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6  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11  
12

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 NORTH WALK, LTD.; *et al.*,

17 Defendants.  
18

Case No. HG12640481

**[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”), and  
4     defendant, North Walk, Ltd. (“North Walk”), with Moore and North Walk each individually referred  
5     to as a “Party” and collectively 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 improve human health by reducing or eliminating hazardous substances  
9     contained in consumer products.

10            **1.3 Defendant**

11            North Walk 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, Health & Safety Code  
13    § 25249.6 *et seq.* (“Proposition 65”).

14            **1.4 General Allegations**

15            Moore alleges that North Walk sold footwear containing di-n-butyl phthalate (“DBP”)  
16    without first providing the clear and reasonable warning required by Proposition 65. DBP is listed  
17    pursuant to Proposition 65 as a chemical known to the state of California to cause birth defects or  
18    other reproductive harm.

19            **1.5 Product Description**

20            The products that are covered by this Consent Judgment are footwear containing DBP that are  
21    imported, manufactured, sold, or distributed for sale by North Walk in California (collectively  
22    “Products”) including, but not limited to, the *Fun Flip-Flops* (#6 19649 15277 5) and *Maui Girl Flip*  
23    *Flops* (#3594827).

24            **1.6 Notice of Violation**

25            On February 24, 2011, Russell Brimer<sup>1</sup> served Big Five Sporting Goods Corporation and  
26    certain requisite public enforcers with a 60-Day Notice of Violation (“Brimer Notice”) alleging that

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28            

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<sup>1</sup> Mr. Brimer is a party to the settlement but not a party to the action.

1 *Maui Girl Flip Flops* (#3594827) sold at Big Five Sporting Goods Corporation stores exposes users  
2 to DBP. For purposes of this Consent Judgment, North Walk represents that it, or one of its affiliates,  
3 supplied the Maui Girl Flip Flops sold at Big Five Sporting Goods Corporation.

4 On or about October 28, 2011, Moore served North Walk and certain requisite public  
5 enforcement agencies with a 60-Day Notice of Violation (“Moore Notice”), alleging that North Walk  
6 was in violation of Proposition 65 for failing to warn its California customers that its footwear  
7 containing DBP including, but not limited to, the *Fun Flip-Flops* (#6 19649 15277 5) exposed users  
8 to DBP. The Brimer and Moore notices shall be referred to herein collectively as the “Notices.”

### 9 **1.7 Complaint**

10 On July 24, 2012, Moore filed the instant action against North Walk (“Complaint”) for the  
11 alleged violations of Health & Safety Code § 25249.6 that are the subject of the Moore Notice.

### 12 **1.8 No Admission**

13 North Walk denies the material, factual and legal allegations contained in the Notices and  
14 Complaint, and it maintains that all of the products that it has sold and distributed in California,  
15 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
16 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
17 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
18 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall  
19 not, however, diminish or otherwise affect North Walk’s obligations, responsibilities, and duties  
20 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 North Walk as to the allegations in the Complaint, that venue is proper in Alameda  
24 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent  
25 Judgment.

### 26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean October 10,  
28 2013.

1     **2.     INJUNCTIVE RELIEF: REFORMULATION**

2             Commencing on the Effective Date and continuing thereafter, North Walk shall only import,  
3     manufacture, sell or distribute for sale in California “Reformulated Products.” For purposes of this  
4     Consent Judgment, Reformulated Products contain a maximum of 1,000 parts per million (0.1%)  
5     DBP content in any accessible component (i.e., any component that may be touched or handled  
6     during a reasonably foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A  
7     and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of  
8     determining DBP content in a solid substance.

9     **3.     MONETARY PAYMENTS**

10            **3.1     Civil Penalty Payments**

11            In settlement of all the claims referred to in this Consent Judgment against it, North Walk  
12     shall make civil penalty payments of \$40,000, unless waived as set for herein, as follows:

13                    **3.1.1     Initial Penalty Payment**

14            Pursuant to Health & Safety Code § 25249.7(b), North Walk shall pay \$7,500 in civil  
15     penalties on or before the Effective Date. The penalty payment shall be allocated according to Health  
16     & Safety Code § 25249.12 (c)(1) and (d), with seventy-five percent (75%) of the penalty amount  
17     earmarked for the California Office of Environmental Health Hazard Assessment (“OEHHA”) and  
18     the remaining twenty-five (25%) of the penalty amount earmarked for Moore. North Walk shall  
19     issue two separate checks for the penalty payment: (a) one check made payable to “OEHHA” in the  
20     amount of \$5,625 representing 75% of the total penalty; and (b) one check made payable to “The  
21     Chanler Group in Trust for Moore” in the amount of \$1,875, representing 25% of the total penalty.  
22     Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered  
23     to the addresses listed in Section 3.3 below.

24                    **3.1.2     Second Penalty Payment**

25            North Walk shall pay a second penalty payment of \$15,000, allocated as described above in  
26     3.1.1, on or before the Effective Date, which payment shall be waived in its entirety if, on or before  
27     the Effective Date, North Walk certifies in writing that Big Five Sporting Goods Stores Corporation  
28     removed the Maui Girl Flip Flops from its shelves pursuant to a recall issued by North Walk.

1                                   **3.1.3 Third Penalty Payment**

2           North Walk shall pay a third and final civil penalty payment of \$17,500 on or before the  
3 Effective Date, with seventy-five percent (75%) of the penalty amount earmarked for OEHHA and  
4 the remaining twenty-five (25%) of the penalty amount earmarked for Moore, which final payment  
5 shall be waived in its entirety if, on or before the Effective Date, an officer of North Walk certified in  
6 writing that all Products it imports, manufactures, sells or distributes for sale in California after the  
7 Effective Date are "Reformulated Product" as specified in Section 2, above.

8                                   **3.2 Reimbursement of Moore's Fees and Costs**

9           The Parties acknowledge that Moore and his counsel offered to resolve this dispute without  
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue  
11 to be resolved after the material terms of the agreement had been settled. Shortly after all other  
12 settlement terms had been finalized, North Walk expressed a desire to resolve the fees and costs.  
13 The Parties then attempted to (and did) reach an accord on the compensation due Moore and his  
14 counsel under general contract principles and the private attorney general doctrine codified at Code  
15 of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees and costs  
16 incurred on appeal, if any. Under these legal principles, on or before the Effective Date, North Walk  
17 shall pay \$45,000 for the fees and costs incurred investigating, litigating, and enforcing this matter,  
18 including the fees and costs incurred (and to be incurred) drafting, negotiating, and obtaining the  
19 Court's approval of this Consent Judgment in the public interest.

20                                   **3.3 Payment Procedures**

21                                   **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 22                                   (a) All payments owed to Moore pursuant to Sections 3.1.1 through 3.1.3 and  
23                                   owed to The Chanler Group pursuant to Section 3.2, shall be delivered on  
24                                   or before the Effective Date to the following payment address:

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

1 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections  
2 3.1.1 through 3.1.3, shall be delivered within 10 days of the Court's  
3 approval of the Consent Judgment directly to OEHHA (Memo line "Prop  
4 65 Penalties") at the following addresses:

5 For United States Postal Service Delivery:

6 Mike Gyurics  
7 Fiscal Operations Branch Chief  
8 Office of Environmental Health Hazard Assessment  
9 P.O. Box 4010  
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:

12 Mike Gyurics  
13 Fiscal Operations Branch Chief  
14 Office of Environmental Health Hazard Assessment  
15 1001 I Street  
16 Sacramento, CA 95814

17 With a copy of the checks payable to OEHHA mailed to The Chanler  
18 Group at the address set forth above, as proof of payment to OEHHA.

19 **3.3.2 Issuance of 1099 Forms.** After each payment, North Walk shall issue  
20 separate 1099 forms for each payment, as follows:

- 21 (a) For each penalty payment owed to OEHHA in Sections 3.1.1 through  
22 3.1.3, a 1099 shall be issued to the Office of Environmental Health  
23 Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-  
24 0284486);
- 25 (b) For each penalty payment owed in Sections 3.1.3 through 3.1.3, a  
26 1099 shall be issued to Moore, whose address and tax identification  
27 number shall be furnished upon request; and
- 28 (c) For the Payment made pursuant to section 3.2 to The Chanler Group  
(EIN: 94-3171522) a 1099 shall be issued and delivered to The  
Chanler Group at the address set forth above in Section 3.3.1.

1     **4. CLAIMS COVERED AND RELEASED**

2             **4.1 Moore's Public Release of Proposition 65 Claims**

3             Moore, acting on his own behalf and in the public interest, releases North Walk from all  
4     claims for violations of Proposition 65 up through the Effective Date based on exposures to DBP  
5     from the Products, as set forth in the Moore Notice. Compliance with the terms of this Consent  
6     Judgment constitutes compliance with Proposition 65 with respect to exposures to DBP from the  
7     Products sold by North Walk before the Effective Date, as set forth in the Notices.

8             **4.2 Brimer's and Moore's Individual Release of Claims**

9             Brimer and Moore, in their individual capacity only and *not* in their representative capacity,  
10    also provide a release herein which shall be effective as a full and final accord and satisfaction, as a  
11    bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,  
12    claims, liabilities and demands of Moore and Brimer of any nature, character or kind, whether  
13    known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DBP in  
14    the Products imported, manufactured, sold or distributed for sale by North Walk before the  
15    Effective Date.

16            **4.3 North Walk's Release of Moore and Brimer**

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

23            **5. COURT APPROVAL**

24            This Consent Judgment is not effective until it is approved and entered by the Court and shall  
25    be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
26    has been fully executed by all Parties.

1     **6. SEVERABILITY**

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

5     **7. GOVERNING LAW**

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

13     **8. NOTICES**

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

17 For North Walk:

18             Max Mizrachi, President  
19             North Walk Ltd.  
20             34 West 33<sup>rd</sup> St., 7<sup>th</sup> Floor  
21             New York, NY 10001

22             with a copy to:

23             Susan L. Germaise, Esq.  
24             McGuire Woods LLP  
25             1800 Century Park East, 8<sup>th</sup> Floor  
26             Los Angeles, CA 90067

27 For Moore:

28             The Chanler Group  
29             Attn: Proposition 65 Coordinator  
30             2560 Ninth Street  
31             Parker Plaza, Suite 214  
32             Berkeley, CA 94710



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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **10. POST EXECUTION ACTIVITIES**

8 Moore agrees to comply with the reporting form requirements referenced in Health & Safety  
9 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code  
10 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance  
11 of obtaining such approval, Moore and North Walk agree to mutually employ their best efforts, and  
12 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain  
13 judicial approval of the settlement in a timely manner. For purposes of this Section, “best efforts”  
14 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,  
15 and supporting the motion for judicial approval.

16 **11. MODIFICATION**

17 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
18 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or  
19 application of any Party and the entry of a modified consent judgment by the Court.

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**12. AUTHORIZATION**

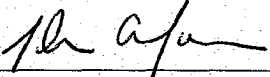
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: 9/13/13

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

By:   
JOHN MOORE

By: \_\_\_\_\_  
Max Mizrachi, President  
NORTH WALK, LTD.

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

By: \_\_\_\_\_  
RUSSELL BRIMER

1 **12. AUTHORIZATION**

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

4  
5 **AGREED TO:**

**AGREED TO:**

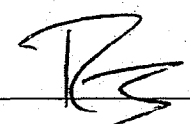
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JOHN MOORE

By: \_\_\_\_\_  
Max Mizrachi, President  
NORTH WALK, LTD.

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RUSSELL BRIMER

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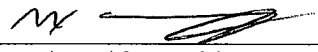
**AGREED TO:**

**AGREED TO:**

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

Date: 10/3/13

By: \_\_\_\_\_  
JOHN MOORE

By:  \_\_\_\_\_  
Max Mizrachi, President  
NORTH WALK, LTD.

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

By: \_\_\_\_\_  
RUSSELL BRIMER