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Attorneys for Plaintiff
JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,
Plaintiff,
v.
B.H. INC.; *et al.*,
Defendants.

Case No. RG13662418
[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 plaintiff, John Moore (“Moore”), and
4 defendant, B.H. Inc., dba Pinnacle Designs (“B.H.”), with Moore and B.H. each individually
5 referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 B.H. 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, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that B.H. sold vinyl/PVC luggage tags containing di(2-ethylhexyl)phthalate
16 (“DEHP”) without first providing the exposure warning required by Proposition 65. DEHP is listed
17 pursuant to Proposition 65 as a chemical known to the state of California to cause birth defects and
18 other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are vinyl/PVC luggage tags that are
21 imported, manufactured, distributed, sold and/or offered for sale by B.H. including but not limited
22 to, the *Tag, Warner Bros. Studios, #32-83-014-167 (#0 82954 32004 5)* (the “Products”).

23 **1.6 Notices of Violation**

24 On or about September 21, 2012, Moore served B.H. and various public enforcement
25 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided recipients
26 with notice that B.H. was in violation of Proposition 65 for failing to warn customers and consumers
27 in California that the Products expose users to DEHP.

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1 On or about February 22, 2013 Moore served B.H., Time Warner Inc. ("Time Warner"),
2 Warner Bros. Entertainment Inc. ("W.B. Inc."), Warner Bros. VIP Tour Store ("W.B. VIP") and
3 various public enforcement agencies with a documents entitled "Supplemental 60-Day Notice of
4 Violation" ("Supplemental Notice") that provided recipients with notice that B.H., Time Warner,
5 W.B. Inc. and W.B. VIP were in violation of Proposition 65 for failing to warn customers and
6 consumers in California that the Products expose users to DEHP. The Notice and Supplemental
7 Notice are referred to collectively as the "Notices". To the best of the Parties' knowledge, no public
8 enforcer has commenced and is diligently prosecuting any of the allegations set forth in the Notices.

9 **1.7 Complaint**

10 On January 7, 2013, Moore filed a complaint in the Superior Court in and for the County of
11 Alameda against B.H. and DOES 1-150, *Moore v. B.H. Inc., et al.*, Case No. RG13662418 (the
12 "Action" or "Complaint") alleging violations of Health and Safety Code section 25249.6, based on
13 the alleged exposures to DEHP contained in certain vinyl/PVC luggage tags sold by B.H. in the State
14 of California that is the subject of the Notice.

15 On May 23, 2013, Moore filed a first amended complaint in the Action, alleging violations of
16 California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in
17 certain vinyl/PVC luggage tags sold by B.H., Time Warner, W.B. Inc. and W.B. VIP in the State of
18 California ("First Amended Complaint").

19 **1.8 No Admission**

20 B.H. denies the material, factual, and legal allegations contained in the Notices, Complaint
21 and First Amended Complaint, B.H. denies that the Products have caused harm to any person or that
22 they have the potential to do so, and B.H. maintains the Products, have been, and are, in compliance
23 with all laws. Nothing in this Consent Judgment shall be construed as an admission of any fact,
24 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
25 Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of
26 law, or violation of law. This Section shall not, however, diminish or otherwise affect B.H.'s
27 obligations, responsibilities, and duties under this Consent Judgment.

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1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over B.H. as to the allegations in the Notices and the Complaint, that venue is proper in
4 Alameda County, and that this Court has jurisdiction to enter and enforce the provisions of this
5 Consent Judgment.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term "Effective Date" shall mean August 31,
8 2013.

9 **2. INJUNCTIVE RELIEF: REFORMULATION**

10 Prior to its receipt of the Notice, B.H. asserts it had already implemented processes to comply
11 with the reformulation standards recited in this section as to the Products it purchases for sale,
12 manufactures for sale and distributes for sale in California.

13 For purposes of this Consent Judgment, "Reformulated Products" means Products containing
14 a maximum of 1,000 parts per million (0.1%) DEHP in Accessible Components when analyzed
15 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other
16 methodology selected by B.H. that is utilized by state or federal government agencies for the
17 purpose of determining DEHP content in a solid substance and suitable for the materials comprising
18 the Products. "Accessible component" as used in this Consent Judgment means a component of a
19 Product that can be touched by a person during typical and reasonably foreseeable use.

20 B.H. agrees that as of the Effective Date, it shall purchase for sale, manufacture for sale,
21 import for sale, and distribute for sale in California only Products that are Reformulated Products.
22 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
23 with respect to DEHP in the Products.

24 **3. MONETARY SETTLEMENT TERMS**

25 **3.1 Payments pursuant to Health and Safety Code § 25249.7(b)**

26 In settlement of all the claims referred to in this Consent Judgment, B.H. shall pay \$20,000 in
27 civil penalties. Each civil penalty payment shall be allocated according to Health and Safety Code
28 section 25249.7(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California

1 Office of Environmental Health Hazard Assessment and twenty-five percent (25%) of the funds
2 remitted to Moore. All civil penalty payments shall be delivered to the payment addresses provided
3 in Section 3.3.1.

4 **3.1.1 Initial Civil Penalty**

5 On or before August 31, 2013, B.H. shall make an initial civil penalty payment of
6 \$5,000. B.H. shall provide its payment in two checks for the following amounts made payable to:
7 (a) "OEHHA" in the amount of \$3,750; and (b) "The Chanler Group in Trust for John Moore" in the
8 amount of \$1,250.

9 **3.1.2 Final Civil Penalty**

10 On or before February 28, 2014, B.H. shall make a final civil penalty payment of
11 \$15,000. Pursuant to title 11 California Code of Regulations, section 3203(c), the final civil penalty
12 payment shall be waived in its entirety if, no later than February 15, 2014, an officer of B.H.
13 provides Moore with written certification that as of the date of certification and continuing into the
14 future, all of the Products sold, purchased for sale, imported for sale, distributed for sale, offered for
15 sale, and manufactured for sale in California are Reformulated Products. The written certification of
16 reformulation in lieu of the final civil penalty payment required by this Section is a material term,
17 and time is of the essence. Unless waived, B.H. shall issue two checks for the following amounts
18 payable to: (a) "OEHHA" in the amount of \$11,250; and (b) "The Chanler Group in Trust for John
19 Moore" in the amount of \$3,750.

20 **3.2 Reimbursement of Fees and Costs**

21 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
22 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
23 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
24 other settlement terms had been finalized, B.H. expressed a desire to resolve the fee and cost issue.
25 The Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
26 counsel under general contract principles (with this Consent Judgment being the sole contract) and
27 the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5
28 for all work reasonably and actually performed (and to be performed) relative to this matter,

1 including but not limited to investigating, bringing this matter to the attention of the parties and
2 public enforcers, litigating, negotiating a settlement in the public interest, and obtaining court
3 approval thereof, as to which B.H. shall pay \$50,000.00. B.H. shall issue a separate 1099 for fees
4 and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall
5 deliver payment within five days of the date the Alameda County Superior Court grants the motion
6 to enter this Consent Judgment as the order of the court, to the address listed in Section 3.3.1(a)
7 below.

8 **3.3 Payment Procedures**

9 **3.3.1 Payment Address**

10 (a) All payments to Moore and The Chanler Group shall be delivered to the
11 following address:

12 The Chanler Group
13 Attn: Proposition 65 Controller
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

17 (b) All payments to OEHHA (EIN: 68-0284486) made pursuant to Section 3.1,
18 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following address:

19 Mike Gyrics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 P.O. Box 4010
23 Sacramento, CA 95812-4010

24 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address payment
25 address provided in Section 3.3.1(a), as proof of payment to OEHHA.

26 **3.3.2 Required Tax Documentation**

27 (a) B.H. agrees to provide appropriate 1099 form documentation for the civil
28 penalties paid to OEHHA. The form shall be transmitted to the "Office of Environmental Health
Hazard Assessment," 1001 I Street, Sacramento, CA 95814 (EIN: 68-0284486);

(b) For the civil penalties paid to Moore, B.H. agrees to issue a 1099 form to
"John Moore," whose address and tax identification number shall be furnished after this Consent
Judgment is fully executed by the Parties.

1 (c) For the reimbursement of fees and costs pursuant to Section 3.2, B.H. shall
2 issue a separate 1099 form to "The Chanler Group" (EIN: 94-3171522) at the address listed in
3 section 3.3.1(a).

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 Moore's Public Release of Proposition 65 Claims**

6 Moore, acting on his own behalf and in the public interest, releases B.H., Time Warner,
7 W.B. Inc., W.B. VIP and their parents, subsidiaries, affiliated entities under common ownership or
8 control, directors, officers, employees and attorneys ("Releasees") and each entity to whom they
9 directly or indirectly distribute or sell the Products, including but not limited to its downstream
10 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
11 licensees, and each of their parents, subsidiaries, affiliated entities under common ownership or
12 control, directors, officers, employees and attorneys ("Downstream Releasees") for any violations
13 arising under Proposition 65 for unwarned exposures to DEHP from any and all of the Products
14 offered for sale, purchased for sale, manufactured for sale, imported for sale, sold or distributed for
15 sale by B.H. in California prior to the Effective Date. Compliance with the terms of this Consent
16 Judgment constitutes compliance with Proposition 65 with respect to DEHP in the Products as set
17 forth in the Notices. Within two business days of the mutual execution of this Consent Judgment
18 by the Parties, Moore shall dismiss Time Warner, W.B. Inc. and W.B. VIP without prejudice from
19 this Action.

20 **4.2 Moore's Individual Release of Claims**

21 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
22 release to Releasees and Downstream Releasees which shall be effective as a full and final accord
23 and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys'
24 fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or kind,
25 whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to
26 DEHP in any and all of the Products offered for sale, purchased for sale, imported for sale,
27 manufactured for sale, sold or distributed for sale by B.H. before the Effective Date.

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1 **4.3 B.H.'s Release of Moore**

2 B.H., on its own behalf, and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims against Moore and his
4 attorneys and other representatives, for any and all actions taken or statements made (or those that
5 could have been taken or made) by Moore and his attorneys and other representatives, whether in
6 the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
7 matter, or with respect to the Products.

8 **4.4 No Other Known Claims or Violations**

9 Moore and his counsel affirm that as of the Effective Date, they are not aware of any actual
10 or alleged violations of Proposition 65 by B.H., Time Warner, W.B. Inc. or W.B. VIP other than
11 those that are fully resolved by this Consent Judgment.

12 **5. COURT APPROVAL**

13 This Consent Judgment is not effective until it is approved and entered by the Court and shall
14 be null and void if, for any reason, it is not approved and entered by the Court within one year after
15 it has been fully executed by the Parties.

16 If the Court denies or otherwise does not grant the motion to approve this Consent Judgment,
17 and the Parties choose not to pursue a modified Consent Judgment or to appeal a decision denying
18 approval within 30 days of said denial or other non-approval, or in the event the Court approves this
19 Consent Judgment and any person successfully appeals that approval, all payments made pursuant to
20 this Consent Judgment will be returned to Defendant within fifteen (15) days of written notice made
21 to Moore, and the Action shall return to *status quo ante* as if there had been no settlement, and
22 nothing in or about the settlement, this proposed Consent Judgment, or any act, agreement or
23 statement of Defendants or any other Releasee related thereto shall be admissible, discoverable or
24 otherwise considered for any purpose whatsoever.

25 **6. SEVERABILITY**

26 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
27 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
28 adversely affected.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California
3 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or
4 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then B.H. may
5 provide written notice to Moore of any asserted change in the law, and shall have no further
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
7 so affected. Nothing in this Consent Judgment shall be interpreted to relieve B.H. from any
8 obligation to comply with any pertinent state or federal toxics control laws.

9 **8. NOTICES**

10 Unless specified herein, all correspondence and notices required by this Consent Judgment
11 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
12 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

13 For B.H.:

14 Brad Hartstein, President
15 B.H. Inc.
16 615 8th Street
 San Fernando, CA 91340

17 with a copy to:

18 Paul S. Rosenlund, Esq.
19 Duane Morris LLP
20 Spear Tower
 One Market Plaza, Suite 2200
 San Francisco, CA 94105

21 For Moore:

22 The Chanler Group
23 Attn: Proposition 65 Coordinator
 2560 Ninth Street
24 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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1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable
3 document format (PDF) signature, each of which shall be deemed an original, and all of which,
4 when taken together, shall constitute one and the same document.

5 **10. POST EXECUTION ACTIVITIES**

6 Moore shall comply with the reporting form requirements referenced in Health and Safety
7 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
8 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
9 furtherance of obtaining such approval, Moore and B.H. agree to mutually employ their reasonable
10 best efforts, and that of their counsel, to support the entry of this agreement as judgment, and to
11 obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best
12 efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary moving
13 papers, and supporting the motion for judicial approval.

14 **11. MODIFICATION**

15 This Consent Judgment may be modified only as provided in Section 7 above or by: (i) a
16 written agreement of the Parties and upon entry of a modified consent judgment by the Court
17 thereon; or (ii) upon a successful motion or application of any Party and the entry of a modified
18 consent judgment by the Court.

19 **12. AUTHORIZATION**

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


22 **AGREED TO:**

AGREED TO:

23
24 Date: August 12, 2013

Date: Aug. 9, 2013

25
26 By: 
John Moore

By: 
Brad Hartstein, President
B.H. Inc.

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