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Clifford A. Chanler, State Bar No. 135534
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
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Attorneys for Plaintiff
JOHN MOORE

FILED

SEP 01 2011

KIM TURNER
Court Executive Office
MARIN COUNTY SUPERIOR COURT
By: A. Garcia, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

LUDLOW COMPOSITES CORPORATION;
et al.,

Defendants.

) Case No.: CIV-1006343

) ~~PROPOSED~~ JUDGMENT PURSUANT
) TO TERMS OF PROPOSITION 65
) SETTLEMENT AND CONSENT
) JUDGMENT

) Date: August 31, 2011

) Time: 8:30 a.m.

) Dept.: B

) Judge: Hon. Roy O. Chernus

1 In the above-entitled action, Plaintiff JOHN MOORE and Defendant LUDLOW
2 COMPOSITES CORPORATION having agreed through their respective counsel that a judgment be
3 entered pursuant to the terms of the Consent Judgment entered into by the parties in resolution of this
4 Proposition 65 action, and following the issuance of an order approving the Parties' settlement
5 agreement on August 31, 2011.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety
7 Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance
8 with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties,
9 the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

10 **IT IS SO ORDERED.**

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12 Dated: _____

9/1/11

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JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
2 Laurence D. Haveson, State Bar No. 152631
3 Josh Voorhees, State Bar No. 241436
4 THE CHANLER GROUP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565
8 Telephone: (510) 848-8880
9 Facsimile: (510) 848-8118

10 Attorneys for Plaintiff
11 JOHN MOORE

12 Bruce Nye, State Bar No. 77608
13 ADAMS NYE BECHT LLP
14 222 Kearny Street, 7th Floor
15 San Francisco, CA 94108-4501
16 Telephone: (415) 982-8955
17 Facsimile: (415) 982-2042

18 Attorneys for Defendant
19 LUDLOW COMPOSITES CORPORATION

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE CITY AND COUNTY OF MARIN
22 UNLIMITED CIVIL JURISDICTION

23 JOHN MOORE,
24 Plaintiff,
25 v.
26 LUDLOW COMPOSITES CORPORATION,
27 *et al.*,
28 Defendants.

) Case No. CIV-1006343
)
) UNLIMITED JURISDICTION
)
)
) **[PROPOSED] CONSENT JUDGMENT**
)
) Dept:
) Judge:
) Date: None set
)
)
) Complaint Filed: December 2, 2010

1 **1. INTRODUCTION**

2 **1.1 John Moore and Ludlow Composites Corporation**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and Ludlow Composites Corporation (“Ludlow” or “Defendant”), with Plaintiff and
5 Defendant collectively referred to as the “parties.”

6 **1.2 John Moore**

7 Moore is an individual residing in the State of California who seeks to promote awareness of
8 exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Ludlow Composites Corporation**

11 Moore alleges that Ludlow employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Ludlow has manufactured, imported, distributed and/or sold vinyl
16 flooring that contain phthalates, including di(2-ethylhexyl)phthalate (“DEHP”), without the requisite
17 Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause cancer as well as
18 birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows: vinyl
21 flooring containing DEHP manufactured, imported, distributed, sold and/or offered for sale in
22 California including, but not limited to, *Clear Carpet Runner, #CWN CP0312CL (#0 23244 20095*
23 *l)*. All such vinyl flooring containing DEHP is referred to hereinafter as the “Products.”

24 **1.6 Notice of Violation**

25 On June 3, 2010, Moore served Ludlow and various public enforcement agencies, with a
26 document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with
27 notice of alleged violations of California Health & Safety Code § 25249.6 based on Ludlow’s
28

1 alleged failure to warn consumers that the Products, exposed users in California to DEHP. To the
2 best of the parties' knowledge, no public enforcer has prosecuted the allegations set forth in the
3 Notice.

4 **1.7 Complaint**

5 On or about, December 2 , 2010, Moore filed a complaint in the Superior Court in and for
6 the County of Marin against Ludlow Composites Corporation and Does 1 through 150, *Moore v.*
7 *Ludlow, et al.*, Case No. CIV-1006343 (the "Action"), alleging violations of California Health &
8 Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain vinyl flooring
9 products sold by Ludlow.

10 **1.8 No Admission**

11 Ludlow denies the material, factual and legal allegations contained in Moore's Notice and
12 Complaint and maintains that all products that it has sold, manufactured, imported and/or
13 distributed in California, including the Products, have been and are in compliance with all laws.
14 Nothing in this Consent Judgment shall be construed as an admission by Ludlow of any fact,
15 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
16 constitute or be construed as an admission by Ludlow of any fact, finding, conclusion, issue of law,
17 or violation of law, such being specifically denied by Ludlow. However, this section shall not
18 diminish or otherwise affect Ludlow's obligations, responsibilities, and duties under this Consent
19 Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the parties stipulate that this Court has
22 jurisdiction over Ludlow as to the allegations contained in the Complaint, that venue is proper in the
23 County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
24 Consent Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean March 31,
27 2011.

1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Reformulation Standards**

3 Reformulated Products are defined as those Products containing DEHP in concentrations
4 less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed
5 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any
6 other methodology utilized by federal or state agencies for the purpose of determining DEHP
7 content in a solid substance.

8 **2.2 Product Warnings**

9 Commencing on the Effective Date, Ludlow shall, for all Products other than Reformulated
10 Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). The
11 parties hereby acknowledge and agree that Ludlow has already implemented a labeling program that
12 uses the following language:

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

15 Therefore, the parties agree that Ludlow may continue to use the above as interim warning language
16 until August 1, 2011, at which time Ludlow shall use the specific language provided in Sections
17 2.2(a) and 2.2(b) below. In all cases each warning shall be prominently placed with such
18 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
19 to be read and understood by an ordinary individual under customary conditions before purchase or
20 use. Each warning shall be provided in a manner such that the consumer or user understands to
21 which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

22 **(a) Retail Store Sales.**

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

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

1 (ii) **Point-of-Sale Warnings.** Alternatively, Ludlow may provide warning
2 signs in the form below to its customers in California with instructions to post the warnings in
3 close proximity to the point of display of the Products. Such instruction sent to Ludlow's
4 customers shall be sent by certified mail, return receipt requested.

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

7 Where more than one Product is sold in proximity to other like items or to those that do not
8 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
9 must be used:¹

10 **WARNING:** The following products contain DEHP, a
11 phthalate chemical known to the State of
12 California to cause birth defects and other
reproductive harm:

13 [*list products for which warning is required*]

14 (b) **Mail Order Catalog and Internet Sales.** In the event that Ludlow sells
15 Products via mail order catalog and/or the internet, to customers located in California, after the
16 Effective Date, and that are not Reformulated Products, Ludlow shall provide a warning for such
17 Products sold via mail order catalog or the internet to California residents. Warnings given in the
18 mail order catalog or on the internet shall identify the *specific* Product to which the warning applies
19 as further specified in Sections 2.2(b)(i) and (ii).

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

24 **WARNING:** This product contains DEHP, a phthalate
25 chemical known to the State of California to
26 cause birth defects and other reproductive harm.

27 ¹For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another product are
28 offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not
reasonably determine which of the two products is subject to the warning sign.

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

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

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

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

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

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

26 **WARNING:** Products identified on this page with the
27 following symbol ▼ contain DEHP, a
28 phthalate chemical known to the State of
 California to cause birth defects and other
 reproductive harm.

1 **3. PAYMENT OF PENALTIES**

2 **3.1 Initial Civil Penalty**

3 In settlement of all the claims referred to in this Consent Judgment, Ludlow shall pay \$4,000
4 in initial civil penalties, to be apportioned in accordance with California Health & Safety Code §
5 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of
6 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
7 remitted to John Moore. Ludlow shall issue two separate checks for the penalty payment: (a) one
8 check made payable to "The Chanler Group in Trust For OEHHA" in the amount of \$3,000,
9 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for John
10 Moore" in the amount of \$1,000, representing 25% of the total penalty. Two separate 1099s shall
11 be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-
12 0284486); and (b) John Moore, whose information shall be provided five calendar days before the
13 payment is due.

14 Payment shall be delivered to Moore's counsel on or before April 4, 2011, at 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 **3.2 Final Civil Penalty**

22 Ludlow shall pay a final civil penalty of \$35,000 on August 15, 2011. As incentive to
23 reformulate the Products, however, the final civil penalty shall be waived in its entirety if an Officer
24 of the Ludlow certifies in writing that it, as of August 1, 2011, has sold, shipped and offered for sale
25 in California only Reformulated Products and that it will continue to sell, ship and offer for sale in
26 California only Reformulated Products. Such certification must be received by The Chanler Group
27 on or before August 15, 2011. The final civil penalty payment shall be apportioned in accordance
28 with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the
29 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the

1 remaining 25% of the penalty remitted to John Moore. Ludlow shall issue two separate checks for
2 the final civil penalty payment: (a) one check made payable to “The Chanler Group in Trust For
3 OEHHA” in the amount of \$26,250, representing 75% of the total penalty; and (b) one check to
4 “The Chanler Group in Trust for John Moore” in the amount of \$8,750, representing 25% of the
5 total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box
6 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall be
7 provided five calendar days before the payment is due (if different than the information already
8 provided to Ludlow under Section 3.1 above).

9 Payment shall be delivered to Moore’s counsel at the following address:

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

13 **4. REIMBURSEMENT OF ATTORNEY’S FEES AND COSTS**

14 The parties reached an accord on the compensation due to Moore and his counsel under
15 general contract principles and the private attorney general doctrine codified at California Code of
16 Civil Procedure (CCP) §1021.5. Ludlow shall reimburse Moore and his counsel \$35,000 for fees
17 and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a
18 settlement in the public interest. This figure includes Moore’s future fees and costs including
19 attorney’s fees to be incurred in seeking judicial approval of this Consent Judgment as well as any
20 other legal work performed after the execution of this Consent Judgment incurred in an effort to
21 obtain finality of the case. However, in the event a third party were to appeal entry of this
22 Consent Judgment, Plaintiff and his counsel shall be entitled to seek their reasonable attorney’s fees
23 and costs associated with all appellate work defending the entry of judgment pursuant to CCP §
24 1021.5.

25 The check for reimbursement of fees and costs shall be made payable to “The Chanler
26 Group” and shall be delivered on or before April 4, 2011, to the following address:
27
28

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

6 A separate 1099 shall be issued to “The Chanler Group” (EIN: 94-3171522) for the amount
7 of the reimbursement of Plaintiff’s fees and costs.

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Moore’s Release of Ludlow**

10 In further consideration of the promises and agreements herein contained, and for the
11 payments to be made pursuant to Sections 3 and 4, Moore, on behalf of himself, his past and current
12 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
13 public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or
14 participate in, directly or indirectly, any form of legal action and releases all claims, including,
15 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
16 obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or
17 expenses (including, but not limited to, investigation fees, expert fees, and attorney’s fees) of any
18 nature whatsoever, whether known or unknown, fixed or contingent (collectively “claims”), against
19 Ludlow and each of its downstream wholesalers, licensors, licensees, auctioneers, retailers,
20 distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
21 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
22 shareholders, agents, and employees, and sister and parent entities, (collectively “Releasees”) that
23 arise under Proposition 65, as such claims relate to Ludlow’s alleged failure to warn about
24 exposures to DEHP contained in the Products. The parties further understand and agree that this
25 release shall not extend upstream to any entities that manufactured the Products for Ludlow or any
26 component parts thereof or to any distributors or suppliers who sold the Products or any component
27 parts thereof to Ludlow.

28 **5.2 Ludlow’s Release of Moore**

Ludlow, on behalf of itself and its Releasees, waives any and all claims against Moore, his

1 attorneys, and other representatives for any and all actions taken by Moore and his attorneys and
2 other representatives, whether in the course of investigating claims or otherwise seeking
3 enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

4 **6. COURT APPROVAL**

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

8 **7. SEVERABILITY**

9 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
10 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
11 remaining shall not be adversely affected.

12 **8. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California
14 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
15 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
16 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
17 preemption or rendered inapplicable by reason of law generally as to the Products, then Ludlow
18 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
19 extent that, the Products are so affected.

20 **9. NOTICES**

21 Unless specified herein, all correspondence and notices required to be provided pursuant to
22 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
23 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
24 other party at the following addresses:

25 To Ludlows:

26 Bruce Nye
27 Adams Nye Becht LLP
28 222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521

To Moore:

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

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

3 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
5 each of which shall be deemed an original, and all of which, when taken together, shall constitute
6 one and the same document. A facsimile or pdf signature shall be as valid as the original.

7 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

10 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

11 Moore and Ludlow agree to mutually employ their, and their counsel's, best efforts to
12 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
13 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
14 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
15 Consent Judgment, which Moore shall draft and file, and Ludlow shall join. If any third party
16 objection to the noticed motion is filed, Moore and Ludlow shall work together to file a joint reply
17 and appear at any hearing before the Court. This provision is a material component of the Consent
18 Judgment and shall be treated as such in the event of a breach. If the Superior Court does not
19 approve the motion to approve this Consent Judgment, and if the parties choose not to pursue a
20 modified Consent Judgment within 30 days after the Court's denial of the motion to approve, then,
21 upon remittitur, all payments made pursuant to this Consent Judgment will be returned to counsel
22 for Ludlow.

23 **13. MODIFICATION**

24 This Consent Judgment may be modified only: (1) by written agreement of the parties and
25 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
26 of any party and entry of a modified Consent Judgment by the Court.
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14. AUTHORIZATION

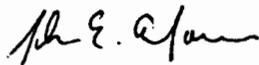
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: April 7, 2011

Date: _____

By: 
Plaintiff, John Moore

By: _____
Defendant, Ludlow Composites Corporation

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14. 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:

AGREED TO:

Date: _____

Date: March 30, 2011

By: _____
Plaintiff, John Moore

By:  _____
Defendant, Ludlow Composites Corporation