

1 Clifford Chanler, State Bar No. 135534
2 Christopher F. Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 JOHN MOORE

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

ANNA GRIFFIN, INC., *et al.*

Defendants.

Case No. 115CV284008

[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 Anna Griffin, Inc. (“Anna Griffin”), with Moore and Anna Griffin each individually referred to as a
5 “Party” and collectively as the “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 to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Anna Griffin**

11 Anna Griffin employs ten or more individuals and is a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
13 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Anna Griffin manufactures, imports, sells, or distributes for sale in
16 California, vinyl/PVC luggage tags components that contain di(2-ethylhexyl)phthalate (“DEHP”)
17 without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause birth defects or other
19 reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are vinyl/PVC luggage tag components
22 containing DEHP that are manufactured, imported, sold, or distributed for sale in California by Anna
23 Griffin including, but not limited to, the *Always Anna by Anna Griffin Luggage Tag, #053-24-0308,*
24 *TF102, UPC #6 66303 97102 9*, hereinafter the “Products”.

25 **1.6 Notice of Violation**

26 On or about May 21, 2015, Moore served Anna Griffin, and certain requisite public
27 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Anna Griffin
28 violated Proposition 65 by failing to warn its customers and consumers in California that the Products

1 expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and
2 is diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On August 5, 2015 Moore filed the instant action ("Complaint") naming Anna Griffin as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Anna Griffin denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
14 not, however, diminish or otherwise affect Anna Griffin's obligations, responsibilities, and duties
15 under this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Anna Griffin as to the allegations contained in the Complaint, that venue is proper in
19 the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of
20 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the Motion for Approval of the Consent Judgment is granted by the Court.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date, and continuing thereafter, Anna Griffin shall only
27 manufacture, sell, or distribute for sale in California, "Reformulated Products." For purposes of this
28 Consent Judgment, Reformulated Products are Products containing DEHP in concentrations less than

1 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection
2 Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state
3 government agencies for the purpose of determining DEHP content in a solid substance.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
7 this Consent Judgment, Anna Griffin shall pay \$12,000 in civil penalties. Each civil penalty payment
8 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-
9 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
10 Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Moore.

11 **3.1.1 Initial Civil Penalty**

12 Anna Griffin shall make an initial civil penalty payment of \$3,000 on or before the Effective
13 Date. Anna Griffin shall provide its payment in a single check made payable to “John Moore, Client
14 Trust Account” to be delivered to the address provided in Section 3.4, below. Moore and his counsel
15 will ensure 75% of this initial penalty is paid to OEHHA.

16 **3.1.2 Final Civil Penalty**

17 On June 15, 2016, Anna Griffin shall make a final civil penalty payment of \$9,000.
18 Pursuant to title 11 California Code of Regulations, section 3203(c), Moore agrees that the final civil
19 penalty payment shall be waived in its entirety if, no later than June 1, 2016, an officer of Anna
20 Griffin provides Moore with written certification that all of the Products it is selling or distributing
21 for sale in California as of the date of such certification are Reformulated Products as defined by
22 Section 2.1, and that Anna Griffin will continue to offer only Reformulated Products for sale in
23 California in the future. The option to certify to expedite reformulation in lieu of making the final
24 civil penalty payment required by this Section is a material term, and with regard to such term, time
25 is of the essence. Anna Griffin shall deliver its certificate, if any, to Moore’s counsel at the address
26 provided in Section 3.4, below. In the event that Anna Griffin does not timely certify its compliance
27 or make the final civil penalty payment required by this Section, the Parties agree that Moore may
28 file a motion or application seeking an order compelling Anna Griffin’s compliance with this Section.

1 If successful, the Parties further agree that Moore shall be entitled to his reasonable attorneys' fees
2 and costs pursuant to general contract principles and Code of Civil Procedure section 1021.5.

3 **3.2 Reimbursement of Attorney's Fees and Costs**

4 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
6 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
7 other settlement terms had been finalized, Anna Griffin expressed a desire to resolve Moore's fees
8 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Moore
9 and his counsel under general contract principles and the private attorney general doctrine codified at
10 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
11 execution of this Consent Judgment. On or before the Effective Date, Anna Griffin shall pay \$30,000
12 for the fees and costs incurred by Moore investigating, bringing this matter to Anna Griffin's
13 attention, litigating and negotiating a settlement in the public interest.

14 **3.3 Payments Held in Trust**

15 All payments due under this Consent Judgment shall be held in trust until such time as the
16 Court approves the Parties' settlement. Except the final civil penalty payment required by Section
17 3.1.2, all payments due under this agreement shall be delivered within five (5) days of the date that
18 this Consent Judgment is fully executed by the Parties, and held in trust by Anna Griffin's counsel
19 until the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.
20 Within two business days of the Court's approval of this Consent Judgment, Anna Griffin's counsel
21 shall tender the initial civil penalty payments and attorneys' fee and costs reimbursements required
22 by Sections 3.1 and 3.2.

23 **3.4 Payment Address**

24 All payments required by this Consent Judgment shall be delivered to the following
25 address:

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

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Moore's Public Release of Proposition 65 Claims**

3 Moore, acting on his own behalf and in the public interest, releases Anna Griffin and it's
4 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
5 and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
6 Products including, but not limited to, it's downstream distributors, wholesalers, customers,
7 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
8 any violations arising under Proposition 65 for unwarned exposures to DEHP from Products sold by
9 Anna Griffin prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
10 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
11 failures to warn about DEHP from the Products sold by Anna Griffin before the Effective Date, as
12 set forth in the Notice.

13 **4.2 Moore's Individual Release of Claims**

14 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
15 release to Anna Griffin, Releasees, and Downstream Releasees which shall be effective as a full and
16 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
17 attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or
18 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
19 exposures to DEHP in the Products sold or distributed for sale by Anna Griffin before the Effective
20 Date.

21 **4.3 Anna Griffin's Release of Moore**

22 Anna Griffin, on its own behalf, and on behalf of its past and current agents, representatives,
23 attorneys, successors, and assignees, hereby waives any and all claims against Moore and his
24 attorneys and other representatives, for any and all actions taken or statements made by Moore and
25 his attorneys and other representatives, whether in the course of investigating claims, otherwise
26 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.
27
28

1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

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

9 **7. 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 Anna Griffin
13 may 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 Anna Griffin from any
16 obligation to comply with any pertinent state or federal toxics control laws.

17 **8. NOTICE**

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

21 **Anna Griffin**

22 Anna Griffin, President
23 Anna Griffin, Inc.
24 99 Armour Drive
Atlanta, GA 30324

Barbara R. Adams
Adams | Nye | Becht LLP
222 Kearny St., 7th Floor
San Francisco, CA 94108

25 **Moore**

26 Proposition 65 Coordinator
27 The Chanler Group
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **10. POST EXECUTION ACTIVITIES**

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

16 **11. MODIFICATION**

17 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
18 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
19 Party, and the entry of a modified consent judgment by the Court.

20 **12. AUTHORIZATION**

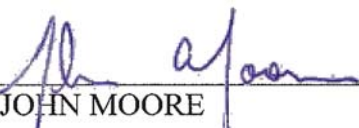
21 The undersigned are authorized to execute this Consent Judgment and have read, understood,
22 and agree to all of the terms and conditions contained herein

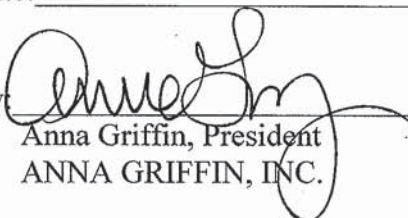
23 **AGREED TO:**

AGREED TO:

24
25 Date: 4/8/2016 _____

Date: 3/24/16 _____

26
27 By:  _____
JOHN MOORE

By:  _____
Anna Griffin, President
ANNA GRIFFIN, INC.