

Laralei S. Paras, State Bar No. 203319
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone:(510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

Elizabeth V. McNulty, State Bar No. 192455
ARCHER NORRIS, PLC
4695 MacArthur Court, Suite 350
Newport Beach, CA 92660
Telephone:(949) 975-8200
Facsimile: (949) 975-8210

Attorneys for Defendant
IZZO GOLF, INC.

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

JOHN MOORE,

Plaintiff,

v.

IZZO GOLF, INC.; DICK'S SPORTING
GOODS, INC.; and DOES 1-150, inclusive,

Defendants.

Case No. RG14751002

[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, Izzo Golf, Inc. (“Izzo”), with Moore and Izzo each referred to individually as a “Party”
5 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 reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Moore alleges that Izzo has manufactured, imported, distributed, sold and/or offered for sale
16 in the State of California, vinyl/PVC golf ball retriever grips and vinyl/PVC bags containing di(2-
17 ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to
18 the State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as vinyl/PVC golf ball
21 retriever grips including, but not limited to, *Callaway 15’ Retriever, C10400, UPC #6 89769 10400*
22 *8, and Callaway 6’ Ball Retriever, C40101, UPC 689769104015, and vinyl/PVC bags including, but*
23 *not limited to, Callaway Golf Training Impact Bag, C10232, UPC #6 89769 10232 5*, manufactured,
24 imported, distributed, sold and/or offered for sale by Izzo in the State of California, hereinafter
25 “Products.”

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1 **1.6 Notices of Violation**

2 On September 30, 2014, Moore served Izzo, Dick’s Sporting Goods, Inc. and various public
3 enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that
4 provided the recipients with notice that Izzo was in violation of California Health & Safety Code
5 § 25249.6 for failing to warn consumers that its Products exposed users in the State of California to
6 DEHP.

7 On March 13, 2015, Moore served Izzo, Dick’s Sporting Goods, Inc., Wal-Mart Stores, Inc.
8 and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of
9 Violation” (“Supplemental Notice”) that provided the recipients with notice that Izzo was in violation
10 of California Health & Safety Code § 25249.6 for failing to warn consumers that its Products exposed
11 users in the State of California to DEHP.

12 The Notice and Supplemental Notice are collectively referred to herein as the “Notices”. To
13 the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting
14 the allegations set forth in the Notices.

15 **1.7 Complaints**

16 On December 10, 2014, Moore filed the instant action against Izzo and Dick’s Sporting
17 Goods, Inc. for the alleged violations of Health & Safety Code § 25249.6 that are the subject of the
18 Notice. On or about June 26, 2015, Moore filed a first amended complaint (“Complaint”) against
19 Izzo and Dick’s Sporting Goods, Inc. for the alleged violations of Health & Safety Code § 25249.6
20 that are the subject of the Notices.

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1 **1.8 No Admission**

2 Izzo denies the material, factual, and legal allegations contained in the Notices and Complaint,
3 and maintains that all of the products that it has sold in California, including the Products, have been,
4 and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
5 admission of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall
6 compliance with this Consent Judgment constitute or be construed as an admission of any fact,
7 finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by
8 Izzo. This section shall not, however, diminish or otherwise affect Izzo's obligations,
9 responsibilities, and duties under this Consent Judgment.

10 **1.9 Consent to Jurisdiction**

11 For purposes of this Consent Judgment only, the Parties stipulate that the Court has
12 jurisdiction over Izzo as to the allegations in the Complaint, that venue is proper in Alameda County,
13 and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

14 **1.10 Execution Date**

15 For purposes of this Consent Judgment, the term "Execution Date" shall mean the date the
16 Consent Judgment is signed by all Parties.

17 **1.11 Effective Date**

18 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
19 Consent Judgment is approved by the Court.

20 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNING**

21 Commencing on the Execution Date, Izzo shall only sell, ship or offer for sale in California
22 Products that are: (1) sold or shipped with one of the clear and reasonable warnings set forth in
23 subsection 2.1; or (2) exempt pursuant to Section 2.2 as Reformulated Products as defined in Section
24 2.3.

25 **2.1 Product Warnings**

26 Each warning shall be prominently placed with such conspicuousness as compared with other
27 words, statements, designs or devices as to render it likely to be read and understood by an ordinary
28 individual under customary conditions before purchase or use. Each warning shall be provided in a

manner such that the consumer or user understands to which specific Product(s) the warning applies, so as to minimize the risk of consumer confusion. Izzo shall affix a warning to the packaging, labeling or directly on any Products that are not Reformulated Products sold in California that states:

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

or

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

2.2 Exceptions to Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Standards

Reformulated Products are defined as Products containing concentrations less than 0.1 percent (1000 parts per million) of DEHP, di-n-butyl (“DBP”), butyl benzyl phthalate (“BBP”) and Diisononyl phthalate (“DINP”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP, DBP, BBP and DINP content in a solid substance. By entering into this Consent Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Izzo by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to affect any defenses available to Izzo under laws other than Proposition 65.

2.4 Supplier Notification Requirement

To the extent is has not already done so, no more than ten (10) days after the Execution Date, Izzo shall provide the reformulation standards specified in section 2.3 for Reformulated Products to any and all of its suppliers of Products and of accessible component parts used in the Products that will be sold or offered for sale to California consumers, and shall instruct each suppliers to use its best efforts to provide only Reformulated Products, as defined in Section 2.3.

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1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

3 In settlement of all the claims referred to in this Consent Judgment, Izzo shall pay a total of
4 \$21,000 in civil penalties in accordance with this Section. Moore will allocate each penalty payment
5 in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
6 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHHA”) and the
7 remaining 25% of the penalty retained by Moore, as follows:

8 **3.1.1 Initial Civil Penalty.** Within seven (7) calendar days of the Effective Date,
9 Izzo shall pay an initial civil penalty in the amount of \$6,000 with one check made payable as
10 follows: “John Moore, Client Trust Account”. All penalty payments shall be delivered to the address
11 listed in Section 3.3 below.

12 **3.1.2 Final Civil Penalty.** On or before September 30, 2015, Izzo shall pay a final
13 civil penalty of \$15,000 with one check made payable as follows: “John Moore, Client Trust
14 Account”. The final civil penalty shall be waived in its entirety, however, if, no later than September
15 15, 2015, an officer of Izzo provides Moore with written certification that, as of the Execution Date
16 and continuing into the future, Izzo has met the reformulation standard specified in Section 2.3 above,
17 such that all Products manufactured, imported, sold and/or distributed for sale in California by Izzo
18 are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this
19 Section is a material term, and time is of the essence.

20 **3.2 Reimbursement of Moore’s 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 the agreement had been settled. Shortly after all other
24 settlement terms had been finalized, Izzo expressed a desire to resolve the fee and costs issue. The
25 Parties then attempted to (and did) reach an accord on the compensation due Moore and his counsel
26 under general contract principles and the private attorney general doctrine codified at California Code
27 of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees and costs incurred
28 on appeal, if any. Under these legal principles, Izzo shall pay \$40,000 for fees and costs incurred

1 investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be
2 incurred) drafting, negotiating, and obtaining the Court's approval of this Consent Judgment in the
3 public interest. The check shall be made payable to "The Chanler Group" and shall be due and
4 payable within seven (7) calendar days of the Effective Date.

5 **3.3 Payment Procedures**

6 All payments owed to Plaintiff and his counsel, pursuant to Sections 3.1 and 3.2 shall be
7 delivered to the following payment address:

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

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Moore's Release of Proposition 65 Claims**

13 Moore, acting on his own behalf and in the public interest, releases Izzo and each entity to
14 whom Izzo directly or indirectly distributes or sells the Products including, but not limited to,
15 downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and
16 retailers including Dick's Sporting Goods, Inc. and Wal-Mart, Inc. ("Releasees") from all claims for
17 violations of Proposition 65 up through the Effective Date based on exposures to DEHP from the
18 Products as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes
19 compliance with Proposition 65 with respect to exposures to DEHP from the Products sold by Izzo
20 before the Effective Date as set forth in the Notices.

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

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1 **4.2 Izzo's Release of Moore**

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

8 **5. COURT APPROVAL**

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

12 **6. SEVERABILITY**

13 If, subsequent to the execution of this Consent Judgment, any provision is Moore by a court to
14 be unenforceable, the validity of the remaining provisions shall not be 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 or is otherwise
18 rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement
19 Agreement are rendered inapplicable or no longer required as a result of any such repeal or
20 preemption or rendered inapplicable by reason of law generally as to the Products, then Izzo shall
21 provide written notice to Moore of any asserted change in the law, and shall have no further
22 obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products
23 are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Izzo from any
24 obligation to comply with any pertinent state or federal toxics control law.

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1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Settlement Agreement shall be in writing and (i) personally delivered, (ii) sent by first-class
4 (registered or certified mail) return receipt requested, or (iii) sent by overnight courier, to one party by
5 the other party at the following addresses:

6 For Izzo:

7 Joseph Cupido, President
8 Izzo Golf, Inc.
9 1635 Commons Parkway
 Macedon, NY 14502

For Moore:

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

10 With a copy on behalf of Izzo to:

11 Elizabeth V. McNulty, Esq.
12 Archer Norris, PLC
 4695 MacArthur Court, Suite 350
 Newport Beach, CA 92660

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

15 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
17 each of which shall be deemed an original, and all of which, when taken together, shall constitute one
18 and the same document.

19 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

20 Moore agrees to comply with the reporting form requirements referenced in California Health
21 & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to California Health &
22 Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the
23 settlement. In furtherance of obtaining such approval, Moore and Izzo agree to mutually employ their
24 best efforts, and those of their counsel, to support the entry of this agreement as a Consent Judgment
25 and to obtain judicial approval of the settlement in a timely manner. For purposes of this section,
26 “best efforts” shall include, at a minimum, cooperating on the drafting and filing of the necessary
27 moving papers and supporting the motion for judicial approval.

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1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and have read, understood,
7 and agree to all of the terms and conditions contained herein.
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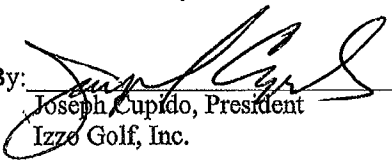
9 **AGREED TO:**

AGREED TO:

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11 Date: JUNE 29, 2015

Date: July 2, 2015

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13 By: 
14 John Moore

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16 By: 
17 Joseph Cupido, President
18 Izzo Golf, Inc.
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