

1 Christopher M. Martin, State Bar No. 186021  
THE CHANLER GROUP  
2 2560 Ninth Street  
Parker Place, Suite 214  
3 Berkeley, CA 94710  
Telephone: (510) 848-8880  
4 Facsimile: (510) 848-8118

5 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.  
BAKER & TAYLOR, INC.; and DOES 1  
through 150, inclusive,  
  
Defendants.

Case No.  
  
**[PROPOSED] CONSENT JUDGMENT AS  
TO DEFENDANT BAKER & TAYLOR,  
INC.**

1 **1. INTRODUCTION**

2 **1.1 John Moore and Baker & Taylor Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore, (hereinafter  
4 “Moore” or “Plaintiff”) and defendant Baker & Taylor, Inc. (hereinafter “Baker & Taylor” or  
5 “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties” and each  
6 individually referred to as a “Party.”

7 **1.2 Plaintiff**

8 Moore is an individual residing in California who seeks to promote awareness of  
9 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous  
10 substances in consumer products.

11 **1.3 Defendant**

12 Baker & Taylor employs ten or more persons and is a person in the course of doing  
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code §25249.6 *et seq.* (hereinafter “Proposition 65”).

15 **1.4 General Allegations**

16 Moore alleges that Baker & Taylor has manufactured, distributed sold and/or offered for  
17 sale art kits with handles containing the phthalate chemical di(2-ethylhexyl)phthalate  
18 (hereinafter “DEHP”) in the state of California without the requisite health hazard warnings.  
19 DEHP is listed pursuant to Proposition 65 as known to the state of California to cause birth  
20 defects and other reproductive harm.

21 **1.5 Covered Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: art kits  
23 with handles, including, but not limited to *Art Academy Paint It*, (ISBN 1-59223-466-6, 978-  
24 1592-23466-09 781592 234660), *Art Academy Collage It* (ISBN 1-59223-467-4, 9 78-1592-  
25 23467-7), and *Art Academy Sculpt It* (ISBN 1-59223-468-2, 978-1592-23468-4), which contain  
26 DEHP and which Defendant distributed, sold and/or offered for sale in the state of California,  
27 hereinafter the “Products.”  
28

1           **1.6 Notice of Violation**

2           On July 20, 2011, Moore served Defendant and various public enforcement agencies  
3 with a document entitled “60-Day Notice of Violation” (hereinafter “Notice”) that provided the  
4 recipients with notice of alleged violations of Proposition 65 for failing to warn consumers that  
5 the Products exposed users in California to DEHP.

6           **1.7 Complaint**

7           On or about December 30, 2011, Moore, who was and is acting in the interest of the  
8 general public in California, filed a complaint (hereinafter “Complaint” or “Action”) in the  
9 Superior Court in and for the County of Marin against Defendant and Does 1 through 150,  
10 alleging violations of California Health & Safety Code §25249.6 based on the alleged exposures  
11 to DEHP contained in the Products.

12           **1.8 No Admission**

13           Defendant denies the material factual and legal allegations contained in Moore's Notice  
14 and Complaint, and maintains that all Products sold and distributed in California have been and  
15 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an  
16 admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall  
17 compliance with this Consent Judgment constitute or be construed as an admission by  
18 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
19 specifically denied by Defendant. However, this section shall not diminish or otherwise affect  
20 Defendant obligations, responsibilities, and duties under this Consent Judgment.

21           **1.9 Consent to Jurisdiction**

22           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
23 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is  
24 proper in the County of Marin, and that this Court has jurisdiction to enter and enforce the  
25 provisions of this Consent Judgment.

26           **1.10 Effective Date**

27           For purposes of this Consent Judgment, the term “Effective Date” shall mean January  
28 15, 2012.

1     **2.     INJUNCTIVE RELIEF: REFORMULATION**

2             **2.1     Reformulation Standards**

3             As of the Effective Date, Defendant shall only distribute, sell, and/or offer for sale in  
4 California Products that are Phthalate Free. For purposes of this Settlement Agreement,  
5 “Phthalate Free” Products shall mean Products containing less than or equal to 1,000 parts per  
6 million (0.1%) of DEHP when analyzed pursuant to Environmental Protection Agency testing  
7 methodologies 3580A and 8270C.

8     **3.     MONETARY PAYMENTS**

9             **3.1     Civil Penalty**

10            Defendant shall pay a civil penalty of \$2,000 to be apportioned in accordance with  
11 California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to  
12 the State of California’s Office of Environmental Health Hazard Assessment and the remaining  
13 25% of the civil penalty to Moore, as provided by California Health & Safety Code §  
14 25249.12(d).

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

16            The Parties acknowledge that Moore and his counsel offered to resolve this dispute  
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
18 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
19 Defendant then expressed a desire to resolve the fee and cost issue shortly after the other  
20 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on  
21 the compensation due to Moore and his counsel under general contract principles and the private  
22 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all  
23 work performed in this matter, except fees that may be incurred on appeal. Under these legal  
24 principles, Defendant shall pay the amount of \$20,000 for fees and costs incurred investigating,  
25 litigating and enforcing this matter, including the fees and costs incurred (and yet to be  
26 incurred) negotiating, drafting, and obtaining the Court’s approval of this Consent Judgment  
27 in the public interest.

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1           **3.3    Payment Procedures**

2           **(a)    Funds Held In Trust:** All payments required by Sections 3.1 and 3.2  
3 shall be delivered on or before the Effective Date, to either The Chanler Group or the attorney of  
4 record for Defendant, and shall be held in trust pending the Court’s approval of this Consent  
5 Judgment.

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

- 7                   (i)    One check made payable to “The Chanler Group in Trust for  
8                   OEHHA” in the amount of \$1,500;  
9                   (ii)   One check made payable to “The Chanler Group in Trust for  
10                  Moore” in the amount of \$500; and  
11                  (iii)  One check made payable to “The Chanler Group in Trust” in the  
12                  amount of \$20,000.

13                  Payments delivered to Orrick, Herrington & Sutcliffe LLP shall be made payable,  
14 as follows:

- 15                  (i)    One check made payable to “Orrick, Herrington & Sutcliffe LLP  
16                  in Trust for OEHHA” in the amount of \$1,500;  
17                  (ii)   One check made payable to “Orrick, Herrington & Sutcliffe LLP  
18                  in Trust for Moore” in the amount of \$500; and  
19                  (iii)  One check made payable to “Orrick, Herrington & Sutcliffe LLP  
20                  in Trust for The Chanler Group” in the amount of \$20,000.

21                  If Defendant elects to deliver payments to its attorney of record, the attorney of record  
22 shall confirm, in writing within five days of deposit, that the funds have been deposited in a trust  
23 account.

24                  Within two days of the date of the hearing on which the Court approves the Consent  
25 Judgment, the payments being held in trust by the attorney of record for Defendant shall be  
26 delivered to The Chanler Group in three separate checks payable, as follows:

- 27                  (i)    One check made payable to “The Chanler Group in Trust for  
28                  OEHHA” in the amount of \$1,500;

1 (ii) One check to “The Chanler Group in Trust for Moore” in the  
2 amount of \$500; and  
3 (iii) One check to “The Chanler Group” in the amount of \$20,000.  
4 (b) **Issuance of 1099 Forms.** After the Consent Judgment has been approved  
5 and the settlement funds have been transmitted to plaintiff’s counsel, Defendant shall issue three  
6 separate 1099 forms, as follows:

7 (i) The first 1099 shall be issued to the Office of Environmental  
8 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:  
9 68-0284486) in the amount of \$1,500;

10 (ii) The second 1099 shall be issued to Moore in the amount of \$500,  
11 whose address and tax identification number shall be furnished upon  
12 request; and

13 (iii) The third 1099 shall be issued to The Chanler Group (EIN: 94-  
14 3171522) in the amount of \$20,000.

15 (c) **Payment Address:** All payments to the Chanler Group shall be delivered  
16 to the following payment address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

22 This Consent Judgment is a full, final and binding resolution between Moore, on behalf  
23 of himself and in the interest of the general public, and Defendant, of any violation of  
24 Proposition 65 that was or could have been asserted by Moore against Defendant, its parents,  
25 subsidiaries, affiliated entities that are under common ownership, successors, predecessors,  
26 directors, officers, employees, attorneys (collectively “BAKER & TAYLOR”) and each entity to  
27 whom BAKER & TAYLOR directly or indirectly distributed or sold Products, including but not  
28 limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative

1 members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged  
2 exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or  
3 offered for sale by BAKER & TAYLOR prior to the Effective Date.

4 **4.2 Moore’s Public Release of Proposition 65 Claims**

5 In further consideration of the promises and agreements herein contained, Moore on  
6 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or  
7 assignees, and in the interest of the general public, hereby waives all rights to institute or  
8 participate in, directly or indirectly, any form of legal action and releases all claims, including,  
9 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,  
10 demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not  
11 limited to, investigation fees, expert fees, and attorneys’ fees, but exclusive of fees and costs on  
12 appeal -- limited to and arising under Proposition 65 with respect to DEHP in the Products  
13 manufactured, distributed, sold and/or offered for sale by BAKER & TAYLOR (collectively  
14 “claims”), against BAKER & TAYLOR and Releasees.

15 **4.3 Moore’s Individual Release of Claims**

16 Moore also, in his individual capacity only and *not* in his representative capacity,  
17 provides a release herein which shall be effective as a full and final accord and satisfaction, as a  
18 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,  
19 claims, liabilities and demands of Moore of any nature, character or kind, whether known or  
20 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to  
21 the DEHP in the Products manufactured, distributed, sold and/or offered for sale by BAKER &  
22 TAYLOR.. Moore expressly waives any and all rights and benefits which he now has, or in the  
23 future may have, under California Civil Code § 1542, which provides as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
26 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR  
27 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH  
28 THE DEBTOR.

1           **4.4    Baker & Taylor’s Release of Moore**

2           BAKER & TAYLOR on behalf of itself, its past and current agents, representatives,  
3 attorneys, successors, and/or assignees, hereby waives any and all claims against Moore, his  
4 attorneys and other representatives, for any and all actions taken or statements made (or those  
5 that could have been taken or made) by Moore and his attorneys and other representatives,  
6 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65  
7 against it in this matter with respect to the Products.

8           **5.    COURT APPROVAL**

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

14           **6.    SEVERABILITY**

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

18           **7.    GOVERNING LAW**

19           The terms of this Consent Judgment shall be governed by the laws of the state of  
20 California and apply within the state of California. In the event that Proposition 65 is repealed  
21 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then  
22 Defendant shall provide written notice to Moore of any asserted change in the law, and shall  
23 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
24 that, the Products are so affected.

25           **8.    NOTICES**

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

3 To Defendant:

4 Bradley D. Murchison  
5 General Counsel  
6 Baker & Taylor, Inc.  
7 2550 West Tyvola Road, Suite 300  
8 Charlotte, NC 28217

9 With a copy to:

10 Kathryn H. Edwards  
11 Orrick, Herrington & Sutcliffe LLP  
12 The Orrick Building  
13 405 Howard Street  
14 San Francisco, CA 94105-2669

15 To Moore:

16 Proposition 65 Coordinator  
17 The Chanler Group  
18 2560 Ninth Street  
19 Parker Plaza, Suite 214  
20 Berkeley, CA 94710-2565

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

28 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**11. ADDITIONAL POST EXECUTION ACTIVITIES**

The Parties agree to mutually employ their, and their counsel's, reasonable best efforts  
to support the entry of this agreement as a Consent Judgment and obtain approval of the

1 Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to  
2 California Health and Safety Code section 25249.7, a noticed motion is required to obtain  
3 judicial approval of this Consent Judgment, which Moore shall file, and which Defendant shall  
4 not oppose. If any third party objection to the noticed motion is filed, Moore and Defendant  
5 shall work together to file a joint reply and appear at any hearing before the Court. If the  
6 Superior Court does not approve the motion to approve this Consent Judgment, and the Parties  
7 choose not to pursue a modified Consent Judgment within 30 days of said denial, or in the event  
8 that the Superior Court approve this Consent Judgment and any person successfully appeals that  
9 approval, all payments made pursuant to this Consent Judgment will be returned to Defendant.

10 **12. MODIFICATION**

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

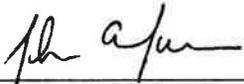
14 **13. AUTHORIZATION**

15 The undersigned are authorized to execute this Consent Judgment on behalf of their  
16 respective parties and have read, understood, and agree to all of the terms and conditions of this  
17 Consent Judgment.

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1 **14. ENTIRE AGREEMENT**

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

8 AGREED TO:  
9 Date: JANUARY 12, 2012  
10  
11 By:   
12 John Moore

AGREED TO:  
Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Sydney J. Stanley, Executive Vice-President  
Baker & Taylor, Inc.

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5 otherwise, express or implied, other than those contained herein have been made by any party  
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
7 deemed to exist or to bind any of the parties.

8 AGREED TO:

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

10 By: \_\_\_\_\_

11 John Moore

12 AGREED TO:

13 Date: 5 January 2012

14 By: Sydney J. Stanley

15 Sydney J. Stanley, Executive Vice-President  
16 Baker & Taylor, Inc.

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