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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION  
12  
13

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 ACHIM IMPORTING COMPANY INC.; *et*  
18 *al.*,

19 Defendants.  
20

Case No. RG14730480

**[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, Achim Importing Company Inc. (“Achim”), with Moore and Achim each individually  
5 referred to as a “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 improve human health by eliminating hazardous substances contained in  
9 consumer products.

10 **1.3 Defendant**

11 Achim 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 Achim sold vinyl/PVC floor tiles 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 or  
18 other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are vinyl/PVC floor tiles containing  
21 DEHP that are imported, manufactured, sold, or distributed for sale in California by Achim including,  
22 but not limited to, the *Nexus Tile Collection Self-Adhesive Vinyl Floor Tiles, Style FTVWD201DG,*  
23 *SKU Number FTVWD20120(# 0 54006 33236 8)* (“Covered Products”).

24 **1.6 Notice of Violation**

25 On or about July 5, 2013, Moore served Achim and the requisite public enforcement agencies  
26 with a 60-Day Notice of Violation (“Notice”) alleging that Achim was in violation of Proposition 65  
27 for failing to warn its customers and consumers in California that the Covered Products expose users  
28 to DEHP. On or about June 20, 2014, Moore served Achim and the requisite public enforcement

1 agencies with a Supplemental 60-Day Notice of Violation (“Notice”) alleging that Achim was in  
2 violation of Proposition 65 for failing to warn its customers and consumers in California that the  
3 Covered Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer  
4 has elected to enforce the claims alleged in the Notices.

5 **1.7 Complaint**

6 On June 25, 2014, Moore filed the instant action (“Complaint”) alleging that Achim violated  
7 Health & Safety Code § 25249.6 based on, among other things, exposures to DEHP present in and  
8 on the vinyl/PVC floor tiles that Achim manufactures, imports, distributes, and/or offers for sale to  
9 consumers throughout the State of California. On September 15, 2014, Moore filed a First  
10 Amended Complaint (“FAC”) alleging that Achim violated Health & Safety Code § 25249.6 based  
11 on, among other things, exposures to DEHP present in and on the vinyl/PVC floor tiles that Achim  
12 manufactures, imports, distributes, and/or offers for sale to consumers throughout the State of  
13 California.

14 **1.8 No Admission**

15 Achim denies the material, factual, and legal allegations contained in the Notices and  
16 Complaints, and it maintains that all of the products that it has sold and distributed for sale in  
17 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing  
18 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,  
19 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be  
20 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.  
21 This Section shall not, however, diminish or otherwise affect Achim’s obligations, responsibilities,  
22 and duties under this Consent Judgment.

23 **1.9 Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25 jurisdiction over Achim as to the allegations in the Complaint, that venue is proper in the County of  
26 Alameda, and that this Court has, and will retain, jurisdiction to enter and enforce the provisions of  
27 this Consent Judgment pursuant to California Health & Safety Code section 25249.7 and California  
28 Code of Civil Procedure section 664.6.

1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this  
3 Consent Judgment is entered by the Court.

4           **2. INJUNCTIVE RELIEF**

5           Commencing on the Effective Date, and continuing thereafter, Achim shall only manufacture,  
6 import, distribute, sell and/or offer for sale in California Covered Products that are “DEHP Free”  
7 pursuant to Section 2.1, or that contain the proper health hazard warning pursuant to Section 2.2  
8 below.

9           **2.1 Reformulated Products**

10           For purposes of this Consent Judgment, “DEHP Free” Products shall mean Products  
11 containing less than 1,000 parts per million (0.1%) of DEHP when analyzed pursuant to U.S.  
12 Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent  
13 methodologies utilized by state or federal agencies to determine DEHP content in a solid substance.

14           **2.2 Product Warnings**

15           Commencing on the Effective Date, Achim shall, for all Covered Products other than DEHP  
16 Free Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b).<sup>1</sup> Each  
17 warning shall be prominently placed with such conspicuousness as compared with other words,  
18 statements, designs, or devices as to render it likely to be read and understood by an ordinary  
19 individual under customary conditions before purchase or use. Each warning shall be provided in a  
20 manner such that the consumer or user understands to which *specific* Product the warning applies, so  
21 as to minimize the risk of customer confusion.

22                   (a)     Retail Store Sales

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

26 \_\_\_\_\_  
27           <sup>1</sup> Achim claims that at the time the settlement is executed it has already complied with the  
28 warning requirements.





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

4  
5 **WARNING: Products identified on this page with the following**  
6 **symbol ▼ contain chemicals known to the State of**  
7 **California to cause cancer, or birth defects or other**  
8 **reproductive harm.**

9 **OR**

10 **WARNING: Products identified on this page with the following**  
11 **symbol ▼ contain DEHP a chemical known to the State**  
12 **of California to cause cancer, and birth defects or other**  
13 **reproductive harm.**

14 **3. MONETARY PAYMENTS**

15 **3.1 Civil Penalty Payment**

16 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred  
17 to in this Consent Judgment, Achim shall pay civil penalties in the amount of \$4,000 within five  
18 business days of the Effective Date. Achim shall remit its payment of the civil penalties in one check  
19 for the total amount pursuant to the payment method prescribed under Section 3.3. Plaintiff's counsel  
20 shall allocate payment of the civil penalty according to Health and Safety Code section  
21 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of  
22 Environmental Health Hazard Assessment ("OEHHA") and twenty-five percent (25%) of the funds  
23 remitted to Moore.

24 **3.2 Reimbursement of Fees and Costs**

25 The parties acknowledge that Moore and his counsel offered to resolve this dispute without  
26 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
27 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
28 other settlement terms had been finalized, Achim expressed a desire to resolve Moore's fees and  
costs. The Parties then attempted to (and did) reach an accord on the compensation due to Moore and  
his counsel under general contract principles and the private attorney general doctrine codified at

1 California Code of Civil Procedure section 1021.5 for all work performed through the mutual  
2 execution of this Consent Judgment. Within five business days of the Effective Date, Achim shall  
3 pay \$32,000 for the fees and costs incurred by Moore investigating, bringing this matter to Achim's  
4 attention, and negotiating a settlement in the public interest.

### 5 **3.3 Payment Procedures**

6 All payments due under this Consent Judgment are due within five business days of the  
7 Effective Date according to the following subsections:

#### 8 **3.3.1 Payment Addresses**

9 (a) All payments and tax documentation shall be delivered to:

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

#### 13 **3.3.2 Required Tax Documentation**

14 Achim agrees to provide an IRS 1099 form for its payments under this Consent  
15 Judgment to each of the following payees: (a) "Office of Environmental Health Hazard  
16 Assessment"; (b) "John Moore"; and (c) "The Chanler Group". Addressed and tax identification  
17 numbers for each of the above payees shall be furnished after this Consent Judgment is fully  
18 executed by the Parties

#### 19 **3.3.3 Payments Held in Trust**

20 The payments due under this Consent Judgment shall be held in trust until such time as the  
21 Court approves the Parties' settlement. These payments shall be paid within fifteen (15) days of the  
22 date that this Consent Judgment is fully executed by the Parties, and held in trust by Achim's  
23 counsel until the Court grants the motion for approval of this Consent Judgment contemplated by  
24 Section 5. Within five business days of the Court's approval of this Consent Judgment, Achim's  
25 counsel shall tender the civil penalty payment and attorney's fee and costs reimbursements required  
26 by Sections 3.1 and 3.2.



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 Achim and its parents,  
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and  
5 attorneys (“Releasees”) and each entity to whom they directly or indirectly distribute or sell the  
6 Covered Products, including but not limited to its 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 the Covered  
9 Products sold by Achim prior to the Effective Date, as set forth in the Notice. Compliance with  
10 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to  
11 exposures to DEHP from the Covered Products sold by Achim before the Effective Date, as set  
12 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 Achim, Releasees, and Downstream Releasees which shall be effective as a full and final  
16 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 Covered Products sold or distributed for sale by Achim before the  
20 Effective Date.

21 **4.3 Achim’s Release of Moore**

22 Achim, 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 Covered Products.  
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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 Covered Products, then  
13 Achim may provide written notice to Moore of any asserted change in the law, and shall have no  
14 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
15 Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve  
16 Achim from any 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 For Achim:

22            Marton Grossman, President  
23            Achim Importing Company Inc.  
24            58 Second Avenue  
25            Brooklyn, NY 11215

26            with a copy to:

27            Melissa A. Jones, Esq.  
28            Stoel Rives LLP  
29            500 Capital Mall, Suite 1600  
30            Sacramento, CA 95814

1 For Moore:

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

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Moore agrees to comply with the reporting form requirements referenced in Health and Safety  
15 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
16 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In  
17 furtherance of obtaining such approval, Moore and Achim agree to mutually employ their best  
18 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain  
19 judicial approval of their settlement in a timely manner. For purposes of this Section, “best efforts”  
20 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,  
21 and supporting the motion for judicial approval.

22 **11. MODIFICATION**

23 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
24 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any  
25 Party, and the entry of a modified consent judgment by the Court.  
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1 **12. 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 contained herein.

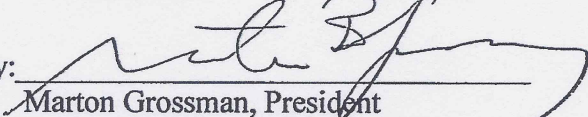
4 **AGREED TO:**

**AGREED TO:**

5  
6 Date: DECEMBER 18, 2014

Date: 12/18/14

7  
8 By:   
JOHN MOORE

By:   
Marton Grossman, President  
ACHIM IMPORTING COMPANY INC.

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