

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

5 Attorneys for Plaintiff
JOHN MOORE
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
12
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14 JOHN MOORE,

15 Plaintiff,

16 v.

17 ACHIM IMPORTING COMPANY INC.; *et*
18 *al.*,

19 Defendants.
20

Case No. RG14730480

[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, Achim Importing Company Inc. (“Achim”), with Moore and Achim each individually
5 referred 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 eliminating hazardous substances contained in
9 consumer products.

10 **1.3 Defendant**

11 Achim 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 Achim sold vinyl/PVC floor tiles containing di(2-ethylhexyl)phthalate
16 (“DEHP”) without first providing the exposure warning required by Proposition 65. DEHP 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 vinyl/PVC floor tiles containing
21 DEHP that are imported, manufactured, sold, or distributed for sale in California by Achim including,
22 but not limited to, the *Nexus Tile Collection Self-Adhesive Vinyl Floor Tiles, Style FTVWD201DG,*
23 *SKU Number FTVWD20120(# 0 54006 33236 8)* (“Covered Products”).

24 **1.6 Notice of Violation**

25 On or about July 5, 2013, Moore served Achim and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation (“Notice”) alleging that Achim was in violation of Proposition 65
27 for failing to warn its customers and consumers in California that the Covered Products expose users
28 to DEHP. On or about June 20, 2014, Moore served Achim and the requisite public enforcement

1 agencies with a Supplemental 60-Day Notice of Violation (“Notice”) alleging that Achim was in
2 violation of Proposition 65 for failing to warn its customers and consumers in California that the
3 Covered Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer
4 has elected to enforce the claims alleged in the Notices.

5 **1.7 Complaint**

6 On June 25, 2014, Moore filed the instant action (“Complaint”) alleging that Achim violated
7 Health & Safety Code § 25249.6 based on, among other things, exposures to DEHP present in and
8 on the vinyl/PVC floor tiles that Achim manufactures, imports, distributes, and/or offers for sale to
9 consumers throughout the State of California. On September 15, 2014, Moore filed a First
10 Amended Complaint (“FAC”) alleging that Achim violated Health & Safety Code § 25249.6 based
11 on, among other things, exposures to DEHP present in and on the vinyl/PVC floor tiles that Achim
12 manufactures, imports, distributes, and/or offers for sale to consumers throughout the State of
13 California.

14 **1.8 No Admission**

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

23 **1.9 Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Achim as to the allegations in the Complaint, that venue is proper in the County of
26 Alameda, and that this Court has, and will retain, jurisdiction to enter and enforce the provisions of
27 this Consent Judgment pursuant to California Health & Safety Code section 25249.7 and California
28 Code of Civil Procedure section 664.6.

1 **1.10 Effective Date**

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

4 **2. INJUNCTIVE RELIEF**

5 Commencing on the Effective Date, and continuing thereafter, Achim shall only manufacture,
6 import, distribute, sell and/or offer for sale in California Covered Products that are “DEHP Free”
7 pursuant to Section 2.1, or that contain the proper health hazard warning pursuant to Section 2.2
8 below.

9 **2.1 Reformulated Products**

10 For purposes of this Consent Judgment, “DEHP Free” Products shall mean Products
11 containing less than 1,000 parts per million (0.1%) of DEHP when analyzed pursuant to U.S.
12 Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent
13 methodologies utilized by state or federal agencies to determine DEHP content in a solid substance.

14 **2.2 Product Warnings**

15 Commencing on the Effective Date, Achim shall, for all Covered Products other than DEHP
16 Free Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b).¹ Each
17 warning shall be prominently placed with such conspicuousness as compared with other words,
18 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 be provided in a
20 manner such that the consumer or user understands to which *specific* Product the warning applies, so
21 as to minimize the risk of customer confusion.

22 (a) Retail Store Sales

23 (i) **Product Labeling.** Achim shall affix a warning to the packaging, labeling,
24 or directly on each Product sold in retail outlets in California by Achim or any person selling the
25 Covered Products, that states:

26 _____
27 ¹ Achim claims that at the time the settlement is executed it has already complied with the
28 warning requirements.

1 **WARNING: This product contains chemicals known to the State of**
2 **California to cause cancer, and birth defects or other**
3 **reproductive harm.**

3 **OR**

4 **WARNING: This product contains DEHP a chemical known to the**
5 **State of California to cause cancer, and birth defects or**
6 **other reproductive harm.**

7 (b) Mail Order Catalog and Internet Sales.

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

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

17 **WARNING: This product contains chemicals known to the State of**
18 **California to cause cancer, and birth defects or other**
19 **reproductive harm.**

20 **OR**

21 **WARNING: This product contains DEHP a chemical known to the**
22 **State of California to cause cancer, and birth defects or**
23 **other reproductive harm.**

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

1 **WARNING:** **Certain products identified with the symbol ▼ and**
2 **offered for sale in this catalog contain chemicals known**
3 **to the State of California to cause cancer, and birth**
4 **defects or other reproductive harm.**

5 **OR**

6 **WARNING:** **Certain products identified with the symbol ▼ and**
7 **offered for sale in this catalog contain DEHP a chemical**
8 **known to the State of California to cause cancer, and**
9 **birth defects or other reproductive harm.**

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

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

22 **WARNING:** **This product contains chemicals known to the State of**
23 **California to cause cancer, and birth defects or other**
24 **reproductive harm.**

25 **OR**

26 **WARNING:** **This product contains DEHP a chemical known to the**
27 **State of California to cause cancer, and birth defects or**
28 **other reproductive harm.**

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

4
5 **WARNING: Products identified on this page with the following**
6 **symbol ▼ contain chemicals known to the State of**
7 **California to cause cancer, or birth defects or other**
8 **reproductive harm.**

9 **OR**

10 **WARNING: Products identified on this page with the following**
11 **symbol ▼ contain DEHP a chemical known to the State**
12 **of California to cause cancer, and birth defects or other**
13 **reproductive harm.**

14 **3. MONETARY PAYMENTS**

15 **3.1 Civil Penalty Payment**

16 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
17 to in this Consent Judgment, Achim shall pay civil penalties in the amount of \$4,000 within five
18 business days of the Effective Date. Achim shall remit its payment of the civil penalties in one check
19 for the total amount pursuant to the payment method prescribed under Section 3.3. Plaintiff's counsel
20 shall allocate payment of the civil penalty according to Health and Safety Code section
21 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of
22 Environmental Health Hazard Assessment ("OEHHHA") and twenty-five percent (25%) of the funds
23 remitted to Moore.

24 **3.2 Reimbursement of Fees and Costs**

25 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
26 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
27 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
28 other settlement terms had been finalized, Achim expressed a desire to resolve Moore's fees and
costs. The Parties then attempted to (and did) reach an accord on the compensation due to Moore and
his counsel under general contract principles and the private attorney general doctrine codified at

1 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
2 execution of this Consent Judgment. Within five business days of the Effective Date, Achim shall
3 pay \$32,000 for the fees and costs incurred by Moore investigating, bringing this matter to Achim's
4 attention, and negotiating a settlement in the public interest.

5 **3.3 Payment Procedures**

6 All payments due under this Consent Judgment are due within five business days of the
7 Effective Date according to the following subsections:

8 **3.3.1 Payment Addresses**

9 (a) All payments and tax documentation shall be delivered to:

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710

13 **3.3.2 Required Tax Documentation**

14 Achim agrees to provide an IRS 1099 form for its payments under this Consent
15 Judgment to each of the following payees: (a) "Office of Environmental Health Hazard
16 Assessment"; (b) "John Moore"; and (c) "The Chanler Group". Addressed and tax identification
17 numbers for each of the above payees shall be furnished after this Consent Judgment is fully
18 executed by the Parties

19 **3.3.3 Payments Held in Trust**

20 The payments due under this Consent Judgment shall be held in trust until such time as the
21 Court approves the Parties' settlement. These payments shall be paid within fifteen (15) days of the
22 date that this Consent Judgment is fully executed by the Parties, and held in trust by Achim's
23 counsel until the Court grants the motion for approval of this Consent Judgment contemplated by
24 Section 5. Within five business days of the Court's approval of this Consent Judgment, Achim's
25 counsel shall tender the civil penalty payment and attorney's fee and costs reimbursements required
26 by Sections 3.1 and 3.2.

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 Achim and its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
5 attorneys (“Releasees”) and each entity to whom they directly or indirectly distribute or sell the
6 Covered Products, including but not limited to its downstream distributors, wholesalers, customers,
7 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
8 any violations arising under Proposition 65 for unwarned exposures to DEHP from the Covered
9 Products sold by Achim prior to the Effective Date, as set forth in the Notice. Compliance with
10 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
11 exposures to DEHP from the Covered Products sold by Achim before the Effective Date, as set
12 forth in the Notice.

13 **4.2 Moore’s Individual Release of Claims**

14 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
15 release to Achim, Releasees, and Downstream Releasees which shall be effective as a full and final
16 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
17 attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or
18 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
19 exposures to DEHP in the Covered Products sold or distributed for sale by Achim before the
20 Effective Date.

21 **4.3 Achim’s Release of Moore**

22 Achim, on its own behalf, and on behalf of its past and current agents, representatives,
23 attorneys, successors, and assignees, hereby waives any and all claims against Moore and his
24 attorneys and other representatives, for any and all actions taken or statements made by Moore and
25 his attorneys and other representatives, whether in the course of investigating claims, otherwise
26 seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.
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1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

6 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
7 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
8 adversely affected.

9 **7. GOVERNING LAW**

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

17 **8. NOTICE**

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

21 For Achim:

22 Marton Grossman, President
23 Achim Importing Company Inc.
24 58 Second Avenue
25 Brooklyn, NY 11215

26 with a copy to:

27 Melissa A. Jones, Esq.
28 Stoel Rives LLP
 500 Capital Mall, Suite 1600
 Sacramento, CA 95814

1 For Moore:

2 The Chanler Group
3 Attn: Proposition 65 Coordinator
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
15 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
16 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
17 furtherance of obtaining such approval, Moore and Achim agree to mutually employ their best
18 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
19 judicial approval of their settlement in a timely manner. For purposes of this Section, “best efforts”
20 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
21 and supporting the motion for judicial approval.

22 **11. MODIFICATION**

23 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
24 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
25 Party, and the entry of a modified consent judgment by the Court.
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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.

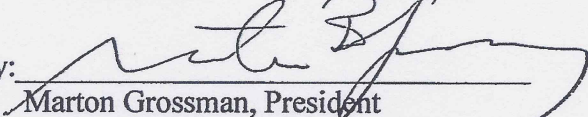
4 **AGREED TO:**

AGREED TO:

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6 Date: DECEMBER 18, 2014

Date: 12/18/14

7
8 By: 
JOHN MOORE

By: 
Marton Grossman, President
ACHIM IMPORTING COMPANY INC.

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