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2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565
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8 Attorneys for Plaintiff
9 JOHN MOORE

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

JOHN MOORE,

Plaintiff,

v.

ARTLAND, INC.; NORDSTROM, INC.; and
DOES 1-150, inclusive,

Defendants.

Case No. RG15759001

[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 John Moore (“Moore”) and Artland,
4 Inc. (“Artland”), with Moore and Artland each individually referred to as a “Party” and collectively
5 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 Defendant**

11 Artland employs ten or more individuals 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 Artland manufactures, imports, sells, or distributes for sale in California,
16 drinking glasses with exterior designs that contain lead without first providing the exposure warning
17 required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the
18 State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are drinking glasses with exterior designs
21 containing lead including, but not limited to, the *Upcycle Glass Set, Fun in the Sun, #0755 2296*
22 *3380, UPC Nos. 8 35452 11114 3 and 8 35452 11116 7*, manufactured, imported, sold, or distributed
23 for sale in California by Artland, hereinafter the “Products”.

24 **1.6 Notice of Violation**

25 On or about September 30, 2014, Moore served Artland, Nordstrom, Inc, and certain requisite
26 public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Artland
27 and Nordstrom, Inc. violated Proposition 65 by failing to warn their customers and consumers in
28

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

3 **1.7 Complaint**

4 On February 18, 2015, Moore filed the instant action ("Complaint") naming Artland 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 Artland denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and it maintains that all of the products that it has sold and distributed for sale in
10 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
11 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
12 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
13 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
14 Section shall not, however, diminish or otherwise affect Artland's obligations, responsibilities, and
15 duties 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 Artland as to the allegations contained in the Complaint, that venue is proper in the
19 County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this
20 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 December 31, 2015, and continuing thereafter, Artland shall only purchase
27 for sale, or manufacture for sale in California, "Reformulated Products," or Products that: (a) contain
28 no more than to 90 parts per million ("ppm") lead when analyzed pursuant to U.S. Environmental

Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; and (b) yield no more than 1.0 microgram (“ug”) of lead when a wipe is applied to all surfaces according to NIOSH Test Method No. 9100.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Consent Judgment, Artland shall pay \$8,000 in civil penalties, allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Moore. Artland shall make the civil penalty payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$6,000; and (b) “John Moore, Client Trust Account” in the amount of \$2,000.

3.2 Reimbursement of Attorney’s Fees and Costs

The parties acknowledge that Moore and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the other settlement terms had been finalized, Artland 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 California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent Judgment. On or before the Effective Date, Artland shall pay \$28,000 for the fees and costs incurred by Moore investigating, bringing this matter to Artland’s attention, litigating and negotiating a settlement in the public interest.

3.3 Payments Held in Trust

All payments due under this Consent Judgment shall be held in trust until such time as the Court approves the Parties’ settlement. All payments due under this agreement shall be delivered within five (5) days of the date that this Consent Judgment is fully executed by the Parties, and held

1 in trust by Artland's counsel until the Court grants the motion for approval of this Consent Judgment
2 contemplated by Section 5. Within two business days of the Court's approval of this Consent
3 Judgment, Artland's counsel shall tender the initial civil penalty payments and attorneys' fee and
4 costs reimbursements required by Sections 3.1 and 3.2.

5 **3.4 Payment Address**

6 All payments required by this Consent Judgment shall be delivered to the following
7 address:

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

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 Moore's Public Release of Proposition 65 Claims**

14 Moore, acting on his own behalf and in the public interest, releases Artland and its parents,
15 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
16 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
17 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers
18 (including Nordstrom, Inc.), franchisers, cooperative members, licensors and licensees
19 ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures
20 to lead from Products sold by Artland prior to the Effective Date, as set forth in the Notice.
21 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
22 with respect to exposures to failures to warn about lead from the Products sold by Artland before
23 the Effective Date, as set forth in the Notice.

24 **4.2 Moore's Individual Release of Claims**

25 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
26 release to Artland, Releasees, and Downstream Releasees which shall be effective as a full and final
27 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
28 attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or

1 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
2 exposures to lead in the Products sold or distributed for sale by Artland before the Effective Date.

3 **4.3 Artland's Release of Moore**

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

10 **5. COURT APPROVAL**

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

14 **6. SEVERABILITY**

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

18 **7. GOVERNING LAW**

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

1 **8. NOTICE**

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

5 **Artland**

6 Mason Cheng, President
7 Artland, Inc.
8 1 South Middlesex Avenue, Suite A
9 Monroe Township, NJ 08831

 Fong Joe Hou, Esq.
 Law Offices Fong Joe Hou, LLC
 100 Wood Ave South, Suite 118
 Iselin, NJ 08830

9 **Moore**

10 The Chanler Group
11 Attn: Proposition 65 Coordinator
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

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

17 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

21 **10. POST EXECUTION ACTIVITIES**

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

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11. MODIFICATION

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

12. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: July 6, 2015

Date: _____

By: 
JOHN MOORE

By: _____
Mason Cheng, President
ARTLAND, INC.

11. MODIFICATION

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

12. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: _____

Date: 6/30/15

By: _____
JOHN MOORE

By: _____
Mason Cheng, President
ARTLAND, INC.