

1 Christopher M. Martin, State Bar No. 186021  
THE CHANLER GROUP  
2 2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
3 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

4 Attorneys for Plaintiff  
5 JOHN MOORE

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 FOR THE COUNTY OF ALAMEDA  
8 UNLIMITED CIVIL JURISDICTION  
9

10 JOHN MOORE,  
11 Plaintiff,  
12  
13 v.  
14 SHINN FU COMPANY OF AMERICA, INC.;  
and DOES 1 through 150, inclusive,  
15 Defendants.

Case No. RG11599844

**[PROPOSED] CONSENT JUDGMENT**

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1     **1. INTRODUCTION**

2             **1.1 John Moore and Shinn Fu Company of America, Inc.**

3             This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or  
4     “Plaintiff”) and defendant Shinn Fu Company of America, Inc. (“Shinn Fu” or “Defendant”),  
5     with Plaintiff and Defendant collectively referred to as the “Parties” and each individually  
6     referred to as a “Party.”

7             **1.2 Plaintiff**

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

11            **1.3 Defendant**

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

15            **1.4 General Allegations**

16            Moore alleges that Shinn Fu manufactured, imported, distributed, sold and/or offered for  
17    sale stools with vinyl seats containing di(2-ethylhexyl)phthalate (“DEHP”) in the State of  
18    California without the requisite health hazard warnings. DEHP is listed pursuant to Proposition  
19    65 as known to the State of California to cause birth defects and other reproductive harm.

20            **1.5 Product Description**

21            The products that are covered by this Consent Judgment are defined as stools with vinyl  
22    seats containing DEHP including, but not limited to, the *Pro-Lift Pneumatic Chair with Tool*  
23    *Tray, Model C-3001 (#6 52597 04324 5)*, manufactured, imported, distributed, sold and/or  
24    offered for sale in the State of California by Shinn Fu, hereinafter referred to as the “Products.”

25            **1.6 Notice of Violation**

26            On August 2, 2011, Moore served Shinn Fu and various public enforcement agencies  
27    with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients  
28

1 with notice of alleged violations of Proposition 65 for failing to warn consumers that the  
2 Products exposed users in California to DEHP.

3 **1.7 Complaint**

4 On or about October 14, 2011, Moore, who was and is acting in the interest of the  
5 general public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court  
6 in and for the County of Alameda against Shinn Fu Company of America, Inc. and Does 1  
7 through 150, alleging, *inter alia*, violations of Proposition 65 based on the alleged exposures to  
8 DEHP contained in the Products.

9 **1.8 No Admission**

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

18 **1.9 Consent to Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean May 15,  
25 2012.

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

2             After the Effective Date, Shinn Fu shall manufacture, import, distribute, sell and/or offer  
3 for sale in California only: 1) Products that are “Reformulated Products” as provided in Section  
4 2.1 below; or 2) Products that comply with the warning requirements provided in Section 2.2  
5 below.

6             **2.1     Reformulation Standards and Commitment**

7             For purposes of this Consent Judgment, “Reformulated Products” are defined as those  
8 Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) in  
9 each Accessible Component when analyzed pursuant to U.S. Environmental Protection Agency  
10 testing methodologies 3580A and 8270C or any other methodology utilized by federal or state  
11 agencies for the purpose of determining DEHP content in a solid substance. Although the  
12 Parties disagree as to whether any of the Products that yield more than 1,000 parts per million of  
13 DEHP in a phthalate test may result in exposure of DEHP to users of the Products in excess of  
14 the applicable maximum allowable dose levels (“MADL”) pursuant to Proposition 65, the  
15 Parties agree that exposure to Reformulated Products will not require a Proposition 65 warning,  
16 as such exposures will not result in an exposure of more than the applicable MADL for DEHP  
17 as a chemical know to cause reproductive harm. For the purposes of this Section 2.1, the term  
18 “Accessible Component” means a polyvinyl chloride or other soft plastic vinyl, synthetic or  
19 leather component of a Product that could be touched by a person during reasonably foreseeable  
20 use.

21             **2.2     Warnings Requirement**

22             Commencing on the Effective Date Shinn Fu shall, for all Products sold in California  
23 that are not Reformulated Products, provide clear and reasonable warnings as set forth in  
24 subsections 2.2(a) and (b). Each warning shall be prominently placed with such  
25 conspicuousness, as compared with other words, statements, designs, or devices as to render it  
26 likely to be read and understood by an ordinary individual under customary conditions before  
27 purchase or use. Each warning shall be provided in a manner such that the consumer or user  
28

1 understands to which *specific* Product the warning applies, so as to minimize the risk of  
2 consumer confusion.

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

4 **(i) Product Labeling.** Shinn Fu shall affix a warning to the  
5 packaging, labeling, or directly on each Product sold to retail outlets in California by Shinn Fu  
6 or any person selling the Products, that states:

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

11 **(b) Mail Order Catalog and Internet Sales.**

12 In the event that Shinn Fu sells Products via mail order catalog or internet to customers  
13 located in California after the Effective Date that are not Reformulated Products, Shinn Fu shall  
14 provide a warning: (1) in the mail order catalog; or (2) on the internet. Warnings given in the  
15 mail order catalog or on the internet shall identify the specific Product to which the warning  
16 applies as further specified in Sections 2.2(b)(i) and (ii).

17 **(i) Mail Order Catalog Warning.** Any warning provided in a mail  
18 order catalog must be in the same type size or larger than the Product description text within the  
19 catalog. The following warning shall be provided on the same page and in the same location as  
20 the display and/or description of the Product:

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

25 Where it is impracticable to provide the warning on the same page and in the same  
26 location as the display and/or description of the Product, Shinn Fu may utilize a designated  
27 symbol to cross reference the applicable warning and shall define the term “designated symbol”  
28 with the following language on the inside of the front cover of the catalog or on the same page  
as any order form for the Product(s):

1                   **WARNING:** Certain products identified with this symbol  
2                                   ▼ and offered for sale in this catalog contain  
3                                   DEHP, a phthalate chemical known to the  
4                                   State of California to cause birth defects and  
5                                   other reproductive harm.

6                   The designated symbol must appear on the same page and in close proximity to the  
7                   display and/or description of the Product. On each page where the designated symbol appears,  
8                   Shinn Fu must provide a header or footer directing the consumer to the warning language and  
9                   definition of the designated symbol.

10                   If Shinn Fu elects to provide warnings in the mail order catalog, then the warnings must  
11                   be included in all catalogs offering to sell one or more Products printed after the Effective Date.

12                                   **(ii) Internet Warning.** A warning may be given in conjunction with  
13                   the sale of the Products via the internet, provided it appears either: (a) on the same web page on  
14                   which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on  
15                   the same page as the price for any Product; or (d) on one or more web pages displayed to a  
16                   purchaser during the checkout process. The following warning statement shall be used and shall  
17                   appear in any of the above instances adjacent to or immediately following the display,  
18                   description, or price of the Product for which it is given in the same type size or larger than the  
19                   Product description text:

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

24                   Alternatively, the designated symbol may appear adjacent to or immediately following  
25                   the display, description, or price of the Product for which a warning is being given, provided  
26                   that the following warning statement also appears elsewhere on the same web page, as follows:

27                                   **WARNING:** Products identified on this page with the  
28                                   following symbol ▼ contain DEHP, a  
                                 phthalate chemical known to the State of  
                                 California to cause birth defects and other  
                                 reproductive harm.

1 **3. MONETARY PAYMENTS**

2 **3.1 Initial Civil Payment**

3 Shinn Fu shall pay an initial civil payment of \$1,000 to be apportioned in accordance  
4 with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds  
5 remitted to the State of California's Office of Environmental Health Hazard Assessment and the  
6 remaining 25% of the initial civil payment to Moore, as provided by California Health & Safety  
7 Code § 25249.12(d).

8 **3.2 Final Civil Payment**

9 Shinn Fu shall pay a final civil payment of \$2,000 on or before December 31, 2012.  
10 However, the final civil payment shall be waived in its entirety if Shinn Fu certifies in writing,  
11 via a signed declaration from an appropriate Shinn Fu employee, that all Products sold or  
12 shipped into California from December 1, 2012 and after shall be Reformulated Products as  
13 defined in Section 2.1, above.

14 **3.3 Reimbursement of Plaintiff's Fees and Costs**

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

27  
28

1           **3.4    Payment Procedures**

2           **(a)    Funds Held In Trust.** All payments required by Sections 3.1 and 3.3  
3 shall be delivered on or before July 31, 2012, to either The Chanler Group or the attorney of  
4 record for Shinn Fu, and shall be held in trust pending the Court’s approval of this Consent  
5 Judgment.

6           Payments delivered to The Chanler Group shall be made payable, as follows:

- 7                   **(i)**    One check made payable to “The Chanler Group in Trust for  
8                                    OEHHA” in the amount of \$750;
- 9                   **(ii)**   One check made payable to “The Chanler Group in Trust for John  
10                                   Moore” in the amount of \$250; and
- 11                   **(iii)**   One check made payable to “The Chanler Group in Trust” in the  
12                                   amount of \$21,000.

13           Payments delivered to Lewis Brisbois Bisgaard & Smith LLP shall be made payable, as  
14 follows:

- 15                   **(i)**    One check made payable to “Lewis Brisbois Bisgaard & Smith  
16                                   LLP in Trust for OEHHA” in the amount of \$750;
- 17                   **(ii)**   One check made payable to “Lewis Brisbois Bisagard & Smith  
18                                   LLP in Trust for John Moore” in the amount of \$250; and
- 19                   **(iii)**   One check made payable to “Lewis Brisbois Bisgaard & Smith  
20                                   LLP in Trust for The Chanler Group” in the amount of \$21,000.

21           If Shinn Fu elects to deliver payments to its attorney of record, the attorney of record  
22 shall confirm, in writing within five days of deposit, that the funds have been deposited in a  
23 trust account.

24           Within two days of the date of the hearing on which the Court approves the Consent  
25 Judgment, the payments being held in trust by the attorney of record for Shinn Fu shall be  
26 delivered to The Chanler Group in three separate checks payable, as follows:

27  
28



- 1 (i) One check made payable to “The Chanler Group in Trust for
- 2 OEHHA” in the amount of \$750;
- 3 (ii) One check made payable to “The Chanler Group in Trust for John
- 4 Moore” in the amount of \$250; and
- 5 (iii) One check made payable to “The Chanler Group” in the amount of
- 6 \$21,000.

7 If the payments required by Section 3.2 above are not waived, payments shall be  
8 delivered to The Chanler Group made payable, as follows:

- 9 (i) One check made payable to “The Chanler Group in Trust for
- 10 OEHHA” in the amount of \$1,500;
- 11 (ii) One check made payable to “The Chanler Group in Trust for John
- 12 Moore” in the amount of \$500.

13 (b) **Issuance of 1099 Forms.** After the Consent Judgment has been approved  
14 and the settlement funds have been transmitted to plaintiff’s counsel, Shinn Fu shall issue five  
15 separate 1099 forms, as follows:

- 16 (i) The first 1099 shall be issued to the Office of Environmental
- 17 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA
- 18 95814 (EIN: 68-0284486) in the amount of \$750;
- 19 (ii) The second 1099 shall be issued to Moore in the amount of \$250,
- 20 whose address and tax identification number shall be furnished
- 21 upon request; and
- 22 (iii) The third 1099 shall be issued to The Chanler Group (EIN: 94-
- 23 3171522) in the amount of \$21,000.
- 24 (iv) If the final civil payment in Section 3.2 above is paid, the fourth
- 25 1099 shall be issued to the Office of Environmental Health Hazard
- 26 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
- 27 0284486) in the amount of \$1,500;
- 28

1 (v) If the final civil payment in Section 3.2 above is paid, the fifth  
2 1099 shall be issued to Moore in the amount of \$500, whose  
3 address and tax identification number shall be furnished upon  
4 request.

5 (c) **Payment Address.** All payments to the Chanler Group shall be delivered  
6 to the following payment address:

7 The Chanler Group  
8 Attn: Proposition 65 Controller  
9 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Moore’s Public Release of Proposition 65 Claims**

12 Moore acting on his own behalf and in the public interest releases Shinn Fu, its agents,  
13 officers, directors, shareholders, owners, members, representatives, principals, servants,  
14 employees, attorneys, insurers, reinsurers, assignees, predecessors, successors, parents,  
15 subsidiaries, affiliated companies and each entity to whom Shinn Fu directly or indirectly  
16 distributes or sells Products, including but not limited to downstream distributors, wholesalers,  
17 customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”),  
18 from all claims for violations of Proposition 65 up through the Effective Date based on  
19 exposure to DEHP from the Products as set forth in the Notice. Compliance with the terms of  
20 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to  
21 DEHP from the Products as set forth in the Notice.

22 **4.2 Moore’s Individual Release of Claims**

23 Moore also, in his individual capacity only and *not* in his representative capacity,  
24 provides a release herein which shall be effective as a full and final accord and satisfaction, as a  
25 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages,  
26 losses, claims, liabilities and demands of Moore of any nature, character or kind, whether  
27 known or unknown, suspected or unsuspected, arising out of the subject matter of this dispute,  
28

1 including, but not limited to, any alleged or actual exposures to DEHP from the Products and  
2 any failure by Shinn Fu to warn about DEHP in the Products prior to the Effective Date.

3 **4.3 Shinn Fu's Release of Moore**

4 Shinn Fu on behalf of itself and its Releasees, hereby waives any and all claims against  
5 Moore, his attorneys and other representatives, for any and all actions taken or statements made  
6 (or those that could have been taken or made) by Moore and his attorneys and other  
7 representatives, whether in the course of investigating claims or otherwise seeking to enforce  
8 Proposition 65 against it in this matter with respect to the Products.

9 **5. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved and entered by the court and  
11 shall be null and void if, for any reason, it is not approved and entered by the court within one  
12 year after it has been fully executed by all Parties, in which event any monies that have been  
13 provided to Moore or his counsel pursuant to Section 3 above, shall be refunded within fifteen  
14 (15) days after receiving written notice from Shinn Fu that the one-year period has expired.

15 **6. SEVERABILITY**

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

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of  
21 California and apply within the State of California. In the event that Proposition 65 is repealed  
22 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then  
23 Shinn Fu shall provide written notice to Moore of any asserted change in the law, and shall have  
24 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,  
25 the Products are so affected.

26  
27  
28

1 **8. NOTICES**

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

6 To Shinn Fu:

7 Helen Lee Greenberg  
8 Lewis Brisbois Bisgaard & Smith LLP  
9 One Sansome Street, Suite 1400  
San Francisco, CA 94104

10 With a copy to:

11 Arthur Chaykin, General Counsel  
12 Shinn Fu Company of America, Inc.  
13 10939 North Pomona Avenue  
Kansas City, MO 64153

14 To Moore:

15 Proposition 65 Coordinator  
16 The Chanler Group  
17 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile or portable  
22 document format (".pdf"), each of which shall be deemed an original, and all of which, when  
23 taken together, shall constitute one and the same document. A facsimile or .pdf signature shall  
24 be as valid as the original.

25 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

26 Moore agrees to comply with the reporting form requirements referenced in California  
27 Health & Safety Code §25249.7(f).  
28

1     **11.     ADDITIONAL POST EXECUTION ACTIVITIES**

2             The Parties agree to mutually employ their reasonable best efforts to support the entry of  
3 this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the  
4 Court in a timely manner. The Parties acknowledge that, pursuant to California Health and  
5 Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this  
6 Consent Judgment, which Moore shall file, and which Shinn Fu shall not oppose. If any third  
7 party objection to the noticed motion is filed, Moore and Shinn Fu shall work together to file a  
8 joint reply and appear at any hearing before the Court. If the Superior Court does not approve  
9 the motion to approve this Consent Judgment, and the Parties choose not to pursue a modified  
10 Consent Judgment within 30 days of said denial, or in the event that the Superior Court approve  
11 this Consent Judgment and any person successfully appeals that approval, all payments made  
12 pursuant to this Consent Judgment will be returned to Shinn Fu.

13     **12.     MODIFICATION**

14             This Consent Judgment may be modified only: (1) by written agreement of the parties  
15 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful  
16 motion of any Party and entry of a modified Consent Judgment by the court.

17     **13.     ENTIRE AGREEMENT**

18             This Consent Judgment contains the sole and entire agreement and understanding of the  
19 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
20 negotiations, commitments, and understandings related hereto. No representations, oral or  
21 otherwise, express or implied, other than those contained herein have been made by any party  
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
23 deemed to exist or to bind any of the Parties.

24  
25  
26  
27  
28

1 **14. AUTHORIZATION**

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

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**AGREED TO:**

**AGREED TO:**

Date: July 17, 2012

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

By:   
Plaintiff JOHN MOORE

By: \_\_\_\_\_  
Defendant SHINN FU COMPANY OF AMERICA, INC.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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: 8-10-12

By: \_\_\_\_\_  
Plaintiff JOHN MOORE

By:   
Defendant SHINN FU COMPANY OF AMERICA, INC.