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9 Attorneys for Plaintiff
10 JOHN MOORE

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

14 JOHN MOORE,
15 Plaintiff,
16 v.
17 GUITAR CENTER, INC.; and DOES 1-150,
18 inclusive,
19 Defendants.

) Case No. CIV1105656

) **[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT GUITAR CENTER, INC.**

1 **1. INTRODUCTION**

2 **1.1 John Moore and Guitar Center, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and defendant Guitar Center, Inc. (“Guitar Center” or “Defendant”), with Plaintiff
5 and Defendant collectively referred to as the “Parties” and each individually referred to as a
6 “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 Guitar Center 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.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Moore alleges that Guitar Center manufactured, imported, distributed, sold and/or
17 offered for sale benches with vinyl seats containing di(2-ethylhexyl)phthalate (“DEHP”) in the
18 State of California without the requisite Proposition 65 health hazard warnings. DEHP is listed
19 pursuant to Proposition 65 as known to the State of California to cause birth defects and other
20 reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are benches with vinyl seats
23 containing DEHP including, but not limited to, the *ProLine Keyboard Bench, PL-1250 (#6*
24 *56238 00621 7)*, which Guitar Center manufactured, imported, distributed, sold and/or offered
25 for sale in the state of California, hereinafter referred to as the “Products.”

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1.6 Notice of Violation

On August 2, 2011, Moore served Guitar Center and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 for failing to warn consumers that the Products exposed users in California to DEHP. To the best of the Parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

1.7 Complaint

On or about November 16, 2011, Moore filed a complaint in the Superior Court in and for the County of Marin against Guitar Center, Inc. and Does 1 through 150, *Moore v. Guitar Center, Inc., et al. Case No. CIV1105656* (“Complaint” or “Action”) alleging, *inter alia*, violations of Proposition 65 based on the alleged exposures to DEHP contained in the Products.

1.8 No Admission

Guitar Center denies the material factual and legal allegations contained in Moore's Notice and Complaint, and maintains that all Products which Guitar Center allegedly manufactured, imported, distributed, sold, and/or offered for sale in California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Guitar Center of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Guitar Center of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Guitar Center. However, this section shall not diminish or otherwise affect Guitar Center’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

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

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1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this Consent Judgment is approved by the Court.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

After the Effective Date, Guitar Center shall only manufacture, import, distribute, sell and/or offer for sale in California Products that are “Reformulated Products” or that provide warnings pursuant to Section 2.2 below. “Reformulated Products” are defined as those Products containing DEHP in concentrations less than or equal to 0.1 percent (1,000 parts per million) in each “Accessible Component” when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal and state agencies for the purpose of determining DEHP content in a solid substance. For purposes of this Section 2.1, the term “Accessible Component” means a component of a Product that could be touched by a person during reasonably foreseeable use. Reformulated Products shall be exempt from any Proposition 65 warning requirements regarding exposure to DEHP.

2.2 Product Warnings

After Moore filed the Complaint, Guitar Center began placing warnings on all Products offered for sale in California. The warnings included the following language:

WARNING: This product contains a chemical known to the state of California to cause birth defects or other reproductive harm.

Therefore, the Parties agree that Guitar Center may continue to sell Products that are currently in Guitar Center’s inventory and that contain the above warning label. Commencing 60 days after the Effective Date, however, Guitar Center shall, in accordance with Proposition 65, for all Products sold in California other than Reformulated Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual

1 under customary conditions before purchase or use. Each warning shall be provided in a manner
2 such that the consumer or user understands to which *specific* Product the warning applies, so as
3 to minimize the risk of consumer confusion.

4 (a) **Warnings for Retail Store Sales.**

5 (i) **Product Labeling.** Guitar Center may perform its warning
6 obligation by affixing a warning to the packaging, labeling, or directly on each Product sold in
7 retail outlets in California by Guitar Center or any person selling the Products, that states:

8 **WARNING:** This product contains a chemical known to the state
9 of California to cause birth defects and other
reproductive harm.

10 (ii) **Point-of-Sale Warnings.** Alternatively, Guitar Center may
11 perform its warning obligations by ensuring that signs are posted at its retail outlets in the state
12 of California where the Products are sold. Point-of-sale warnings shall be provided through one
13 or more warning signs posted in close proximity to the point of display of the Products that
14 states:

15 **WARNING:** This product contains a chemical known to the state
16 of California to cause birth defects and other
reproductive harm.

17 Where more than one Product is sold in proximity to other like items or to those that do
18 not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following
19 statement shall be used:¹

20 **WARNING:** The following products contain a chemical known to
21 the state of California to cause birth defects and
22 other reproductive harm.

23 *[list products for which warning is required]*

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26 ¹ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another
27 similar product are offered for sale close enough to each other that the consumer, under customary conditions of
28 purchase, could not reasonably determine which of the two products is subject to the warning sign.

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(b) **Warnings For Mail Order Catalog and Internet Sales.**

In the event that Guitar Center sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date that are not Reformulated Products, Guitar Center shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains a chemical known to the state of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Guitar Center may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain a chemical known to the state of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Guitar Center must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

1 (ii) **Internet Website Warning.** A warning shall be given in
2 conjunction with the sale of the Products via the internet, provided it appears either: (a) on the
3 same web page on which a Product is displayed; (b) on the same web page as the order form for
4 a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
5 displayed to a purchaser during the checkout process. The following warning statement shall be
6 used and shall appear in any of the above instances adjacent to or immediately following the
7 display, description, or price of the Product for which it is given in the same type size or larger
8 than the Product description text:

9 **WARNING:** This product contains a chemical known to the
10 state of California to cause birth defects and other
reproductive harm

11 Alternatively, the designated symbol may appear adjacent to or immediately following the
12 display, description, or price of the Product for which a warning is being given, provided that the
13 following warning statement also appears elsewhere on the same web page, as follows:

14 **WARNING:** Products identified on this page with the following
15 symbol ▼ contain a chemical known to the state of
16 California to cause birth defects and other
reproductive harm.

17 **3. MONETARY PAYMENTS**

18 **3.1 Initial Civil Penalty**

19 Guitar Center shall pay an initial civil penalty of \$5,000, to be apportioned in accordance
20 with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to
21 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and
22 the remaining 25% of the penalty remitted to Moore. Such payment shall be made, in the
23 manner detailed in Section 3.4 below.

24 **3.2 Final Civil Penalty**

25 Guitar Center shall pay a final civil penalty in the amount of \$10,000 on December 31,
26 2012. As incentive for Guitar Center to reformulate the Products, however, this final civil
27 penalty shall be waived in its entirety if an officer of Guitar Center certifies in writing that it, as
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1 of December 15, 2012, will sell, ship and offer for sale in California only Reformulated
2 Products. Such certification must be received by The Chanler Group on or before December 15,
3 2012. The final civil penalty payment shall be apportioned in accordance with California Health
4 & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the
5 remaining 25% of the penalty remitted to Moore. Such payment shall be made in the manner
6 detailed in Section 3.4 below.

7 **3.3 Reimbursement of Plaintiff's Fees and Costs**

8 The Parties reached an accord on the compensation due to Moore and his counsel under
9 general contract principles and the private attorney general doctrine codified at California Code
10 of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be
11 incurred on appeal. Under these legal principles, Guitar Center shall pay the amount of \$35,000
12 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees
13 and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's
14 approval of this Consent Judgment in the public interest. The check for reimbursement of fees
15 and costs shall be made, in the manner detailed in Section 3.4 below.

16 **3.4 Payment Procedures**

17 **3.4.1 Funds Held In Trust.** All payments required by Sections 3.1 and 3.3
18 shall be delivered on or before the Effective Date to either The Chanler Group or the attorney of
19 record for Guitar Center and shall be held in trust pending the Court's approval of this Consent
20 Judgment.

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

- 22 (a) One check made payable to "The Chanler Group in Trust for
23 OEHHA" in the amount of \$3,750;
- 24 (b) One check made payable to "The Chanler Group in Trust for John
25 Moore" in the amount of \$1,250; and
- 26 (c) One check made payable to "The Chanler Group in Trust" in the
27 amount of \$35,000.

1 If Guitar Center elects to deliver payments to its attorney of record, those payments shall
2 be made payable, as follows:

- 3 (a) One check made payable to “Latham & Watkins LLP in Trust for
4 OEHHA” in the amount of \$3,750;
- 5 (b) One check made payable to “Latham & Watkins LLP in Trust for
6 John Moore” in the amount of \$1,250; and
- 7 (c) One check made payable to “Latham & Watkins LLP in Trust for
8 The Chanler Group” in the amount of \$35,000.

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

- 14 (a) One check made payable to “The Chanler Group in Trust for
15 OEHHA” in the amount of \$3,750;
- 16 (b) One check made payable to “The Chanler Group in Trust for John
17 Moore” in the amount of \$1,250; and
- 18 (c) One check made payable to “The Chanler Group” in the amount of
19 \$35,000.

20 If the penalty payments required by Section 3.2 above are not waived, payments shall be
21 delivered to The Chanler Group made payable, as follows:

- 22 (a) One check made payable to “The Chanler Group in Trust for
23 OEHHA” in the amount of \$7,500;
- 24 (b) One check made payable to “The Chanler Group in Trust for John
25 Moore” in the amount of \$2,500.

1 **3.4.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
2 and the settlement funds have been transmitted to Plaintiff's counsel, Guitar Center shall issue
3 five separate 1099 forms, as follows:

4 (a) The first 1099 shall be issued to the Office of Environmental
5 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA
6 95814 (EIN: 68-0284486) in the amount of \$3,750;

7 (b) The second 1099 shall be issued to John Moore in the amount of
8 \$1,250, whose address and tax identification number shall be
9 furnished upon request; and

10 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
11 3171522) in the amount of \$35,000.

12 (d) If the final penalty in Section 3.2 above is paid, the fourth 1099
13 shall be issued to the Office of Environmental Health Hazard
14 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
15 0284486) in the amount of \$7,500;

16 (e) If the final penalty in Section 3.2 above is paid, the fifth 1099 shall
17 be issued to Moore in the amount of \$2,500, whose address and tax
18 identification number shall be furnished upon request.

19 **3.4.3 Payment Address.** All payments to the Chanler Group shall be delivered
20 to the following payment address:

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 Plaintiff's Public Release of Proposition 65 Claims**

28 Moore, acting on his own behalf and in the public interest, releases Guitar Center from
all claims for violations of Proposition 65 up through the Effective Date based on exposure to

1 DEHP from the Products as set forth in the Notice. Compliance with the terms of this Consent
2 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from
3 the Products as set forth in the Notice.

4 **4.2 Plaintiff's Individual Release of Claims**

5 In further consideration of the promises and agreements herein contained, and for the
6 payments made pursuant to Section 3, Moore also, in his individual capacity only and *not* in his
7 representative capacity, hereby releases Guitar Center from all claims, including without
8 limitation all actions, causes of action, in law or in equity, suits, liabilities, demands,
9 obligations, agreements, promises, royalties, accountings, costs, fines, penalties, expenses
10 (including, but not limited to, investigation fees, expert fees, and attorneys' fees, damages),
11 losses, claims, liabilities and demands of Plaintiff of any nature, character or kind, whether
12 known or unknown, suspected or unsuspected (collectively, "Claims"), against Guitar Center
13 and each of its retailers, distributors, franchisees, dealers, parent companies, corporate
14 affiliates, successors, assignees, subsidiaries, and their respective officers, directors, attorneys,
15 representatives, shareholders, agents, and employees, and sister and parent entities
16 (collectively, "Releasees"). This release is limited to those Claims that arise under Proposition
17 65, as such Claims relate to Guitar Center's alleged failure to warn about exposures to DEHP
18 contained in the Products.

19 **4.3 Defendant's Release of Plaintiff**

20 Guitar Center, on behalf of itself and its Releasees, hereby waives any and all claims
21 against Moore, his attorneys and other representatives, for any and all actions taken or
22 statements made (or those that could have been taken or made) by Moore and his attorneys and
23 other representatives, whether in the course of investigating claims or otherwise seeking to
24 enforce Proposition 65 against it in this matter with respect to the Products.

25 **5. COURT APPROVAL**

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

4 **6. SEVERABILITY**

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

8 **7. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the state of
10 California and apply within the state of California. In the event that Proposition 65 is repealed
11 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
12 Guitar Center shall provide written notice to Moore of any asserted change in the law, and shall
13 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
14 that, the Products are so affected.

15 **8. NOTICES**

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

20 To Guitar Center:

21 Winston P. Stromberg
22 Latham & Watkins LLP
23 355 South Grand Avenue
24 Los Angeles, CA 90071-1560

25 With a copy to:

26 Ellen Rosenberg, Vice President & Assistant General Counsel
27 Guitar Center, Inc.
28 5795 Lindero Canyon Road
Westlake Village, CA 91362

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To Moore:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

Any Party, from time to time, may 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”), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

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 Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment (“Noticed Motion”), which Moore shall file, and which Guitar Center shall not oppose. For purposes of this paragraph, best efforts shall include at a minimum that Guitar Center join in or file a joinder in the Noticed Motion and participate in any oral argument before the Court on the hearing of the Noticed Motion. If any third party objection to the Noticed Motion is filed, best efforts shall include at a minimum that Guitar Center join in or file a joinder to any reply brief filed by Moore. If the Superior Court does not approve the Noticed Motion, and the Parties choose not to pursue a modified Consent Judgment within 30 days of said denial, or in the event that the Superior Court approve this Consent

1 Judgment and any person successfully appeals that approval, all payments made pursuant to this
2 Consent Judgment will be returned to Guitar Center.

3 **12. MODIFICATION**

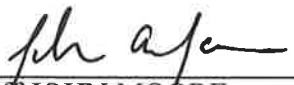
4 This Consent Judgment may be modified only: (1) by written agreement of the Parties
5 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
6 motion of any Party and entry of a modified Consent Judgment by the Court. The Attorney
7 General shall be served with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

9 **13. ENTIRE AGREEMENT**

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

16 **14. AUTHORIZATION**

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

20 **AGREED TO:** **AGREED TO:**
21 Date: JUNE 24, 2012 Date: _____
22
23 By:  By: _____
24 Plaintiff JOHN MOORE Defendant GUITAR CENTER, INC.
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1 Judgment and any person successfully appeals that approval, all payments made pursuant to this
2 Consent Judgment will be returned to Guitar Center.

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5 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
6 motion of any Party and entry of a modified Consent Judgment by the Court. The Attorney
7 General shall be served with notice of any proposed modification to this Consent Judgment at
8 least fifteen (15) days in advance of its consideration by the Court.

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11 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
12 negotiations, commitments, and understandings related hereto. No representations, oral or
13 otherwise, express or implied, other than those contained herein have been made by any party
14 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
15 deemed to exist or to bind any of the Parties.

16 **14. AUTHORIZATION**

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

20	AGREED TO:	AGREED TO:
21	Date: _____	Date: <u>June 15, 2012</u>
22		
23	By: _____	By: _____
24	Plaintiff JOHN MOORE	Defendant GUITAR CENTER, INC.