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12 ITOYA OF AMERICA, LTD.

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

17 JOHN MOORE,

18 Plaintiff,

19 v.

20 ITOYA OF AMERICA, LTD.; and
DOES 1-150, inclusive,

21 Defendants.
22

Case No. CGC-11-508221

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 John Moore and Itoya of America, Ltd.**

3 This Consent Judgment is entered into by and between John Moore (hereinafter “Moore”)
4 and Itoya of America, Ltd. (hereinafter “Itoya”), with Moore and Itoya collectively referred to as
5 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 Itoya 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 Itoya has manufactured, distributed, and/or offered for sale in California
16 coverings for padfolios/books containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite
17 Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the
18 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 the *Art Profolio Brand*
22 *Professional Presentation Book* line of products offered by Itoya. Said presentation books are
23 identified as follows:

- 24 (1) Item #PU-24-4 (#0 75633 90674 6);
25 (2) Item #PU-24-5 (#0 75633 90675 3);
26 (3) Item #PU-24-7 (#0 75633 90676 0);
27 (4) Item #PU-24-8 (#0 75633 90671 5);
28 (5) Item #PU-24-9 (#0 75633 90677 7);

- 1 (6) Item #PU-24-11 (#0 75633 90672 2);
- 2 (7) Item #PU-24-12 (#0 75633 90678 4);
- 3 (8) Item #PU-24-13 (#0 75633 90679 1);
- 4 (9) Item #PU-24-14 (#0 75633 90680 7);
- 5 (10) Item #PU-24-A4 (#0 75633 90673 9); and
- 6 (11) Item #PU-7000 (#0 75633 90670 8).

7 All such items shall be referred to collectively herein as “Products.”

8 **1.6 Notice of Violation**

9 On November 12, 2010, Moore served Itoya and various public enforcement agencies with a
10 document titled “60-Day Notice of Violation” that provided Itoya and such public enforcers with
11 notice that alleged that Itoya was in violation of Health & Safety Code § 25249.6 for failing to
12 warn its customers and consumers in California that the Products expose users to the Listed
13 Chemical.

14 **1.7 Complaint**

15 On February 14, 2011, Moore, who alleges that he was and is acting in the interest of the
16 general public in California, filed the instant action in the San Francisco Superior Court
17 (“Complaint”) naming Itoya as a defendant and stating a cause of action for the violations of Health
18 & Safety Code § 25249.6 alleged in the Notice.

19 **1.8 No Admission**

20 Itoya denies the factual and legal allegations contained in the Notice and Complaint, and
21 maintains that all of the products it has sold in California, including the Products, have been, and
22 are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
23 admission by Defendant of any fact, finding, conclusion of law, issue of law, or violation of law,
24 nor shall compliance with this Consent Judgment constitute or be construed as an admission by
25 Defendant of any fact, finding, conclusion of law, issue of law, or violation of law, the same being
26 specifically denied by Itoya. However, this Section shall not diminish or otherwise affect Itoya’s
27 obligations, responsibilities, and duties under this Consent Judgment.

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1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in
4 the County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions
5 of this Consent Judgment pursuant to California Code of Civil Procedure § 664.6, as a full and
6 binding resolution of all claims which were brought or could have been brought in the Complaint
7 against Itoya for unwarned exposures to the Listed Chemical contained in the Products, as such
8 claims are alleged in the Notice.

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term “Effective Date” shall mean August 1,
11 2011.

12 **2. INJUNCTIVE RELIEF**

13 **2.1 Reformulation**

14 Commencing on December 31, 2011, Itoya shall only purchase for sale in California, or
15 supply to an unaffiliated third-party for sale in California, Products that are “Reformulated
16 Products.” For purposes of this Consent Judgment, Reformulated Products shall mean the Products
17 specifically identified under section 1.5 above, which shall contain less than 1,000 parts per million
18 of the Listed Chemical when analyzed pursuant to Environmental Protection Agency (EPA) testing
19 methodologies 3580A and 8270C.

20 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

21 Pursuant to California Health & Safety Code § 25249.7(b)(1), and in settlement of all the
22 claims alleged in the Notice and Complaint and referred to in this Consent Judgment, Itoya shall pay
23 \$4,000 in Civil Penalties. The penalty amount reflects a credit of \$6,000 provided by Moore for
24 Itoya’s commitment to only offer only Reformulated Products in California after December 31,
25 2011.

26 Payments are to be apportioned in accordance with Health & Safety Code §§ 25249.12 (c)(1)
27 & (d), with seventy-five percent of the penalty amount remitted to the State of California’s Office of
28 Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent

1 remitted to Moore. Itoya shall issue two checks for the penalty payment to: (a) “The Chanler Group
2 in Trust for OEHHA” in the amount of \$3,000; and (b) “The Chanler Group in Trust for John
3 Moore” in the amount of \$1,000. Two separate 1099 forms shall be issued for the above payments
4 to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814
5 (EIN: 68-0284486); and (b) John Moore, whose address and tax identification number shall be
6 furnished upon request five days before payment is due.

7 Payments made pursuant to this Section shall be delivered to Moore’s counsel within ten
8 days of the date the Effective Date at the following address:

9 The Chanler Group
10 Attn: Proposition 65 Controller
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710

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

13 **4.1 Attorney Fees and Costs**

14 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed by Itoya, thereby leaving the issue
16 to be resolved after the material terms of the agreement had been settled. Itoya then expressed a
17 desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
18 The Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
19 counsel under general contract principles and the private attorney general doctrine codified at
20 California Code of Civil Procedure (“CCP”) § 1021.5, for all work performed in this matter. Under
21 these legal principles, Itoya shall pay \$34,000 for fees and costs incurred as a result of investigating,
22 bringing this matter to Itoya’s attention, litigating and negotiating a settlement in the public interest.
23 Itoya shall issue a separate 1099 for fees and costs paid to “The Chanler Group “(EIN: 94-
24 3171522).

25 Payments made pursuant to this Section shall be in the form of a check payable to “The
26 Chanler Group” to be delivered to Moore’s counsel within ten days of the Effective Date at the
27 following address:
28

1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

6 **5. RELEASE OF ALL CLAIMS**

7 **5.1 Moore's Release of Itoya**

8 In further consideration of the promises and agreements herein contained, and for the
9 payments to be made pursuant to Sections 3 and 4 above, Moore, on behalf of himself, his past and
10 current agents, representatives, attorneys, including, without limitation, The Chanler Group,
11 successors and/or assignees, and in the interest of the general public, hereby waives all rights to
12 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
13 including, without limitation, all actions and causes of action, in law or in equity, suits, liabilities,
14 demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited
15 to, investigation fees, expert fees and attorney's fees) of any nature (collectively "Claims"), that
16 were brought or could have been brought against Itoya, its subsidiaries or affiliates, and each of its
17 past and current downstream customers, distributors, wholesalers, suppliers, licensors, licensees,
18 auctioneers, retailers, or any other person in the course of doing business, and the successors and
19 assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell
20 Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers
21 and representatives of each of them (collectively "Releasees"), in this matter related to exposures to
22 the Listed Chemical contained in the Products sold by Itoya, as alleged in the Notice, and all such
23 claims related to the failure to warn under Health & Safety Code §25249.6. The Parties further
24 understand and agree that this release shall not extend upstream to any third parties that
25 manufactured the Products or any component parts thereof, or any distributors or suppliers who sold
26 the Products or any component parts thereof to Defendant.

27 Compliance with the terms of this Consent Judgment resolves any issue, now and in the
28 future, concerning compliance by Itoya and its Releasees with the requirements of Proposition 65
with respect to the failure to warn and alleged exposures to the Listed Chemical from the Products
distributed or sold in California by Itoya or the Releasees.

1 **5.2 Itoya's Release of Moore**

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

7 **6. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court and
9 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
10 after it has been fully executed by all Parties, in which event any monies that have been provided to
11 Moore or his counsel pursuant to Section 3 and/or Section 4 above shall be refunded within fifteen
12 (15) days after receiving written notice from Itoya that the one-year period has expired.

13 **7. SEVERABILITY**

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

17 **8. GOVERNING LAW**

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

23 **9. NOTICES**

24 Unless specified herein, all correspondence and notices required to be provided pursuant to
25 this Consent Judgment shall be in writing and ; (i) personally delivered; (ii) sent by first-class,
26 registered, or certified mail, return receipt requested; or (iii) overnight courier on any party by the
27 other party at the following addresses:
28

1 For Itoya:

2 Shun Takemura, President
3 Itoya of America, Ltd.
4 800 Sandhill Avenue
5 Carson, CA 90746

6 with a copy to:

7 Derrick K. Takeuchi, Esq.
8 Mark K. Worthge, Esq.
9 Greenberg, Whitcombe, & Takeuchi, LLP
10 21515 Hawthorne Boulevard, Suite 450
11 Torrance, CA 90503

12 For Moore:

13 Proposition 65 Coordinator
14 The Chanler Group
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

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

20 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile or Portable
22 Document Format (pdf) signature, each of which shall be deemed an original, and all of which,
23 when taken together, shall constitute one and the same document.

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

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

27 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

28 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
noticed motion is required to obtain judicial approval of this Consent Judgment (“Motion”). In
furtherance of obtaining such approval, Moore and Itoya and their respective counsel agree to
mutually employ their “best efforts” to support the entry of this agreement as a Consent Judgment
and obtain approval of the Settlement by the Court in a timely manner. For purposes of this section,
best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in
support of the required Motion.

1 **13. MODIFICATION**

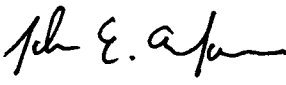
2 This Consent Judgment may be modified only by: (1) written agreement of the Parties and
3 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
4 any party and entry of a modified consent judgment by the Court. The Attorney General shall be
5 served with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

7 **14. AUTHORIZATION**

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

10
11 **AGREED TO:**

AGREED TO:

12
13 By: 
14 JOHN MOORE

By: _____
SHUN TAKEMURA, PRESIDENT
Itoya of America, Ltd.

15
16 Dated: July 1, 2011

Dated: _____

1 **13. MODIFICATION**

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

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

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AGREED TO:

AGREED TO:

By: _____
JOHN MOORE

By: 
SHUN TAKEMURA, PRESIDENT
Itoya of America, Ltd.

Dated: _____

Dated: July 8th 2011