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7 JOHN MOORE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF MARIN  
10 UNLIMITED CIVIL JURISDICTION  
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13 JOHN MOORE,  
14 Plaintiff,  
15 v.  
16 OFFICEMATE INTERNATIONAL  
CORPORATION; and DOES 1-150,  
17 inclusive,  
18 Defendants.

Case No. CIV 1800114

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”) and  
4 defendant Officemate International Corporation (“Officemate”), with Moore and Officemate each  
5 referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Officemate 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, California Health and  
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Officemate manufactures, imports, sells and/or distributes for sale in  
16 California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without  
17 providing the health hazard warning that Moore alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are binder clip grip material containing  
20 DEHP including, but not limited to, *Easy Grip Binder Clips, Stock #: 31054, UPC #0 42491 31054*  
21 *I*, that are manufactured, imported, distributed, sold and/or offered for sale in California by  
22 Officemate (“Products”).

23 **1.6 Notice of Violation**

24 On September 28, 2017, Moore served Officemate and the requisite public enforcement  
25 agencies with a 60-Day Notice of Violation (the “Notice”), alleging that Officemate violated  
26 Proposition 65 when it failed to warn its customers and consumers in California that the Products  
27 expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced  
28 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1           **1.7 Complaint**

2           On January 11, 2018, Moore commenced the instant action, naming Officemate as one  
3 of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

4           **1.8 No Admission**

5           Officemate denies the material, factual, and legal allegations contained in the Notice and  
6 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,  
7 including the Products, have been, and are, in compliance with all laws, including Proposition 65.  
8 Nothing in this Consent Judgment shall be construed as an admission by Officemate of any fact,  
9 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent  
10 Judgment constitute or be construed as an admission by Officemate of any fact, finding, conclusion  
11 of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise  
12 affect Officemate’s obligations, responsibilities, and duties under this Consent Judgment.

13           **1.9 Jurisdiction**

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

18           **1.10 Effective Date**

19           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
20 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,  
21 including any unopposed tentative ruling.

22 **2. INJUNCTIVE SETTLEMENT TERMS**

23           **2.1 Reformulation Standards**

24           “Reformulated Products” are defined as those Products containing (i) DEHP; and (ii) butyl  
25 benzyl phthalate (“BBP”), di-n-butyl phthalate (“DBP”), di-isodecyl phthalate (“DIDP”),  
26 diisononyl phthalate (“DINP”), Di-n-hexyl Phthalate (DnHP) (collectively, the “Additional Listed  
27 Phthalates,”), in concentrations less than 0.1 percent (1,000 parts per million) when analyzed  
28 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or

1 other methodology utilized by federal or state government agencies for the purpose of determining  
2 phthalate content in a solid substance.

### 3 **2.2 Reformulation Commitment**


4 As of the Effective Date, Officemate shall not manufacture, import, distribute, sell or offer  
5 the Products for sale in the State of California unless they are Reformulated Products pursuant to  
6 Section 2.1 above, or shall carry appropriate health hazard warnings per section 2.3, below.

### 7 **2.3 Product Warnings**


8 Commencing on or before the Effective Date, Officemate shall provide clear and reasonable  
9 warnings for all Products as set forth in subsections 2.3(a) and (b) for all Products that do not  
10 qualify as Reformulated Products.<sup>1</sup> Each warning shall be prominently placed with such  
11 conspicuousness as compared with other words, statements, designs, or devices as to render it likely  
12 to be read and understood by an ordinary individual under customary conditions before purchase or  
13 use. Each warning shall be provided in a manner such that the consumer or user understands to  
14 which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

#### 15 **(a) Retail Store Sales.**

16 **(i) Product Labeling.** Officemate shall affix a warning to the packaging,  
17 labeling, or directly on each Product provided for sale in retail outlets in California that states:

18  **WARNING:** This product can expose you to chemicals including DEHP,  
19 which are known to the State of California to cause cancer  
20 and birth defects or other reproductive harm. For more  
information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

21 OR

22  **WARNING:** Cancer and Reproductive Harm –  
23 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).


24 **(b) Mail Order Catalog and Internet Sales.** In the event that Officemate sells  
25 Products via mail order catalog and/or the internet, to customers located in California, after the  
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27 <sup>1</sup> Products that were acquired or supplied to third parties by Officemate prior to the  
28 Effective Date shall be deemed exempt from the requirements of Sections 2.2 and 2.3 and permitted  
to be sold through as previously manufactured, packaged and labeled, as they were incorporated in  
the calculation of civil penalties payable in accordance with section 3 below.

1 Effective Date, that are not Reformulated Products, Officemate shall provide warnings for such  
2 Products sold via mail order catalog or the internet to California residents. Warnings given in the  
3 mail order catalog or on the internet shall identify the *specific* Product to which the warning applies  
4 as further specified in Sections 2.3(b)(i) and (ii).


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

9  **WARNING:** This product can expose you to chemicals including DEHP,  
10 which are known to the State of California to cause cancer  
11 and birth defects or other reproductive harm. For more  
12 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).


12 OR

13  **WARNING:** Cancer and Reproductive Harm –  
14 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

20  **WARNING:** Certain products identified with this symbol ▼ and offered  
21 for sale in this catalog can expose you to chemicals  
22 including DEHP, which are known to the State of  
23 California to cause cancer and birth defects or other  
24 reproductive harm. For more information go to  
25 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).


24 OR

25  **WARNING:** The following warning applies to products identified  
26 with this symbol ▼:


27 Cancer and Reproductive Harm –  
28 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

1 The designated symbol must appear on the same page and in close proximity to the display  
2 and/or description of the Product. On each page where the designated symbol appears, Officemate  
3 must provide a header or footer directing the consumer to the warning language and definition of  
4 the designated symbol.


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

13  **WARNING:** This product can expose you to chemicals including DEHP,  
14 which are known to the State of California to cause cancer  
15 and birth defects or other reproductive harm. For more  
16 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

17 OR

18  **WARNING:** Cancer and Reproductive Harm –  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

19 Alternatively, where it is impracticable to provide the warning on the same page and in the  
20 same location as the display and/or description of the Product, Officemate may utilize a designated  
21 symbol to cross reference the applicable warning with a “designated symbol” which may appear  
22 adjacent to or immediately following the display, description, or price of the Product for which a  
23 warning is being given, provided that the following warning statement also appears elsewhere on  
24 the same web page, as follows:

25  **WARNING:** Certain products identified with this symbol ▼ and offered  
26 for sale in this website can expose you to chemicals  
27 including DEHP, which are known to the State of  
28 California to cause cancer and birth defects or other

reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

 **WARNING:** The following warning applies to products identified with this symbol ▼ :

Cancer and Reproductive Harm –  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

### **3. MONETARY SETTLEMENT TERMS**

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

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Consent Judgment, Officemate shall pay a total of \$7,000 in civil penalties in accordance with this Section. The 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, as follows: Officemate shall, within five (5) business days of the date that this Consent judgment is executed, issue a check payable to its counsel’s law firm in the amount of \$7,000, to be held in trust by its counsel. Counsel for Officemate shall provide The Chanler Group with written confirmation within three days of receipt that the funds have been deposited in a trust account. Within two business days of the Effective Date, counsel shall issue checks to “The Chanler Group” as follows: (1) to “John Moore, Client Trust Account” totaling \$1,750; and (2) to the “Office of Environmental Health Hazard Assessment” totaling \$5,250. Upon receipt, Moore and his counsel will then ensure payment to OEHHA. All penalty payments shall be delivered to the addresses listed in Section 3.3 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 the other settlement terms had been finalized, Officemate 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

1 under general contract principles and the private attorney general doctrine codified at California  
2 Code of Civil Procedure § 1021.5. For all work performed through the mutual execution of this  
3 agreement and the Court’s approval of the same, but exclusive of fees and costs on appeal, if any,  
4 Officemate shall reimburse Moore and his counsel \$32,000. Officemate shall, within five (5)  
5 business days of the date that this Consent judgment is executed, issue a check payable to its  
6 counsel’s law firm in the amount of \$32,000, to be held in trust by its counsel. Counsel for  
7 Officemate shall provide The Chanler Group with written confirmation within three days of  
8 receipt that the funds have been deposited in a trust account. Within two business days of the  
9 Effective Date, counsel shall issue a check to “The Chanler Group” in the amount of \$32,000,  
10 and shall deliver it to the address listed in Section 3.3 below. The reimbursement shall cover all  
11 fees and costs incurred by Moore investigating, bringing this matter to Officemate’s attention,  
12 litigating, and negotiating a settlement of the matter in the public interest.

13 **3.3 Payment Address**

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

16 The Chanler Group  
17 Attn: Proposition 65 Controller  
18 2560 Ninth Street  
19 Parker Plaza, Suite 214  
20 Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Moore’s Public Release of Proposition 65 Claims**

23 Moore, acting on his own behalf and in the public interest, releases Officemate and its  
24 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
25 and attorneys (“Releasees”) and each entity to whom Officemate directly or indirectly distributes or  
26 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,  
27 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for  
28 any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products



1 manufactured, imported, distributed or sold by Officemate prior to the Effective Date, as set forth in  
2 the Notice.

### 3 **4.2 Moore's Individual Release of Claims**

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

### 11 **4.3 Officemate's Release of Moore**

12 Officemate, on its own behalf and on behalf of its past and current agents, representatives,  
13 attorneys, successors and/or assignees, hereby waives any and all claims against Moore and his  
14 attorneys and other representatives, for any and all actions taken or statements made (or those that  
15 could have been taken or made) by Moore and his attorneys and other representatives in the course  
16 of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to  
17 the Products.

## 18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and  
20 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
21 after it has been fully executed by all Parties. Moore and Officemate agree to support the entry of  
22 this agreement as a judgment, and to seek the Court's approval of their settlement in a timely  
23 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section  
24 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which  
25 motion Moore shall draft and file and Officemate shall support, appearing at the hearing if so  
26 requested. If any third-party objection to the motion is filed, Moore and Officemate agree to work  
27 together to file a reply and appear at any hearing. This provision is a material component of the  
28 Consent Judgment and shall be treated as such in the event of a breach.

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

13 **8. NOTICE**

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

18	To Officemate:	To Moore:
19	Robert Falk	Attn: Proposition 65 Coordinator
20	Morrison & Foerster LLP	The Chanler Group
21	425 Market Street, 32nd Floor	2560 Ninth Street
22	San Francisco, CA 94015	Parker Plaza, Suite 214
		Berkeley, CA 94710-2565

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

25 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

4 **11. MODIFICATION**

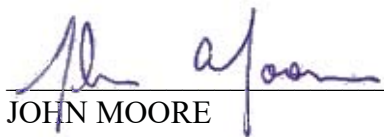
5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
6 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
7 any party and the entry of a modified Consent Judgment by the Court thereon.

8 **12. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their  
10 respective Parties and have read, understood, and agreed to all of the terms and conditions of this  
11 Consent Judgment.

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**AGREED TO:**

  
\_\_\_\_\_  
JOHN MOORE

Dated: 2/5/2018

**AGREED TO:**

\_\_\_\_\_  
OFFICEMATE INTERNATIONAL  
CORPORATION

By: \_\_\_\_\_  
ROGER KO  
OFFICEMATE INTERNATIONAL  
CORPORATION

Dated: \_\_\_\_\_

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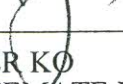
16  
17 **AGREED TO:**

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19 \_\_\_\_\_  
20 JOHN MOORE

21 Dated: \_\_\_\_\_

**AGREED TO:**

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24 OFFICEMATE INTERNATIONAL  
CORPORATION

25 By:  \_\_\_\_\_  
26 ROGER KO  
27 OFFICEMATE INTERNATIONAL  
CORPORATION

28 Dated: 4/31/18 \_\_\_\_\_