



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              *1)*. 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  
15   or other reproductive harm.

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

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

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

27                               **WARNING:** This product contains DEHP, a phthalate  
28   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:<sup>1</sup>

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 <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           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  
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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, 7<sup>th</sup> 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**

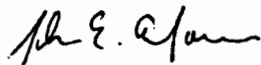
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

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