributed in
15 California, including the Products, have been and are in compliance with all laws. Nothing in this
16 Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of
17 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
18 as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
19 being specifically denied by Defendant. However, this section shall not diminish or otherwise affect
20 Defendant's obligations, responsibilities, and duties under this Consent Judgment.

21 **1.10 Consent to Jurisdiction**

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

26 **1.11 Purpose of Consent Judgment**

27 In order to avoid continued and protracted litigation, the Parties wish to resolve completely
28 and finally the issues raised by the Notice and the Complaint pursuant to the terms and conditions

1 described herein. By entering into this Consent Judgment, the Parties recognize that this Consent
2 Judgment is a full and final settlement of all claims related to the Products and the Listed Chemical
3 that were raised or could have been raised in the Complaint. The Parties also intend for this
4 Consent Judgment to provide, to the maximum extent permitted by law, *res judicata* and/or
5 collateral estoppel protection for Defendant against any and all other claims based upon the same or
6 similar allegations to the Products and the Listed Chemical.

7 **1.12 Effective Date**

8 For purposes of this Consent Judgment, the term “Effective Date” shall mean July 15, 2010.

9 **2. INJUNCTIVE RELIEF: REFORMULATION AND RECALL**

10 **2.1 Reformulation Standards**

11 Reformulated Products are defined as those Products containing less than or equal to 1,000
12 parts per million (“ppm” or “mg/kg”) of the Listed Chemical.

13 **2.2 Past and Future Reformulation Steps**

14 Defendant hereby commits that one hundred percent (100%) of the Products that it
15 manufactures after the Effective Date for sale in California, shall qualify as Reformulated Products.

16 Defendant also represents that, as a result of the notice issued on December 15, 2009, Defendant
17 began to implement steps to come into compliance with the statute, including the reformulation of
18 the Products.

19 **3. MONETARY PAYMENTS**

20 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

21 In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay
22 \$2,000 in civil penalties to be apportioned in accordance with California Health & Safety Code
23 §25192, with 75% of these funds remitted to the State of California’s Office of Environmental
24 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to John
25 Moore as provided by California Health & Safety Code §25249.12(d). Defendant shall issue two
26 separate checks for the penalty payment: (a) one check made payable to “The Chanler Group in
27 Trust For OEHHA” in the amount of \$1,500, representing 75% of the total penalty; and (b) one
28 check to “The Chanler Group in Trust for John Moore” in the amount of \$500, representing 25% of

1 the total penalty.

2 Within fifteen (15) business days after the execution and delivery of this Consent Judgment
3 by both parties, the penalty payment shall be made by Defendant to the following address:

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

9 Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010,
10 Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall be
11 provided within two (2) calendar days after execution and delivery of this Consent Judgment by
12 both parties.

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

14 **4.1 Attorney Fees and Costs**

15 The Parties reached an accord on the compensation due to Moore and his counsel under
16 general contract principles and the private attorney general doctrine codified at California Code of
17 Civil Procedure (CCP) §1021.5. Defendant shall reimburse Moore and his counsel \$27,000 for fees
18 and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a
19 settlement in the public interest. This figure includes Moore's future fees and costs including
20 attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as well as any
21 other legal work performed after the execution of this Consent Judgment incurred in an effort to
22 obtain finality of the case.

23 Within fifteen (15) business days after the execution and delivery of this Consent Judgment
24 by both parties, the Attorneys Fees and Costs payment shall be made by Defendant to the following
25 address:

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

A separate 1099 shall be issued to "The Chanler Group" (EIN: 94-3171522) for the amount
of the reimbursement of Plaintiff's fees and costs.

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5. RELEASE OF ALL CLAIMS

5.1 Moore’s Release of Defendant

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public pursuant to Health & Safety Code Section 25249.7(d), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorney’s fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively “claims”), against Defendant and each of its wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, including, but not limited to, HarperCollins Publishers LLC and News Corporation, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, (collectively “Releasees”) that arise under Proposition 65, as such claims relate to Defendant’s alleged failure to warn about exposures to the Listed Chemical contained in the Products.

Moore in his individual capacity on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assigns, and *not* his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims which he now has or may have in the future against Defendant or Releasees for sales of Defendant’s Products, irrespective of the subject matter, of all character, kind and nature, whether said claims are known or unknown or are suspected or unsuspected and Moore expressly waives any and all rights and benefits which he now has, or in the future may have, under California Civil Code § 1542, which provides as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
4 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
5 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
6 WITH THE DEBTOR.

7 It is expressly agreed and understood that the general release by Moore of Defendant or Releasees
8 for sales of Defendant's Products is a determinative consideration of Defendant's willingness and
9 decision to enter into this Consent Judgment.

10 **5.2 Defendant's Release of Moore**

11 Defendant, on behalf of itself and its Releasees, waive any and all claims against Moore, his
12 attorneys, and other representatives for any and all actions taken by Moore and his attorneys and
13 other representatives, whether in the course of investigating claims or otherwise seeking
14 enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.

15 **6. COURT APPROVAL**

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

19 **7. SEVERABILITY**

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

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
26 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
27 Consent Judgment are rendered inapplicable or are no longer required as a result of any such repeal
28 or preemption or rendered inapplicable by reason of law generally as to the Products, then
Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
to the extent that, the Products are so affected.

1 **9. NOTICES**

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

6 To Defendant:

7 Maureen Girkins, President
8 The Zondervan Corporation L.L.C.
9 5300 Patterson Ave. SE
 Grand Rapids, MI 49512

To Moore:

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

10 With Copy to:

11 Kurt Weissmuller, Esq.
12 Alston + Bird, LLP
 333 S. Hope St., 16th Floor
 Los Angeles, CA 90071

13 Any party, from time to time, may specify in writing to the other party a change of address to
14 which all notices and other communications shall be sent. Should Moore become aware of any
15 zippered book covers manufactured after the Effective Date by Defendant in California that Moore
16 believes violates Section 2 of this Consent Judgment, Moore agrees to provide Defendant with
17 written notice which identifies the products at issue by model and style number and shall include
18 relevant test data showing the presence of DEHP. Within 30 days following Defendant's receipt of
19 such notice, Defendant shall have the option to provide Moore, at the addresses listed in this
20 Section, with testing information demonstrating its compliance with Section 2. If such testing
21 information is satisfactory to Moore, no further action shall be taken by Moore.

22 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

1 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

2 Moore and Defendant agree to mutually employ their and their counsel’s best efforts to
3 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
4 Judgment by the Court in a timely manner and defend any appellate review of the Court’s approval.
5 The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed
6 motion is required to obtain judicial approval of this Consent Judgment which Moore shall draft and
7 file, and Defendant shall join. If any third party objection to the noticed motion is filed, Moore and
8 Defendant shall work together to file a joint reply and appear at any hearing before the Court. This
9 provision is a material component of the Consent Judgment and shall be treated as such in the event
10 of a breach. If the Superior Court does not approve the motion to approve this Consent Judgment,
11 all payments made by Defendant shall be immediately returned to counsel for Defendant. Should
12 the Superior Court approve this Consent Judgment and any person successfully appeals that
13 approval, upon remittitur, all payments made pursuant to this Consent Judgment will be returned to
14 counsel for Defendant.

15 **13. MODIFICATION**

16 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
17 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
18 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: _____

Date: _____

By: _____
Plaintiff, John Moore

By: _____
Defendant, The Zondervan Corporation
L.L.C.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: _____

THE CHANLER GROUP

ALSTON & BIRD LLP

By: _____
Christopher Martin
Attorneys for Plaintiff
JOHN MOORE

By: _____
Kurt Weissmuller
Attorneys for Defendant
THE ZONDERVAN CORPORATION
L.L.C.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR 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: 07/22/10

Date: _____

By: [Signature]
Plaintiff, John Moore

By: _____
Defendant, The Zondervan Corporation
L.L.C.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 7/22/10

Date: _____

THE CHANLER GROUP

ALSTON & BIRD LLP

By: [Signature]
Christopher Martin
Attorneys for Plaintiff
JOHN MOORE

By: _____
Kurt Weissmuller
Attorneys for Defendant
THE ZONDERVAN CORPORATION
L.L.C.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR 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: _____

Date: 07/22/2010

By: _____
Plaintiff, John Moore

By: [Signature]
Defendant, The Zondervan Corporation
L.L.C.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: 7/22/10

THE CHANLER GROUP

ALSTON & BIRD LLP

By: _____
Christopher Martin
Attorneys for Plaintiff
JOHN MOORE

By: [Signature]
Kurt Weissmuller
Attorneys for Defendant
THE ZONDERVAN CORPORATION
L.L.C.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT