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Attorneys for Defendant
REGENT SPORTS CORPORATION

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

JOHN MOORE,

Plaintiff,

V.

REGENT SPORTS CORPORATION, *et al.*,

Defendants.

Case No. CIV-1003747

[PROPOSED] CONSENT JUDGMENT

Dept:

Judge:

Date: None set

Complaint Filed: July 19, 2010

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 John Moore, Regent Sports Corporation**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and Regent Sports Corporation (“Regent”), with Moore and Regent 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 Regent Sports Corporation**

11 Plaintiff alleges that Regent 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 Regent has manufactured, imported, distributed and/or sold baseballs
16 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, birth
18 defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows: baseballs
21 containing DEHP including, but not limited to, *Spalding Baseball, #15723 (#0 29807 15723 6)*.
22 All such baseballs containing DEHP are referred to hereinafter as the “Product(s).”

23 **1.6 Notice of Violation**

24 On May 7, 2010, Moore served Regent, and various public enforcement agencies, with a
25 document entitled “60-Day Notice of Violation” (the “Notice”) that provided Regent and public
26 enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for failing
27 to warn consumers that the Products sold by Regent exposed users in California to DEHP. To the
28

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

3 **1.7 Complaint**

4 On July 19, 2010, Moore filed a complaint in the Superior Court in and for the County of
5 Marin against Regent Sports Corporation and Does 1 through 150, *Moore v. Regent, et al.*, Case
6 No. CIV-1003747 (the "Action"), alleging violations of California Health & Safety Code § 25249.6,
7 based on the alleged exposures to DEHP contained in certain baseballs products sold by Regent.

8 **1.8 Answer**

9 On November 5, 2010, Regent responded to the Complaint by filing a general denial and
10 affirmation defenses, denying all claims alleged by Plaintiff.

11 **1.9 No Admission**

12 Regent denies the material, factual and legal allegations contained in Moore's Notice and
13 Complaint and maintains that all products that it has sold, manufactured, imported and/or
14 distributed in California, including the Products, have been and are in compliance with all laws.
15 Nothing in this Consent Judgment shall be construed as an admission by Regent of any fact,
16 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
17 constitute or be construed as an admission by Regent of any fact, finding, conclusion, issue of law,
18 or violation of law, such being specifically denied by Regent. However, this section shall not
19 diminish or otherwise affect Regent's obligations, responsibilities, and duties under this Consent
20 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 Regent as to the allegations contained in the Complaint, that venue is proper in the
24 County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
25 Consent Judgment.
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1 **1.11 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean February 28,
3 2011.

4 **2. INJUNCTIVE RELIEF: REFORMULATION**

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
9 any other methodology utilized by federal or state agencies for the purpose of determining DEHP
10 content in a solid substance.

11 **2.2 Reformulation Commitment**

12 Commencing on the Effective Date, Regent shall ship, sell, or offer to be shipped for sale in
13 California, only Reformulated Products.

14 **3. PAYMENT OF PENALTIES**

15 **3.1 Civil Penalty**

16 In settlement of all the claims referred to in this Consent Judgment, Regent shall pay a
17 civil penalty of \$1,000, to be apportioned in accordance with California Health & Safety Code §
18 25249.12(c) & (d), with 75% of these funds remitted to the State of California’s Office of
19 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
20 remitted to John Moore. This civil penalty reflects a credit of \$10,000 based on Regent’s
21 commitment to reformulate. Regent shall issue two separate checks for the penalty payment: (a)
22 one check made payable to “The Chanler Group in Trust For OEHHA” in the amount of \$750,
23 representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for John
24 Moore” in the amount of \$250, representing 25% of the total penalty. Two separate 1099s shall
25 be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN:
26 68-0284486); and (b) John Moore, whose information shall be provided five calendar days before
27 the payment is due.

1 Payment shall be delivered to Moore's counsel on or before February 28, 2011, at the
2 following address:

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

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

9 The parties reached an accord on the compensation due to Moore and his counsel under
10 general contract principles and the private attorney general doctrine codified at California Code of
11 Civil Procedure (CCP) §1021.5. Regent shall reimburse Moore and his counsel \$17,000 for fees
12 and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a
13 settlement in the public interest. This figure includes Moore's future fees and costs including
14 attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as well as any
15 other legal work performed after the execution of this Consent Judgment incurred in an effort to
16 obtain finality of the case. However, in the event a third party were to appeal entry of this
17 Consent Judgment, Plaintiff and his counsel shall be entitled to seek their reasonable attorney's fees
18 and costs associated with all appellate work defending the entry of judgment pursuant to CCP §
19 1021.5.

20 The check for reimbursement of fees and costs shall be made payable to "The Chanler
21 Group" and shall be delivered on or before February 28, 2011, to the following address:

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

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

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Moore's Release of Regent**

3 In further consideration of the promises and agreements herein contained, and for the
4 payments to be made pursuant to Sections 3 and 4, Moore, on behalf of himself, his past and current
5 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
6 public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or
7 participate in, directly or indirectly, any form of legal action and releases all claims, including,
8 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
9 obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or
10 expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of any
11 nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against
12 Regent and each of their downstream wholesalers, licensors, licensees, auctioneers, retailers,
13 distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
14 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
15 shareholders, agents, and employees, and sister and parent entities, (collectively "Releasees") that
16 arise under Proposition 65, as such claims relate to Regent's alleged failure to warn about
17 exposures to DEHP contained in the Products. The parties further understand and agree that this
18 release shall not extend upstream to any entities that manufactured the Products for Regent or any
19 component parts thereof or to any distributors or suppliers who sold the Products or any
20 component parts thereof to Regent.

21 **5.2 Regent's Release of Moore**

22 Regent, on behalf of itself and its Releasees, waives any and all claims against Moore, his
23 attorneys, and other representatives for any and all actions taken by Moore and his attorneys and
24 other representatives, whether in the course of investigating claims or otherwise seeking
25 enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.
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1 **6. COURT APPROVAL**

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

5 **7. 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 **8. 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
12 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
13 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
14 preemption or rendered inapplicable by reason of law generally as to the Products, then Regent shall
15 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
16 the Products are so affected.

17 **9. NOTICES**

18 Unless specified herein, all correspondence and notices required to be provided pursuant to
19 this Consent Judgment shall be in writing and: (i) 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:

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23 To Regent:

24 Stuart M. Steinberg, Esq.
25 Steinberg, Fineo, Berger & Fischhoff P.C.
26 401 Broadhollow Road
27 Melville, NY 11747

28 To 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 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 Regent agree to mutually employ their, and their counsel's, best efforts to
10 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 Regent shall join. If any third party
14 objection to the noticed motion is filed, Moore and Regent shall work together to file a joint reply
15 and appear at any hearing before the Court. This provision is a material component of the Consent
16 Judgment and shall be treated as such in the event of a breach. If the Superior Court does not
17 approve the motion to approve this Consent Judgment, and if the parties choose not to pursue a
18 modified Consent Judgment within 30 days after the Court's denial of the motion to approve, then,
19 upon remittitur, all payments made pursuant to this Consent Judgment will be returned to counsel
20 for Regent.

21 **13. MODIFICATION**

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

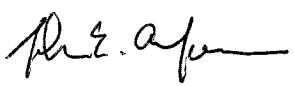
2 The undersigned are authorized to execute this Consent Judgment and have read,
3 understood, and agree to all of the terms and conditions of this Consent Judgment.

4
5 **AGREED TO:**

6 **AGREED TO:**

7 Date: MARCH 7, 2011

8 Date: 2/2/11

9 By: 
10 Plaintiff, John Moore

11 By: 
12 Defendant, Regent Sports Corporation