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10 Attorneys for Plaintiff
11 JOHN MOORE

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,
16 Plaintiff,
17 v.
18 FOREMOST GROUPS, INC.; and DOES 1-150,
19 inclusive,
20 Defendants.

Case No. RG10553310

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 John Moore and Foremost Groups, Inc.**

3 This Consent Judgment is entered into by and between John Moore (“Moore”) and Foremost
4 Groups, Inc. (“Foremost”), with Moore and Foremost collectively referred to as the “parties.”

5 **1.2 Plaintiff**

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

9 **1.3 Defendant**

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

13 **1.4 General Allegations**

14 Moore alleges that Foremost has sold in the State of California storage furniture containing
15 di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known
16 to the State of California to cause birth defects or other reproductive harm. DEHP shall be referred to
17 hereinafter as the “Listed Chemical.”

18 **1.5 Product Description**

19 The product covered by this Consent Judgment is the *Target Home Storage Ottoman, #24912*
20 *ID059444-VCC-LE (#7 21015 72455 1)* an item of storage furniture that is manufactured, distributed
21 and/or sold in California by Foremost. The item shall be referred to hereinafter as the “Product” or
22 “Products.”

23 **1.6 Notice of Violation**

24 On September 1, 2010, Moore served Foremost and various public enforcement agencies with
25 a document entitled “60-Day Notice of Violation” (“Notice”) that provided Foremost and such public
26 enforcers with notice that Foremost was in alleged to be in violation of Proposition 65 for failing to
27 warn consumers and customers that the Products exposed users in California to DEHP.

28

1 **1.7 Complaint**

2 On December 28, 2010, Moore, who alleges that he was and is acting in the interest of the
3 general public in California, filed the instant action in the San Francisco Superior Court
4 (“Complaint”), naming Foremost as a defendant and alleging violations of Proposition 65 based on
5 the exposures to DEHP contained in the Products it manufactured, distributed, sold and/or offered for
6 sale in California.

7 **1.8 No Admission**

8 Foremost 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 Foremost 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 Foremost of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
14 denied by Foremost. However, this section shall not diminish or otherwise affect the obligations,
15 responsibilities, and duties of Foremost 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 Foremost 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 March 1, 2011.

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

24 **2.1 Reformulation Commitment**

25 After the Effective Date, Foremost shall only manufacture, distribute, sell, or offer for sale in
26 California “Reformulated Products.” For purposes of this Consent Judgment, Reformulated Products
27 shall mean Products – as that term is defined in Section 1.5 – containing DEHP in concentrations less
28 than 0.1 percent (1,000 parts per million) when analyzed pursuant to Environmental Protection

1 Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or
2 state agencies for the purpose of determining the presence of the Listed Chemical in a solid sample.

3 **3. MONETARY PAYMENTS**

4 **3.1 Payments Pursuant to California Health & Safety Code § 25249.7(b)**

5 Pursuant to Health & Safety Code § 25249.7(b)(1), in settlement of all claims alleged in the
6 Notice and Complaint, \$10,000 civil penalties comprised of combined credits and payments. For its
7 cooperation in the settlement of this matter, its prompt response upon receipt of the Notice to
8 investigate any alleged violations, and for its commitment to offer only Reformulated Products,
9 thereby, ensuring that sales of Product after the Effective Date will not require a Proposition 65
10 warning, plaintiff agrees to provide Foremost with credits totaling \$5,500. Thereafter, Foremost shall
11 pay the remaining penalty amount of \$4,500.

12 The penalty payment is to be apportioned in accordance with California Health & Safety
13 Code §§ 25249.12(c)(1) & (d), with seventy-five percent of the penalty amount remitted to the State
14 of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
15 twenty-five percent of the penalty paid to Moore. Foremost shall issue two checks for the penalty
16 payment: (a) one check payable to "The Chanler Group in Trust for OEHHA" in the amount of
17 \$3,375; and (b) one check payable to "The Chanler Group in Trust for John Moore" in the amount of
18 \$1,125. Two 1099 forms shall be issued for the above-payments to: (a) California Office of
19 Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
20 0284486); and (b) John Moore, whose information shall be provided five calendar days before the
21 payment is due. Payment of penalty payment shall be delivered in full to Moore's counsel within five
22 days of the Effective Date at the following address:

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

1 **4. REIMBURSEMENT OF FEES AND COSTS**

2 **4.1 Attorney Fees and Costs**

3 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
4 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
5 issue to be resolved after the material terms of the agreement had been settled. Foremost then
6 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
7 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Moore
8 and his counsel under general contract principles and the private attorney general doctrine codified at
9 California Code of Civil Procedure (“CCP”) § 1021.5, for all work performed through the mutual
10 execution of this agreement. Defendants shall pay \$28,500 for fees and costs incurred as a result of
11 investigating, bringing this matter to its attention, litigating, and negotiating a settlement in the public
12 interest. This figure includes Moore’s future fees and costs including attorneys’ fees to be incurred in
13 seeking judicial approval of this Consent Judgment as well as any other legal work performed after
14 the execution of this Consent Judgment incurred in an effort to obtain finality of the case. However,
15 in the event a third party were to appeal entry of this Consent Judgment, Plaintiff and his counsel
16 shall be entitled to seek their reasonable attorneys’ fees and costs associated with all appellate work
17 defending the entry of judgment pursuant to CCP § 1021.5.

18 A third check for the reimbursement of a portion of plaintiff’s fees and costs shall be made
19 payable to “The Chanler Group” and delivered within five days of the Effective Date at the following
20 address:

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

26 A separate 1099 shall also be issued to “The Chanler Group” (EIN: 94-3171522) for the
27 reimbursement of Plaintiff’s fees and costs.
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1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Moore's Release of Foremost**

3 In further consideration of the promises and agreements herein contained, and for the
4 payments to be made pursuant to Sections 3.1 and 4.1 above, Moore, on behalf of himself, his past
5 and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
6 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
7 legal action and releases all claims, including, without limitation, all actions, causes of action, suits,
8 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but
9 not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
10 known or unknown, fixed or contingent, at law or in equity (collectively "Claims"), against Foremost
11 and each of its past and current downstream distributors, wholesalers, licensors, licensees,
12 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,
13 corporate affiliates, and subsidiaries, and their respective past and current officers, directors,
14 principals, partners, members, attorneys, representatives, shareholders, agents, and employees, and
15 sister and parent entities (collectively "Releasees"). This release is limited to those Claims that arise
16 under Proposition 65, as such Claims relate to Foremost's alleged failure to warn about exposures to
17 or identification of the Listed Chemical contained in the Products. The parties further agree that this
18 release shall not extend upstream to any entities that manufactured the Products or any component
19 parts thereof, or to any distributors or suppliers who sold Products or any component parts thereof to
20 Foremost.

21 **5.2 Foremost's Release of Moore**

22 Foremost waives any and all claims against Moore, his attorneys and other representatives, for
23 any and all actions taken or statements made (or those that could have been taken or made) by Moore
24 and his attorneys and other representatives, whether in the course of investigating claims or otherwise
25 seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

26 **6. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and shall
28 be null and void if, for any reason, it is not approved and entered by the Court within one year after it

1 has been fully executed by all parties, in which event any monies that have been provided to Moore
2 or his counsel pursuant to Sections 3.1 and/or Section 4.1 above shall be refunded within fifteen (15)
3 days after receiving written notice from Foremost that the one-year period has expired and the
4 Consent Judgment has not been approved by the Court.

5 **7. SEVERABILITY**

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

9 **8. GOVERNING LAW**

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

17 **9. NOTICES**

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

22 For Foremost:

23 Liang Chen, Chief Administrative Officer
24 Foremost Groups, Inc.
25 906 Murray Road
26 East Hanover, NJ 07936

27 with a copy to:

28 Dennis E. Raglin, Esq.
Sedgwick, Detert, Moran & Arnold, LLP
One Market Plaza
Steuart Tower, Eighth Floor
San Francisco, CA 94105

1 For Moore:

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

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

9 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

10 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall
11 be deemed an original, and all of which, when taken together, shall constitute one and the same
12 document.

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

14 Moore agrees to comply with the reporting form requirements referenced in California Health
15 & Safety Code § 25249.7(f).

16 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

17 The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
18 noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
19 obtaining such approval, Moore and Foremost and their respective counsel agree to mutually employ
20 their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of
21 the Consent Judgment by the Court in a timely manner. For purposes of this section, “best efforts”
22 shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the
23 required motion for judicial approval.

24 **13. MODIFICATION**

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

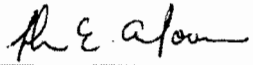
2 The undersigned are authorized to execute this Consent Judgment and have read, understood,
3 and agree to all of the terms and conditions hereof.

4
5 **AGREED TO:**

5 **AGREED TO:**

6 Date: FEBRUARY 21, 2011

6 Date: FEBRUARY 24, 2011

7
8 By: 
9 JOHN MOORE

8 By: 
9 Liang Chen, Chief Administrative Officer
10 FOREMOST GROUPS, INC.

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