

1 **1. INTRODUCTION**

2 **1.1 John Moore and Janco Distributors Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and Janco Distributors Inc. (“Janco” or “Defendant”), with Moore and Janco
5 collectively referred to as the “Parties.”

6 **1.2 John Moore**

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

10 **1.3 Janco Distributors Inc.**

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

14 **1.4 General Allegations**

15 Moore alleges that Janco has manufactured, imported, distributed and/or sold exercise balls
16 containing di(2-ethylhexyl)phthalate (“DEHP”) in California without the requisite Proposition 65
17 health hazard warnings. Additionally, Moore alleges that Janco has manufactured, imported,
18 distributed and/or sold yoga mats and jump ropes containing DEHP in California without the
19 requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to Proposition 65 as
20 known to the State of California to cause birth defects and other reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: (1) exercise
23 balls containing DEHP including, but not limited to, the *Maha Yoga Fitness Ball, Item #MY-104 (#0*
24 *14761 85104 7)*, manufactured, imported, distributed and/or sold by Janco in California, hereinafter
25 referred to as the “Noticed Products;” (2) yoga mats containing DEHP including, but not limited to,
26 the *Maha Yoga Mat, #MY-100 (#0 14761 85100 9)*, manufactured, imported, distributed and/or sold
27 by Janco in California; and (3) jump ropes containing DEHP including, but not limited to, the *Maha*
28 *Fitness Jump Rope, #MF-120 (#0 14761 85012 5)*, manufactured, imported, distributed and/or sold

1 by Janco in California. All yoga mats containing DEHP and jump ropes containing DEHP
2 manufactured, imported, distributed and/or sold by Janco in California are hereinafter referred to
3 collectively as “Additional Products.” Noticed Products and Additional Products are hereinafter
4 referred to as “Products.”

5 **1.6 Notice of Violation**

6 On April 25, 2012, Moore served Janco, Bliss Hammocks Inc. (“Bliss”), and various public
7 enforcement agencies, with a document entitled “60-Day Notice of Violation” (“Notice”) that
8 provided the recipients with notice of alleged violations of California Health & Safety Code §
9 25249.6 based on Janco’s alleged failure to warn consumers that the Noticed Products exposed
10 users in California to DEHP. To the best of the Parties’ knowledge, no public enforcer has
11 commenced and is diligently prosecuting the allegations set forth in the Notice.

12 **1.7 Complaint**

13 On August 2, 2012, Moore filed a complaint in the Superior Court in and for the County of
14 Marin against Bliss, Janco and Does 1 through 150, *Moore v. Bliss Hammocks Inc., et al.*, Case
15 No. CIV-1203539 (the “Complaint”), alleging violations of California Health & Safety Code
16 § 25249.6, based on the alleged exposures to DEHP contained in the Noticed Products sold by
17 Janco.

18 **1.8 No Admission**

19 Janco denies the material, factual and legal allegations contained in Moore’s Notice and
20 Complaint and maintains that all products that it has manufactured, imported, distributed, and/or
21 sold in California, including the Products, have been and are in compliance with all laws. Nothing
22 in this Consent Judgment shall be construed as an admission by Janco of any fact, finding, issue of
23 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
24 as an admission by Janco of any fact, finding, conclusion, issue of law, or violation of law.
25 However, this Section shall not diminish or otherwise affect Janco’s obligations, responsibilities,
26 and duties under this Consent Judgment.

1 **1.9 Consent to Jurisdiction**

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

6 **1.10 Effective Date**

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

9 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

10 **2.1 Injunctive Relief**

11 As of May 1, 2013, Janco shall only acquire for distribution to or sale in California, Products
12 that: (1) qualify as Reformulated Products as defined in Section 2.2 below; or (2) include one of the
13 clear and reasonable warnings set forth in Section 2.3 below.

14 **2.2 Reformulation Standards**

15 Reformulated Products are defined as those Products containing DEHP in concentrations
16 less than 0.1 percent (1,000 parts per million) in each Accessible Component when analyzed
17 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any
18 other methodology utilized by federal or state agencies for the purpose of determining the DEHP
19 content in a solid substance. “Accessible Component,” as used in this Consent Judgment, means a
20 component of a Product that can be touched by a person during normal, intended and foreseeable
21 use of the Product.

22 **2.3 Product Warnings**

23 Commencing on May 1, 2013, Janco shall, for all Products other than Reformulated
24 Products, provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b). Each
25 warning shall be prominently placed with such conspicuousness as compared with other words,
26 statements, designs, or devices as to render it likely to be read and understood by an ordinary
27 individual under customary conditions before purchase or use. Each warning shall be provided in a
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1 manner such that the consumer or user understands to which *specific* Product the warning applies,
2 so as to minimize the risk of consumer confusion.

3 (a) **Retail Store Sales.**

4 (i) **Product Labeling.** Janco shall affix a warning to the packaging,
5 labeling, or directly on each Product sold in retail outlets in California by Janco or any person
6 selling the Products, that states:

7 **WARNING:** This product contains DEHP, a phthalate chemical
8 known to the State of California to cause birth
defects and other reproductive harm.

9 (ii) **Point-of-Sale Warnings.** Alternatively, Janco may provide
10 warning signs in the form below to its customers in California with instructions to post the
11 warnings in close proximity to the point of display of the Products. Such instruction sent to
12 Janco’s customers shall be sent by certified mail, return receipt requested.

13 **WARNING:** This product contains DEHP, a phthalate chemical
14 known to the State of California to cause birth
defects and other reproductive harm.

15 Where more than one Product is sold in proximity to other like items or to those that do not
16 require a warning (*e.g.*, Reformulated Products as defined in Section 2.2), the following statement
17 shall be used:¹

18 **WARNING:** The following products contain DEHP, a phthalate
19 chemical known to the State of California to cause
20 birth defects and other reproductive harm:
[*list products for which warning is required*]

21 (b) **Mail Order Catalog and Internet Sales.** In the event that Janco sells
22 Products via mail order catalog and/or the internet, to customers located in California, after May 1,
23 2013, that are not Reformulated Products, Janco shall provide warnings for such Products sold via
24 mail order catalog or the internet to California residents. Warnings given in the mail order catalog
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27 ¹ For purposes of the Consent Judgment, “sold in proximity” shall mean that the Product and another similar product
28 are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not
reasonably determine which of the two products is subject to the warning sign.

1 or on the internet shall identify the *specific* Product to which the warning applies as further
2 specified in Sections 2.3(b)(i) and (ii).

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

7 **WARNING:** This product contains DEHP, a phthalate chemical
8 known to the State of California to cause birth
defects and other reproductive harm.

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

14 **WARNING:** Certain products identified with this symbol ▼ and
15 offered for sale in this catalog contain DEHP, a
16 phthalate chemical known to the State of California
to cause birth defects and other reproductive harm.

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

21 (ii) **Internet Website Warning.** A warning shall be given in conjunction
22 with the sale of the Products via the internet, which warning shall appear either: (a) on the same
23 web page on which a Product is displayed; (b) on the same web page as the order form for a
24 Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
25 displayed to a purchaser during the checkout process. The following warning statement shall be
26 used and shall appear in any of the above instances adjacent to or immediately following the
27 display, description, or price of the Product for which it is given in the same type size or larger than
28 the Product description text:

1 two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$1,875;
2 and (b) “The Chanler Group in Trust for John Moore” in the amount of \$625.

3 **3.3 Payment Procedures**

4 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

5 (a) All payments owed to Moore, pursuant to Sections 3.1 through 3.2,
6 shall be delivered to the following payment 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 owed to OEHHA (EIN: 68-0284486), pursuant to
13 Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at
14 the following addresses:

15 For United States Postal Service Delivery:

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

21 For Non-United States Postal Service Delivery:

22 Mike Gyrics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street
26 Sacramento, CA 95814

27 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address
28 set forth above in 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, Janco shall issue
separate 1099 forms for each payment to Moore, whose address and tax identification number shall
be furnished upon request after this Consent Judgment has been fully executed by the Parties, and
OEHHA at the addresses listed in Section 3.3.1(b) above.

1 **4. REIMBURSEMENT OF FEES AND COSTS**

2 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 issue to be resolved after the material terms of the agreement had been settled. Janco then
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
6 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
7 Moore and his counsel under general contract principles and the private attorney general doctrine
8 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
9 execution of this agreement. Janco shall pay \$25,000 for fees and costs incurred as a result of
10 investigating, bringing this matter to Janco’s attention, and negotiating a settlement in the public
11 interest. Janco shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the
12 check payable to “The Chanler Group” and shall deliver payment on or before May 15, 2013 to the
13 address listed in Section 3.3.1(a) above.

14 **5. CLAIMS COVERED AND RELEASED**

15 **5.1 Moore’s Release of Proposition 65 Claims**

16 Moore acting on his own behalf and in the public interest releases Janco, its parents,
17 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,
18 and each entity to whom Janco directly or indirectly distributes or sells Noticed Products, including,
19 but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees,
20 cooperative members, and licensees (“Releasees”), from all claims for violations of Proposition 65
21 up through the Effective Date based on exposure to DEHP from the Noticed Products set forth in
22 the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
23 Proposition 65 with respect to exposures to DEHP from the Noticed Products as set forth in the
24 Notice.

25 **5.2 Moore’s Individual Release of Claims**

26 Moore also, in his individual capacity only and *not* in his representative capacity, provides a
27 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
28 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,

1 liabilities and demands of Moore of any nature, character or kind, whether known or unknown,
2 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the
3 Products manufactured, imported, distributed, or sold by Janco.

4 **5.3 Janco's Release of Moore**

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

11 **6. COURT APPROVAL**

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

15 **7. SEVERABILITY**

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

19 **8. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
22 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
23 Consent Judgment are rendered inapplicable or are no longer required as a result of any such repeal
24 or preemption or rendered inapplicable by reason of law generally as to the Products, then Janco
25 shall provide written notice to Moore of any asserted change in the law, and shall have no further
26 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
27 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Janco from any
28 obligation to comply with any pertinent state or federal toxics control law.

1 **9. NOTICES**

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

6 To Janco:

7 Gerry Grunsfeld, Esq.
8 Lazar Grunsfeld Elnadav LLP
9 1795 Coney Island Avenue
 Brooklyn, NY 11230

To Moore:

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

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

12 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

13 This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature,
14 each of which shall be deemed an original, and all of which, when taken together, shall constitute
15 one and the same document. A facsimile or .pdf signature shall be as valid as the original.

16 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

17 Moore and his attorneys agree to comply with the reporting form requirements referenced in
18 California Health & Safety Code § 25249.7(f).

19 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

20 Moore and Janco agree to mutually employ their best efforts to support the entry of this
21 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
22 timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code
23 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
24 Moore shall draft and file, and Janco shall join. If any third party objection to the noticed
25 motion is filed, Moore and Janco shall work together to file a joint reply and appear at any hearing
26 before the Court. This provision is a material component of the Consent Judgment and shall be
27 treated as such in the event of a breach.
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13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified Consent Judgment by the Court.

14. AUTHORIZATION

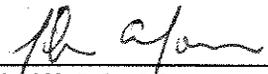
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: MAY 17, 2013

Date: _____

By: 
Plaintiff, John Moore

By: _____
Defendant, Janco Distributors Inc.

1 **13. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
3 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
4 of any party and entry of a modified Consent Judgment by the Court.

5 **14. AUTHORIZATION**

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

9
10 AGREED TO:

AGREED TO:

11 Date: _____

11 Date: 5/6/13

12
13 By: _____
14 Plaintiff, John Moore

13 By: [Signature]
14 Defendant, Janco Distributors Inc.