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10
11 Attorneys for Plaintiff
12 JOHN MOORE

FILED

SEP 07 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguero, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION
12

13 JOHN MOORE,
14 Plaintiff,
15 v.
16 DICK'S SPORTING GOODS, INC.; and
17 DOES 1 through 150, inclusive,
18 Defendants.

Case No. CIV 1006344

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND [PROPOSED]
CONSENT JUDGMENT**

Date: September 7, 2012
Time: 8:30 a.m.
Dept. E
Judge: Hon. Faye D'Opal

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Plaintiff John Moore and Defendant Dick's Sporting Goods, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

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

IT IS SO ORDERED.

Dated: SEP 07 2012

FAYE D'OPAL
JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Christopher Martin, State Bar No. 186021
Troy Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

6 Attorneys for Plaintiff
JOHN MOORE
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

12 JOHN MOORE,) Case No. CIV 1006344
13 Plaintiff,)
14 v.) **CONSENT JUDGMENT**
15 DICK'S SPORTING GOODS, INC., *et al.*,) **[PROPOSED]**
16 Defendants.)
17)
18)

1 **1. INTRODUCTION**

2 **1.1 John Moore and Dick’s Sporting Goods, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and defendant Dick’s Sporting Goods, Inc. (“Dick’s Sporting Goods” or
5 “Defendant”), with Moore and Dick’s Sporting Goods collectively referred to as the “Parties.”

6 **1.2 Plaintiff.**

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

10 **1.3 Defendant.**

11 Dick’s Sporting Goods employs ten or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code §25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Moore alleges that Dick’s Sporting Goods has manufactured, distributed, sold, and/or
16 offered for sale exercise/fitness mats containing di(2-ethylhexyl)phthalate (“DEHP”) for use in
17 the State of California without the requisite Proposition 65 warnings. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause birth defects and other
19 reproductive harm.

20 **1.5 Notice of Violation.**

21 On August 5, 2010 Moore served Dick’s Sporting Goods and various public enforcement
22 agencies with a document entitled “60-Day Notice of Violation” that alleged that Dick’s Sporting
23 Goods violated Proposition 65 by failing to warn consumers that the exercise/fitness mats,
24 including, but not limited to *Fitness Gear 2’ x 6’ High-Density Exercise Mat, Style #CFM00000*
25 (*#8 22688 19416 7*), that Dick’s Sporting Goods manufactured, distributed, sold, and/or offered
26 for sale exposed users in California to DEHP.

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1.6 Complaint.

On December 2, 2010, Moore, acting in the interest of the general public of California, filed a complaint in this action alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in exercise/fitness mats manufactured, distributed, sold, and/or offered for sale in California by Dick’s Sporting Goods.

1.7 No Admission.

The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties, as they relate to DEHP in Covered Products (as defined in Section 2.1 below). By execution of this Consent Judgment and agreeing to comply with its terms, Dick’s Sporting Goods does not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law or equitable requirements relating to DEHP in Covered Products (as defined in section 2.1 below). This Consent Judgment is the product of negotiation and compromise and is accepted by Dick’s Sporting Goods for purposes of settling, compromising, and resolving issues disputed in this action. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Dick’s Sporting Goods under this Consent Judgment.

1.8 Consent to Jurisdiction.

For purposes of this Consent Judgment only, Dick’s Sporting Goods stipulates that this Court has jurisdiction over Dick’s Sporting Goods as to the allegations contained in the Complaint, that venue is proper in the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

2. DEFINITIONS

2.1 “Covered Products” means exercise/fitness mats that are sold or offered for retail sale by Defendant, including internet and catalog sales, and that bear a private label with a brand or trademark owned or licensed for use by Dick’s Sporting Goods and/or a Defendant Releasee (as defined in Section 6.1) and that does not bear the brand of the manufacturer of the Covered Product on the product label.

1 2.2 “Effective Date” means the date this Consent Judgment is approved by the court.

2 **3. INJUNCTIVE RELIEF**

3 3.1 **Reformulation.**

4 Commencing on May 1, 2012, Dick’s Sporting Goods shall not sell, ship or offer for sale
5 in California any Covered Product containing DEHP in concentrations exceeding 0.1 percent
6 (1,000 parts per million (“ppm”)) when analyzed pursuant to any methodology utilized by federal
7 or state agencies for the purpose of determining DEHP content in a solid substance, unless the
8 Covered Product bears a warning that complies with Section 3.2.

9 3.2 **Warnings.**

10 Dick’s Sporting Goods shall provide a warning for any Covered Product it sells, ships or
11 offers for sale in California on or after May 1, 2012 that does not meet the reformulation standard
12 set forth in Section 3.1.

13 3.2.1 The warning shall be conveyed through one of the following means:

14 (a) A warning affixed to the packaging of, or, if no packaging exists,
15 directly on, each Covered Product.

16 (b) A warning provided to the consumer at the point of sale through
17 signs and/or cash register receipts.

18 3.2.2 The warning shall state:

19 **WARNING:** This product contains a chemical known to
20 the State of California to cause birth defects
and other reproductive harm.

21 For Covered Products sold by catalog or via the internet or by telephone, and including
22 the warnings pursuant to 3.2.1(a) above, Dick’s Sporting Goods shall advise the purchaser that he
23 or she may return the Covered Product for a full refund (including shipping costs for both the
24 receipt and return of the product), within 90 days of purchase. The warning and information
25 regarding return of the Covered Product required by this section shall be sufficiently conspicuous
26 as to be read and understood by a consumer under normal conditions of purchase or use.

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1 **4. ENFORCEMENT OF CONSENT JUDGMENT**

2 **4.1 General Enforcement Provisions.**

3 Any Party may, by motion or application for an order to show cause before the Superior
4 Court of the County of Marin, enforce the terms and conditions contained in this Consent
5 Judgment. A Party may file such a motion or application only after that Party first provides 30
6 days notice to the Party allegedly failing to comply with the terms and conditions of this Consent
7 Judgment and attempts to resolve such Party's failure to comply in an open and good faith
8 manner for a period of no less than 30 days.

9 **5. MONETARY PAYMENTS**

10 **5.1 Initial Civil Penalty.**

11 Dick's Sporting Goods shall pay an initial civil penalty of \$3,000 to be apportioned in
12 accordance with California Health & Safety Code §25192, with 75% of these funds remitted to
13 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
14 remaining 25% of the amount remitted to John Moore as provided by California Health & Safety
15 Code §25249.12(d). Dick's Sporting Goods shall issue two separate checks for the payment: (a)
16 one check made payable to "The Chanler Group in trust For OEHHA" in the amount of \$2,250,
17 representing 75% of the total payment; and (b) one check to "The Chanler Group in trust for John
18 Moore" in the amount of \$750, representing 25% of the total payment. Two separate 1099s shall
19 be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN:
20 68-0284486); and (b) John Moore, whose information shall be provided five calendar days before
21 the payment is due.

22 Payment shall be delivered to Moore's counsel within two business days of the Effective
23 Date, at the following address:

24 The Chanler Group
25 Attn: Proposition 65 Controller
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710-2565

1 **5.2 Final Civil Penalty.**

2 Dick's Sporting Goods shall pay a final civil penalty in the amount of \$6,000 on
3 December 31, 2012. As incentive for Dick's Sporting Goods to reformulate the Covered
4 Products, however, this final civil penalty shall be waived in its entirety if an officer of Dick's
5 Sporting Goods certifies in writing that it, as of December 15, 2012, has sold, shipped and
6 offered for sale in California only Covered Products that meet the reformulation standard set forth
7 in Section 3.1 and that it will continue to sell, ship and offer for sale in California only Covered
8 Products that meet the reformulation standard set forth in Section 3.1. Such certification must be
9 received by The Chanler Group on or before December 15, 2012. The final civil penalty payment
10 shall be apportioned in accordance with California Health & Safety Code §25192, with 75% of
11 these funds remitted to the State of California's Office of Environmental Health Hazard
12 Assessment ("OEHHA") and the remaining 25% of the amount remitted to John Moore as
13 provided by California Health & Safety Code §25249.12(d). Dick's Sporting Goods shall issue
14 two separate checks for the payment: (a) one check made payable to "The Chanler Group in trust
15 For OEHHA" in the amount of \$4,500, representing 75% of the total payment; and (b) one check
16 to "The Chanler Group in trust for John Moore" in the amount of \$1,500, representing 25% of the
17 total payment. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O.
18 Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose information
19 shall be provided five calendar days before the payment is due.

20 Payment shall be delivered to Moore's counsel at the following address:

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710-2565

26 **5.3 Reimbursement of Fees and Costs.**

27 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
28 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
this fee issue to be resolved after the material terms of the agreement had been settled. Dick's
Sporting Goods then expressed a desire to resolve the fee and cost issue shortly after the other

1 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
2 the compensation due to Moore and his counsel under general contract principles and the private
3 attorney general doctrine codified at California Code of Civil Procedure §1021.5, for all work
4 performed through the mutual execution of this agreement. Dick's Sporting Goods shall
5 reimburse Moore and his counsel a total of \$36,000 for fees and costs incurred as a result of
6 investigating, bringing this matter to Dick's Sporting Goods' attention, litigating and negotiating
7 a settlement in the public interest, and obtaining court approval of such settlement. Dick's
8 Sporting Goods shall issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall make
9 the check payable to "The Chanler Group" and to be delivered within two business days of the
10 Effective Date, to the following address:

11 The Chanler Group
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710-2565

14 **6. CLAIMS COVERED AND RELEASE**

15 6.1 This Consent Judgment is a full, final, and binding resolution between Moore, on
16 behalf of himself and in the public interest, and Dick's Sporting Goods and its parents,
17 subsidiaries, affiliated entities, sister and related companies, directors, officers, shareholders,
18 employees, attorneys, successors and assigns, including but not limited to Dick's Sporting Goods,
19 Inc., (collectively "Defendant Releasees") and each entity to whom Defendant directly or
20 indirectly distributes or sells Covered Products, including but not limited to downstream
21 distributors, wholesalers, customers, resellers, retailers, franchisees, cooperative members,
22 licensors, and licensees that sold or distributed the Covered Products (collectively "Downstream
23 Defendant Releasees"), of any violation of Proposition 65 regarding the failure to warn about
24 exposure to DEHP arising in connection with Covered Products manufactured, sourced,
25 distributed, sold, or offered for sale by Defendant Releasees prior to the Effective Date.
26 Compliance with the terms of this Consent Judgment by Dick's Sporting Goods and Defendant
27 Releasees constitutes compliance with Proposition 65 with respect to DEHP in Covered Products.

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1 6.2 In further consideration of the promises and agreements herein contained, Moore
2 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
3 assignees, and in the interest of the general public, hereby waives all rights to institute or
4 participate in, directly or indirectly, any form of legal action and releases all claims, including,
5 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
6 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
7 investigation fees, expert fees, and attorneys' fees) limited to and arising out of any violation of
8 Proposition 65 regarding the failure to warn about exposure to DEHP in the Covered Products up
9 through the Effective Date (collectively "Claims"), against Dick's Sporting Goods, Defendant
10 Releasees, and Downstream Defendant Releasees.

11 6.3 Moore also, in his individual capacity only and *not* in his representative capacity,
12 provides a general release herein which shall be effective as a full and final accord and
13 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
14 damages, losses, claims, liabilities and demands of Moore of any nature, character or kind,
15 whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or
16 actual exposures to any chemical listed pursuant to Proposition 65 in the Covered Products
17 manufactured, distributed, sold or offered for sale by Defendant Releasees and Downstream
18 Defendant releases.

19 6.4 Moore acknowledges that he is familiar with Section 1542 of the California Civil
20 Code, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
22 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
23 EXIST IN HIS OR HER FAVOR AT THE TIME OF
24 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
25 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
26 SETTLEMENT WITH THE DEBTOR.

27 Moore, expressly waives and relinquishes any and all rights and benefits which he may
28 have under, or which may be conferred on him by the provisions of Section 1542 of the
California Civil Code as well as under any other state or federal statute or common law principle
of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining

1 to the released matters. In furtherance of such intention, the release hereby given shall be and
2 remain in effect as a full and complete release notwithstanding the discovery or existence of any
3 such additional or different claims or facts arising out of alleged or actual exposure now or in the
4 future to DEHP in the Covered Products manufactured, imported, distributed, sold or offered for
5 sale by Dick's Sporting Goods, that could otherwise be made against Dick's Sporting Goods,
6 Defendant Releasees, and Downstream Defendant Releasees.

7 6.5 Dick's Sporting Goods on behalf of itself, its past and current agents,
8 representatives, attorneys, successors, and/or assignees, hereby waives any and all Claims against
9 Moore, his attorneys, and other representatives for any and all actions taken or statements made
10 (or those that could have been taken or made) by Moore and his attorneys and other
11 representatives, whether in the course of investigating claims or otherwise seeking enforcement of
12 Proposition 65 against it in this matter with respect to the Covered Products.

13 **7. COURT APPROVAL**

14 7.1 By this Consent Judgment and upon its approval, the Parties waive their right to
15 trial on the merits, and waive rights to seek appellate review of any and all interim rulings,
16 including all pleading, procedural, and discovery orders.

17 7.2 Plaintiff shall file a motion seeking approval of this Consent Judgment pursuant to
18 California Health & Safety Code §25249.7(f), and Dick's Sporting Goods shall support the entry
19 of such motion.

20 7.3 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
21 and any and all prior agreements between the Parties merged herein shall terminate and become
22 null and void, and the action shall revert to the status that existed prior to the execution date of
23 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
24 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
25 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
26 action, or in any other proceeding; and (c) the parties agree to meet and confer to determine
27 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

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8. GOVERNING LAW

8.1 The terms of this Consent Judgment shall be governed by the laws of the State of California, and shall apply only to Covered Products offered for sale in the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Dick's Sporting Goods may provide written notice to Moore 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 Covered Products are so affected.

8.2 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

9. NOTICES

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

To Dick's Sporting Goods:
Mary Tortorice
Vice President & Senior Corporate Counsel
Dick's Sporting Goods
345 Court Street
Coraopolis, PA 15108

1 With a copy to:

2 Jeffrey B. Margulies, Esq.
3 Fulbright & Jaworski LLP
4 555 South Flower Street
41st Floor
Los Angeles, CA 90071

5 To Moore:

6 Proposition 65 Coordinator
7 The Chanler Group
8 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

9 9.2 Any Party, from time to time, may specify in writing to the other Party a change of
address to which all notices and other communications shall be sent.

10 **10. MODIFICATION**

11 **10.1 Modification.**

12 This Consent Judgment may be modified by written agreement of the Parties and upon
13 entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a
14 modified Consent Judgment by the court.

15 **10.2 Subsequent Legislation.**

16 If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the
17 DEHP content of Covered Products sold in California, any Party shall be entitled to request that
18 the Court modify the reformulation standard of Section 3.1 of this Consent Judgment for good
19 cause shown.

20 **10.3 Notice; Meet and Confer.**

21 Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet
22 and confer with the other Party prior to filing a motion to modify the Consent Judgment.

23 **11. ENTIRE AGREEMENT**

24 11.1 This Consent Judgment contains the sole and entire agreement and understanding
25 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
26 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
27 and therein. No supplementation, modification, waiver, or termination of this Consent Judgment
28 shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of

1 the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
2 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
3 waiver.

4 **12. RETENTION OF JURISDICTION**

5 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
6 Consent Judgment.

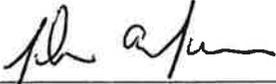
7 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

8 13.1 This Consent Judgment may be executed in counterparts and by facsimile or
9 portable document format (.pdf), each of which shall be deemed an original, and all of which,
10 when taken together, shall constitute one and the same document.

11 **14. AUTHORIZATION**

12 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of
13 their respective Parties and have read, understood, and agree to all of the terms and conditions of
14 this Consent Judgment.

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AGREED TO:	AGREED TO:
Date: <u>MAY 17, 2012</u>	Date: _____
By: <u></u> Plaintiff JOHN MOORE	By: _____ Defendant DICK'S SPORTING GOODS, INC.

1 the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
2 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
3 waiver.

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AGREED TO:	AGREED TO:
Date: _____	Date: <u>5/15/12</u>
By: _____ Plaintiff JOHN MOORE	By: <u>MARY Tortorella</u> Defendant DICK'S SPORTING GOODS, INC.