

1 Clifford A. Chanler, State Bar No. 135534  
Jennifer Henry, State Bar No. 208221  
2 Josh Voorhees, State Bar No. 241436  
THE CHANLER GROUP  
3 2560 Ninth Street  
Parker Plaza, Suite 214  
4 Berkeley, CA 94710  
Telephone: (510) 848-8880  
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff  
JOHN MOORE  
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ALAMEDA  
12 UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 DIGITAL INTERACTIVE SYSTEMS  
CORPORATION; and DOES 1-150, inclusive,

17 Defendants.  
18

Case No. RG11564504

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6  
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1 **1. INTRODUCTION**

2 **1.1 John Moore and Digital Interactive Systems Corporation**

3 This Consent Judgment is entered into by and between John Moore (“Moore”) and Digital  
4 Interactive Systems Corporation (“Digital”), with Moore and Digital collectively referred to as the  
5 “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 improve human health by reducing or eliminating hazardous substances  
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Moore alleges that Digital has sold in the State of California cases for CDs/DVDs containing  
16 di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known  
17 to the State of California to cause birth defects or other reproductive harm. DEHP is also referred to  
18 herein as the “Listed Chemical.”

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as cases for CDs/DVDs  
21 containing the Listed Chemical including, but not limited to, *TekNmotion For 32 CD/DVD Case,*  
22 *TM-CD32B1 (#8 95693 001041)* manufactured, distributed and/or sold by Digital in California. All  
23 such items shall be referred to herein as the “Products.”

24 **1.6 Notice of Violation**

25 On or about December 30, 2010, Moore served Digital and various public enforcement  
26 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that alleged Digital was  
27 in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed  
28 users in California to DEHP.

1           **1.7 Complaint**

2           On March 8, 2011, Moore, who alleges that he was and is acting in the interest of the general  
3 public in California, filed the instant action in the Alameda County Superior Court (“Complaint”),  
4 naming Digital as a defendant and alleging violations of Proposition 65 by Digital based on the  
5 alleged exposures to DEHP contained in the Products it manufactured, distributed, and/or offered for  
6 sale in California.

7           **1.8 No Admission**

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

16           **1.9 Consent to Jurisdiction**

17           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18 jurisdiction over Digital as to the allegations contained in the Complaint, that venue is proper in the  
19 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this  
20 Consent Judgment.

21           **1.10 Effective Date**

22           For purposes of this Consent Judgment, the term “Effective Date” shall mean January 1, 2012.

23 **2. INJUNCTIVE RELIEF**

24           **2.1 Reformulation Standards**

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

### 3 **2.2 Product Warnings**

4 Commencing on the Effective Date, Digital shall, for all Products other than Reformulated  
5 Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b) for all  
6 Product sold into California. Each warning shall be prominently placed with such conspicuousness  
7 as compared with other words, statements, designs, or devices as to render it likely to be read and  
8 understood by an ordinary individual under customary conditions before purchase or use. Each  
9 warning shall be provided in a manner such that the consumer or user understands to which *specific*  
10 Product the warning applies, so as to minimize the risk of consumer confusion.

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

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

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

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

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 Where more than one Product is sold in proximity to other like items or to those that do not  
24 require a warning, the following statement  
25 must be used:<sup>1</sup>

26  
27 <sup>1</sup>For 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                   **WARNING:** This product contains DEHP, a phthalate  
2                   chemical known to the State of California to  
3                   cause birth defects and other reproductive harm:

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

5                   **3.       MONETARY PAYMENTS**

6                   **3.1       Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

7                   On or before January 1, 2012, Digital shall make a payment of \$5,000 to be apportioned in  
8                   accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of  
9                   these funds earmarked for the State of California’s Office of Environmental Health Hazard  
10                  Assessment (“OEHHA”) and the remaining 25% of these penalty monies earmarked for Moore.

11                  **3.2       Final Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

12                  On or before June 1, 2012, Digital shall pay a final civil penalty of \$10,000. As an incentive  
13                  to reformulate the Products, however, the final civil penalty shall be waived in its entirety if an  
14                  Officer of Digital certifies in writing that as of June 1, 2012, Digital will sell, ship and offer for sale  
15                  in California only Reformulated Products. Such certification must be received by The Chanler Group  
16                  on or before June 1, 2012. The final civil penalty payment shall be apportioned in accordance with  
17                  California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA  
18                  and the remaining 25% of the penalty remitted to John Moore.

19                  **3.2       Reimbursement of Plaintiff’s Fees and Costs**

20                  The Parties acknowledge that Moore and his counsel offered to resolve this dispute without  
21                  reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
22                  issue to be resolved after the material terms of the agreement had been settled. Digital then  
23                  expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
24                  finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
25                  Moore and his counsel under general contract principles and the private attorney general doctrine  
26                  codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,  
27                  except fees that may be incurred on appeal. Under these legal principles, Digital shall pay the  
28                  amount of \$20,000 for fees and costs incurred investigating, litigating and enforcing this matter,  
                     including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining

1 the Court's approval of this Consent Judgment in the public interest, in eight equal monthly  
2 payments of \$2,500 starting on January 1, 2012. Each payment will be due on or before the first of  
3 the month.

4 **3.3 Payment Procedures**

5 **3.3.1** All payments made under this Consent Judgment shall be held in trust until  
6 the Court approves the Consent Judgment. The Parties acknowledge that Moore gave Digital the  
7 option of depositing the funds into its attorney's trust account, but that Digital elected to have the  
8 funds held in trust by The Chanler Group. The settlement funds shall be made payable by checks, as  
9 follows:

- 10 (a) "The Chanler Group in Trust for OEHHA" in an amount equal to 75%  
11 of the civil penalty;  
12 (b) "The Chanler Group in Trust for Moore" in an amount equal to 25%  
13 of the penalty; and  
14 (c) "The Chanler Group in Trust" in an amount totaling \$20,000.

15 **3.3.2** After the Consent Judgment has been approved, Digital shall issue a 1099  
16 form to each of the following entities:

- 17 (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010,  
18 Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalties payable to OEHHA;  
19 (b) Moore, whose address and tax identification number shall be furnished upon  
20 request, for the civil penalties payable to Moore; and  
21 (c) The Chanler Group (EIN: 94-3171522) for the amount of \$20,000.

22 **3.3.3** All payments transmitted to the Chanler Group shall be delivered to the  
23 following address:

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

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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

3 This Consent Judgment is a full, final, and binding resolution between Moore, on behalf of  
4 himself and the public, and Digital, of any violation of Proposition 65 that was or could have been  
5 asserted by Moore against Digital, its parents, subsidiaries, affiliated entities that are under common  
6 ownership, directors, officers, employees, attorneys, and each entity to whom Digital directly or  
7 indirectly distributes or sells Products, including but not limited to downstream distributors,  
8 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees  
9 (“Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the  
10 Products that were manufactured, distributed, or sold by Digital. Compliance with this Consent  
11 Judgment constitutes compliance with Proposition 65 now and after the Effective Date for Products  
12 sold by Digital and the Releasees in California.

13 **4.2 Moore’s Public Release of Proposition 65 Claims**

14 In further consideration of the promises and agreements contained herein, Moore on behalf of  
15 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in  
16 the interest of the general public in California, hereby waives all rights to institute or participate in,  
17 directly or indirectly, any form of legal action and releases all claims, including, without limitation,  
18 all actions and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,  
19 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert  
20 fees, and attorneys’ fees – exclusive of fees and costs on appeal, if any – (collectively “Claims”)   
21 arising under Proposition 65. This release is limited to those claims that were brought or could have  
22 been brought by Moore against Digital and Releasees for unwarned exposures to the Listed Chemical  
23 contained in the Products sold by Digital.

24 **4.3 Moore’s Individual Release of Claims**

25 Moore, in his individual capacity only and not in his representative capacity, provides a  
26 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
27 Claims, liabilities, and demands of any nature, character, or kind, whether known or unknown,  
28 suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products.

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**12. MODIFICATION**

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court

**13. AUTHORIZATION**

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

**AGREED TO:**

JOHN MOORE

  
\_\_\_\_\_

Date: DECEMBER 16, 2011

**AGREED TO:**

DIGITAL INTERACTIVE SYSTEMS CORPORATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



1 **12. MODIFICATION**

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3 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of  
4 any party and entry of a modified consent judgment by the Court

5 **13. AUTHORIZATION**

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

8  
9 **AGREED TO:**

10 JOHN MOORE

11 \_\_\_\_\_

12  
13 Date: \_\_\_\_\_

**AGREED TO:**

DIGITAL INTERACTIVE SYSTEMS  
CORPORATION

14 By: Ammer Adve

15 Its: \_\_\_\_\_

16 Date: 12-21-11

PRESIDENT

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