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9 JOHN MOORE

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

13 JOHN MOORE,  
14 Plaintiff,  
15 v.  
16 TRADE ASSOCIATES GROUP, LTD.; *et al.*,  
17 Defendants.

Case No. CGC-11-513304

**[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 plaintiff John Moore (“Moore” or  
4     “Plaintiff”) and defendant Trade Associates Group, Ltd. (“Trade Associates” or “Defendant”), with  
5     Moore and Trade Associates 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 to  
8     toxic chemicals and to improve human health by reducing or eliminating hazardous substances  
9     contained in consumer products.

10            **1.3 Defendant**

11            Trade Associates 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 section 25249.6 *et seq.* (“Proposition 65”).

14            **1.4 General Allegations**

15            Moore alleges that Trade Associates sold coverings for books containing di(2-  
16    ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable warning required by  
17    Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of  
18    California to cause birth defects and other reproductive harm.

19            **1.5 Product Description**

20            The products covered by this Consent Judgment are coverings for books manufactured,  
21    distributed, sold, or offered for sale in California by Trade Associates, including, but not limited to,  
22    the *Tag Notebook, 96 Pages, #590231 (#0 25466 67357 5)*. All such items are referred to  
23    collectively as the “Products,” or individually as a “Product.”

24            **1.6 Notice of Violation**

25            On or about May 11, 2011, Moore served Trade Associates and various public enforcement  
26    agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed Trade Associates  
27    and the public enforcers of Moore’s allegation that Trade Associates was in violation of Proposition  
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1 65 for failing to warn its customers and consumers in California that the Products expose users to  
2 DEHP.

3 **1.7 Complaint**

4 On August 11, 2011, Moore filed the instant action against Trade Associates (“Complaint”)  
5 for the violations of Health & Safety Code section 25249.6 alleged in the Notice. Pursuant to Health  
6 & Safety Code section 25249.7(d), Moore brings this action in the public interest.

7 **1.8 No Admission**

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

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18 jurisdiction over Trade Associates as to the allegations in the Complaint, that venue is proper in the  
19 City and County of San Francisco, and that this Court has jurisdiction to enter and enforce the  
20 provisions of this Consent Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean March 8, 2012.

23 **2. INJUNCTIVE RELIEF: REFORMULATION**

24 Beginning on the Effective Date and continuing thereafter, Trade Associates shall not ship,  
25 sell, or offer to ship for sale in California, any Product that contains more than 1,000 parts per million  
26 of DEHP in any accessible component (i.e., any component that may be touched or handled by a user  
27 during reasonably foreseeable use) analyzed pursuant to Environmental Protection Agency testing  
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1 methodologies 3580A and 8270C or equivalent methodologies used by federal or state agencies for  
2 the purpose of determining DEHP content in a solid substance.

3 **3. MONETARY PAYMENTS**

4 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

5 Pursuant to Health & Safety Code section 25249.7(b), Trade Associates shall pay a civil  
6 penalty of \$1,750. The penalty amount reflects a credit of \$5,500 agreed to by Moore in response to  
7 Trade Associates' commitment to Proposition 65 compliance as set forth in Section 2.

8 The penalty shall be allocated according to Health & Safety Code sections 25249.12 (c)(1) &  
9 (d), with seventy-five percent (75%) of the penalty payment earmarked for the California Office of  
10 Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five (25%) of the  
11 penalty payment earmarked for Moore. Payment shall be delivered to Moore's counsel within  
12 fourteen (14) days of the Effective Date at the Payment Address provided in Section 3.3.

13 **3.2 Reimbursement of Plaintiff's 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 to them, thereby leaving the issue to  
16 be resolved after the material terms of the agreement had been settled. Shortly after all other  
17 settlement terms had been finalized, Trade Associates expressed a desire to resolve the issue. The  
18 Parties then attempted to (and did) reach an accord on the compensation due Moore and his counsel  
19 under general contract principles and the private attorney general doctrine codified at California Code  
20 of Civil Procedure section 1021.5 for all work performed in this matter exclusive of fees and costs  
21 that may be incurred on appeal, if any. Under these legal principles, Trade Associates shall pay  
22 \$26,000 for fees and costs incurred investigating, litigating, and enforcing this matter, including the  
23 fees and costs incurred (and to be incurred) negotiating a settlement, and moving the Court for, and  
24 obtaining its approval of, this Consent Judgment in the public interest. Payment shall be delivered to  
25 Moore's counsel within fourteen (14) days of the Effective Date at the Payment Address provided in  
26 Section 3.3.

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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 Trade Associates the  
5 option of depositing the funds into its attorney’s trust account, but that Trade Associates elected to  
6 have The Chanler Group hold the settlement funds in trust until such time as the hearing of the  
7 motion for judicial approval of the settlement. Settlement funds delivered to The Chanler Group  
8 shall be in the form of three checks for the following amounts, made payable as follows:

- 9                   (a)       to “The Chanler Group in Trust for OEHHA” in the amount of \$1,312.50;  
10                  (b)       to “The Chanler Group in Trust for John Moore” in the amount of \$437.50;  
11                  and  
12                  (c)       to “The Chanler Group in Trust” in the amount of \$26,000.

13                   **3.3.2    Issuance of 1099 Forms**

14                  After the Consent Judgment has been approved, Trade Associates shall issue three  
15 1099 forms for the payments made pursuant Sections 3.1 and 3.2, as follows:

- 16                  (a)       one 1099 form to “Office of Environmental Health Hazard Assessment”, P.O.  
17                  Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid in the  
18                  amount of \$1,312.50;  
19                  (b)       a second 1099 form to “John Moore”, whose address and tax identification  
20                  number shall be furnished upon request after the date that this Consent Judgment is  
21                  fully executed by the Parties, for civil penalties paid in the amount of \$437.50; and  
22                  (c)       a third 1099 form to “The Chanler Group” (EIN: 94-3171522) for the  
23                  reimbursement of Moore’s fees and costs in the amount of \$26,000.

24                   **3.3.3    Payment Address**

25                  All payments and tax forms required by Sections 3.1, 3.2, and 3.3.2 of this Consent  
26 Judgment shall be delivered to Moore’s counsel at the following address:

27                   The Chanler Group  
28                   Attn: Proposition 65 Controller  
                    2560 Ninth Street

1 Parker Plaza, Suite 214  
2 Berkeley, CA 94710

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Moore's Public Release of Proposition 65 Claims**

5 Moore, acting on his own behalf and in the public interest, releases Trade Associates from  
6 all claims for violations of Proposition 65 up through the Effective Date based on exposures to  
7 DEHP from the Products as set forth in the Notice. Compliance with the terms of this Consent  
8 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the  
9 Products as set forth in the Notice.

10 **4.2 Moore's Individual Release of Claims**

11 Moore, in his individual capacity only and *not* in his representative capacity, also provides a  
12 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
13 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
14 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,  
15 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the  
16 Products manufactured, distributed or sold by Trade Associates.

17 **4.3 Trade Associates' Release of Moore**

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

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
26 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
27 has been fully executed by all Parties, in which event any monies that have been provided to Moore  
28 or his counsel pursuant to Sections 3.1 or 3.2 shall be refunded within fifteen (15) days after

1 receiving written notice from Trade Associates that the one-year period has expired and the Consent  
2 Judgment has not been approved and entered by the Court.

3 **6. SEVERABILITY**

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

6 **7. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the state of California  
8 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is  
9 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Trade  
10 Associates may provide written notice to Moore of any asserted change in the law, and shall have no  
11 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
12 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Trade  
13 Associates from any obligation to comply with any pertinent state or federal toxics control laws.

14 **8. NOTICES**

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

19 For Trade Associates:

20 Norman Glassberg, President  
21 Trade Associates Group, Ltd.  
22 1730 West Wrightwood Avenue  
Chicago, IL 60614

23 with a copy to:

24 Levi Heath, Esq.  
25 Barnes & Thornburg LLP  
26 2049 Century Park East, Suite 3550  
27 Los Angeles, CA 90067  
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For Moore:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
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.

**10. POST EXECUTION ACTIVITIES**

Moore agrees to comply with the reporting form requirements referenced in Health & Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code section 25249.7(f)(4), a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Moore and Trade Associates and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and to obtain judicial approval of the same 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 be modified only by: (i) the written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or application of any Party and entry of a modified consent judgment by the Court.

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**12. AUTHORIZATION**

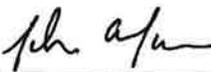
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: MARCH 9, 2012

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

By:   
John Moore

By: \_\_\_\_\_  
Norman Glassberg, President  
Trade Associates Group, Ltd.

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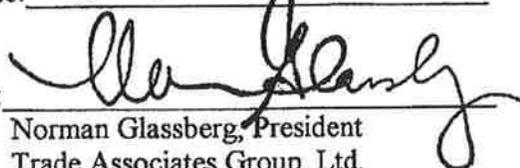
**AGREED TO:**

**AGREED TO:**

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

Date: 3-16-12

By: \_\_\_\_\_  
John Moore

By:   
Norman Glassberg, President  
Trade Associates Group, Ltd.