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9 JOHN MOORE

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CITY AND COUNTY OF SAN FRANCISCO
12 UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,) Case No. CGC-11-507915
14 Plaintiff,)
15 v.)
16 THREE HANDS CORPORATION; and DOES 1)
17 through 150, inclusive,) [PROPOSED] CONSENT
18 Defendants.) JUDGMENT
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1 **1. INTRODUCTION**

2 **1.1 John Moore, and Three Hands Corporation.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and defendant Three Hands, Inc. (“Three Hands” or “Defendant”), with Moore and
5 Three Hands collectively referred to as the “Parties.”

6 **1.2 Plaintiff.**

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

10 **1.3 Defendant.**

11 Three Hands employs ten or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
13 & Safety Code §25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Moore alleges that Three Hands has manufactured, distributed and/or sold storage
16 furniture containing benzyl butyl phthalate (“BBP”), di-n-butyl phthalate (“DBP”), and
17 di(2-ethylhexyl)phthalate (“DEHP”), and lead for use in the State of California without the
18 requisite health hazard warnings. BBP, DBP, DEHP, and lead are listed pursuant to Proposition
19 65 as chemicals known to the State of California to cause birth defects and other reproductive
20 harm.

21 **1.5 Notices of Violation.**

22 1.5.1 On September 1, 2010, Moore served Three Hands and various public
23 enforcement agencies with a document entitled “60-Day Notice of Violation” that alleged that
24 Three Hands violated Proposition 65 by failing to warn consumers that storage furniture
25 including, but not limited to, *Storage Chest, Item No. 37169 (#7 26674 37169 6)* exposed users in
26 California to DEHP (“Notice”).

27 1.5.2 On September 20, 2011, Moore served Three Hands and various public
28 enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” that

1 provided public enforcers and Three Hands with notice of alleged violations of Health & Safety
2 Code § 25249.6 for failing to warn consumers that storage furniture, storage totes, including, but
3 not limited to, *Storage Tote, Silver, Item No. 16682 (#7 26674 16682 7)* and trays, including, but
4 not limited to, *Tray, Item No. 164 (#7 26674 16443 4)* that Three Hands manufactured, distributed
5 and/or sold exposed users in California to lead, BBP, DBP, and DEHP (“Supplemental Notice”).

6 **1.6 Complaint.**

7 On February 3, 2011, Moore filed a complaint in this action in the Superior Court for the
8 City and County of San Francisco, naming Three Hands as a defendant, alleging violations of
9 Health & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in storage
10 furniture manufactured, distributed, or sold and/or offered for sale by Three Hands in California.
11 (“Complaint.”) In the event that no public enforcer undertakes diligent prosecution of the
12 allegations set forth in the Supplemental Notice prior to the expiration of the 60-Day Notice
13 period, the complaint shall be deemed amended to include said allegations. This action shall
14 hereinafter be referred to as the “Action”.

15 **1.7 No Admission.** The Parties enter into this Consent Judgment as a full and final
16 settlement of all claims that were raised in the Complaint or that could have been raised in the
17 Complaint, arising out of the facts or conduct alleged therein. By execution of this Consent
18 Judgment and agreeing to comply with its terms, Three Hands does not admit any facts or
19 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
20 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
21 requirements relating to DEHP in Covered Products. This Consent Judgment is the product of
22 negotiation and compromise and is accepted by Three Hands for purposes of settling,
23 compromising, and resolving issues disputed in this action. However, this section shall not
24 diminish or otherwise affect the obligations, responsibilities and duties of Three Hands under this
25 Consent Judgment.

26 **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, Three
27 Hands stipulates that this Court has jurisdiction over Three Hands as to the allegations contained
28 in the Complaint, that venue is proper in the City and County of San Francisco and that this Court

1 has, and will retain, jurisdiction to enter and enforce the provisions of this Consent Judgment
2 pursuant to Code of Civil Procedure § 664.6.

3 **2. Definitions.**

4 2.1 “Covered Products” means storage furniture, including but not limited to storage
5 benches, boxes, and trunks. In the event that no public enforcer undertakes diligent prosecution of
6 the allegations set forth in the Supplemental Notice prior to the expiration of the 60-Day Notice
7 period, the definition of “Covered Products” shall be expanded to include storage totes and trays.

8 2.2 “Effective Date” means September 30, 2011.

9 **3. INJUNCTIVE RELIEF: REFORMULATION**

10 3.1 **BBP, DBP, and DEHP.** Commencing on the Effective Date, Three Hands shall
11 not sell or offer for sale in California any Covered Product containing BBP, DBP, or DEHP in
12 concentrations exceeding 0.1 percent by weight (1,000 parts per million (“ppm”)) when analyzed
13 pursuant to any methodology utilized by federal or state agencies for the purpose of determining
14 phthalate content in a solid substance.

15 3.2 **Lead.**

16 3.2.1 Commencing on the Effective Date, Three Hands shall not sell, ship, or offer
17 for sale in California any Covered Products that contain more than 100 ppm by weight of lead
18 when analyzed pursuant to EPA testing methodologies 30508 and 6010B, or equivalent
19 methodologies utilized by federal or state agencies for the purpose of determining lead content in
20 a solid substance.

21 3.2.2 Notwithstanding Section 3.2.1, Three Hands may sell, ship, or offer for sale
22 in California a Covered Product that contains more than 100 ppm lead provided that the following
23 conditions are met: (i) a Covered Product, or component thereof containing 100 ppm or less of
24 lead (“Compliant Covered Product”), is not reasonably commercially available; (ii) the Covered
25 Product is not primarily intended for use by individuals twelve years of age or younger; (iii) the
26 Covered Product contains no more than 300 ppm lead. For purposes of this Section 3.2.2,
27 reasonable commercial availability shall include consideration of the following factors:
28 availability and supply of a Compliant Covered Product; cost of the Compliant Covered Product;

1 performance characteristics of the Compliant Covered Product, including but not limited to
2 performance, safety, and stability. Within 30 days of a written request, Three Hands shall
3 produce to plaintiff records demonstrating that a Compliant Covered Product is not reasonably
4 commercially available. Three Hands shall cooperate with Plaintiff in providing additional
5 information or representations necessary to demonstrate that a Compliant Covered Product is not
6 reasonably commercially available.

7 **4. ENFORCEMENT OF CONSENT JUDGMENT**

8 4.1 **General Enforcement Provisions.** Any Party may, by motion or application for
9 an order to show cause before the San Francisco Superior Court, enforce the terms and conditions
10 contained in this Consent Judgment. A Party may file such a motion or application only after that
11 Party first provides 30 days notice to the Party allegedly failing to comply with the terms and
12 conditions of this Consent Judgment and attempts to resolve such Party's failure to comply in an
13 open and good faith manner for a period of no less than 30 days.

14 **5. MONETARY PAYMENTS**

15 5.1 **Payments Made Pursuant to Health & Safety Code §25249.7(b).**

16 Three Hands shall pay \$21,000 of which \$15,000 shall be automatically waived in
17 exchange for Three Hands' agreement to sell only Covered Products that comply with Sections
18 3.1 and 3.2 in the future. The remaining \$6,000 is to be apportioned in accordance with
19 California Health & Safety Code §25192, with 75% of these funds remitted to the State of
20 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
21 25% of the amount remitted to John Moore as provided by California Health & Safety Code
22 §25249.12(d). Three Hands shall issue two separate checks for the payment: (a) one check made
23 payable to "The Chanler Group in trust For Office of Environmental Health Hazard Assessment"
24 in the amount of \$4,500, representing 75% of the total payment; and (b) one check to "The
25 Chanler Group in trust for John Moore" in the amount of \$1,500, representing 25% of the total
26 payment. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box
27 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall
28 be provided five calendar days before the payment is due.

1 Payment shall be delivered to Moore's counsel within two business days of the Effective
2 Date, at the following address:

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565

6 5.2 Reimbursement of Fees and Costs.

7 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
8 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
9 this fee issue to be resolved after the material terms of the agreement had been settled. Three
10 Hands then expressed a desire to resolve the fee and cost issue shortly after the other settlement
11 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
12 compensation due to Moore and his counsel under general contract principles and the private
13 attorney general doctrine codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all
14 work performed through the mutual execution of this agreement. Three Hands, on behalf of itself
15 and those in its chain of distribution, shall reimburse Moore and his counsel a total of \$37,500 for
16 fees and costs incurred as a result of investigating, bringing this matter to Three Hands' attention,
17 and litigating and negotiating a settlement in the public interest and obtaining judicial approval
18 thereof. Three Hands shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall
19 make the check payable to "The Chanler Group" to be delivered within two business days of the
20 Effective Date, to the following address:

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710-2565

24 6. CLAIMS COVERED AND RELEASED

25 6.1 This Consent Judgment is a full, final, and binding resolution between Moore and
26 Three Hands and its parents, shareholders, divisions, subdivisions, subsidiaries, partners,
27 affiliates, and sister companies and their successors and assigns ("Defendant Releasees"), and
28 their distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors,

1 and licensees, and any other person or entity to whom they directly or indirectly distribute or sell
2 Covered Products (“Downstream Defendant Releasees”) of any violation of Proposition 65 that
3 has been or could have been asserted in the public interest against Three Hands, Defendant
4 Releasees, and Downstream Defendant Releasees regarding the failure to warn about exposure to
5 BBP, DBP, DEHP or lead in Covered Products.

6 6.2 Moore on behalf of himself, his past and current agents, representatives, attorneys,
7 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to
8 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
9 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
10 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
11 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
12 known or unknown, fixed or contingent (collectively “Claims”), against Three Hands, Defendant
13 Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65
14 regarding the failure to warn about exposure to BBP, DBP, DEHP or lead in Covered Products.

15 6.3 Moore also, in his individual capacity only and *not* in his representative capacity,
16 provides a general release herein which shall be effective as a full and final accord and
17 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
18 damages, losses, claims, liabilities and demands of Moore of any nature, character or kind, known
19 or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint. Moore
20 acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides
21 as follows:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
23 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
24 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

25 Moore, in his individual capacity only and *not* in his representative capacity, expressly waives
26 and relinquishes any and all rights and benefits which he may have under, or which may be
27 conferred on him by the provisions of Section 1542 of the California Civil Code as well as under
28 any other state or federal statute or common law principle of similar effect, to the fullest extent

1 that he may lawfully waive such rights or benefits pertaining to the released matters. In
2 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
3 complete release notwithstanding the discovery or existence of any such additional or different
4 claims or facts arising out of the released matters.

5 6.4 Three Hands waives any and all Claims against Moore, his attorneys, and other
6 representatives for any and all actions taken or statements made (or those that could have been
7 taken or made) by Moore and his attorneys and other representatives, whether in the course of
8 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
9 matter, and/or with respect to the Covered Products.

10 6.5 Three Hands also provides a general release herein which shall be effective as a
11 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
12 expenses, attorneys' fees, damages, losses, claims, liabilities and demands against Moore, his
13 attorneys, and other representatives, of any nature, character or kind, known or unknown,
14 suspected or unsuspected, arising out of the subject matter of the Action. Three Hands
15 acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as
16 follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
18 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
19 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

20 Three Hands expressly waives and relinquishes any and all rights and benefits which it may have
21 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil
22 Code as well as under any other state or federal statute or common law principle of similar effect,
23 to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released
24 matters. In furtherance of such intention, the release hereby given shall be and remain in effect as
25 a full and complete release notwithstanding the discovery or existence of any such additional or
26 different claims or facts arising out of the released matters.

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1 **7. COURT APPROVAL**

2 7.1 By this Consent Judgment and upon its approval, the Parties waive their right to
3 trial on the merits, and waive rights to seek appellate review of any and all interim rulings,
4 including all pleading, procedural, and discovery orders.

5 7.2 Plaintiff shall file a motion seeking approval of this Consent Judgment pursuant to
6 California Health & Safety Code §25249.7(f), and Three Hands shall support the entry of such
7 motion.

8 7.3 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
9 and any and all prior agreements between the parties merged herein shall terminate and become
10 null and void, and the action shall revert to the status that existed prior to the execution date of
11 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
12 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
13 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
14 action, or in any other proceeding; and (c) the parties agree to meet and confer to determine
15 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

16 **8. GOVERNING LAW**

17 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California, and shall apply only to Covered Products offered for sale in the State of California. In
19 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
20 generally, or as to the Products, then Three Hands may provide written notice to Moore of any
21 asserted change in the law, and shall have no further obligations pursuant to this Consent
22 Judgment with respect to, and to the extent that, the Products are so affected.

23 8.2 The Parties, including their counsel, have participated in the preparation of this
24 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
25 Consent Judgment was subject to revision and modification by the Parties and has been accepted
26 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
27 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
28 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment

1 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
2 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
3 this regard, the Parties hereby waive California Civil Code § 1654.

4 **9. NOTICES**

5 9.1 Unless specified herein, all correspondence and notices required to be provided
6 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
7 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
8 Party by the other Party at the following addresses:

9 To Three Hands:

10 Shant Anan
11 President
12 Three Hands Corporation
13 13259 Ralston Avenue
14 Sylmar, CA 91342

13 With a copy to:

14 Jeffrey B. Margulies, Esq.
15 Fulbright & Jaworski LLP
16 555 South Flower Street
17 41st Floor
18 Los Angeles, California 90071
19 213-892-9286
20 213-892-9494 fax
21 jmargulies@fulbright.com

19 To Moore:

20 Proposition 65 Coordinator
21 The Chanler Group
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710-2565

23 9.2 Any Party, from time to time, may specify in writing to the other Party a change of
24 address to which all notices and other communications shall be sent.

25 **10. MODIFICATION**

26 10.1 **Modification.** This Consent Judgment may be modified by written agreement of
27 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
28 Party and entry of a modified Consent Judgment by the court.

1 10.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation or
2 regulation is adopted that addresses the BBP, DBP, DEHP or lead content of Covered Products
3 sold in California, any Party shall be entitled to request that the Court modify the reformulation
4 standards of Section 3.1 and/or 3.2 of this Consent Judgment for good cause shown.

5 10.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
6 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
7 modify the Consent Judgment.

8 **11. ENTIRE AGREEMENT AND SEVERABILITY**

9 11.1 This Consent Judgment contains the sole and entire agreement and understanding
10 of the Parties with respect to all issues and disputes arising from the allegations in the Notice and
11 Supplemental Notice and/or the Complaint, existing as of the Effective Date, between Moore and
12 Three Hands, and any and all prior discussions, negotiations, commitments, or understandings
13 related thereto, if any, are hereby merged herein. No supplementation, modification, waiver, or
14 termination of this Consent Judgment shall be binding unless executed in writing by the Party to
15 be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed
16 or shall constitute a waiver of any of the other provisions hereof whether or not similar. If,
17 subsequent to the execution of this Consent Judgment, any of the provisions of this Consent
18 Judgment are held by a court to be unenforceable or invalid, the validity of the enforceable
19 provisions remaining shall not be adversely affected.

20 **12. RETENTION OF JURISDICTION**

21 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment.

23 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

24 13.1 This Consent Judgment may be executed in counterparts and by facsimile or
25 portable document format (pdf), each of which shall be deemed an original, and all of which,
26 when taken together, shall constitute one and the same document.

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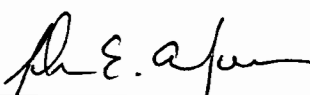
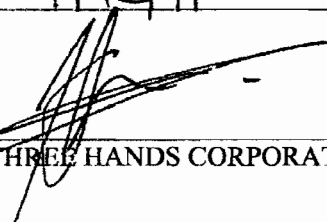
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14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

15. AUTHORIZATION

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

AGREED TO:	AGREED TO:
Date: <u>SEPTEMBER 13, 2011</u>	Date: <u>9/12/11</u>
By: <u></u>	By: <u></u>
Plaintiff JOHN MOORE	Defendant THREE HANDS CORPORATION

IT IS SO ORDERED.

Date: _____ JUDGE OF THE SUPERIOR COURT