

1 Brian C. Johnson, State Bar No. 235965  
Josh Voorhees, State Bar No. 241436  
2 THE CHANLER GROUP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
4 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff  
6 JOHN MOORE

7  
8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION  
12  
13

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 ESCALADE, INCORPORATED; INDIAN  
18 INDUSTRIES INC.; *et al.*,

19 Defendants.  
20

Case No. RG12653761

**[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, Indian Industries Inc. (“Indian”), with Moore and Indian each individually referred to as a  
5 “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 Indian 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 and Safety Code  
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

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

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are billiard table covers and ping  
21 pong table covers containing DEHP that are imported, manufactured, sold, or distributed for sale by  
22 Indian in California including, but not limited to, the *Mizerak Deluxe Billiard Table Cover, Item No.*  
23 *P0863 (#7 54806 06451 2)* and the *Stiga Deluxe Table Cover, Item No. T1585 (#7 54806 12564 0)*  
24 (collectively, “Products”).

25 **1.6 Notices of Violation**

26 On March 29, 2012, Moore served Indian and certain requisite public enforcement agencies  
27 with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Moore’s  
28

1 allegation that Indian was in violation of Proposition 65 for failing to warn its customers and  
2 consumers in California that the Products expose users to DEHP.

3 On September 21, 2012, Moore served Indian, Indian’s retail customer Sports Authority, Inc.  
4 (“Sports Authority”), and certain requisite public enforcement agencies with a “Supplemental Notice  
5 of Violation” (“Supplemental Notice”), alleging that Indian and Sports Authority were in violation of  
6 Proposition 65 with respect to their unwarned sales of the Products. The Notice and the  
7 Supplemental Notice are referred to collectively as the “Notices.”

### 8 **1.7 Complaint**

9 On October 26, 2012, Moore filed the instant action against Indian (“Complaint”) for the  
10 alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notices.

### 11 **1.8 No Admission**

12 Indian denies the material, factual and legal allegations contained in the Notices and  
13 Complaint, and it maintains that all of the products that it has sold and distributed in California,  
14 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
15 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
16 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
17 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall  
18 not, however, diminish or otherwise affect Indian’s obligations, responsibilities, and duties under this  
19 Consent Judgment.

### 20 **1.9 Consent to Jurisdiction**

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

### 25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the  
27 Court grants the motion for judicial approval of this Consent Judgment contemplated by section 5.  
28

1 **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

2 **2.1 Reformulated Products**

3 Commencing on the Effective Date, and continuing thereafter, Indian shall only manufacture,  
4 ship, sell, or distribute for sale in California Reformulated Products, or Products that are sold with a  
5 clear and reasonable warning pursuant to section 2.2. For purposes of this Consent Judgment,  
6 “Reformulated Products” contain a maximum of 1,000 parts per million (0.1%) DEHP content when  
7 analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies  
8 utilized by state or federal agencies for the purpose of determining DEHP content in a solid  
9 substance.

10 **2.2 Product Warnings**

11 For any Product Indian sells or distributes for sale in California after the Effective Date that is  
12 not a Reformulated Product, Indian shall provide a clear and reasonable warning affixed to the  
13 Product packaging or labeling, if any, or directly to the Product, with a statement that provides:

14 **WARNING:** This product contains chemicals known to  
15 the State of California to cause cancer or  
16 birth defects or other reproductive harm,  
including DEHP.

17 Each warning shall be prominently placed with such conspicuousness as compared with other  
18 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary  
19 individual under customary conditions before purchase or use. Each warning shall also be provided  
20 in a manner such that the consumer or user understands to which *specific* Product the warning  
21 applies, so as to minimize the risk of consumer confusion.

22 **3. MONETARY PAYMENTS**

23 **3.1 Civil Penalty Payments**

24 Pursuant to Health and Safety Code section 25249.7(b), except as provided in section  
25 3.1.2 below, Indian shall pay \$14,000 in civil penalties. Each penalty payment shall be allocated  
26 according to Health and Safety Code section 25249.12 (c)(1) and (d), with seventy-five percent  
27 (75%) of the penalty amount earmarked for the California Office of Environmental Health Hazard  
28 Assessment (“OEHHA”) and the remaining twenty-five (25%) of the penalty amount retained by

1 Moore. Indian agrees to provide Moore’s counsel with IRS 1099 forms for its penalty payments to  
2 Moore and OEHHA. All payments made under this Consent Judgment shall be delivered to the  
3 payment addresses provided in section 3.3.1.

### 4 **3.1.1 Initial Civil Penalty**

5 Within 10 days of the Effective Date, Indian shall pay an initial civil penalty of  
6 \$6,000. Indian shall deliver payment in the form of two checks made payable to: (a) “OEHHA” in  
7 the amount of \$4,500; and (b) “The Chanler Group in Trust for John Moore” in the amount of \$1,500.

### 8 **3.1.2 Final Civil Penalty; Waiver on Certification**

9 On November 1, 2013, Indian shall pay the remaining penalty portion of \$8,000,  
10 except that the remaining portion of the penalty shall be waived in its entirety if, on or before October  
11 15, 2013, an officer of Indian certifies in writing to Moore’s counsel that, as of September 1, 2013,  
12 one hundred percent of the Products manufactured for sale or purchased for in California by Indian  
13 are Reformulated Products as defined by section 2.1, and that Indian will only offer Reformulated  
14 Products in California in the future.

### 15 **3.1.3 Products Sold Prior to Effective Date**

16 Provided that Escalade has complied with the injunctive terms required by section 2,  
17 including Reformulated Products and warnings, sales of Products purchased, imported,  
18 manufactured, or supplied to unaffiliated third parties prior to the Effective Date shall not be  
19 considered a violation of this Consent Judgment, and shall not be separately actionable in another  
20 case brought pursuant to Section 25249.7(d) of the Health and Safety Code alleging unwarned  
21 exposures to DEHP under Proposition 65.

### 22 **3.2 Reimbursement of Moore’s Fees and Costs**

23 The Parties reached an accord on the compensation due to Moore and his counsel under  
24 general contract principles and the private attorney general doctrine codified at Code of Civil  
25 Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Indian  
26 shall pay \$36,000 for all fees and costs incurred investigating, bringing this matter to the attention of  
27 Indian’s management, and negotiating a settlement in the public interest. Within 10 days of the  
28 Effective Date, Indian shall provide Moore’s counsel with a third check payable to “The Chanler

1 Group,” and issue a separate 1099 for the reimbursement of fees and costs under this section to The  
2 Chanler Group (EIN: 94-3171522).

### 3 **3.3 Payment Procedures**

#### 4 **3.3.1. Payment Addresses**

5 (a) All payments to Moore and The Chanler Group shall be delivered to the  
6 following address:

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

12 (b) All payments to OEHHA (EIN: 68-0284486) made pursuant to section 3.1,  
13 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following address:

14 Mike Gyrics  
15 Fiscal Operations Branch Chief  
16 Office of Environmental Health Hazard Assessment  
17 P.O. Box 4010  
18 Sacramento, CA 95812-4010

19 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address payment  
20 address provided in section , as proof of payment to OEHHA.

#### 21 **3.3.2 Required Tax Documentation**

22 (a) For each penalty payment to OEHHA, a 1099 shall be issued to the Office of  
23 Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-  
24 0284486) in the amount of 75% of the total penalty payment;

25 (b) For each penalty payment to Moore, a 1099 shall be issued to “John Moore,”  
26 whose address and tax identification number shall be furnished upon request after this Consent  
27 Judgment is fully executed by the Parties; and

28 (b) For the reimbursement of fees and costs pursuant to section 3.3, Indian shall  
issue a separate 1099 form to “The Chanler Group” (EIN: 94-3171522).

## 29 **4. CLAIMS COVERED AND RELEASED**

### 30 **4.1 Moore’s Public Release of Proposition 65 Claims**

Moore, acting on his own behalf and in the public interest, releases Indian and its parents,

1 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and  
2 attorneys (“Releasees”) and each entity to whom they directly or indirectly distribute or sell the  
3 Products, including but not limited to its downstream distributors, wholesalers, customers  
4 (including, without limitation, Sports Authority, Inc.), retailers, franchisers, cooperative members,  
5 licensors and licensees (“Downstream Releasees”) for any violations arising under Proposition 65  
6 for unwarned exposures to DEHP contained in the Products sold by Indian prior to the Effective  
7 Date, as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes  
8 compliance with Proposition 65 with respect to exposures to DEHP from the Products sold by  
9 Indian before the Effective Date, as set forth in the Notices.

#### 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 to Indian, Releasees, and Downstream Releasees which shall be effective as a full and final  
13 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
14 attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature, character  
15 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
16 exposures to DEHP in the Products sold or distributed for sale by Indian before the Effective Date.

#### 17 **4.3 Indian’s Release of Moore**

18 Indian on behalf of itself and on behalf of its past and current agents, representatives,  
19 attorneys, successors, and/or assignees, hereby waives any and all claims against Moore and his  
20 attorneys and other representatives, for any and all actions taken or statements made (or those that  
21 could have been taken or made) by Moore and his attorneys and other representatives, whether in  
22 the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this  
23 matter, or with 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.  
28

1 **6. SEVERABILITY**

2 If, subsequent to the Court's approval of this Consent Judgment, any provision of this  
3 Consent Judgment is held by a court to be unenforceable, the validity of the remaining provisions  
4 shall not be 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 Indian may  
9 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.

12 **8. NOTICES**

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

16 For Indian:

17 Robert Keller, President  
18 Indian Industries Inc.  
19 817 Maxwell Avenue  
20 Evansville, IN 47711

21 with a copy to:

22 Stephen L. Marsh, Esq.  
23 McKenna Long & Aldridge LLP  
24 600 W. Broadway, Suite 2600  
25 San Diego, CA 92101

26 For Moore:

27 The Chanler Group  
28 Attn: Proposition 65 Coordinator  
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.

1  
2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

6 **10. POST EXECUTION ACTIVITIES**

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

15 **12. MODIFICATION**

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

19 **13. AUTHORIZATION**

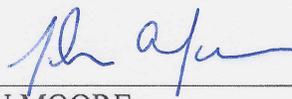
20 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
21 and agree to all of the terms and conditions contained herein.

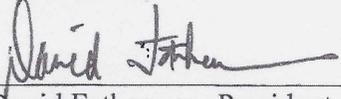
22 **AGREED TO:**

**AGREED TO:**

23  
24 Date: MARCH 19, 2013

Date: MARCH 15, 2013

25  
26 By:   
JOHN MOORE

25  
26 By:   
David Fetherman, President  
INDIAN INDUSTRIES INC.