

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

8 Attorneys for Plaintiff
9 JOHN MOORE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,
12 Plaintiff,
13 v.
14 DYNAMIC BRANDS, LLC; and DOES 1-
15 150, inclusive,
16 Defendants.

Case No. CGC-15-546515
[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 Dynamic Brands, LLC (“Dynamic Brands”), with Moore and Dynamic Brands 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 to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Dynamic Brands**

11 Dynamic Brands employs ten or more individuals and is a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
13 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Dynamic Brands manufacturers, sells, and/or distributes for sale in
16 California, golf bag travel covers with vinyl/PVC handles containing di(2-ethylhexyl)phthalate
17 (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California
18 to cause birth defects or other reproductive harm. Moore alleges that Dynamic Brands failed to
19 provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from
20 golf bag travel covers with vinyl/PVC handles.

21 **1.5 Product Description**

22 The products that are covered by this Settlement Agreement are golf bag travel covers with
23 vinyl/PVC handles containing DEHP including, but not limited to, the *Bag Boy Hard-Top Wheeled*
24 *Travel Cover, T-10 BB96901, UPC No. 0 40782 96901 0*, manufactured, sold or distributed for sale
25 in California by Dynamic Brands (“Products”).

26 **1.6 Notice of Violation**

27 On or about February 27, 2015, Moore served Dynamic Brands and certain requisite public
28 enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Dynamic Brands

1 violated Proposition 65 when it failed to warn its customers and consumers in California that its
2 Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has
3 commenced and is diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On June 23, 2015, Moore filed the instant action ("Complaint"), naming Dynamic Brands as a
6 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
7 the Notice.

8 **1.8 No Admission**

9 Dynamic Brands denies the material, factual, and legal allegations contained in the Notice and
10 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
11 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
12 Judgment shall be construed as an admission by Dynamic Brands of any fact, finding, conclusion of
13 law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
14 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.
15 This Section shall not, however, diminish or otherwise affect Dynamic Brands' obligations,
16 responsibilities, and duties under this Consent Judgment.

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Dynamic Brands as to the allegations contained in the Complaint, that venue is
20 proper in the County of San Francisco, and that the Court has jurisdiction to enter and enforce the
21 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section
22 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
25 this Consent Judgment is approved by the trial court.
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California Proposition 65 Warning
WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

until that inventory is depleted.

(ii) **Point-of-Sale Warning.** Alternatively, Dynamic Brands may provide warning signs in the form below to its retail customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Dynamic Brand’s retail customers shall be sent by certified mail, return receipt request.

California Proposition 65 Warning
WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

or

California Proposition 65 Warning
WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.

(b) **Mail Order Catalog and Internet Sales.** In the event that Dynamic Brands sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, Dynamic Brands shall provide warnings for such Products. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

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

California Proposition 65 Warning
WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

or

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California Proposition 65 Warning
WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Dynamic Brands may utilize a designated symbol to cross reference the warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for a Product:

California Proposition 65 Warning
WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

or

California Proposition 65 Warning
WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain a chemical known to the State of California to cause birth defects or other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Dynamic Brands must provide a header or footer directing the consumer to the definition of the designated symbol.

(ii) **Internet Website Warning.** Any warning provided on the internet shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same web page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger:

1 **California Proposition 65 Warning**
2 WARNING: This product contains DEHP, a
3 phthalate chemical known to the State of California
4 to cause birth defects or other reproductive harm.

5 or

6 **California Proposition 65 Warning**
7 WARNING: This product contains a chemical
8 known to the State of California to cause birth
9 defects or other reproductive harm.

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Civil Penalty Payments**

12 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
13 this Consent Judgment, Dynamic Brands shall pay \$14,000 in civil penalties. Each civil penalty
14 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with
15 seventy-five percent (75%) of the funds paid to the California Office of Environmental Health
16 Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Moore.

17 **3.1.1 Initial Civil Penalty**

18 Dynamic Brands shall make an initial civil penalty payment of \$5,500. Dynamic
19 Brands shall provide its payment in two checks for the following amounts made payable to: (a)
20 “OEHHA” in the amount of \$4,125; and (b) “John Moore, Client Trust Account” in the amount of
21 \$1,375, as set forth in Sections 3.3 and 3.4.

22 **3.1.2 Final Civil Penalty**

23 On December 31, 2015 or on the Effective Date, whichever is later, Dynamic Brands
24 shall make a final civil penalty payment of \$8,500. Pursuant to title 11 California Code of
25 Regulations, section 3203(c), Moore agrees that the final civil penalty payment shall be waived in its
26 entirety if, no later than November 15, 2015, an officer of Dynamic Brands provides Moore with
27 written certification that all of the Products it is selling or distributing for sale in California as of the
28 date of such certification are Reformulated Products as defined by Section 2.1, and that Dynamic
29 Brands will continue to offer only Reformulated Products for sale in California in the future. The
30 option to certify to reformulation in lieu of making the final civil penalty payment required by this

1 Section is a material term, and with regard to such term, time is of the essence. Dynamic Brands
2 shall deliver its certificate, if any, to Moore's counsel at the address provided in Section 3.4, below.
3 In the event that Dynamic Brands does not timely provide written certification of reformulation or
4 make the final civil penalty payment required by this Section, the Parties agree that Moore may file a
5 motion or application seeking an order compelling Dynamic Brands' compliance with this Section.
6 If successful, the Parties further agree that Moore shall be entitled to his reasonable attorneys' fees
7 and costs pursuant to general contract principles and Code of Civil Procedure section 1021.5.

8 **3.2 Reimbursement of Attorney'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 to
11 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
12 other settlement terms had been finalized, Dynamic Brands expressed a desire to resolve Moore's
13 fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
14 Moore and his counsel under general contract principles and the private attorney general doctrine
15 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
16 mutual execution of this Consent Judgment. Dynamic Brands shall pay \$28,500 for the fees and
17 costs incurred by Moore investigating, bringing this matter to Dynamic Brands' attention, litigating
18 and negotiating a settlement in the public interest.

19 **3.3 Payments Held in Trust**

20 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
21 this agreement shall be delivered within five (5) days of the date that this Consent Judgment is fully
22 executed by the Parties, and held in trust by Dynamic Brands' counsel until the Effective Date.
23 Within two business days of the Effective Date, Dynamic Brands' counsel shall tender the initial
24 civil penalty payments and attorneys' fee and costs reimbursements required by Sections 3.1 and
25 3.2.

26 **3.4 Payment Address**

27 All payments required by this Consent Judgment shall be delivered to the following
28 address:

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

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 Moore's Public Release of Proposition 65 Claims**

6 Moore, acting on his own behalf and in the public interest, releases Dynamic Brands and its
7 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
8 and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
9 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
10 franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any
11 violations arising under Proposition 65 for unwarned exposures to DEHP from Products sold by
12 Dynamic Brands prior to the Effective Date, as set forth in the Notice. Compliance with the terms
13 of this Consent Judgment constitutes compliance with Proposition 65 with respect to failures to
14 warn about DEHP from the Products manufactured, sold or distributed for sale by Dynamic Brands
15 before the Effective Date, as set forth in the Notice.

16 **4.2 Moore's Individual Release of Claims**

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

24 **4.3 Dynamic Brands' Release of Moore**

25 Dynamic Brands, on its own behalf, and on behalf of its past and current agents,
26 representatives, attorneys, successors, and assignees, hereby waives any and all claims against
27 Moore and his attorneys and other representatives, for any and all actions taken or statements made
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1 by Moore and his attorneys and other representatives, whether in the course of investigating claims,
2 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

3 **5. COURT APPROVAL**

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

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

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

19 **8. NOTICE**

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

23 **Dynamic Brands**

24 Craig Ramsbottom, President
25 Dynamic Brands, LLC
26 2701 Emerywood Parkway, Suite 101
27 Richmond, VA 23294

Karen F. Lederer, Esq.
Troutman Sanders LLP
875 Third Avenue
New York, NY 10022

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

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. POST EXECUTION ACTIVITIES

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

11. MODIFICATION

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

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:

5
6 Date: SEPTEMBER 29, 2015

Date: _____

7
8 By: 
JOHN MOORE

By: _____
Craig Ramsbottom, President
DYNAMIC BRANDS, LLC

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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.

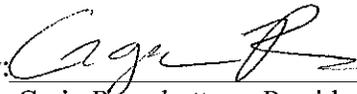
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Date: _____

Date: 9/15/15

By: _____
JOHN MOORE

By:  _____
Craig Ramsbottom, President
DYNAMIC BRANDS, LLC