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11 Attorneys for Defendant
PIONEER PHOTO ALBUMS, INC.

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SAN FRANCISCO
16 UNLIMITED CIVIL JURISDICTION
17

18 JOHN MOORE,

19 Plaintiff,

20 v.

21 PIONEER PHOTO ALBUMS, INC.; and DOES
22 1-150, inclusive,

23 Defendants.

Case No. CGC-10-503423

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 John Moore, and Pioneer Photo Albums, Inc.**

3 This Consent Judgment is entered into by and between John Moore (“Moore”) and Pioneer
4 Photo Albums, Inc. (“Pioneer”), with Moore and Pioneer collectively referred to as the “Parties.”

5 **1.2 Plaintiff**

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

9 **1.3 Defendant**

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

13 **1.4 General Allegations**

14 Moore alleges that Pioneer has sold in the State of California books with soft covers
15 containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a
16 chemical known to the State of California to cause birth defects or other reproductive harm. DEHP is
17 also referred to herein as the “Listed Chemical.”

18 **1.5 Product Description**

19 The products that are covered by this Consent Judgment are defined as books with soft covers
20 containing the Listed Chemical including, but not limited to, *Frame Cover Album, Style No. KZ-46*
21 *(#0 23602 02402 1)*. All such items shall be referred to herein as the “Products.”

22 **1.6 Notice of Violation**

23 On June 17, 2010, Moore served Pioneer and various public enforcement agencies with a
24 document entitled “60-Day Notice of Violation” (“Notice”) that provided Pioneer and such public
25 enforcers with notice that alleged Pioneer was in violation of Proposition 65 for failing to warn
26 consumers and customers that the Products exposed users in California to DEHP.

27 ///

28 ///

1 **1.7 Complaint**

2 On September 10, 2010, Moore, who alleges that he was and is acting in the interest of the
3 general public in California, filed the instant action in the San Francisco Superior Court
4 (“Complaint”), naming Pioneer as a defendant and alleging violations of Proposition 65 by Pioneer
5 based on the alleged exposures to DEHP contained in the Products it manufactured, distributed,
6 and/or offered for sale in California.

7 **1.8 No Admission**

8 Pioneer denies the material, factual, and legal allegations contained in the Notice and
9 Complaint and maintains that all of the 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 Pioneer 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 Pioneer of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
14 denied by Pioneer. However, this section shall not diminish or otherwise affect the obligations,
15 responsibilities, and duties of Pioneer 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 Pioneer as to the allegations contained in the Complaint, that venue is proper in the
19 County of San Francisco, 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 April 1, 2011.

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

24 **2.1 Reformulation Commitment**

25 After the Effective Date, Pioneer shall only distribute, sell, or offer for sale in California
26 “Reformulated Products.” For purposes of this Consent Judgment, Reformulated Product shall mean
27 Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when
28 analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or

1 equivalent methodologies utilized by federal or state agencies for the purpose of determining the
2 presence of the Listed Chemical in a given sample.

3 **3. MONETARY PAYMENTS**

4 **3.1 Payments Pursuant to California Health & Safety Code § 25249.7(b)**

5 Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all claims alleged in the
6 Notice and Complaint and referred to in this Consent Judgment, Pioneer shall pay civil penalties in
7 the amount of \$10,000 in combined penalty payments and credits. Because of Pioneer's cooperation
8 in the resolution of this action, and its commitment to only offer Reformulated Products pursuant to
9 Section 2.1 above, Moore agrees to apply an automatic credit of \$5,500 to the total civil penalty.
10 Thereafter, Pioneer agrees to pay the sum of \$4,500. The penalty shall be apportioned in accordance
11 with California Health & Safety Code §§ 25249.12(c)(1) & (d), with seventy-five percent of the
12 amount remitted to the State of California's Office of Environmental Health Hazard Assessment
13 ("OEHHA") and the remaining twenty-five percent paid to Moore.

14 Pioneer shall issue two checks for the penalty payment: (a) one check made payable to "The
15 Chanler Group in Trust for OEHHA" in the amount of \$3,375; and (b) one check to The Chanler
16 Group in Trust for John Moore in the amount of \$1,125. Two 1099 forms shall also be issued for the
17 above-payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010,
18 Sacramento, CA 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall be
19 provided upon request five days before the payment is due.

20 The penalty payment shall be delivered to Moore's counsel within five days of the Effective
21 Date at 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 **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. Pioneer then
2 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
3 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Moore
4 and his counsel under general contract principles and the private attorney general doctrine codified at
5 California Code of Civil Procedure (“CCP”) § 1021.5, for all work performed through the mutual
6 execution of this Agreement. Defendants shall pay \$30,000 for fees and costs incurred by Moore as a
7 result of investigating, bringing this matter to its attention, and negotiating a settlement in the public
8 interest. This figure includes Moore’s future fees and costs including attorney’s fees to be incurred in
9 seeking judicial approval of this Consent Judgment as well as any other legal work performed after
10 the execution of this Consent Judgment incurred in an effort to obtain finality of the case. However,
11 in the event a third party were to appeal entry of this Consent Judgment, Plaintiff and his counsel
12 shall be entitled to seek their reasonable attorney’s fees and costs associated with all appellate work
13 defending the entry of judgment pursuant to CCP § 1021.5.

14 The payment for reimbursement of fees and costs shall be made payable to “The Chanler
15 Group” and shall be delivered within five days of the Effective Date at 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 third 1099 form shall be issued to “The Chanler Group” (EIN: 94-3171522) for the reimbursement
22 of Plaintiff’s fees and costs pursuant to this Section.

23 **5. RELEASE OF ALL CLAIMS**

24 **5.1 Moore’s Release of Pioneer**

25 In further consideration of the promises and agreements herein contained, and for the
26 payments to be made pursuant to Sections 3.1 and 4.1 above, Moore, on behalf of himself, his past
27 and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
28 general public, 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, causes of action, suits,
liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but

1 not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
2 known or unknown, fixed or contingent, at law or in equity (collectively "Claims"), against Pioneer
3 and each of its past and current downstream distributors, wholesalers, licensors, licensees,
4 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,
5 corporate affiliates, and subsidiaries, and their respective past and current officers, directors,
6 principals, partners, members, attorneys, representatives, shareholders, agents, and employees, and
7 sister and parent entities (collectively "Releasees"). This release is limited to those Claims that arise
8 under Proposition 65, as such Claims relate to Pioneer's alleged failure to warn about exposures to or
9 identification of the Listed Chemical contained in the Products. The Parties further agree that this
10 release shall not extend upstream to any entities that manufactured the Products or any component
11 parts thereof, or to any distributors or suppliers who sold Products or any component parts thereof to
12 Pioneer.

13 **5.2 Pioneer's Release of Moore**

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

18 **6. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and shall
20 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
21 has been fully executed by all Parties, in which event any monies that have been provided to Moore
22 or his counsel pursuant to Sections 3.1 and/or Section 4.1 above shall be refunded within fifteen (15)
23 days after receiving written notice from Pioneer that the one-year period has expired and the Consent
24 Judgment has not been approved by the Court.

25 **7. SEVERABILITY**

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

1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
4 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Pioneer may
5 provide written notice to Moore of any asserted change in the law, and shall have no further
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
7 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Pioneer from any
8 obligation to comply with any pertinent state or federal toxics control laws.

9 **9. NOTICES**

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

14 For Pioneer:

15 Michael J. Stiles, Esq.
16 Stiles Law Group
17 800 Colorado Boulevard, Suite 210
Pasadena, CA 91101

18 For Moore:

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

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

24 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

4 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

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

12 **13. MODIFICATION**

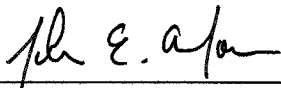
13 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
14 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
15 any party and entry of a modified consent judgment by the Court

16 **14. AUTHORIZATION**

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

19
20 **AGREED TO:**

21 JOHN MOORE

22 

23 _____
24 Date: MARCH 28, 2011

AGREED TO:

PIONEER PHOTO ALBUMS, INC.

25 By: _____

26 Its: _____

27 Date: _____

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19
20 **AGREED TO:**

21 JOHN MOORE

22 _____
23

24 Date: _____
25

AGREED TO:

PIONEER PHOTO ALBUMS, INC.

22 By: *Ahell Plutsky*
23

24 Its: PRESIDENT

25 Date: 3/30/11
26
27
28