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Attorneys for Plaintiff
JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

SIXTREES USA LTD.; and DOES 1-150,
inclusive,

Defendants.

Case No. RG10537565

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 John Moore and Sixtrees USA Ltd.**

3 This Consent Judgment is entered into by and between John Moore (hereinafter “Moore”)
4 and Sixtrees USA Ltd. (hereinafter “Sixtrees”), with Moore and Sixtrees collectively referred to as
5 the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Sixtrees employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Sixtrees has manufactured, distributed, and/or offered for sale books containing di(2-
16 ethylhexyl)phthalate (hereinafter the “Listed Chemical”), without the requisite Proposition 65
17 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California
18 to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are books with covers containing
21 the Listed Chemical, limited to: *Sixtrees Photo Album Item Nos. #AL230GR2, #AL230PK, and*
22 *#AL230RD2, and Sixtrees Fine Photo Album Item Nos. AL216BI2 and A1701BR2.* These books with
23 covers containing DEHP are referred to hereinafter as the “Products.”

24 **1.6 Notice of Violation**

25 On June 3, 2010, Moore served Sixtrees and various public enforcement agencies with a
26 document entitled “60-Day Notice of Violation” that provided Sixtrees and such public enforcers
27 with notice that alleged that Sixtrees was in violation of Proposition 65 for failing to warn
28 consumers and customers that the Products exposed users in California to Listed Chemical.

1 **1.7 Complaint**

2 On September 21, 2010, Moore, who alleges that he was and is acting in the interest of the
3 general public in California, filed a complaint in the Alameda Superior Court (the “Complaint”),
4 naming Sixtrees as a defendant and alleging violations of Proposition 65 by Sixtrees based on the
5 alleged exposures to the Listed Chemical contained in the Products manufactured, distributed,
6 and/or offered for sale in California by Sixtrees.

7 **1.8 No Admission**

8 Sixtrees denies the material factual and legal allegations contained in Moore’s Notice and in
9 the Complaint and maintains that all products that it has sold in California, including the Products,
10 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
11 construed as an admission by Sixtrees of any fact, finding, conclusion, issue of law, or violation of
12 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by
13 Sixtrees of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
14 denied by Sixtrees. However, this section shall not diminish or otherwise affect the obligations,
15 responsibilities and duties of Sixtrees under this Consent Judgment.

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Sixtrees as to the allegations contained in the Complaint, that venue is proper in
19 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
20 this Consent Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean December 17,
23 2010.

24 **2. INJUNCTIVE RELIEF**

25 **2.1 Reformulation**

26 As of the Effective Date, Sixtrees shall cease all sales of the following Products it
27 manufactures, distributes, and/or offers for sale in California or shall reformulate these Products to
28 be Phthalate Free: *Sixtrees Photo Album Item Nos. #AL230GR2, #AL230PK, and #AL230RD2, and*

1 *Sixtrees Fine Photo Album Item Nos. AL216B12 and A1701BR2.* For purposes of Consent Judgment,
2 “Phthalate Free” Products shall mean Products containing less than or equal to 1,000 parts per
3 million of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency
4 (“EPA”) testing methodologies 3580A and 8270C.

5 **3. MONETARY PAYMENTS**

6 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

7 In settlement of all claims related to the Products and the Listed Chemical referred to in the
8 Complaint and this Consent Judgment pursuant to California Health & Safety Code § 25249.7(b),
9 the total civil penalty assessed shall be \$4,000.

10 Civil penalties are to be apportioned in accordance with California Health & Safety Code
11 §§25249.12(c)(1) & (d), with 75% of these funds remitted to the State of California’s Office of
12 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the funds
13 remitted to Moore as provided by California Health & Safety Code § 25249.12(d). Sixtrees shall
14 issue two separate checks as follows: (a) one check made payable to “The Chanler Group in Trust
15 for OEHHA” in the amount of \$3,000, representing 75% of the total payment; and (b) one check to
16 “The Chanler Group in Trust for John Moore” in the amount of \$1,000, representing 25% of the
17 total payment. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box
18 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall be
19 provided five calendar days before the payment is due.

20 Payment shall be delivered to Moore’s counsel on or before December 30, 2010, at the
21 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 **4. REIMBURSEMENT OF FEES AND COSTS**

28 **4.1 Attorney Fees and Costs**

The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee

1 issue to be resolved after the material terms of the agreement had been settled. Sixtrees expressed a
2 desire to resolve the fee and cost issue as part of the settlement terms to determine whether a
3 settlement could be finalized. The parties then attempted to (and did) reach an accord on the
4 compensation due to Moore and his counsel under general contract principles and the private
5 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all
6 work performed through the mutual execution of this agreement. Sixtrees shall reimburse Moore
7 and his counsel the total of \$30,000 for fees and costs incurred as a result of investigating, bringing
8 this matter to Sixtrees' attention, and litigating and negotiating a settlement in the public interest.
9 Sixtrees shall issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall make the check
10 payable to "The Chanler Group" and shall be delivered on or before December 30, 2010, at the
11 following address:

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

17 **5. RELEASE OF ALL CLAIMS**

18 **5.1 Moore's Release of Sixtrees**

19 In further consideration of the promises and agreements herein contained, and for the
20 payments to be made pursuant to Sections 3 and 4 above, Moore, on behalf of himself, his past and
21 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
22 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form
23 of legal action and releases all claims, including, without limitation, all actions, causes of action,
24 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses
25 (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature
26 whatsoever, whether known or unknown, fixed or contingent, at law or in equity (collectively
27 "Claims"), against Sixtrees and each of its past and current distributors, wholesalers, licensors,
28 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent
companies, corporate affiliates, and subsidiaries, and their respective past and current officers,
directors, principals, partners, members, attorneys, representatives, shareholders, agents, and

1 employees, and sister and parent entities (collectively "Releasees"). This release is limited to those
2 claims that arise under Proposition 65, as such claims relate to Sixtrees' alleged failure to warn
3 about exposures to or identification of DEHP contained in the Products.

4 This release shall not extend upstream to any entities that manufactured the Products for
5 Sixtrees or any component parts thereof or to any distributors or suppliers who sold the Products or
6 any component parts thereof to Sixtrees.

7 **5.2 Sixtrees Release of Moore**

8 Sixtrees waives any and all claims against Moore, his attorneys and other representatives,
9 for any and all actions taken or statements made (or those that could have been taken or made) by
10 Moore and his attorneys and other representatives, whether in the course of investigating claims or
11 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
12 Products.

13 **6. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
16 after it has been fully executed by all Parties, in which event any monies that have been provided to
17 Moore or his counsel pursuant to Section 3 and/or Section 4 above shall be refunded within fifteen
18 (15) days after receiving written notice from Sixtrees that the one-year period has expired.

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 as to the Products, then Sixtrees
27 may provide written notice to Moore of any asserted change in the law, and shall have no further
28 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products

1 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Sixtrees from any
2 obligation to comply with any pertinent state or federal toxics control laws.

3 **9. NOTICES**

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

8 To Sixtrees:

9 Steve Rosen, President
10 Sixtrees USA Ltd.
11 58 Grant Avenue
12 Carteret, NJ 07008

13 With copy to:

14 Laura G. Brys
15 Burris, Schoenberg & Walden LLP
16 12121 Wilchire Blvd., Suite 800
17 Los Angeles, CA 90025

18 For Moore:

19 Proposition 65 Coordinator
20 The Chanler Group
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

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

26 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

27 This Consent Judgment may be executed in counterparts and by facsimile, each of which
28 shall be deemed an original, and all of which, when taken together, shall constitute one and the
same document.

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

Moore agrees to comply with the reporting form requirements referenced in California
Health & Safety Code § 25249.7(f).

1 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

2 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
3 noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
4 obtaining such approval, Moore and Sixtrees and their respective counsel agree to mutually employ
5 their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval
6 of the Consent Judgment by the Court in a timely manner. For purposes of this section, best efforts
7 shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the
8 required motion for judicial approval.

9 **13. MODIFICATION**

10 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
11 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
12 any party and entry of a modified consent judgment by the Court.

13 **14. AUTHORIZATION**

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

16
17 **AGREED TO:**

18
19 Date: DECEMBER 30, 2010
20 By: *John E. Moore*
21 John Moore

AGREED TO:

22
23 Date: 1-3-11
24 By: *S. Rosen*
25 Steve Rosen, President
26 Sixtrees USA Ltd.

27 **IT IS SO ORDERED.**

28
Date: _____
JUDGE OF THE SUPERIOR COURT