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20 GAIAM, INC. and
21 SPRI PRODUCTS, INC.

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

25 JOHN MOORE,)
26)
27 Plaintiff,)
28)
29 v.)
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31 BELL SPORTS, INC., *et al.*,)
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33 Defendants.)
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Case No. CIV-1002842
UNLIMITED JURISDICTION
**[PROPOSED] CONSENT JUDGMENT
AS TO GAIAM, INC. AND SPRI
PRODUCTS, INC.**
Dept:
Judge:
Date: None set
Complaint Filed: June 2, 2010

1 **1. INTRODUCTION**

2 **1.1 John Moore, Gaiam, Inc. and SPRI Products, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (öMooreö or
4 öPlaintiffö) on the one hand, and Gaiam, Inc. and SPRI Products, Inc. (collectively öDefendantsö),
5 on the other hand, with Plaintiff and Defendants collectively referred to as the öparties.ö

6 **1.2 John Moore**

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

10 **1.3 Gaiam, Inc. and SPRI Products, Inc.**

11 Plaintiff alleges that Defendants each employ ten or more persons and are each persons in the
12 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
13 1986, California Health & Safety Code § 25249.6, *et seq.* (öProposition 65ö).

14 **1.4 General Allegations**

15 Plaintiff alleges that Defendants have manufactured, imported, distributed and/or sold
16 exercise /fitness mats which contain phthalates, including di(2-ethylhexyl)phthalate (öDEHPö),
17 without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known to
18 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: all exercise
21 /fitness mats containing DEHP including, but not limited to, *SPRI FoldingMat, TFM-1R (37 59026*
22 *46197 4)*, and, in the event no public enforcer diligently prosecutes the allegations set forth in the
23 December 9, 2010, 60 Day Notice of Violation discussed in Section 1.6 below, all exercise balls
24 containing DEHP including, but not limited to, *Pro Plus Xercise Balls, Model No. SXBPP45G*. The
25 exercise/fitness mats and balls shall be collectively referred to hereinafter as the öProducts.ö

26 **1.6 Notices of Violation**

27 On March 19, 2010, Moore served Defendants and various public enforcement agencies, with
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1 a document entitled "60-Day Notice of Violation" (the "Notice") that provided Defendants and public
2 enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for failing
3 to warn consumers that exercise/fitness mats sold by Defendants, exposed users in California to
4 DEHP. To the best of the parties' knowledge, no public enforcer has prosecuted the allegations set
5 forth in the March 19, 2010 Notice.

6 On or about December 9, 2010, Moore served Defendants and various public enforcement
7 agencies, with a document entitled "Supplemental 60-Day Notice of Violation" that provided
8 Defendants and public enforcers with notice of alleged violations of California Health & Safety Code
9 § 25249.6 for failing to warn consumers that exercise balls sold by Defendants, exposed users in
10 California to DEHP. The March 19, 2010 Notice and the December 9, 2010 Notice shall hereinafter
11 be referred to collectively as "the Notices".

12 **1.7 Complaint**

13 On June 2, 2010, Moore filed a complaint in the Superior Court in and for the County of
14 Marin against Natco Products Corporation and Does 1 through 150, *Moore v. Natco, et al.*, Case
15 No. CIV-1002842 (the "Action"), alleging violations of California Health & Safety Code § 25249.6,
16 based on the alleged exposures to DEHP contained in certain vinyl flooring products sold by Natco.
17 On July 2, 2010, Moore filed a First Amended Complaint (the "Complaint") in the Action, renaming
18 it as *Moore v. Bell Sports, Inc., et al.*, adding Gaiam, Inc., SPRI Products, Inc., and others, as
19 defendants, alleging additional violations of California Health & Safety Code § 25249.6 based on the
20 alleged exposures to DEHP contained in Products manufactured by or on behalf of, imported,
21 distributed and/or sold by the Defendants.

22 **1.8 No Admission**

23 Defendants deny the material, factual and legal allegations contained in Moore's Notice and
24 Complaint, deny that Plaintiff is entitled to any relief, and maintain that all products that they have
25 sold, manufactured, imported and/or distributed in California, including the Products, have been and
26 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
27 admission by Defendants of any fact, finding, issue of law, or violation of law, nor shall compliance
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1 with this Consent Judgment constitute or be construed as an admission by Defendants of any fact,
2 finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendants.
3 However, this section shall not diminish or otherwise affect Defendants' obligations, responsibilities,
4 and duties under this Consent Judgment.

5 **1.9 Consent to Jurisdiction**

6 For purposes of this Consent Judgment only, the parties stipulate that this Court has
7 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper in
8 the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
9 Consent Judgment.

10 **1.10 Effective Date**

11 For purposes of this Consent Judgment, the term "Effective Date" shall mean December 15,
12 2010.

13 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

14 **2.1 Reformulation Standards**

15 Reformulated Products are defined as Products containing DEHP in concentrations of 0.1
16 percent (1,000 parts per million) or less in each accessible component when analyzed pursuant to
17 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, U.S. Consumer
18 Product Safety Commission Test Method CPSC-CH-C1001-09.3, "Standard Operating Procedure
19 for Determination of Phthalates", or any other methodology utilized by federal or state agencies for
20 the purpose of determining DEHP content in a solid substance. Reformulated Products are exempt
21 from the warning requirements of Proposition 65. As of January 1, 2011, Defendants shall ship, sell
22 or offer to be shipped for sale in California only Reformulated Products.

23 **2.2 Representation Regarding Product Exemption**

24 Plaintiff and Plaintiff's counsel (i) acknowledge that the Defendants have provided them
25 independent testing for the Products which indicate DEHP levels less than 0.1 percent content and
26 (2) accept and agree that the Products, as per the test results, qualify as Reformulated Products
27 under this Consent Judgment and settlement agreement and comply with Proposition 65 as it relates
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1 to the presence of DEHP in the exercise/fitness mats.

2 **3. PAYMENT OF PENALTIES**

3 **3.1 Civil Penalty**

4 In settlement of all the claims referred to in this Consent Judgment, Defendants shall
5 collectively pay \$4,900 in civil penalties. This civil penalty reflects a \$20,000 credit due to
6 Defendants' commitment to reformulate all Products on or before January 1, 2011. The civil penalty
7 shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with
8 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
9 Assessment ("OEHHHA") and the remaining 25% of the penalty remitted to John Moore. Defendants
10 shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler
11 Group in Trust For OEHHHA" in the amount of \$3,675, representing 75% of the total penalty; and (b)
12 one check to "The Chanler Group in Trust for John Moore" in the amount of \$1,225, representing
13 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHHA,
14 P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose
15 information shall be provided five calendar days before the payment is due.

16 Payment shall be delivered to defense counsel and held in a client trust account within seven
17 (7) calendar days of the Effective Date. Payment shall then be delivered to Moore's counsel, within
18 seven (7) calendar days of written notice of the Court's approval of this Consent Judgment, to the
19 following address:

20 The Chanler Group
21 Attn: Proposition 65 Controller
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710

23 **4. REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS**

24 The parties reached an accord on the compensation due to Moore and his counsel under
25 general contract principles and the private attorney general doctrine codified at California Code of
26 Civil Procedure (CCP) §1021.5. Defendants shall reimburse Moore and his counsel \$40,000 for fees
27 and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a
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1 settlement in the public interest. This figure includes Moore's future fees and costs including
2 attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as well as any
3 other legal work performed after the execution of this Consent Judgment incurred in an effort to
4 obtain finality of the case. However, in the event a third party were to appeal entry of this
5 Consent Judgment, Plaintiff and Defendants may each, in their sole discretion, choose not to defend
6 the appeal. In the event that one party chooses not to defend an appeal of the entry of this Consent
7 Judgment, the other party may still defend the appeal but shall do so at its sole cost and expense. In
8 no event shall Plaintiff or Plaintiff's Counsel be entitled to seek fees and costs from Defendants or
9 their counsel for defense of an appeal of this Consent Judgment. Similarly, Defendants shall not be
10 entitled to seek fees and costs from Plaintiff or his counsel for defense of an appeal of this Consent
11 Judgment.

12 Payment shall be delivered to defense counsel and held in a client trust account within seven
13 (7) calendar days of the Effective Date. A check shall then be made payable to "The Chanler Group"
14 and be delivered within seven (7) calendar days of written notice of the Court's approval of this
15 Consent Judgment, to the following address:

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

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

23 **5. JOINT AND SEVERAL LIABILITY**

24 Defendants shall be jointly and severally liable for the payments required under Sections 3
25 and 4 of this Consent Judgment.

26 **6. RELEASE OF ALL CLAIMS**

27 **6.1 Moore's Release of Defendants**

28 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

1 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
2 public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or
3 participate in, directly or indirectly, any form of legal action and releases all claims, including,
4 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
5 obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or
6 expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of any
7 nature whatsoever, whether known or unknown, whether suspected or unsuspected, fixed or
8 contingent (collectively "claims"), against Defendants and each of their downstream manufacturers,
9 wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Walmart,
10 Amazon and Target), resellers, distributors, franchisees, dealers, customers, owners, purchasers,
11 users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors,
12 attorneys, representatives, shareholders, agents, and employees, and sister and parent entities,
13 (collectively "Releasees") that arise under Proposition 65 with respect to the Products.

14 Moore also, on behalf of himself and his agents, attorneys, representatives, successors and
15 assigns, in his individual capacity only and *not* in his representative capacity, provides a general
16 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
17 actions, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, claims,
18 liabilities and demands of Moore of any nature, character or kind, known or unknown, suspected or
19 unsuspected, arising out of the subject matter of this dispute. Moore acknowledges that he is
20 familiar with Section 1542 of the California Civil Code, which provides as follows:

21 **A general release does not extend to claims which the creditor does not**
22 **know or suspect to exist in his or her favor at the time of executing the**
23 **release, which if known by him or her must have materially affected his or**
24 **her settlement with the debtor.**

25 Moore, in his individual capacity only and *not* in his representative capacity, on behalf of
26 himself and his agents, attorneys, representatives, successors and assigns, expressly waives and
27 relinquishes any and all rights and benefits which he may have under, or which may be conferred on
28 him by the provisions of Section 1542 of the California Civil Code as well as under any other state or
federal statute or common law principle of similar effect, to the fullest extent that he may lawfully

1 waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the
2 release hereby given shall be and remain in effect as a full and complete release notwithstanding the
3 discovery or existence of any such additional or different claims or facts arising out of the released
4 matters.

5 The Parties further understand and agree that this release shall not extend upstream to any
6 entities that manufactured the Products for Defendants or any component parts thereof or to any
7 distributors or suppliers who sold the Products or any component parts thereof to Defendants.

8 **6.2 Defendants' Release of Moore**

9 Defendants, on behalf of themselves and their Releasees, waive any and all claims against
10 Moore, his attorneys, and other representatives for any and all actions taken by Moore and his
11 attorneys and other representatives, whether in the course of investigating claims or otherwise
12 seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

13 Defendants also provide a general release herein which shall be effective as a full and final
14 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorney
15 fees, damages, losses, claims, liabilities and demands of Defendants as against Plaintiff and his
16 counsel of any nature, character or kind, known or unknown, suspected or unsuspected, arising out
17 of the subject matter of the Action. Defendants acknowledge that they are familiar with Section
18 1542 of the California Civil Code, which provides as follows:

19 **A general release does not extend to claims which the creditor does not know or**
20 **suspect to exist in his or her favor at the time of executing the release, which if**
21 **known by him or her must have materially affected his or her settlement with**
22 **the debtor.**

23 Defendants expressly waive and relinquish any and all rights and benefits as against Plaintiff
24 and his counsel that they may have under, or that may be conferred on it by, the provisions of
25 Section 1542 of the California Civil Code as well as under any other state or federal statute or
26 common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or
27 benefits pertaining to the released matters. In furtherance of such intention, the release hereby given
28 shall be and remain in effect as a full and complete release notwithstanding the discovery or existence
of any such additional or different claims or facts arising out of the released matters.

1 **7. COURT APPROVAL**

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

5 **8. SEVERABILITY**

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

9 **9. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of California
11 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is
12 otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
13 Judgment are rendered inapplicable or no longer require as a result of any such repeal or preemption
14 or rendered inapplicable by reason of law generally as to the Products, then Defendants shall have no
15 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
16 Products are so affected.

17 **10. NOTICES**

18 Unless specified herein, all correspondence and notices required to be provided pursuant to
19 this Consent Judgment shall be in writing and (1) personally delivered; (ii) sent by first-class,
20 (registered or certified mail) return receipt requested; or (iii) sent by overnight courier to one party
21 from the other party at the following addresses:

22 To Defendants:

23 Timothy H. Irons, Esq.
24 Brownstein Hyatt
25 Farber Schreck, LLP
26 2029 Century Park East, Suite 2100
27 Los Angeles, CA 90067

22 To Moore:

23 Proposition 65 Coordinator
24 The Chanler Group
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

28 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 **11. COUNTERPARTS; FACSIMILE 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 one
4 and the same document. A facsimile or pdf signature shall be as valid as the original.

5 **12. 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 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

9 **13.1.** Moore and Defendants agree to mutually employ their, and their counsel~~s~~, best efforts
10 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
11 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
12 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
13 Consent Judgment, which Moore shall draft and file, and Defendants shall join. Moore shall provide
14 Defendants a draft of the motion for review, shall not file the motion without written approval from
15 Defendants and such approval shall not be unreasonably withheld or delayed. If any third party
16 objection to the noticed motion is filed, Moore and Defendants shall work together to file a joint
17 reply and appear at any hearing before the Court. This provision is a material component of the
18 Consent Judgment and shall be treated as such in the event of a breach.

19 **13.2** If a third party timely appeals the Consent Judgment and the Consent Judgment is
20 overturned by the Court of Appeal, then, within 15 calendar days of remittitur, all payments made
21 pursuant to this Consent Judgment will be returned to counsel for Defendants.

22 **14. MODIFICATION**

23 This Consent Judgment may be modified only: (1) by written agreement of the parties and
24 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
25 of any party to this Consent Judgment and entry of a modified Consent Judgment by the Court.

26 **15. AUTHORIZATION**

27 The undersigned are authorized to execute this Consent Judgment on behalf of their
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respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment. Each party acknowledges that it has consulted with and has had the advice of legal counsel. Each party executes this agreement and Consent Judgment voluntarily and with full knowledge of its significance, and with the express intention of effecting the extinguishment of any and all obligations, liabilities, or claims arising out of the matters, claims and controversies specified herein. The persons executing this agreement represent and warrant that they have all necessary and proper legal authority to execute this agreement on behalf of the parties to this Consent Judgment.

AGREED TO:

AGREED TO:

Date: DECEMBER 10, 2010

Date: _____

By: *John E. Moore*
Plaintiff, John Moore

By: _____
Defendant, Gaiam, Inc.

AGREED TO:

Date: _____

By: _____
Defendant, SPRI Products, Inc.

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AGREED TO:

AGREED TO:

Date: _____

Date: 12-8-2010

By: _____
Plaintiff, John Moore

By: 
Defendant, Gaiam, Inc.

AGREED TO:

Date: 12-8-2010

By: 
Defendant, SPRI Products, Inc.