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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO  
12 UNLIMITED CIVIL JURISDICTION  
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14 JOHN MOORE,

15 Plaintiff,

16 v.

17 CALENDAR HOLDINGS LLC, *et al.*,

18 Defendants.  
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Case No. CGC17557161

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code Civ. Proc. § 664.6 )

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”), and  
4 Calendar Holdings LLC (“Calendar Holdings”), with Moore and Calendar Holdings each  
5 individually 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 Defendant**

11 Calendar Holdings 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 Calendar Holdings imports, sells, or distributes for sale in California,  
16 suction cups that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure  
17 warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known  
18 to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 For purposes of this Consent Judgment “Products” are defined as suction cups containing  
21 DEHP that are imported, sold, or distributed for sale in California by Calendar Holdings, including,  
22 but not limited to, the *50 Fifty Ducky Divers (Suction Cup Component)*, UPC #8 49788 00300 7.

23 **1.6 Notice of Violation**

24 On December 6, 2016, Moore served Calendar Holdings, and the requisite public enforcement  
25 agencies with a 60-Day Notice of Violation (“Notice”) alleging that Calendar Holdings violated  
26 Proposition 65 by failing to warn its customers and consumers in California of the health hazards  
27 associated with exposures to DEHP from the Products. No public enforcer has commenced and is  
28 diligently prosecuting an action to enforce the violations alleged in the Notice.

1           **1.7 Complaint**

2           On February 17, 2017, Moore filed the instant action (“Complaint”), naming Calendar  
3 Holdings as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are  
4 the subject of the Notice.

5           **1.8 No Admission**

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

14           **1.9 Jurisdiction**

15           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
16 jurisdiction over Calendar Holdings as to the allegations in the Complaint, that venue is proper in the  
17 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of  
18 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

19           **1.10 Effective Date**

20           For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
21 the Court approves this Consent Judgment, including any unopposed tentative ruling granting  
22 approval of this Consent Judgment.

23           **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

24           Commencing on the Effective Date and continuing thereafter, Calendar Holdings agrees to  
25 only import for sale, or purchase for sale in California, Reformulated Products. For purposes of this  
26 Consent Judgment, "Reformulated Products" are defined as Products containing DEHP in a  
27 maximum concentration of 1,000 parts per million (0.1%) in any accessible component (i.e., any  
28 component that may be touched during a reasonably foreseeable use) when analyzed pursuant to U.S.

1 Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent  
2 methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a  
3 solid substance.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims  
7 referred to in the Notice, Complaint, and this Consent Judgment, Calendar Holdings shall pay \$6,000  
8 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code  
9 section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California  
10 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five  
11 percent (25%) of the penalty retained by Moore. Calendar Holdings shall provide its payment in two  
12 checks for the following amount made payable to (a) “OEHHA” in the amount of \$4,500; and (b)  
13 “John Moore, Client Trust Account” in the amount of \$1,500. Moore’s counsel shall be responsible  
14 for delivering OEHHA’s portion of any penalty payment(s) made under this Consent Judgment.

15 **3.2 Reimbursement of Attorney’s Fees and Costs**

16 The parties acknowledge that Moore and his counsel offered to resolve this dispute without  
17 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
18 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
19 other settlement terms had been finalized, the Parties negotiated the compensation due to Moore and  
20 his counsel under general contract principles and the private attorney general doctrine codified at  
21 California Code of Civil Procedure section 1021.5 for all work performed through the mutual  
22 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs  
23 on appeal, if any. Under these legal principles, Calendar Holdings shall pay \$29,500 for all fees and  
24 costs incurred by Moore investigating, bringing this matter to Calendar Holdings’ attention, litigating  
25 and negotiating a settlement in the public interest.

1           **3.3     Payment Timing; Payments Held in Trust**

2           Within ten (10) days of the date that Moore files his motion to approve this Consent  
3 Judgment with the Court, all payments due under this agreement shall be delivered to Calendar  
4 Holdings' counsel and held in trust until the Effective Date. Calendar Holdings' counsel shall  
5 provide Moore's counsel with written confirmation upon its receipt of the settlement payments.  
6 Within five days of the Effective Date, Calendar Holdings' counsel shall deliver the civil penalty  
7 and attorneys' fee reimbursement payments to Moore's counsel.

8           **3.4     Payment Address**

9           All payments required by this Consent Judgment 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   **4.     CLAIMS COVERED AND RELEASED**

14           **4.1     Moore's Public Release of Proposition 65 Claims**

15           Moore, acting on his own behalf and in the public interest, Moore releases Calendar  
16 Holdings and its parents, subsidiaries, affiliated entities under common ownership, directors,  
17 officers, employees, and attorneys ("Releasees"), and each entity to whom Calendar Holdings  
18 directly or indirectly distributes or sells the Products including, without limitation, its downstream  
19 customers, distributors, wholesalers, and retailers ("Downstream Releasees") for any violation  
20 arising under Proposition 65 pertaining to the failure to warn about exposures to DEHP from  
21 Products sold or distributed for sale by Calendar Holdings prior to the Effective Date, as 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 Products sold or distributed for sale by  
24 Calendar Holdings after the Effective Date.

25           **4.2     Moore's Individual Release of Claims**

26           Moore, in his individual capacity only and *not* in any representative capacity, also provides a  
27 release to Calendar Holdings, Releasees, and Downstream Releasees, which shall be effective as a  
28 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,

1 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature,  
2 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or  
3 actual exposures to DEHP in Products sold or distributed for sale by Calendar Holdings before the  
4 Effective Date.

5 **4.3 Calendar Holdings' Release of Moore**

6 Calendar Holdings, on its own behalf, and on behalf of its past and current agents,  
7 representatives, attorneys, successors, and assignees, hereby waives any and all claims against  
8 Moore, and his attorneys and other representatives, for any and all actions taken or statements made  
9 by Moore, and his attorneys and other representatives, whether in the course of investigating claims,  
10 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

11 **5. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
13 be null and void if it is not approved and entered by the Court within one year after it has been fully  
14 executed by the Parties, or by such additional time as the Parties may agree in writing.

15 **6. SEVERABILITY**

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

19 **7. 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, or is otherwise  
22 rendered inapplicable by reason of law generally or as to the Products, then Calendar Holdings may  
23 provide written notice to Moore of any asserted change in the law, and shall have no further  
24 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
25 Products are so affected.

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1     **8. NOTICE**

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

6             Marc Winkleman, CEO  
7             Calendar Holdings LLC  
8             6411 Burleson Road  
9             Austin, TX 78744

10            with a copy to:

11            James A. Geocaris, Esq.  
12            Lewis Brisbois  
13            650 Town Center Drive, Suite 1400  
14            Costa Mesa, CA 92626

15 For Moore:

16            Proposition 65 Coordinator  
17            The Chanler Group  
18            2560 Ninth Street  
19            Parker Plaza, Suite 214  
20            Berkeley, CA 94710-2565

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

23     **9. COUNTERPARTS; FACSIMILE SIGNATURES**

24             This Consent Judgment may be executed in counterparts and by facsimile signature, each of  
25 which shall be deemed an original, and all of which, when taken together, shall constitute one and the  
26 same document.

27     **10. POST EXECUTION ACTIVITIES**

28             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, which  
motion Moore shall draft and file. 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 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of

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this Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to any objection that any third-party may file or lodge, and appearing at the hearing before the Court if so requested.

11. MODIFICATION

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

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and acknowledge that they have read, understand, and agree to all of the terms and conditions contained herein.

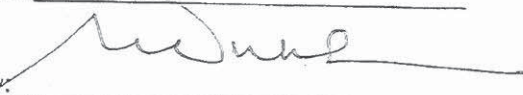
AGREED TO:

Date: 7/27/2017

By:   
JOHN MOORE

AGREED TO:

Date: 7-20-17

By:   
Marc Winkelman, Chief Executive Officer  
CALENDAR HOLDINGS GROUP LLC