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11 JOHN MOORE

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

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 BELL SPORTS, INC., *et al.*,

19 Defendants.

Case No. CIV-1002842

UNLIMITED JURISDICTION

**[PROPOSED] CONSENT JUDGMENT
AS TO CENTURY, LLC**

Dept:

Judge:

Date: None set

Complaint Filed: June 2, 2010

1 **1. INTRODUCTION**

2 **1.1 John Moore and Century, LLC**

3 This Consent Judgment is entered into by and between plaintiff John Moore ("Moore" or
4 "Plaintiff") and defendant Century, LLC ("Century"), with Plaintiff and Century collectively
5 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 Century, LLC**

11 Plaintiff alleges that Century 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 Century has manufactured, imported, distributed and/or sold medicine
16 balls which contain phthalates, including di(2-ethylhexyl)phthalate ("DEHP"), without the requisite
17 Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause cancer as well as
18 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: medicine
21 balls containing DEHP including, but not limited to, *Century Medicine Ball*, #2484-6/8/10 (30
22 14215 26340 2). All such medicine balls containing DEHP are referred to hereinafter as the
23 "Products."

24 **1.6 Notice of Violation**

25 On April 9, 2010, Moore served Century, LLC and various public enforcement agencies,
26 with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Century and
27 public enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for
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1 failing to warn consumers that the Products sold by Century, exposed users in California to DEHP.
2 To the best of the parties' knowledge, no public enforcer has prosecuted the allegations set forth in
3 the Notice.

4 **1.7 Complaint**

5 On June 2, 2010, Moore filed a complaint in the Superior Court in and for the County of
6 Marin against Natco Products Corporation and Does 1 through 150, *Moore v. Natco, et al.*, Case
7 No. CIV-1002842 (the "Action"), alleging violations of California Health & Safety Code § 25249.6,
8 based on the alleged exposures to DEHP contained in certain vinyl flooring products sold by Natco.

9 On July 2, 2010, Moore filed a First Amended Complaint (the "Complaint") in the Action,
10 renaming it as *Moore v. Bell Sports, Inc., et al.*, adding Century, and other companies, as
11 defendants, alleging additional violations of California Health & Safety Code § 25249.6 based on
12 the alleged exposures to DEHP contained in Products sold by Century.

13 **1.8 No Admission**

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

23 **1.10 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the parties stipulate that this Court has
25 jurisdiction over Century as to the allegations contained in the Complaint, that venue is proper in the
26 County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
27 Consent Judgment.
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1 **1.11 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 22,
3 2010.

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

5 **2.1 Reformulation Standards**

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

11 **2.2 Product Warnings**

12 As a direct result of receiving Moore's Notice, Century placed warning labels on all
13 Products offered for sale in California. The warnings included the following language:

14 PROPOSITION 65 WARNING: This product contains chemicals
15 known to the State of California to cause cancer and/or birth
16 defects or other reproductive harm.

17 All Products currently in the stream of commerce contain such warnings and shall continue to do so.
18 Commencing on January 1, 2011, however,, Century shall, for all Products it sells, manufactures,
19 imports and/or distributes in California, other than Reformulated Products, provide clear and
20 reasonable warnings as set forth in subsections 2.2(a) and (b). Each warning shall be prominently
21 placed with such conspicuousness as compared with other words, statements, designs, or devices as
22 to render it likely to be read and understood by an ordinary individual under customary conditions
23 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
24 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
25 confusion.

26 **(a) Retail Store Sales.**

27 **(i) Product Labeling.** Century shall affix a warning to the packaging,
28 labeling, or directly on each Product sold in retail outlets in California by Century or any person
 selling the Products, that states:

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

4 (ii) **Point-of-Sale Warnings.** Alternatively, Century may provide
5 warning signs in the form below to its customers in California with instructions to post the
6 warnings in close proximity to the point of display of the Products. Such instruction sent to
7 Century's customers shall be sent by certified mail, return receipt requested.

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

11 Where more than one Product is sold in proximity to other like items or to those that do not
12 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
13 must be used:¹

14 **WARNING:** The following products contain DEHP, a
15 phthalate chemical known to the State of
16 California to cause birth defects and other
17 reproductive harm:

18 *[list products for which warning is required]*

19 (b) **Mail Order Catalog and Internet Sales.** In the event that Century sells
20 Products via mail order catalog and/or the internet, to customers located in California, after the
21 Effective Date, and that are not Reformulated Products, Century shall provide a warning for such
22 Products sold via mail order catalog or the internet to California residents: (1) in the mail order
23 catalog; or (2) on the website. Warnings given in the mail order catalog or on the internet shall
24 identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i)
25 and (ii).

26 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
27 order catalog must be in the same type size or larger than the Product description text within the
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¹For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 catalog. The following warning shall be provided on the same page and in the same location as the
2 display and/or description of the Product:

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

5 Where it is impracticable to provide the warning on the same page and in the same location
6 as the display and/or description of the Product, Century may utilize a designated symbol to cross
7 reference the applicable warning and shall define the term "designated symbol" with the following
8 language on the inside of the front cover of the catalog or on the same page as any order form for the
9 Product(s):

10 **WARNING:** Certain products identified with this symbol
11 ▼ and offered for sale in this catalog contain
12 DEHP, a phthalate chemical known to the
 State of California to cause birth defects and
 other reproductive harm.

13 The designated symbol must appear on the same page and in close proximity to the display
14 and/or description of the Product. On each page where the designated symbol appears, Century
15 must provide a header or footer directing the consumer to the warning language and definition of the
16 designated symbol.

17 (ii) **Internet Website Warning.** A warning may be given in conjunction
18 with the sale of the Products via the internet, provided it appears either: (a) on the same web page
19 on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on
20 the same page as the price for any Product; or (d) on one or more web pages displayed to a
21 purchaser during the checkout process. The following warning statement shall be used and shall
22 appear in any of the above instances adjacent to or immediately following the display, description,
23 or price of the Product for which it is given in the same type size or larger than the Product
24 description text:

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

27 Alternatively, the designated symbol may appear adjacent to or immediately following the
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1 display, description, or price of the Product for which a warning is being given, provided that the
2 following warning statement also appears elsewhere on the same web page, as follows:

3 **WARNING:** Products identified on this page with the
4 following symbol ▼ contain DEHP, a
5 phthalate chemical known to the State of
6 California to cause birth defects and other
7 reproductive harm.

8 **3. PAYMENT OF PENALTIES**

9 **3.1 Initial Civil Penalty**

10 In settlement of all the claims referred to in this Consent Judgment, Century shall pay
11 \$29,000 in initial civil penalties, to be apportioned in accordance with California Health & Safety
12 Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of
13 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
14 remitted to John Moore. Century shall issue two separate checks for the penalty payment: (a) one
15 check made payable to "The Chanler Group in Trust For OEHHA" in the amount of \$21,750,
16 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for John
17 Moore" in the amount of \$7,250, representing 25% of the total penalty. Two separate 1099s shall
18 be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-
19 0284486); and (b) John Moore, whose information shall be provided five calendar days before the
20 payment is due.

21 Payment shall be delivered to Moore's counsel on or before November 1, 2010, at the
22 following address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710

28 **3.2 Final Civil Penalty**

 Century shall pay a final civil penalty of \$60,000 on March 15, 2011. As an incentive for
achievement reformulating the Products, however, the final civil penalty shall be waived in its
entirety if an Officer of Century certifies in writing that it, as of March 1, 2011, has sold, shipped

1 and offered for sale in California only Reformulated Products and that it will continue to sell, ship
2 and offer for sale in California only Reformulated Products. Such certification must be received by
3 The Chanler Group on or before March 15, 2011. The final civil penalty payment shall be
4 apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of
5 these funds remitted to the State of California's Office of Environmental Health Hazard Assessment
6 ("OEHHA") and the remaining 25% of the penalty remitted to John Moore. Century shall issue two
7 separate checks for the final civil penalty payment: (a) one check made payable to "The Chanler
8 Group in Trust For OEHHA" in the amount of \$45,000, representing 75% of the total penalty; and
9 (b) one check to "The Chanler Group in Trust for John Moore" in the amount of \$15,000,
10 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments:
11 (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore,
12 whose information shall be provided five calendar days before the payment is due (if different than
13 the information already provided to Century under Section 3.1 above).

14 Payment shall be delivered to Moore's counsel at the following address:

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

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

19 The parties reached an accord on the compensation due to Moore and his counsel under
20 general contract principles and the private attorney general doctrine codified at California Code of
21 Civil Procedure (CCP) §1021.5. Century shall reimburse Moore and his counsel \$42,000 for fees
22 and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a
23 settlement in the public interest. This figure includes Moore's future fees and costs including
24 attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as well as any
25 other legal work performed after the execution of this Consent Judgment incurred in an effort to
26 obtain finality of the case. However, in the event a third party were to appeal entry of this
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1 Consent Judgment, Plaintiff and his counsel shall be entitled to seek their reasonable attorney's fees
2 and costs associated with all appellate work defending the entry of judgment pursuant to CCP §
3 1021.5.

4 The check for reimbursement of fees and costs shall be made payable to "The Chanler
5 Group" and shall be delivered on or before November 1, 2010, to the following address:

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

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

13 **5. RELEASE OF ALL CLAIMS**

14 **5.1 Moore's Release of Century**

15 In further consideration of the promises and agreements herein contained, and for the
16 payments to be made pursuant to Sections 3 and 4, Moore, on behalf of himself, his past and current
17 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
18 public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or
19 participate in, directly or indirectly, any form of legal action and releases all claims, including,
20 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
21 obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or
22 expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of any
23 nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against
24 Century and each of its wholesalers, licensors, licensees, auctioneers, retailers, distributors,
25 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,
26 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents,
27 and employees, and sister and parent entities, (collectively "Releasees") that arise under Proposition
28 65, as such claims relate to Century's alleged failure to warn about exposures to DEHP contained in
the Products.

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6. COURT APPROVAL

7. SEVERABILITY

8. GOVERNING 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:

1 To Century:

2 Joseph H. Bocock, Esq.
3 McAfee & Taft
4 10th Floor, Two Leadership Square
211 N. Robinson
Oklahoma City, Oklahoma 73102-7103

To Moore:

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

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

7 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

14 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

15 Moore and Century agree to mutually employ their, and their counsel's, best efforts to
16 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
17 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
18 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
19 Consent Judgment, which Moore shall draft and file, and Century shall join. If any third party
20 objection to the noticed motion is filed, Moore and Century shall work together to file a joint reply
21 and appear at any hearing before the Court. This provision is a material component of the Consent
22 Judgment and shall be treated as such in the event of a breach. If the Superior Court does not
23 approve the motion to approve this Consent Judgment, and if the parties choose not to pursue a
24 modified Consent Judgment within 30 days after the Court's denial of the motion to approve, then,
25 upon remittitur, all payments made pursuant to this Consent Judgment will be returned to counsel
26 for Century.
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1 **13. MODIFICATION**

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

5 **14. AUTHORIZATION**

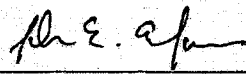
6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective parties and have read, understood, and agree to all of the terms and conditions of this
8 Consent Judgment.

9
10 AGREED TO:

AGREED TO:

11
12 Date: OCTOBER 26, 2010

Date: 10-26-10

13 By: 
14 Plaintiff, John Moore

By:  CEO
Defendant, Century, LLC

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19 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

20
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22 Dated: _____

Judge of the Superior Court