

1 Laurence D. Hayeson, State Bar No. 152631
Rachel S. Doughty, State Bar No. 255904
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

6 Attorneys for Plaintiff
JOHN MOORE
7

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

13 JOHN MOORE,
14 Plaintiff,
15 v.
16 MAGNOLIA FURNITURE, LLC; *et al.*,
17 Defendants.
18

Case No. RG13662039
[PROPOSED] CONSENT JUDGMENT
(Cal. Health & Saf. Code, § 25249.6 et seq.)

19
20
21
22
23
24
25
26
27
28

1 **1. INTRODUCTION**

2 **1.1 John Moore and Magnolia Furniture, LLC**

3 This Consent Judgment is entered into by and between John Moore (“Moore” or “Plaintiff”)
4 and Magnolia Furniture, LLC (“Magnolia” or “Defendant”), with Moore and Magnolia collectively
5 referred to 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 to improve human health by reducing or eliminating hazardous substances
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 Magnolia 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 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Magnolia has manufactured, imported, distributed, and/or sold in
16 California vinyl/PVC chairs containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite
17 Proposition 65 warnings. DEHP is on the Proposition 65 list as a chemical known to cause birth
18 defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are vinyl/PVC chairs or other
21 substantially similar furniture containing DEHP, including, but not limited to, the (1) *Club Chair*
22 *Brown PU, SKU# 610009723, #1950*, (2) *Chair with Stool, Brown, #230870*, and (3) *Recliner, Brown*
23 *#059465*, manufactured, imported, distributed, and/or sold by Magnolia, directly or through others, to
24 consumers in California (“Products”).

25 **1.6 Notice of Violation**

26 On or about August 31, 2012, Moore served Magnolia and the requisite public enforcement
27 agencies with a document entitled “60-Day Notice of Violation” (“August Notice”) that provided
28 Magnolia and such officials with notice that alleged that Magnolia was in violation of Proposition 65

1 for failing to warn its direct customers and end users that its vinyl/PVC chairs or other substantially
2 similar furniture exposed users in California to DEHP.

3 On or about May 21, 2013, Moore served Magnolia , The TJX Companies, Inc.
4 (“TJX”), HomeGoods, Inc. (“HomeGoods”), and the requisite public enforcement agencies with a
5 document entitled “Supplemental 60-Day Notice of Violation” (“May Notice”) that provided
6 Magnolia, TJX, HomeGoods, and the requisite officials with notice that alleged that Magnolia was in
7 violation of Proposition 65 for failing to warn its direct customers and end users that its vinyl/PVC
8 chairs exposed users in California to DEHP.

9 No public enforcer has commenced and is diligently prosecuting the allegations set forth in
10 the August Notice and the May Notice.

11 **1.7 Complaint**

12 On January 13, 2013, Moore filed a complaint in Alameda County Superior Court against
13 Magnolia and Does 1 through 150 (the “Complaint” or “Action”), alleging violations of Proposition
14 65, based on the alleged exposures to DEHP contained in certain viny/PVC chairs sold by Magnolia.

15 **1.8 No Admission**

16 Magnolia denies the material factual and legal allegations contained in the Notice and
17 Complaint including that it sold, distributed or shipped any products into California, but would
18 maintain that all products that it has manufactured, imported and/or distributed, which may have been
19 found in California, including the Products, have been, and are, in compliance with all laws. Nothing
20 in this Consent Judgment shall be construed as an admission by Magnolia of any fact, finding,
21 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment
22 constitute or be construed as an admission by Magnolia of any fact, finding, conclusion of law, issue
23 of law, or violation of law, such being specifically denied by Magnolia. However, this Section shall
24 not diminish or otherwise affect Magnolia’s obligations, responsibilities and duties under this
25 Consent Judgment.

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 jurisdiction over Magnolia as to the allegations contained in the Complaint, that venue is proper

1 in Alameda County, and that this Court has jurisdiction to enter and enforce the provisions of this
2 Consent Judgment, pursuant to California Code of Civil Procedure section 664.6, as a full and
3 binding resolution of all claims that were or could have been raised in the Complaint against
4 Magnolia based on the facts alleged therein and in the Notice.

5 **1.10 Effective Date and Entry Date**

6 For purposes of this Consent Judgment, the term "Effective Date" shall mean January 30,
7 2014. "Entry Date" is the date upon which the Court approves and enters this Consent Judgment.

8 **2. INJUNCTIVE RELIEF: REFORMULATION**

9 As of the Effective Date, Magnolia shall not ship, sell, distribute, or supply any Product that
10 will be sold or offered for sale to California businesses, users, or consumers unless each "Accessible
11 component" (any component that can be touched, handled, or mouthed by a person during reasonably
12 foreseeable use) of any vinyl/PVC chair either meets the DEHP Standard, defined as follows: each
13 Accessible Component of a Product shall contain DEHP in concentration less than 1,000 parts per
14 million when analyzed pursuant to EPA sample preparation and test methodologies 3580A and
15 8270C; or carries the following language prominently placed upon the product's label or other labeling
16 or displayed at the retail outlet with such conspicuousness, as compared with other words, statements,
17 designs, or devices in the label, labeling or display as to render it likely to be read and understood by an
18 ordinary individual under customary conditions of purchase or use:

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

21 **3. MONETARY PAYMENTS**

22 All payments made under this Consent Judgment shall be held in trust by the Chanler Group
23 until the Court approves the Consent Judgment. All payments transmitted to the Chanler Group
24 shall be delivered to the following address ("Payment Address"):

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

In the alternative, payments may be made by wire transfer, instructions for which will be provided

1 upon request.

2 **3.1 Penalties**

3 Magnolia shall pay a civil penalty of \$6,000. Payment shall be apportioned in accordance with
4 Health & Safety Code section 25249.12, subdivisions (c)(1) and (d). Payment equal to 75% of the
5 funds shall be remitted to the California Office of Environmental Health Hazard Assessment
6 (“OEHHA”) at the address listed below within fifteen (15) days of the Entry Date. The remaining
7 25% of the penalty shall be remitted at the address listed in Section 3 within fifteen (15) days of the
8 Effective Date to “The Chanler Group in Trust for Moore.” Magnolia shall be liable for payment of
9 interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not
10 received within two business days of the due date.

11 Upon payment of the civil penalty, Magnolia shall issue two 1099 forms: one to OEHHA, P.O.
12 Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalties payable to OEHHA, and
13 a second to Moore, whose address and tax identification number shall be furnished upon request, for
14 the civil penalties payable to Moore.

15 **3.2 Representation**

16 Magnolia represents that the sales data and other information concerning its size, knowledge
17 of DEHP, and prior reformulation and/or warning efforts, it provided to Moore was truthful to its
18 knowledge and a material factor upon which Moore has relied to determine the amount of civil
19 penalties assessed pursuant to Health & Safety Code section 25249.7 in this Consent Judgment. If,
20 within nine months of the Effective Date, Moore discovers and presents to Magnolia, evidence
21 demonstrating that the preceding representation and warranty was materially inaccurate, then
22 Magnolia and Moore shall have thirty days to meet and confer regarding Moore’s contention. Should
23 this thirty day period pass without any such resolution between Moore and Magnolia, Moore shall be
24 entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of
25 contract.

26 **3.3 Reimbursement of Plaintiff’s Fees and Costs**

27 The Parties have reached an accord on the compensation to be paid to Moore and his counsel,
28 which the parties agree is appropriate under general contract principles and the private attorney

1 general doctrine codified at California Code of Civil Procedure section 1021.5, for all work
2 performed in this matter, except fees that may be incurred in the event of an appeal. Magnolia shall
3 pay \$32,750.00 within fifteen (15) days of the Effective Date for fees and costs incurred
4 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be
5 incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the
6 public interest.

7 Payments of all fees and costs by Magnolia under this Consent Judgment shall be by check or
8 wire transfer to "The Chanler Group in Trust." Upon each payment of fees and costs, Magnolia shall
9 issue a 1099 form to The Chanler Group (EIN: 94-3171522) for the amount paid.

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Plaintiff's Public Release of Proposition 65 Claims**

12 Moore, acting on his own behalf and in the public interest, releases, discharges and acquits
13 Magnolia and any person, corporation or other entity alleged to be an agent, supplier, distributor,
14 retailer, employer, employee or customer of Magnolia from all claims for violations of
15 Proposition 65 up through the Effective Date based on exposure to DEHP from any and all
16 Products, as identified herein, manufactured, imported, sold, distributed or handled in any way by
17 Magnolia or by any of its agents, suppliers, distributors, retailers, employers, employees or
18 customers at any time. Compliance with the terms of this Consent Judgment constitutes
19 compliance with Proposition 65 with respect to exposures to DEHP from the Products.

20 **4.2 Plaintiff's Individual Release of Claims.**

21 Moore also, in his individual capacity only and *not* in his representative capacity, provides
22 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
23 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
24 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
25 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the
26 Products manufactured, distributed, or sold by Magnolia. Moore and his counsel fully, finally
27 and forever, release discharge and acquit Magnolia, its retailers, suppliers, customers, distributors,
28

1 agents, principals, employers, employees, and insurers and from claim of any nature whatsoever
2 arising from the manufacture, sale and delivery of the product(s) herein mentioned at any time.

3 **4.3 Defendant's Release of Plaintiff**

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

10 **5. COURT APPROVAL**

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

16 **6. SEVERABILITY**

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

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of
22 California and apply within the State of California.

23 **8. NOTICES**

24 Unless specified herein, all correspondence and notices required to be provided pursuant to
25 this Consent Judgment shall be in writing and sent by (i) personal delivery, (ii) first-class, registered
26 or certified mail, return receipt requested, or (iii) overnight courier on any party by the other party at
27 the following addresses:

28 For Magnolia:

1 Joe S. Deaton, III
2 Post Office Box 320099
3 Flowood, MS 39232-9588
4 *Attorneys for Magnolia Furniture, LLC*

5 For Moore:

6 Proposition 65 Coordinator
7 The Chanler Group
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710

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

13 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

17 **10. POST EXECUTION ACTIVITIES**

18 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
19 Code section 25249.7, subdivision (f). In addition, the Parties acknowledge that, pursuant to Health
20 and Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this
21 Consent Judgment. In furtherance of obtaining such approval, Moore and Magnolia and their
22 respective counsel agree to mutually employ their best efforts to support the entry of this agreement
23 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
24 manner. For purposes of this section, best efforts shall include, at a minimum, cooperating on the
25 drafting and filing of any papers in support of the required motion for judicial approval.

26 **11. MODIFICATION**

27 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
28 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.

12. AUTHORIZATION

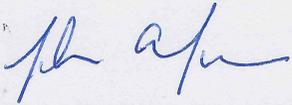
The undersigned are authorized to execute this Consent Judgment and have read, understood,

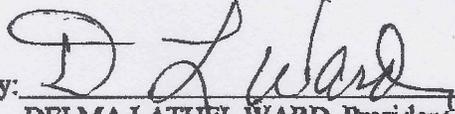
1 and agree to all of the terms and conditions of this Consent Judgment.

2 AGREED TO:

AGREED TO:

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: 
JOHN MOORE

By: 
DELMA LATHEL WARD, President
MAGNOLIA FURNITURE, LLC

Date: 2/20/14

Date: 2-7-2014