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6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE CITY AND COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION
10

11
12 JOHN MOORE,)
13 Plaintiff,)
14 v.)
15 TIFFIN ATHLETIC MATS, INC., *et al.*,) **[PROPOSED] CONSENT JUDGMENT**
16 Defendants.) **AS TO TIFFIN ATHLETIC MATS, INC.**
17) Dept:
18) Judge:
19) Date: None set
20)
21) Complaint Filed: October 20, 2010
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1 **1. INTRODUCTION**

2 **1.1 John Moore and Tiffin Athletic Mats, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and Tiffin Athletic Mats, Inc. (“Tiffin”), with Moore and Tiffin collectively referred
5 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 Tiffin Athletic Mats, Inc.**

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

14 **1.4 General Allegations**

15 Moore alleges that Tiffin has manufactured, imported, distributed and/or sold
16 exercise/fitness mats which contain phthalates, including di(2-ethylhexyl)phthalate (“DEHP”),
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: exercise
21 and fitness mats containing DEHP including, but not limited to, *Tiffin Gym Mat, Red, 2 ft. x 4 ft.,*
22 *Item #AB44241R, #Z17125E; Tiffin Cartwheel Mat 2’ x 6’ x 1-1/8*, manufactured, imported,
23 distributed, and/or sold by, or on behalf of Tiffin. All such exercise and fitness mats containing
24 DEHP are collectively referred to hereinafter as the “Products.”

25 **1.6 Notices of Violation**

26 On August 5, 2010, Moore served Tiffin, and various public enforcement agencies, with a
27 document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with
28 notice of alleged violations of California Health & Safety Code § 25249.6 based on Tiffin’s alleged

1 failure to warn consumers that the Products exposed users in California to DEHP.

2 To the best of the parties' knowledge, no public enforcer has prosecuted the allegations set
3 forth in the Notice. On December 21, 2010, Moore served Tiffin, and various public enforcement
4 agencies, with a document entitled "Supplemental 60-Day Notice of Violation" (the "Supplemental
5 Notice").

6 **1.7 Complaint**

7 On October 20, 2010, Moore filed a complaint
8 in the Superior Court in and for the County of San Francisco against Tiffin, and Does 1 through
9 150, *Moore v Tiffin, et al.*, Case No. CGC-10-504757 (the "Complaint"), alleging violations of
10 California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in
11 certain exercise and fitness mats manufactured, distributed and/or sold by Tiffin.

12 **1.8 No Admission**

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

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the parties stipulate that this Court has
23 jurisdiction over Tiffin as to the allegations contained in the Complaint, that venue is proper in the
24 County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions of
25 this Consent Judgment.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term "Effective Date" shall mean August 15,
28 2011.

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

2 **2.1 Reformulation Standards**

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

8 **2.2 Product Warnings**

9 Commencing on the Effective Date, Tiffin shall, for all Products other than Reformulated
10 Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). Each
11 warning shall be prominently placed with such conspicuousness as compared with other words,
12 statements, designs, or devices as to render it likely to be read and understood by an ordinary
13 individual under customary conditions before purchase or use. Each warning shall be provided in a
14 manner such that the consumer or user understands to which *specific* Product the warning applies,
15 so as to minimize the risk of consumer confusion.

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

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

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

22 **(ii) Point-of-Sale Warnings.** Alternatively, Tiffin may provide
23 warning signs in the form below to its customers in California with instructions to post the
24 warnings in close proximity to the point of display of the Products. Such instruction sent to
25 Tiffin’s customers shall be sent by certified mail, return receipt requested.

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

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

4 **WARNING:** The following products contain DEHP, a
5 phthalate chemical known to the State of
6 California to cause birth defects and other
7 reproductive harm:

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

9 **(b) Mail Order Catalog and Internet Sales.** In the event that Tiffin sell
10 Products via mail order catalog and/or the internet, to customers located in California, after the
11 Effective Date, that are not Reformulated Products, Tiffin shall provide warnings for such Products
12 sold via mail order catalog or the internet to California residents. Warnings given in the mail order
13 catalog or on the internet shall identify the *specific* Product to which the warning applies as further
14 specified in Sections 2.2(b)(i) and (ii).

15 **(i) Mail Order Catalog Warning.** Any warning provided in a mail
16 order catalog shall be in the same type size or larger than the Product description text within the
17 catalog. The following warning shall be provided on the same page and in the same location as the
18 display and/or description of the Product:

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

22 Where it is impracticable to provide the warning on the same page and in the same location
23 as the display and/or description of the Product, Tiffin may utilize a designated symbol to cross
24 reference the applicable warning and shall define the term “designated symbol” with the following
25 language on the inside of the front cover of the catalog or on the same page as any order form for
26 the Product(s):

27 ¹For purposes of the Consent Judgment, “sold in proximity” shall mean that the Product and another product are
28 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 **WARNING:** Certain products identified with this symbol
2 ▼ and offered for sale in this catalog contain
3 DEHP, a phthalate chemical known to the
 State of California to cause birth defects and
 other reproductive harm.

4 The designated symbol must appear on the same page and in close proximity to the display
5 and/or description of the Product. On each page where the designated symbol appears, Tiffin must
6 provide a header or footer directing the consumer to the warning language and definition of the
7 designated symbol.

8 **(ii) Internet Website Warning.** A warning shall be given in conjunction
9 with the sale of the Products via the internet, which warning shall appear either: (a) on the same
10 web page on which a Product is displayed; (b) on the same web page as the order form for a
11 Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
12 displayed to a purchaser during the checkout process. The following warning statement shall be
13 used and shall appear in any of the above instances adjacent to or immediately following the
14 display, description, or price of the Product for which it is given in the same type size or larger than
15 the Product description text:

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

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

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

1 **3. PAYMENT OF PENALTIES**

2 **3.1 Civil Penalty**

3 Tiffin shall pay a civil penalty of \$1,000 to be apportioned in accordance with California
4 Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of
5 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
6 25% of the penalty remitted to John Moore. Tiffin shall issue two separate checks for the penalty
7 payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount
8 of \$750 representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for
9 John Moore” in the amount of \$250, representing 25% of the total penalty. Two separate 1099s
10 shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN:
11 68-0284486); and (b) John Moore, whose information shall be provided, upon request, five calendar
12 days before the payment is due.

13 Payment shall be delivered to Moore’s counsel on or before August 30, 2011, at the
14 following address:

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

20 **4. REIMBURSEMENT OF ATTORNEY’S FEES AND COSTS**

21 The parties reached an accord on the compensation due to Moore and his counsel under
22 general contract principles and the private attorney general doctrine codified at California Code of
23 Civil Procedure (CCP) § 1021.5. Tiffin shall reimburse Moore and his counsel \$10,000 for fees and
24 costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a
25 settlement in the public interest. This figure includes Moore’s future fees and costs including
26 attorney’s fees to be incurred in seeking judicial approval of this Consent Judgment as well as any
27 other legal work performed after the execution of this Consent Judgment incurred in an effort to
28 obtain finality of the case. However, in the event a third party were to appeal entry of this

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 August 30, 2011, 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. CLAIMS COVERED AND RELEASED**

14 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

15 This Consent Judgment is a full, final and binding resolution between Moore, on behalf of
16 himself and the public, and Tiffin, of any violation of Proposition 65 that was or could have been
17 asserted by Moore against Tiffin, its parents, subsidiaries, affiliated entities that are under common
18 ownership, directors, officers, employees, attorneys, and each entity to whom Tiffin directly or
19 indirectly distributes or sells Products, including but not limited to downstream distributors,
20 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
21 (“Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the
22 Products that were sold by Tiffin.

23 **5.2 Moore’s Public Release of Proposition 65 Claims**

24 In further consideration of the promises and agreements herein contained, Moore on behalf
25 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and
26 in the interest of the general public, hereby waives all rights to institute or participate in, directly or
27 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
28 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,
and fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees,
and attorneys’ fees, but exclusive of fees and costs on appeal -- limited to and arising under

1 Proposition 65 with respect to DEHP in the Products sold by Tiffin (collectively “claims”), against
2 Tiffin and Releasees.

3 **5.3 Moore’s Individual Release of Claims**

4 Moore also, in his individual capacity only and not in his representative capacity, provides a
5 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
6 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
7 liabilities and demands of Tiffin of any nature, character or kind, whether known or unknown,
8 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the
9 Products manufactured, distributed or sold by Tiffin.

10 **5.4 Tiffin’s Release of Moore**

11 Tiffin on behalf of itself, its past and current agents, representatives, attorneys, successors,
12 and/or assignees, hereby waives any and all claims against Moore, his attorneys and other
13 representatives, for any and all actions taken or statements made (or those that could have been
14 taken or made) by Moore and his attorneys and other representatives, whether in the course of
15 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
16 respect to the Products.

17 **6. COURT APPROVAL**

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

21 **7. SEVERABILITY**

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

25 **8. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California
27 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
28 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this

1 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
2 preemption or rendered inapplicable by reason of law generally as to the Products, then Tiffin shall
3 provide written notice to Moore of any asserted change in the law, and shall have no further
4 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
5 are so affected.

6 **9. NOTICES**

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

11 To Tiffin:

12 Daniel Tiffin, President
13 Tiffin Athletic Mats, Inc.
14 505 Blue Ball Road, Building 40
Elkton, MD 21921

To Moore:

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

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

17 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

24 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

25 Moore and Tiffin agree to mutually employ their, and their counsel's, best efforts to support
26 the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by
27 the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety
28 Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,

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which Moore shall draft and file, and Tiffin shall join. If any third party objection to the noticed motion is filed, Moore and Tiffin shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach. If the Superior Court does not approve the motion to approve this Consent Judgment, and if the parties choose not to pursue a modified Consent Judgment within 30 days after the Court's denial of the motion to approve, then, upon remittitur, all payments made pursuant to this Consent Judgment will be returned to counsel for Tiffin.

13. MODIFICATION

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

14. AUTHORIZATION

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

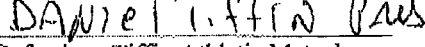
AGREED TO:

AGREED TO:

Date: OCTOBER 1, 2011

Date: 

By: 
Plaintiff, John Moore

By: 
Defendant, Tiffin Athletic Mats, Inc.
Tiffin Athletic Mats Inc