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9 Attorneys for Plaintiff
10 JOHN MOORE

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 C & S WHOLESALE GROCERS, INC.; *et al.*,

20 Defendants.

Case No. CGC-11-514766

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between John Moore (“Moore” or “Plaintiff”)
4 and C & S Wholesale Grocers, Inc. (“C & S” or “Defendant”), with Moore and C & S collectively
5 referred to as the “parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 C & S 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 &
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that C & S sold or distributed for sale in California footwear containing
16 excessive amounts of di(2-ethylhexyl)phthalate (“DEHP”) and di-n-butyl phthalate (“DBP”)
17 without the first providing the “clear and reasonable” exposure warnings required by Proposition
18 65. DEHP and DBP are listed pursuant to Proposition 65 as chemicals known to the state of
19 California to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The product that is covered by this Consent Judgment, and to which this Consent Judgment
22 is specifically limited, is the *Caribbean Cartel Lds Metallic Flex Zori, Article #1200W (#8 02668*
23 *01200 1)* model of footwear which contains DBP and/or DEHP and was manufactured and supplied
24 to C & S by Touchsport Footwear USA, Inc., and sold or distributed for sale in California by C & S
25 (hereaft the “Product”).

26 **1.6 Notice of Violation**

27 On April 8, 2011, Moore served C & S and various public enforcement agencies with a 60-
28 Day Notice of Violation (“Notice”), a document that informed the recipients of Moore’s allegation

1 that C & S was allegedly in violation of Proposition 65 for failing to warn its customers and
2 consumers in California that the Product exposes users to DEHP and DBP.

3 **1.7 Complaint**

4 On September 30, 2011, Moore filed the instant action (“Complaint”) against C & S for the
5 violations of Health & Safety Code § 25249.6 alleged in the Notice.

6 **1.8 No Admission**

7 C & S denies the material, factual, and legal allegations contained in the Notice and
8 Complaint, and maintains that all of the products that it has sold in California, including the
9 Product, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall
10 be construed as an admission by C & S of any fact, finding, conclusion of law, issue of law, or
11 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
12 admission of any fact, finding, conclusion of law, issue of law, or violation of law, the same being
13 specifically denied by C & S. This section shall not, however, diminish or otherwise affect C & S’s
14 obligations, responsibilities and duties under this Consent Judgment.

15 **1.9 Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the parties stipulate that this Court has
17 jurisdiction over C & S as to the allegations in the Complaint, that venue is proper in the county of
18 San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of the Consent
19 Judgment.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” shall mean March 9,
22 2011.

23 **2. INJUNCTIVE RELIEF**

24 Commencing on the Effective Date and continuing thereafter, C & S shall not ship, sell, or
25 distribute for sale in California, any Product that contains either DEHP or DBP in a concentration
26 exceeding 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection
27 Agency testing methodologies 3580A and 8270C.

28

1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

3 Pursuant to Health & Safety Code § 25249.7(b), C & S shall pay a civil penalty of \$3,500.

4 This amount reflects a credit of \$5,500 agreed to by Moore in response to C & S's commitment to
5 Proposition 65 compliance, including only selling or distributing for sale in California a Product that
6 complies with the DEHP and DBP content standards established by Section 2.

7 The penalty payment shall be allocated according to Health & Safety Code § 25249.12(c)(1)
8 & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California Office of
9 Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent
10 (25%) earmarked for Moore.

11 **3.2 Reimbursement of Plaintiff's Fees and Costs**

12 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
13 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
14 to be resolved after the material terms of the agreement had been settled. C & S then expressed a
15 desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
16 The Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
17 counsel under general contract principles and the private attorney general doctrine codified at
18 California Code of Civil Procedure § 1021.5 for all work performed in this matter, exclusive of fees
19 on appeal, if any. Under these legal principles, C & S shall pay \$28,500, for all fees and costs
20 incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and
21 yet to be incurred) drafting, negotiating, and obtaining the Court's approval of this Consent
22 Judgment in the public interest.

23 **3.3 Payment Address**

24 All payments required to be transmitted pursuant to this section shall be delivered to
25 within five days of date of the hearing for judicial approval of this Consent Judgment to Moore's
26 counsel at the following address:

27 ///

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

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.2 Moore's Public Release of Proposition 65 Claims**

8 Moore, acting on his own behalf and in the public interest, releases Defendant from all claims
9 for violations of Proposition 65 up through the Effective Date based on exposures to DEHP and/or
10 DBP from the Product as set forth in the Notice. Compliance with the terms of this Consent
11 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed
12 Chemical from the Product as set forth in the Notice.

13 **4.3 Moore's Individual Release of Claims**

14 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
15 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
16 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
17 liabilities, and demands of plaintiff of any nature, character, or kind, whether known or unknown,
18 suspected or unsuspected, arising out of alleged or actual exposures to DEHP and/or DBP contained
19 in the Product sold or distributed for sale in California by C & S.

20 **4.4 C & S's Release of Moore**

21 C & S on behalf of itself, its past and current agents, representatives, attorneys, successors,
22 and/or assignees, hereby waives any and all claims against Moore and his attorneys and other
23 representatives, for any and all actions taken or statements made (or those that could have been taken
24 or made) by Moore and his attorneys and other representatives, whether in the course of investigating
25 claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

26 **5. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and
28 shall be null and void if, for any reason, it is not approved and entered within one year after it has
been fully executed by the Parties, in which event any monies that have been provided to Moore or
his counsel pursuant to sections 3.1 and/or 3.2 shall be refunded within fifteen days of receiving

1 written notice from C & S that the one-year period has expired and the Consent Judgment has not
2 been approved and entered by the Court.

3 **6. SEVERABILITY**

4 If, subsequent to the execution of this Consent Judgment, any of its provisions are held by a
5 court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6 **7. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the State of California
8 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
9 is otherwise rendered inapplicable by reason of law generally, or as to the Product, then C & S shall
10 have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent
11 that, the Product is so affected.

12 **8. NOTICES**

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

17 For C & S:

18 Daniel Fox, Esq.
19 K&L Gates
20 4 Embarcadero Center, Suite 1200
San Francisco, CA 94111

21 For Moore:

22 Proposition 65 Coordinator
23 The Chanler Group
24 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

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

12. AUTHORIZATION

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

AGREED TO:

AGREED TO:

By: 
JOHN MOORE

By: _____
Bryan Granger, Vice President of
Compliance & Government Relations,
C & S WHOLESALE GROCERS, INC.

Date: MARCH 13, 2012

Date: _____

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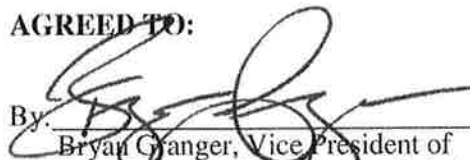
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By: _____
JOHN MOORE

AGREED TO:

By:  _____
Bryan Granger, Vice President of
Compliance & Government Relations,
C & S WHOLESALE GROCERS, INC.

Date: _____

Date: 3/16/12 _____