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6 Attorneys for Plaintiff
JOHN MOORE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

INTERNATIONAL GREETINGS USA, INC.;
and DOES 1 through 150, inclusive,

Defendants.

Case No. CIV 1105578

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff John Moore (“Moore”
4 or “Plaintiff”) and Defendant International Greetings USA, Inc. (“International Greetings” or
5 “Defendant”), with Moore and International Greetings 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 International Greetings employs 10 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 International Greetings has manufactured, imported, distributed, sold,
16 and/or offered for sale in the state of California luggage tags and coverings for planners that
17 expose users to di(2-ethylhexyl)phthalate (“DEHP”), without first providing “clear and
18 reasonable warning” under Proposition 65. DEHP is listed as a reproductive toxicant under
19 Proposition 65.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: luggage
22 tags containing DEHP, including, but not limited to, *Pepper Pot Luggage Tag, #05-5304 (#0*
23 *78228 17589 3)*, and coverings for planners containing DEHP, including, but not limited to,
24 *Studio 18 Weekly 2010 Planner, IG6243 (#8 40341 67243 2)* and *Studio 18 Horses 2011-2012 2*
25 *Year Planner IG67241 (#8 40341 67241 8)* manufactured, imported, distributed, sold, and/or
26 offered for sale in California by International Greetings, hereinafter referred to collectively as
27 the “Products.”
28

1 **1.6 Notices of Violation**

2 On May 11, 2011, Moore served International Greetings and various public enforcement
3 agencies with a document entitled “60-Day Notice of Violation” that provided the recipients with
4 notice of alleged violations of Proposition 65 for failing to warn consumers that the luggage tags
5 International Greetings manufactured, imported, distributed, sold and/or offered for sale in
6 California exposed users to DEHP. On October 28, 2011, Moore served International Greetings
7 and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice
8 of Violation” that provided the recipients with notice of alleged violations of Proposition 65 for
9 failing to warn consumers that the luggage tags and coverings for planners International Greetings
10 manufactured, imported, distributed, sold and/or offered for sale in California exposed users to
11 DEHP. The document titled “60-Day Notice of Violation” served on May 11, 2011, and the
12 document titled “Supplemental 60-Day Notice of Violation” served on October 28, 2011 shall be
13 collectively referred to herein as the “Notices.” To the best of the Parties’ knowledge, no public
14 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

15 **1.7 Complaint**

16 On November 10, 2011, Moore, acting in the interest of the general public in California,
17 filed a complaint in the Superior Court for the County of Marin, alleging violations of Health &
18 Safety Code § 25249.6 based on the alleged exposures to DEHP contained in the luggage tags
19 manufactured, imported, distributed, sold and/or offered for sale by International Greetings. This
20 action shall hereinafter be referred to as the “Action.” Upon the Court’s entry of this Consent
21 Judgment, the Complaint in the Action shall be deemed amended to include allegations that the
22 coverings for planners manufactured, imported, distributed, sold and/or offered for sale by
23 International Greetings herein described exposed users to DEHP.

24 **1.8 No Admission**

25 This Consent Judgment resolves claims that are denied and disputed by International
26 Greetings. The Parties enter into this Consent Judgment pursuant to a full and final settlement of
27 any and all claims between the Parties for the purpose of avoiding prolonged litigation.
28 International Greetings denies the material factual and legal allegations contained in the Notices

1 and Complaint and maintains that all Products it has manufactured, imported, distributed, sold
2 and/or offered for sale in California have been and are in compliance with all applicable laws.
3 Nothing in this Consent Judgment shall be construed as an admission by International Greetings,
4 its parents, subsidiaries, affiliates, sister and related companies, employees, shareholders,
5 directors, insurers, attorneys, successors or assigns of any fact, finding, issue of law, or violation
6 of law, nor shall compliance with this Consent Judgment constitute or be construed as an
7 admission by International Greetings, its parents, subsidiaries, affiliates, sister and related
8 companies, employees, shareholders, directors, insurers, attorneys, successors or assigns of any
9 fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
10 International Greetings. However, this Section shall not diminish or otherwise affect
11 International Greetings' obligations, responsibilities, and duties under this Consent Judgment.

12 **1.9 Consent to Jurisdiction**

13 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
14 jurisdiction over International Greetings as to the allegations contained in the Complaint, that
15 venue is proper in the County of Marin, and that this Court has jurisdiction to enter and enforce
16 the provisions of this Consent Judgment.

17 **2. INJUNCTIVE RELIEF: REFORMULATION**

18 Commencing on November 30, 2011 International Greetings shall manufacture, import,
19 distribute, sell and/or offer for sale in California only Products that are "Phthalate Free." For
20 purposes of this Consent Judgment, "Phthalate Free" shall mean Products containing less than or
21 equal to 1,000 ppm of DEHP, when analyzed pursuant to any testing methodology selected by
22 International Greetings that is acceptable to state or federal government agencies in determining
23 compliance with phthalate standards.

24 **3. MONETARY PAYMENTS**

25 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

26 International Greetings shall make a payment of \$54,000 in combined penalty payments
27 and credits in civil penalties. For its cooperation in the settlement process and its commitment to
28 reformulate the Products to be Phthalate Free pursuant to Section 2.1 above, Moore shall provide

1 International Greetings with a penalty credit of \$36,000. Thereafter, the remaining amount of
2 \$18,000 will be paid by International Greetings and be apportioned in accordance with Health &
3 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked
4 for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")
5 and the remaining 25% of these penalty monies earmarked for Moore.

6 **3.2 Reimbursement of Moore's 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
9 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
10 International Greetings then expressed a desire to resolve the fee and cost issue shortly after the
11 other settlement terms had been finalized. The Parties then attempted to (and did) reach an
12 accord on the compensation due to Moore and his counsel under general contract principles and
13 the private attorney general doctrine codified at California Code of Civil Procedure section
14 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under
15 these legal principles, International Greetings shall pay the amount of \$33,500 for fees and costs
16 incurred investigating, litigating and enforcing this matter, including the fees and costs incurred
17 (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
18 Judgment in the public interest.

19 **3.3 Payment Procedures**

20 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2
21 shall be delivered on or before December 15, 2011 to either The Chanler Group or the attorney
22 of record for the International Greetings and shall be held in trust pending the Court's approval
23 of this Consent Judgment.

24 Payments delivered to The Chanler Group shall be made payable, as follows:

- 25 (i) One check made payable to "The Chanler Group in Trust for
26 OEHHA" in the amount of \$13,500;
- 27 (ii) One check made payable to "The Chanler Group in Trust for John
28 Moore" in the amount of \$4,500; and

- 1 (iii) One check made payable to “The Chanler Group in Trust” in the
2 amount of \$33,500.

3 Payments delivered to Holland & Knight LLP shall be made payable, as follows:

- 4 (i) One check made payable to Holland & Knight LLP in Trust for
5 OEHHA” in the amount of \$13,500;
6 (ii) One check made payable to “Holland & Knight LLP in Trust for
7 John Moore in the amount of \$4,500; and
8 (iii) One check made payable to “Holland & Knight LLP in Trust for
9 The Chanler Group” in the amount of \$33,500,.

10 If International Greetings elects to deliver payments to its attorney of record, such
11 attorney of record shall: (a) confirm in writing within five days of receipt that the funds have
12 been deposited in a trust account; and (b) within two days of the date of the hearing on which the
13 Court approves the Consent Judgment, deliver the payment to The Chanler Group in three
14 separate checks, as follows:

- 15 (i) One check made payable to “The Chanler Group in Trust for
16 OEHHA” in the amount of \$13,500;
17 (ii) One check made payable to “The Chanler Group in Trust for John
18 Moore” in the amount of \$4,500; and
19 (iii) One check made payable to “The Chanler Group” in the amount of
20 \$33,500.

21 **3.3.2 Issuance of 1099 Forms:** After the Consent Judgment has been approved
22 and the settlement funds have been transmitted to Moore’s counsel, International Greetings shall
23 issue three separate 1099 forms, as follows:

24 (a) The first 1099 shall be issued to the Office of Environmental Health
25 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount
26 of \$13,500;

27 (b) The second 1099 shall be issued to John Moore in the amount of \$4,500,
28 whose address and tax identification number shall be furnished upon request; and

1 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522)
2 in the amount of \$33,500.

3 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered
4 to the following payment address:

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

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

10 This Consent Judgment is a full, final and binding resolution between Moore, on behalf
11 of himself and the public, and International Greetings, of any violation of Proposition 65 that
12 was or could have been asserted by Moore against International Greetings, its parents,
13 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
14 attorneys, each entity to whom International Greetings directly or indirectly distributes or sells
15 Products, including but not limited to downstream distributors, wholesalers, customers, retailers,
16 franchisees, cooperative members, licensors, and licensees (“Downstream Releasees”), based on
17 their failure to warn about alleged exposures to DEHP contained in the Products that were
18 manufactured, imported, distributed, sold and/or offered for sale by International Greetings.

19 **4.2 Moore’s Public Release of Proposition 65 Claims**

20 In further consideration of the promises and agreements herein contained, Moore on
21 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
22 assignees, and in the interest of the general public, hereby waives all rights to institute or
23 participate in, directly or indirectly, any form of legal action and releases all claims, including,
24 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
25 demands, obligations, damages, costs, fines, penalties, losses, or expenses – including, but not
26 limited to, investigation fees, expert fees, and attorneys’ fees, but exclusive of fees and costs on
27 appeal – limited to and arising under Proposition 65 with respect to DEHP in the Products
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1 manufactured, imported, distributed, sold and/or offered for sale by International Greetings
2 (collectively “claims”), against International Greetings and Releasees.

3 **4.3 International Greetings’ Individual Release of Claims**

4 Moore also, in his individual capacity only and *not* in his representative capacity,
5 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
6 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
7 claims, liabilities and demands of Moore of any nature, character or kind, whether known or
8 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
9 the DEHP in the Products manufactured, imported, distributed, sold and/or offered for sale by
10 International Greetings.

11 **4.4 Moore’s Release of International Greetings**

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

18 **5. SEVERABILITY**

19 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
20 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
21 provisions remaining shall not be adversely affected unless the Court finds that any unenforceable
22 provision is not severable from the remainder of the Consent Judgment.

23 **6. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court and
25 shall be null and void if, for any reason, it is not approved and entered by the Court within nine
26 months after it has been fully executed by all Parties. In the event this Consent Judgment is (a)
27 not entered by this Court within nine months (or thereafter) for any reason whatsoever, or (b) is
28 entered by the Court and subsequently overturned by any appellate court, any monies that have

1 been provided to Moore, or his counsel pursuant to Section 3 above, together with interest at the
2 prevailing Federal Funds Rate accruing from the date of payment by International Greetings, shall
3 be refunded within fifteen (15) days after receiving written demand from International Greetings
4 for return of such funds.

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the state of
7 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
8 inapplicable by reason of law generally, or as to DEHP and/or the Products, then International
9 Greetings shall have no further obligations pursuant to this Consent Judgment with respect to, and
10 to the extent that, the Products are so affected.

11 **8. NOTICES**

12 When any Party is entitled to receive any notice under this Consent Judgment, the notice
13 shall be sent by certified mail and electronic mail to the person(s) identified below:

14 To International Greetings USA, Inc.:

15 Lawrence Louis, President
16 International Greetings USA, Inc.
17 338 Industrial Boulevard
18 Midway, GA 31320

19 With copy to:

20 Shelley Hurwitz
21 Holland & Knight LLP
22 400 South Hope Street 8th Floor
23 Los Angeles, CA 90071

24 To Moore:

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

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

1 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

2 Moore agrees to comply with the reporting form requirements referenced, in California
3 Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.

4 **10. MODIFICATION**

5 This Consent Judgment may be modified only: (1) by written agreement of the parties and
6 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
7 of any party and entry of a modified Consent Judgment by the court.

8 **11. ADDITIONAL POST-EXECUTION ACTIVITIES**

9 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to
10 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
11 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
12 Health and Safety Code section 25249.7, a noticed motion is required to obtain judicial approval
13 of this Consent Judgment, which Moore shall file, and which International Greetings shall not
14 oppose. If any third party objection to the noticed motion is filed, Moore and International
15 Greetings shall work together to file a joint reply and appear at any hearing before the Court.
16 This provision is a material component of the Consent Judgment and shall be treated as such in
17 the event of a breach. If the Superior Court does not approve the motion to approve this Consent
18 Judgment, and the Parties choose not to pursue a modified Consent Judgment within 30 days of
19 said denial, or in the event that the Superior Court approves this Consent Judgment and any
20 person successfully appeals that approval, all payments made pursuant to this Consent Judgment
21 will be returned to International Greetings.

22 **12. ENTIRE AGREEMENT**

23 This Consent Judgment contains the sole and entire agreement and understanding of the
24 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any party
27 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
28 to exist or to bind any of the parties.

1 **13. COUNTERPARTS, FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable
3 document format (.pdf), each of which shall be deemed an original, and all of which, when taken
4 together, shall constitute one and the same document. A facsimile or .pdf signature shall be as
5 valid as the original.

6 **14. AUTHORIZATION**

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

9 **AGREED TO:**

10 Date: DECEMBER 7, 2011

11
12 By: 
13 Plaintiff John Moore

AGREED TO:

Date: _____

By: _____
Lawrence Louis, President
International Greetings USA, Inc.

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4 together, shall constitute one and the same document. A facsimile or .pdf signature shall be as
5 valid as the original.

6 **14. AUTHORIZATION**

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

9 **AGREED TO:**

10 Date: December 6, 2011

11
12 By: Shelley Horowitz
13 Plaintiff John Moore

AGREED TO:

Date: December 4th 2011

By: [Signature]
Lawrence Louis, President
International Greetings USA, Inc.

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