Kimberly Gates. State Bar No. 282369
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR SAN FRANCISCO COUNTY

UNLIMITED CIVIL JURISDICTION

JOHN MOORE, Plaintiff, v. SCHOOL SPECIALTY, INC.; *et al.* Defendants.	Case No. CGC-15-546938 **[PROPOSED] CONSENT JUDGMENT** (Health & Safety Code § 25249.6 *et seq.* and Code of Civil Procedure § 664.6)

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff John Moore ("Moore") and defendant School Specialty, Inc. ("School Specialty"), with Moore and School Specialty each referred to individually as a "Party" and collectively as the "Parties."

1.2 Plaintiff

Moore is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer and commercial products.

1.3 Defendant

School Specialty employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §25249.5 *et seq*. ("Proposition 65").

1.4 General Allegations

Moore alleges that School Specialty manufactures, imports, sells and/or distributes for sale in California, vinyl/PVC-coated backpacks that contain di(2-ethylhexyl)phthalate ("DEHP") and headphones with vinyl/PVC components containing DEHP, and that it does so without providing the health hazard warning that Moore alleges is required by Proposition 65. DEHP is a chemical listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.5 Product Description

The products covered by this Consent Judgment are: (a) vinyl/PVC backpacks containing DEHP, including, but not limited to, the *School Smart 15" Clear Youth Backpack, #1336644, Model: WBT4204-CL, UPC #8 85634 01619 7,* and all variations thereof, including Item #1336647 and (b) vinyl/PVC headphone components containing DEHP, including, but not limited to, the *Califone Stereo Headphone, Model 3068AV, UPC #6 10356 21300 1*, all kits containing Model 3068AV, and/or all other Califone products containing common parts to Model 3068AV (collectively, "Products").

1.6 Notice of Violation

On February 27, 2015, Moore served School Specialty and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that School Specialty violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.7 Complaint

On July 17, 2015, Moore commenced the instant action, naming School Specialty as the defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 No Admission

School Specialty denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by School Specialty of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by School Specialty of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect School Specialty's obligations, responsibilities, and duties under this Consent Judgment. By entering into this Consent Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon School Specialty by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to affect any defenses available to School Specialty under laws other than Proposition 65.

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over School Specialty as to the allegations in the Complaint, that venue is proper in San

Francisco County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

2. INJUNCTIVE SETTLEMENT TERMS

2.1 Commitment to Reformulate or Provide Warnings

Commencing on January 1, 2016, and continuing thereafter, School Specialty shall only manufacture for sale or purchase for sale in California, Products that are (1) Reformulated Products as defined in Section 2.2; or (2) Products that are sold or shipped with one of the clear and reasonable warnings set forth in subsection 2.3.

2.2 Reformulation Standard

For purposes of this Consent Judgment, "Reformulated Products" are defined as Products with a maximum DEHP concentration of 0.1 percent (1,000 parts per million) when analyzed pursuant to the Consumer Products Safety Commission's CPSC-CH-C1001-09.3 method or other, equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.3 Product Warnings

Commencing on January 1, 2016, for all Products other than Reformulated Products, School Specialty agrees that it will only sell or distribute such products for sale with a clear and reasonable warning in compliance with this Section. For purposes of this Consent Judgment a clear and reasonable warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product(s) the warning applies, so as to minimize the risk of consumer confusion. School Specialty shall affix a warning to the packaging, labeling or directly on any Products that are not Reformulated Products sold in California that states:

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

or

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm).

2.4 Grace Period for Existing Inventory of Products

School Specialty represents that, after receiving the Notice, it implemented a health hazard warning for the Products. Moore agrees that, until it exhausts its current inventory of Products, School Specialty may continue to sell and offer for sale in California those Products labeled with (or offered with packaging containing) the following statement: "Warning: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm."

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

Pursuant to Health and Safety Code §25249.7(b)(2), and in settlement of all the claims referred to in this Consent Judgment, School Specialty shall pay $55,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Moore. Moore's counsel shall be responsible for remitting School Specialty's penalty payment(s) under this Consent Judgment to OEHHA.

3.1.1 Initial Civil Penalty. School Specialty shall make an initial civil penalty payment of $20,000. School Specialty shall provide its payment in a single check made payable to "John Moore, Client Trust Account" to be delivered to the address provided in Section 3.4, below.

3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation. On January 30, 2016, School Specialty shall make a final civil penalty payment of $35,000. Pursuant to Title 11 California Code of Regulations, §3203(c), Moore agrees that the final civil penalty payment

shall be waived in its entirety if, no later than January 15, 2016, an officer of School Specialty provides Moore with a signed declaration certifying that all of the Products it manufactures for sale in California as of the date of the declaration are Reformulated Products, and that School Specialty will offer only Reformulated Products, or Products which were manufactured prior to the date of the declaration but which bear an approved warning label pursuant to Section 2.1, above, in California in the future. The option to certify early reformulation in lieu of making the final civil penalty payment otherwise required by this Section is a material term, and time is of the essence. To obtain a waiver of the final civil penalty, School Specialty must deliver its declaration certifying reformulation to Moore's counsel at the address provided in Section 3.4, below.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Moore and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after finalizing the other settlement terms, School Specialty expressed a desire to resolve Moore's fees and costs. The Parties then negotiated a resolution of the compensation due to Moore and his counsel as a final and independent term of this Consent Judgment pursuant to general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure §1021.5. For all work performed through the mutual execution of this agreement and the Court's approval of the same, but exclusive of fees and costs on appeal, if any, School Specialty shall reimburse Moore and his counsel $35,000. School Specialty's payment shall be delivered to the address in Section 3.4 in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Moore investigating, bringing this matter to School Specialty's attention, litigating, and negotiating a settlement of the matter in the public interest.

3.3 Payment Timing; Enforcement of Payment Terms

With the exception of the final civil penalty payment required by Section 3.1.2, School Specialty shall deliver all payments required by this Consent Judgment to Moore's counsel within seven (7) business days of the Effective Date. In the event any payment required by this Consent Judgment, including the Section 3.1.2 final civil penalty, is untimely, the Parties agree and

acknowledge that (a) School Specialty shall be liable to Moore for 10% simple interest on any unpaid amount(s); (b) Moore may seek to enforce School Specialty's payment obligations under general contract principles and Code of Civil Procedure § 664.6; and (c) Held shall be entitled to any fees incurred recovering such settlement payments pursuant to general contract principles and Code of Civil Procedure § 1021.5.

The payments required under this Consent Judgment shall be made by School Specialty within seven (7) business days of the Effective Date.

3.4 Payment Address

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

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

4. CLAIMS COVERED AND RELEASED

4.1 Moore's Release of Proposition 65 Claims

Moore, acting on his own behalf and in the public interest, releases School Specialty and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys, including but not limited to its wholly owned subsidiary Califone International, LLC, and their collective subsequent purchasers, successors and assigns("Releasees") and each entity to whom they directly or indirectly distribute or sell the Products including, but not limited to, their downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP from Products manufactured, imported, distributed or sold by School Specialty prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by School Specialty with respect to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale by School Specialty after the Effective Date.

4.2 Moore's Individual Release of Claims

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

4.3 School Specialty's Release of Moore

School Specialty, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Moore and his attorneys and other representatives, for any and all actions taken or statements made by Moore and his attorneys and other representatives in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by the Parties. Moore and School Specialty agree to support the entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code §25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion Moore shall draft and file and School Specialty shall support, including by appearing at the hearing if so requested. If any third-party objection to the motion is filed, Moore and School Specialty agree to work together to file a reply and appear at any hearing. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

6. SEVERABILITY

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

7. GOVERNING LAW

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

8. NOTICE

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

To School Specialty:

Joseph Yorio, President
School Specialty, Inc.
W6316 Design Drive
Greenville, WI 54942

To Moore:

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

With a copy to:

Elizabeth V. McNulty, Esq.
Archer Norris, PLC
4695 MacArthur Court, Suite 350
Newport Beach, CA 92660

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.

9. COUNTERPARTS, FACSIMILE AND PDF 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. COMPLIANCE WITH REPORTING REQUIREMENTS

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

11. MODIFICATION

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

12. 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:

JOHN MOORE

Dated: 1/8/2016

AGREED TO:

SCHOOL SPECIALTY, LLC

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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12. 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:

_____

JOHN MOORE

Dated: _____

AGREED TO:

_____

SCHOOL SPECIALTY, LLC

By: Ryan M. Bohr

Its: Chief Financial Officer and Executive Vice President

Dated: 12/22/2015