

1 Clifford A. Chanler, State Bar No. 135534  
2 Josh Voorhees, State Bar No. 241436  
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 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SANTA CLARA  
14 UNLIMITED CIVIL JURISDICTION  
15

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 DAS COMPANIES, INC.; and DOES 1 – 150,  
20 inclusive,

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

Case No. 115CV283927

**[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     DAS Companies, Inc. (“DAS”), with Moore and DAS each individually referred to as a “Party” and  
5     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     Defendant**

11            DAS 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 DAS manufactures, imports, sells, or distributes for sale in California,  
16    tools with vinyl/PVC grips that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing  
17    the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a  
18    chemical known to the 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 tools with vinyl/PVC grips containing  
21    DEHP that are manufactured, imported, sold, or distributed for sale in California by DAS including,  
22    but not limited to, *RoadPro 44-Piece Terminal Kit, RPTK2, UPC #0 45464 23357 1*, hereinafter the  
23    “Products”.

24            **1.6     Notice of Violation**

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

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

### 3 **1.7 Complaint**

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

### 7 **1.8 No Admission**

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

### 16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18 jurisdiction over DAS 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" shall mean the date that the  
23 Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

## 24 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

### 25 **2.1 Reformulation Commitment**

26 Except as provided in Section 2.2 below, on or before December 1, 2015 and continuing  
27 thereafter, DAS agrees to only manufacture for sale or purchase for sale in or into California,  
28 "Reformulated Products". For purposes of this Settlement Agreement, "Reformulated Products" are

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

## 5 **2.2 Exception**

6 DAS may ship, sell or offer to be shipped for sale in California a Product that does not meet  
7 the Reformulated Products standard, if each of the following requirements are met: (i) DAS has  
8 determined that no Reformulated Product or equivalent DEHP-free substitute product is “reasonably  
9 commercially available”; (ii) the Product is not primarily intended for use by individuals twelve years  
10 of age or younger; and (iii) DAS complies with warning requirements set forth in Section 2.3 below  
11 for all future Product runs beginning no later than December 1, 2015. For purposes of this Section  
12 “reasonable commercial availability” shall include consideration by DAS of the following factors:  
13 availability and supply of a Reformulated Product or equivalent DEHP-free product; cost of the  
14 Reformulated Product or equivalent DEHP-free product; and performance characteristics of the  
15 Reformulated Product or equivalent DEHP-free product, including but not limited to performance,  
16 safety, and stability. If DAS intends to invoke this paragraph 2.2, an officer of the company shall set  
17 forth its basis in writing, no later than November 1, 2015, to Plaintiff at the address set forth in  
18 paragraph 8 below.

## 19 **2.3 Product Warnings**

20 Provided that it meets the conditions in Section 2.2, commencing no later than December 1,  
21 2015, DAS shall provide a clear and reasonable warning on all Products sold or offered for sale in  
22 California which are not Reformulated Products as set forth below. Each such warning shall be  
23 prominently placed on the Product or its packaging with such conspicuousness as compared with  
24 other words, statements, designs, or devices as to render it likely to be read and understood by an  
25 ordinary individual under customary conditions before purchase or use. Each warning shall be  
26 provided in a manner such that the consumer or user understands to which specific Product the  
27 warning applies, so as to minimize the risk of consumer confusion. For Products which are not  
28

1 Reformulated Products, DAS shall use the following warning language with respect to all future  
2 Product runs beginning not later than December 1, 2015.

3                   **WARNING:** This product contains DEHP, a chemical  
4                   known to the State of California to cause  
5                   cancer and birth defects and other  
6                   reproductive harm.

7   **or**

8                   **WARNING:** This product contain a chemical known to  
9                   the State of California to cause cancer and  
10                  birth defects and other reproductive harm.

## 11                   **2.4 Vendor Notification Requirement**

12                   To the extent it as not already done so, no more than thirty (30) days after the Effective Date,  
13                   DAS shall provide the reformulation standards specified in Section 2.1 for Reformulated Products to  
14                   any and all of its vendors of its Products that will be sold or offered for sale to California consumers,  
15                   and shall instruct each vendor to use its best efforts to provide only Reformulated Products, as such  
16                   Products are defined in Section 2.1.

## 17                   **3. MONETARY SETTLEMENT TERMS**

### 18                   **3.1 Civil Penalty Payments**

19                   Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in  
20                   this Consent Judgment, DAS shall pay \$14,000 in civil penalties. Each civil penalty payment shall be  
21                   allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five  
22                   percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment  
23                   (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Moore.

#### 24                   **3.1.1 Initial Civil Penalty**

25                   DAS shall make an initial civil penalty payment of \$4,000. DAS shall provide its payment in  
26                   a single check made payable to "John Moore Client Trust Account" as set forth in Sections 3.3 and  
27                   3.4 below.

#### 28                   **3.1.2 Final Civil Penalty**

On or before November 15, 2015, DAS shall pay a final civil penalty of \$10,000 in  
accordance with the formula set forth in Paragraph 3.1.1 above. The final civil penalty shall be  
waived in its entirety, however, if, no later than October 15, 2015, an officer of DAS provides

1 Moore's counsel with written certification that, as of the date of the certification, all Products  
2 shipped, sold or distributed for sale in California are Reformulated Products, and that they will  
3 continue to provide only Reformulated Products in the future. The option to provide a written  
4 certification of reformulation in lieu of making the final civil penalty payment required by this  
5 Section is a material term, and time is of the essence. DAS shall deliver its certificate, if any, to  
6 Moore's counsel at the address provided in Section 3.3 below. In the event that DAS does not timely  
7 certify its compliance or make the final civil penalty payment required by this Section, Moore may  
8 seek relief under any available legal remedy. If successful, the Parties further agree that Moore shall  
9 be entitled to his reasonable attorneys' fees and costs pursuant to general contract principles and  
10 Code of Civil Procedure section 1021.5.

### 11 **3.2 Reimbursement of Attorney's Fees and Costs**

12 The parties acknowledge that Moore and his counsel offered to resolve this dispute without  
13 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
14 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
15 other settlement terms had been finalized, DAS expressed a desire to resolve Moore's fees and costs.  
16 The Parties then attempted to (and did) reach an accord on the compensation due to Moore and his  
17 counsel under general contract principles and the private attorney general doctrine codified at  
18 California Code of Civil Procedure section 1021.5 for all work performed through the mutual  
19 execution of this Consent Judgment and reasonably anticipated through the motion to approve  
20 process.. In accordance with Section 3.3 below, DAS shall pay \$41,500 for the fees and costs  
21 incurred by Moore investigating, bringing this matter to DAS's attention, litigating, negotiating a  
22 settlement in the public interest, and all efforts reasonably incurred to obtain court approval of the  
23 settlement, as well as ensure compliance with its terms.

### 24 **3.3 Payments Held in Trust**

25 All payments due under this Consent Judgment shall be held in trust until such time as the  
26 Court approves the Parties' settlement. Except the final civil penalty payment required by Section  
27 3.1.2, all payments due under this agreement shall be delivered within five (5) days of the date that  
28 this Consent Judgment is fully executed by the Parties, and held in trust by Plaintiff's counsel, or a

1 third party escrow agent determined by Plaintiff, until the Court grants the motion for approval of  
2 this Consent Judgment contemplated by Section 5.

3 **3.4 Payment Address**

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

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

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Moore’s Public Release of Proposition 65 Claims**

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

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 DAS, Releasees, and Downstream Releasees which shall be effective as a full and final  
23 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
24 attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or  
25 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
26 exposures to DEHP in the Products sold or distributed for sale by DAS before the Effective Date.  
27  
28

1           **4.3    DAS’s Release of Moore**

2           DAS, 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 by Moore and  
5 his attorneys and other representatives, whether in the course of investigating claims, otherwise  
6 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

7           **5.    COURT APPROVAL**

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

11          **6.    SEVERABILITY**

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

15          **7.    GOVERNING LAW**

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

23          **8.    NOTICE**

24          Unless specified herein, all correspondence and notice required by this Consent Judgment  
25 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
26 return receipt requested; or (iii) a recognized overnight courier to the following addresses:  
27  
28



1 To: DAS:

To Moore:

2 Michael Abel, President  
3 DAS Companies, Inc.  
4 724 Lawn Road  
Palmyra, PA 17078

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

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

11 **10. POST EXECUTION ACTIVITIES**

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

20 **11. MODIFICATION**

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

24 **12. AUTHORIZATION**

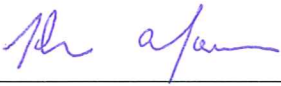
25 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
26 and agree to all of the terms and conditions contained herein.

27  
28

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


**AGREED TO:**

Date: August 11, 2015

By:   
JOHN MOORE

**AGREED TO:**

Date: August 11, 2015

By:   
John W. Borst, Chief Financial Officer  
DAS COMPANIES, INC.