

1 Brian C Johnson, State Bar No. 235965  
2 Josh Voorhees, State Bar No. 241436  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 JOHN MOORE

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
14 UNLIMITED CIVIL JURISDICTION  
15

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 BUXTON ACQUISITION CO., L.L.C.; *et al.*,

20 Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

Case No. CGC-11-511248

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

1     **1. INTRODUCTION**

2             **1.1 Parties**

3             This Consent Judgment is entered into by and between John Moore (“Moore” or “Plaintiff”)  
4 and Buxton Acquisition Co., L.L.C. (“Buxton” or “Defendant”), with Moore and Buxton  
5 collectively 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            Buxton employs ten or more persons and is a person in the course of doing business for  
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14            **1.4 General Allegations**

15            Moore alleges that Buxton has manufactured, distributed, and/or offered for sale in  
16 California books/journals with soft (vinyl) covers containing excessive amounts of di(2-  
17 ethylhexyl)phthalate (“DEHP”) without the first providing the requisite “clear and reasonable”  
18 exposure warnings required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a  
19 chemical known to the state of California to cause birth defects and other reproductive harm.

20            **1.5 Product Description**

21            The products that are covered by this Consent Judgment are books/journals with covers  
22 containing DEHP, including, but not limited to, the *Buxton Writing Pad Folio, #36-006 (#0 43345*  
23 *82831 1)*, sold by Buxton in California (“Products”).

24            **1.6 Notice of Violation**

25            On April 8, 2011, Moore served Buxton and various public enforcement agencies with a  
26 document entitled 60-Day Notice of Violation (“Notice”) that informed Buxton and the public  
27 enforcers that Buxton was allegedly in violation of Proposition 65 for failing to warn its customers  
28 and consumers in California that the Products expose users to DEHP.

1           **1.7 Complaint**

2           On July 7, 2011, Moore filed the instant action ("Complaint") naming Buxton as a defendant  
3 and stating a cause of action for the violations of Health & Safety Code § 25249.6 alleged in the  
4 Notice.

5           **1.8 No Admission**

6           Buxton denies the material, factual, and legal allegations contained in the Notice and  
7 Complaint, and maintains that all of the products that it has sold in California, including the  
8 Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this  
9 Consent Judgment shall be construed as an admission by Buxton of any fact, finding, conclusion of  
10 law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or  
11 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of  
12 law, the same being specifically denied by Buxton. This section shall not, however, diminish or  
13 otherwise affect Buxton's obligations, responsibilities and duties under this Consent Judgment.

14           **1.9 Consent to Jurisdiction**

15           For purposes of this Consent Judgment only, the parties stipulate that this Court has  
16 jurisdiction over Buxton as to the allegations in the Complaint, that venue is proper in the San  
17 Francisco County, and that this Court has jurisdiction to enter and enforce the provisions of the  
18 Consent Judgment under Code of Civil Procedure § 664.6, as a full, final, and binding resolution of  
19 all claims which were raised or could have been raised in the Complaint against Buxton, based on  
20 the facts alleged by Moore in the Notice and Complaint.

21           **1.10 Effective Date**

22           For purposes of this Consent Judgment, the term "Effective Date" shall mean January 1,  
23 2012.

24           **2. INJUNCTIVE RELIEF**

25           On or after the Effective Date, Buxton shall not purchase for sale in California or ship to a  
26 third-party distributor or retailer for sale in California, any Product that is not "DEHP Free." For  
27 purposes of this Consent Judgment, "DEHP Free" shall mean Products containing DEHP in  
28 concentrations that do not exceed 1,000 parts per million (0.1%) when analyzed pursuant to U.S.

1 Environmental Protection Agency testing methodologies 3580A and 8270C or any other  
2 methodology utilized by federal or state agencies for the purpose of determining DEHP content in a  
3 solid substance. It is understood that Products shipped to a third-party distributor or retailer prior to  
4 the Effective Date are not covered by the terms of this Consent Judgment.

5 **3. MONETARY PAYMENTS**

6 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

7 Buxton shall pay \$5,000 in civil penalties pursuant to Health & Safety Code § 25249.7(b).

8 This amount reflects a penalty credit of \$6,000 agreed to by Moore for Buxton's cooperation during  
9 the settlement process and its commitment to Proposition 65 compliance, including offering only  
10 DEHP Free Products in California pursuant to Section 2.

11 The civil penalty payment shall be allocated according to Health & Safety Code §§  
12 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty earmarked for the California  
13 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five  
14 percent (25%) of the penalty earmarked for Moore.

15 **3.2 Reimbursement of Plaintiff's Fees and Costs**

16 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without  
17 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue  
18 to be resolved after the material terms of the agreement had been settled. Buxton then expressed a  
19 desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.  
20 The Parties then attempted to (and did) reach an accord on the compensation due to Moore and his  
21 counsel under general contract principles and the private attorney general doctrine codified at  
22 California Code of Civil Procedure § 1021.5 for all work performed in this matter, exclusive of fees  
23 on appeal, if any. Under these legal principles, Buxton shall pay \$30,500 for all fees and costs  
24 incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and  
25 yet to be incurred) drafting, negotiating, and obtaining the Court's approval of this Consent  
26 Judgment in the public interest.

1           **3.3 Payment Procedures**

2                   **3.3.1 Payments Held in Trust**

3                   All payments made under this Consent Judgment shall be held in trust until the Court  
4 approves the settlement. The Parties acknowledge that Moore's counsel gave Buxton the option of  
5 depositing the funds into its attorney's trust account, but that Buxton elected to have The Chanler  
6 Group hold the settlement funds in its trust account.

7                   **3.3.2 Payment Schedule**

8                   All settlement funds required by Sections 3.1 and 3.2 shall be delivered to Moore's  
9 counsel according to the following schedule:

10                  (a)    On or before November 7, 2011, Buxton shall deliver three checks made  
11 payable as follows:

12                           (1)    one check to "The Chanler Group in Trust for OEHHA" in the amount  
13                                   of \$3,750;

14                           (2)    a second check to "The Chanler Group in Trust for John Moore" in the  
15                                   amount of \$1,250; and

16                           (3)    a third check to "The Chanler Group in Trust" in the amount of \$3,875.

17                  (b)    On or before December 5, 2011, Buxton shall deliver a fourth check made  
18 payable to "The Chanler Group in Trust" in the amount of \$8,875.

19                  (c)    On or before January 9, 2012, Buxton shall deliver a fifth check made payable  
20 to "The Chanler Group in Trust" in the amount of \$8,875.

21                  (d)    On or before February 6, 2012, Buxton shall deliver a sixth check made  
22 payable to "The Chanler Group in Trust" in the amount of \$8,875.

23                   **3.3.3 Issuance of 1099 Forms**

24                   After the Consent Judgment has been approved, Buxton shall issue three 1099 forms  
25 for payments made pursuant Sections 3.1 and 3.2 as follows:

26                           (a)    one 1099 form to the "Office of Environmental Health Hazard Assessment",  
27 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid to OEHHA in  
28 the amount of \$3,750;

1 (b) a second 1099 form to "John Moore", whose address and tax identification  
2 number shall be furnished within five days of the date this Consent Judgment is fully executed by  
3 the Parties, for civil penalties paid in the amount of \$1,250; and

4 (c) a third 1099 form to "The Chanler Group" (EIN: 94-3171522) for the  
5 reimbursement of attorney fees and costs in the amount of \$30,500.

6 **3.3.4 Payment Address**

7 All payments and tax documents required by this Section 3 shall be delivered to  
8 Moore's counsel 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

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

16 This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of  
17 himself and the public, and Defendant, of any violation of Proposition 65 that was or could have been  
18 asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated entities that are under  
19 common ownership, directors, officers, employees, attorneys, and each entity to whom Defendant  
20 directly or indirectly distributes or sells Products, including but not limited to downstream  
21 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and  
22 licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in  
23 the Products that were manufactured, distributed, or sold by Defendant. Compliance with this  
24 Consent Judgment constitutes compliance with Proposition 65 now and after the Effective Date for  
25 Products sold by Buxton and the Releasees in California.

26 **4.2 Plaintiff's Public Release of Proposition 65 Claims**

27 In further consideration of the promises and agreements contained herein, Moore on behalf of  
28 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in  
the interest of the general public in California, hereby waives all rights to institute or participate in,  
directly or indirectly, any form of legal action and releases all claims, including, without limitation,

1 all actions and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,  
2 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert  
3 fees, and attorneys' fees – exclusive of fees and costs on appeal, if any – (collectively “Claims”)  
4 arising under Proposition 65 (collectively “Claims”) for unwarned exposures to DEHP contained in  
5 the Products sold by Buxton.

6 **4.3 Plaintiff's Individual Release of Claims**

7 Plaintiff, in his individual capacity only and not in his representative capacity, provides a  
8 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
9 Claims, liabilities, and demands of any nature, character, or kind, whether known or unknown,  
10 suspected or unsuspected, arising out of alleged or actual exposures to DEHP contained in the  
11 Products sold by Buxton.

12 **4.4 Defendant's Release of Plaintiff**

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

19 **5. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and  
21 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
22 after it has been fully executed by all Parties, in which event any monies that have been provided to  
23 Moore or his counsel pursuant to Sections 3.1 and 3.2 shall be refunded within fifteen (15) days  
24 after receiving written notice from Buxton that the one-year period has expired.

25 **6. SEVERABILITY**

26 If, subsequent to the execution of this Consent Judgment, any provision is held by a court to  
27 be unenforceable, the validity of the enforceable provisions remaining shall not be adversely  
28 affected.

1     **7. GOVERNING LAW**

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

7     **8. NOTICES**

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

12     For Buxton:

13             Eric Lund, President  
14             Buxton Acquisition Co., L.L.C.  
15             45 Plainfield Street  
16             Chicopee, MA 01013

17             and

18             Deborah A. Basile, Esq.  
19             Doherty, Wallace, Pillsbury & Murphy, P.C.  
20             One Monarch Place, Suite 1900  
21             1414 Main Street  
22             Springfield, MA 01144-1900

23     For Moore:

24             Proposition 65 Coordinator  
25             The Chanler Group  
26             2560 Ninth Street  
27             Parker Plaza, Suite 214  
28             Berkeley, CA 94710

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

9.     **COUNTERPARTS; FACSIMILE SIGNATURES**

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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**10. POST EXECUTION ACTIVITIES**

Moore agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f). In addition, 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. In furtherance of obtaining such approval, Moore and Buxton 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 Consent Judgment 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 for judicial approval.

**11. MODIFICATION**

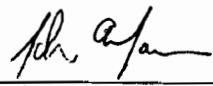
This Consent Judgment may only be modified by: (1) written agreement of the parties and upon entry of a modified consent judgment by the Court; or (2) upon a successful motion or application of any party and entry of a modified consent judgment by the Court.

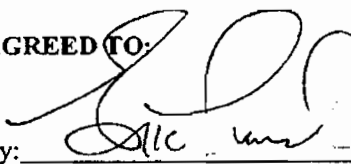
**12. AUTHORIZATION**

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:**

By:   
John Moore

By:   
Eric Lund, President  
Buxton Acquisition Co., L.L.C.

Date: OCTOBER 21, 2011

Date: October 19 2011