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JOHN MOORE  
6  
7

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

12 JOHN MOORE, )

13 Plaintiff, )

14 v. )

15 THREE HANDS CORPORATION; and DOES 1 )  
through 150, inclusive, )

16 Defendants. )  
17 )  
18 )  
19 )

Case No. CGC-11-507915

**AMENDED [PROPOSED] CONSENT  
JUDGMENT**

1       **1. INTRODUCTION**

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

3               This *Amended* Consent Judgment (“Consent Judgment”) is entered into by and between  
4 plaintiff John Moore (“Moore” or “Plaintiff”) and defendant Three Hands, Inc. (“Three Hands” or  
5 “Defendant”), with Moore and 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

8 **5.2 Reimbursement of Fees and Costs.**

9 The Parties acknowledge that Moore and his counsel offered to resolve this dispute  
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
11 this fee issue to be resolved after the material terms of the agreement had been settled. Three  
12 Hands then expressed a desire to resolve the fee and cost issue shortly after the other settlement  
13 terms had been finalized. The Parties then attempted to (and did) reach an accord on the  
14 compensation due to Moore and his counsel under general contract principles and the private  
15 attorney general doctrine codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all  
16 work performed through the mutual execution of this agreement. Three Hands, on behalf of itself  
17 and those in its chain of distribution, shall reimburse Moore and his counsel a total of \$37,500 for  
18 fees and costs incurred as a result of investigating, bringing this matter to Three Hands' attention,  
19 and litigating and negotiating a settlement in the public interest and obtaining judicial approval  
20 thereof. Three Hands shall issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall  
21 make the check payable to "The Chanler Group" to be delivered within two business days of the  
22 Effective Date, to the following address:

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

28 **6. CLAIMS COVERED AND RELEASED**

6.1 This Consent Judgment is a full, final, and binding resolution between Moore and  
Three Hands and its parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
affiliates, and sister companies and their successors and assigns ("Defendant Releasees"), and  
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 DEHP, DBP 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 DEHP, DBP or lead in Covered Products.

15 6.3 Moore also, in his individual capacity only and *not* in his representative capacity,  
16 provides a release herein which shall be effective as a full and final accord and satisfaction, as a  
17 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,  
18 claims, liabilities and demands of Moore of any nature, character or kind, whether known or  
19 unknown, suspected or unsuspected, against Three Hands, Defendant Releasees, and Downstream  
20 Defendant Releasees, limited to and arising out of alleged or actual exposures to lead, BBP, DBP  
21 and/or DEHP in Covered Products. Moore further provides a general release herein which shall  
22 be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
23 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of  
24 Moore of any nature, character or kind, known or unknown, suspected or unsuspected, arising out  
25 of the subject matter of the Complaint. Moore acknowledges that he is familiar with Section  
26 1542 of the California Civil Code, which provides as follows:

27  
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
3 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.

4 Moore, in his individual capacity only and *not* in his representative capacity, expressly waives  
5 and relinquishes any and all rights and benefits which he may have under, or which may be  
6 conferred on him by the provisions of Section 1542 of the California Civil Code as well as under  
7 any other state or federal statute or common law principle of similar effect, to the fullest extent  
8 that he may lawfully waive such rights or benefits pertaining to the released matters. In  
9 furtherance of such intention, the release hereby given shall be and remain in effect as a full and  
10 complete release notwithstanding the discovery or existence of any such additional or different  
11 claims or facts arising out of the released matters.

12 6.4 Three Hands 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 enforcement of Proposition 65 against them in this  
16 matter, and/or with respect to the Covered Products.

17 6.5 Three Hands also provides a general release herein which shall be effective as a  
18 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
19 expenses, attorneys' fees, damages, losses, claims, liabilities and demands against Moore, his  
20 attorneys, and other representatives, of any nature, character or kind, known or unknown,  
21 suspected or unsuspected, arising out of the subject matter of the Action. Three Hands  
22 acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as  
23 follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
26 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.

27 Three Hands expressly waives and relinquishes any and all rights and benefits which it may have  
28 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil



1 Code as well as under any other state or federal statute or common law principle of similar effect,  
2 to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released  
3 matters. In furtherance of such intention, the release hereby given shall be and remain in effect as  
4 a full and complete release notwithstanding the discovery or existence of any such additional or  
5 different claims or facts arising out of the released matters.

## 6 **7. COURT APPROVAL**

7 7.1 By this Consent Judgment and upon its approval, the Parties waive their right to  
8 trial on the merits, and waive rights to seek appellate review of any and all interim rulings,  
9 including all pleading, procedural, and discovery orders.

10 7.2 Plaintiff shall file a motion seeking approval of this Consent Judgment pursuant to  
11 California Health & Safety Code §25249.7(f), and Three Hands shall support the entry of such  
12 motion.

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

## 21 **8. GOVERNING LAW**

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

28

1           8.2     The Parties, including their counsel, have participated in the preparation of this  
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
4 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
5 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
6 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
7 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
8 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
9 this regard, the Parties hereby waive California Civil Code § 1654.

10     **9.     NOTICES**

11           9.1     Unless specified herein, all correspondence and notices required to be provided  
12 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)  
13 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any  
14 Party by the other Party at the following addresses:

15     To Three Hands:

16                     Steve Yerelek  
17                     Three Hands Corporation  
18                     13259 Ralston Avenue  
19                     Sylmar, CA 91342

20     With a copy to:

21                     Jeffrey B. Margulies, Esq.  
22                     Fulbright & Jaworski LLP  
23                     555 South Flower Street  
24                     41st Floor  
25                     Los Angeles, California 90071  
26                     213-892-9286  
27                     213-892-9494 fax  
28                     jmargulies@fulbright.com

29     To Moore:

30                     Proposition 65 Coordinator  
31                     The Chanler Group  
32                     2560 Ninth Street  
33                     Parker Plaza, Suite 214  
34                     Berkeley, CA 94710-2565

1           9.2     Any Party, from time to time, may specify in writing to the other Party a change of  
2 address to which all notices and other communications shall be sent.

3     **10.    MODIFICATION**

4           10.1   **Modification.** This Consent Judgment may be modified by written agreement of  
5 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any  
6 Party and entry of a modified Consent Judgment by the court.

7           10.2   **Subsequent Legislation.** If, subsequent to the Effective Date, legislation or  
8 regulation is adopted that addresses the BBP, DBP, DEHP or lead content of Covered Products  
9 sold in California, any Party shall be entitled to request that the Court modify the reformulation  
10 standard of Section 3.1 of this Consent Judgment for good cause shown.

11          10.3   **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
12 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to  
13 modify the Consent Judgment.

14     **11.    ENTIRE AGREEMENT AND SEVERABILITY**

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

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1 **12. RETENTION OF JURISDICTION**

2 12.1 This Court shall retain jurisdiction of this matter to implement or modify the  
3 Consent Judgment.

4 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

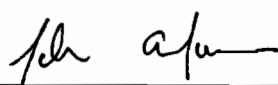
5 13.1 This Consent Judgment may be executed in counterparts and by facsimile or  
6 portable document format (pdf), each of which shall be deemed an original, and all of which,  
7 when taken together, shall constitute one and the same document.

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

9 14.1 Moore agrees to comply with the reporting form requirements referenced in  
10 California Health & Safety Code § 25249.7(f).

11 **15. AUTHORIZATION**

12 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of  
13 their respective Parties and have read, understood, and agree to all of the terms and conditions of  
14 this Consent Judgment.

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: <u>DECEMBER 7, 2011</u>	Date: _____
By: <u></u>	By: _____
Plaintiff JOHN MOORE	Defendant THREE HANDS CORPORATION

23 **IT IS SO ORDERED.**

24  
25 Date: \_\_\_\_\_ JUDGE OF THE SUPERIOR COURT

1 **12. RETENTION OF JURISDICTION**

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3 Consent Judgment.

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7 when taken together, shall constitute one and the same document.

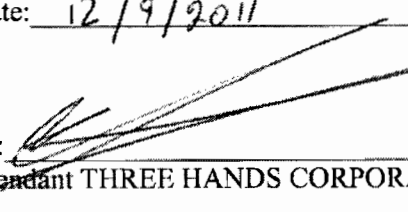
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12 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of  
13 their respective Parties and have read, understood, and agree to all of the terms and conditions of  
14 this Consent Judgment.

15

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: _____	Date: <u>12/9/2011</u>
By: _____ Plaintiff JOHN MOORE	By:  Defendant THREE HANDS CORPORATION

16

17 **IT IS SO ORDERED.**

18

19 Date: \_\_\_\_\_

20 \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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