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9 Attorneys for Plaintiff
10 JOHN MOORE

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

JOHN MOORE,

Plaintiff,

v.

ENCHANTE ACCESSORIES INC.; and
DOES 1-150, inclusive,

Defendants.

Case No. RG11561293

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 John Moore and Enchante Accessories Inc.**

3 This Consent Judgment is entered into by and between John Moore (hereinafter “Moore”)
4 and Enchante Accessories, Inc. (hereinafter “Enchante”), with Moore and Enchante collectively
5 referred to as 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 Moore alleges that Enchante employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

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

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are books/albums with covers
22 containing the Listed Chemical, including but not limited to: *Photo Albums (Live Laugh Love, Sku*
23 *Nos. 400047539011, 400053106900, 400053155502, 400053728454, 400045535855,*
24 *400055612607, 400056243411)*. These books/albums with covers containing DEHP are referred to
25 hereinafter as the “Products.”

26 **1.6 Notice of Violation**

27 On October 15, 2010, Moore served Enchante and various public enforcement agencies with
28 a document entitled “60-Day Notice of Violation” that provided Enchante and such public enforcers

1 with notice that alleged that Enchante was in violation of Proposition 65 for failing to warn
2 consumers and customers that the Products exposed users in California to the Listed Chemical.

3 **1.7 Complaint**

4 On February 15, 2011, Moore, who alleges that he was and is acting in the interest of the
5 general public in California, filed a complaint in the Alameda Superior Court (the “Complaint”),
6 naming Enchante as a defendant and alleging violations of Proposition 65 based on Defendant’s
7 alleged failure to give clear and reasonable warnings before allegedly causing exposures to the
8 Listed Chemical contained in the Products

9 **1.8 No Admission**

10 Enchante denies the factual and legal allegations contained in the Notice and Complaint, and
11 maintains that all products that it has sold in California have been and are in compliance with all
12 laws, including, without limitation, Proposition 65. Nothing in this Consent Judgment shall be
13 construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation
14 of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
15 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
16 specifically denied by Defendant. However, this Section shall not diminish or otherwise affect
17 Defendant’s obligations, responsibilities and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in
21 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
22 this Consent Judgment, pursuant to California Code of Civil Procedure §664.6, as a full and binding
23 resolution of all claims which were or could have been raised in the Complaint against Defendant
24 based on the facts alleged therein and in the Notice.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean March 25,
27 2011.

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation**

3 As of the Effective Date, Enchante shall not ship, sell or offer to be shipped for sale in
4 California any Products unless they are “Reformulated Products.” For purposes of this Consent
5 Judgment, Reformulated Products shall mean Products containing less than 1,000 parts per million
6 of DEHP, when analyzed pursuant to Environmental Protection Agency (“EPA”) testing
7 methodologies 3580A and 8270C.

8 **3. MONETARY PAYMENTS**

9 In settlement of all the claims referred to in this Consent Judgment against it, Enchante shall
10 make payments and receive credits totaling \$12,000, in civil penalties, as follows:

11 **3.1** Enchante shall make an initial payment of \$4,000 to be apportioned in accordance
12 with Health & Safety Code § 25249.12 (c)(1) and (d), with 75% of these funds remitted to the State
13 of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
14 25% of these penalty monies remitted to Moore as provided by Health & Safety Code
15 § 25249.12(d). Enchante shall issue two separate checks for the penalty payment: (a) one check
16 made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$3,000, representing
17 75% of the total penalty, and (b) one check to “The Chanler Group in Trust for John Moore” in the
18 amount of \$1,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the
19 above payments. The first 1099 shall be issued to the Office of Environmental Health Hazard
20 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$3,000.
21 The second 1099 shall be issued to Moore in the amount of \$1,000, whose address and tax
22 identification number shall be furnished upon request. The payments shall be delivered on or before
23 April 15, 2011, at the address set forth in Section 3.4.

24 **3.2** Enchante shall receive an automatic credit of \$4,000, for its commitment to
25 reformulate its Products pursuant to Section 2, above.

26 **3.3** Enchante shall pay a second civil penalty of \$4,000, on or before April 15, 2011, to
27 be apportioned in accordance with Health & Safety Code § 25249.12 (c)(1) and (d) as described
28 above, which penalty shall be waived in its entirety, if, by April 1, 2011, Enchante certifies in

1 writing that all Products in its inventory and the inventory of its downstream customers have been
2 removed from the market.

3 **3.4** All payments, unless waived, shall be delivered to the following address:

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

9 **4. REIMBURSEMENT OF FEES AND COSTS**

10 **4.1 Attorney Fees and Costs**

11 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
12 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
13 issue to be resolved after the material terms of the agreement had been settled. Enchante then
14 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
15 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
16 Moore and his counsel under general contract principles and the private attorney general doctrine
17 codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed in this
18 matter. Under these legal principles, Enchante shall pay the amount of \$32,000 for fees and costs
19 incurred as a result of investigating, bringing this matter to Enchante' attention, and negotiating a
20 settlement in the public interest. Enchante shall issue a separate 1099 for fees and costs (EIN: 94-
3171522) and shall make the check payable to "The Chanler Group" and shall be delivered on or
before April 15, 2011, at 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

26 **5. RELEASE OF ALL CLAIMS**

27 **5.1 Moore's Release of Enchante**

28 In further consideration of the promises and agreements herein contained, and for the
payments to be made pursuant to Sections 3 and 4 above, Moore, on behalf of himself, his past and
current agents, representatives, attorneys, including, without limitation, The Chanler Group,

1 successors and/or assignees, and in the interest of the general public, hereby waives all rights to
2 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
3 including, without limitation, all actions and causes of action, in law or in equity, suits, liabilities,
4 demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited
5 to, investigation fees, expert fees and attorney’s fees) of any nature whatsoever, whether known or
6 unknown, fixed or contingent (collectively “Claims”), that were brought or could have been brought
7 against Enchante, subsidiaries or affiliates, and each of its past and current downstream customers,
8 distributors, wholesalers, suppliers, licensors, licensees, auctioneers, retailers, or any other person in
9 the course of doing business, and the successors and assigns of any of them, who may use, maintain,
10 manufacture, distribute, advertise, market or sell Products, and the officers, directors, managers,
11 employees, members, shareholders, agents, insurers and representatives of each of them
12 (collectively “Releasees”), in this matter related to the Products. The Parties further understand and
13 agree that this release shall not extend upstream to any third parties that manufactured the Products
14 or any component parts thereof, or any distributors or suppliers who sold the Products or any
15 component parts thereof to Defendant.

16 Compliance with the terms of this Consent Judgment resolves any issue, now and in the
17 future, concerning compliance by Enchante and its Releasees with the requirements of Proposition 65
18 with respect to alleged exposure to the Listed Chemical from the Products distributed or sold by
19 Enchante.

20 **5.2 Enchante’s Release of Moore**

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

26 **6. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and
28 shall be null and void if, for any reason, it is not approved and entered by the Court within one year

1 after it has been fully executed by all Parties, in which event any monies that have been provided to
2 Moore or his counsel pursuant to Section 3 and/or Section 4 above shall be refunded within fifteen
3 (15) days after receiving written notice from Enchante that the one-year period has expired.

4 **7. SEVERABILITY**

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

8 **8. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of California
10 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
11 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Enchante
12 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
13 extent that, the Products are so affected.

14 **9. NOTICES**

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

19 For Enchante:

20 Ezra Erani, President
21 Enchante Accessories, Inc.
22 4 East 34th Street, Floor 4
New York, NY 10016

23 with a copy to:

24 Betsy McDaniel, Esq.
25 Sheppard Mullin Richter & Hampton LLP
26 Four Embarcadero Center
27 Seventeenth Floor
28 San Francisco, CA 94111

1 For Moore:

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

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

9 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

10 This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature,
11 each of which shall be deemed an original, and all of which, when taken together, shall constitute
12 one and the same document.

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

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

16 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

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

24 **13. MODIFICATION**

25 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
26 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
27 any party and entry of a modified consent judgment by the Court. The Attorney General shall be
28 served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days
in advance of its consideration by the Court.

1 **14. AUTHORIZATION**

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

4
5 **AGREED TO:**

AGREED TO:

6
7 By: 
8 _____
JOHN MOORE

By: _____
EZRA ERANI, PRESIDENT
Enchante Accessories Inc.

9
10 Date: MARCH 23, 2011

Date: _____

11
12 **IT IS SO ORDERED.**

13
14 Date: _____

JUDGE OF THE SUPERIOR COURT

1 **14. AUTHORIZATION**

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

4
5 **AGREED TO:**

AGREED TO:

6
7 By: _____
8 JOHN MOORE

By:  _____
EZRA ERANI, PRESIDENT
Enchante Accessories Inc.

9
10 Date: _____

Date: 3/24/11 _____

11
12 **IT IS SO ORDERED.**

13
14 Date: _____

JUDGE OF THE SUPERIOR COURT