

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

**FILED**

**MAY 25 2011**

**KIM TURNER**  
Court Executive Officer  
**MARIN COUNTY SUPERIOR COURT**  
By: *A. Garcia, Deputy*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 WESTRIM, INC.; CREATIVITY, INC.; *et al.*,

18 Defendants.

) Case No.: CIV-1003620

) ~~PROPOSED~~ JUDGMENT PURSUANT  
) TO TERMS OF PROPOSITION 65  
) SETTLEMENT AND CONSENT  
) JUDGMENT

) Date: May 25, 2011

) Time: 8:30 a.m.

) Dept.: B

) Judge: Hon. Roy O. Chernus

1 In the above-entitled action, Plaintiff JOHN MOORE and Defendants WESTRIM, INC. and  
2 CREATIVITY, INC., having agreed through their respective counsel that a judgment be entered  
3 pursuant to the terms of the Consent Judgment entered into by the parties in resolution of this  
4 Proposition 65 action, and following the issuance of an order approving the Parties' settlement  
5 agreement on May 25, 2011.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety  
7 Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance  
8 with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties,  
9 the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

10  
11 **IT IS SO ORDERED.**

12 Dated: **MAY 25 2011**  
13 \_\_\_\_\_

14 **ROY CIERNUS**  
15 \_\_\_\_\_  
16 JUDGE OF THE SUPERIOR COURT  
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# Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534  
2 THE CHANLER GROUP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
Berkeley, California 94710  
4 Telephone: 510.848.8880  
Facsimile: 510.848.8118

5 Attorneys for Plaintiff  
JOHN MOORE  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,

12 Plaintiff,

13 v.

14 WESTRIM, INC.; CREATIVITY INC.; and  
15 DOES 1-150, inclusive

16 Defendants.

Case No. CIV1003620

**[PROPOSED] CONSENT  
JUDGMENT**

Cal. Health & Safety Code § 25249.6

Action Filed: July 13, 2010

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1     **1. INTRODUCTION**

2     **1.1 John Moore, Westrim, Inc., and Creativity Inc.**

3             This Consent Judgment is entered into by and between John Moore (hereinafter “Moore”)  
4     on the one hand, and Westrim, Inc. and Creativity Inc. (hereinafter collectively “Defendants”) on  
5     the other hand, with Moore and Defendants collectively referred to as the “Parties.”

6     **1.2 Plaintiff**

7             Moore is an individual residing in California who seeks to promote awareness of  
8     exposures to toxic chemicals and improve human health by reducing or eliminating hazardous  
9     substances contained in consumer products.

10    **1.3 Defendants**

11            Westrim, Inc. and Creativity Inc. each employ ten or more persons and each are persons in  
12    the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act  
13    of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14    **1.4 General Allegations**

15            Moore alleges that Defendants have sold in the State of California crafting tools  
16    containing to di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings.  
17    DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause  
18    birth defects and other reproductive harm.

19    **1.5 Product Description**

20            The products covered by this Consent Judgment are defined as follows: crafting tools  
21    containing DEHP including, but not limited to, *Crafting Expressions 1 pc Chain Nose Pliers,*  
22    *PC90B-PE-000 (#0 48492 04436 2).* All such items shall be referred to herein as the “Products.”

23    **1.6 Notice of Violation**

24            On or about May 7, 2010, Moore served Defendants and various public enforcement  
25    agencies with a document entitled “60-Day Notice of Violation” that provided Defendants and  
26    such public enforcers with notice that alleged that Defendants were in violation of California  
27    Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products  
28    exposed users in California to DEHP.

1 **1.7 Complaint**

2 On July 13, 2010, Moore, who was and is acting in the interest of the general public in  
3 California, filed a complaint in the Marin County Superior Court, Case No. CIV1003620  
4 (“Complaint”), naming Defendants and alleging violations of California Health & Safety Code  
5 § 25249.6 by Defendants based on the alleged exposures to DEHP contained in the Products  
6 offered for sale in California by Defendants.

7 **1.8 No Admission**

8 Defendants deny the material, factual, and legal allegations contained in Moore’s Notice  
9 and Complaint and maintain that all products that they have sold in California, including the  
10 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment  
11 shall be construed as an admission by Defendants of any fact, finding, issue of law, or violation of  
12 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission  
13 by Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being  
14 specifically denied by Defendants. However, this section shall not diminish or otherwise affect  
15 the obligations, responsibilities, and duties of Defendants under this Consent Judgment.

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper  
19 in the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of  
20 this Consent Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean November  
23 17, 2010.

24 **2. INJUNCTIVE RELIEF:**

25 **2.1 Product Reformulation and Interim Warnings**

26 Commencing on the Effective Date, Defendants shall address and abide by the  
27 Reformulation Commitment set forth in Section 2.3 below. With respect to previously  
28 manufactured Products, Defendants shall not sell, ship, or offer to be shipped for sale in

1 California any Products unless such Products are sold or shipped with a clear and reasonable  
2 warning as set forth below or already comply with the reformulation standards set forth as defined  
3 in Section 2.2 below.<sup>1</sup> (Where employed to comply with this Section, each such interim warning  
4 shall be prominently placed on or affixed to the packaging or labeling which is visible to the  
5 consumer with such conspicuousness as compared with other words, statements, designs, or  
6 devices as to render it likely to be read and understood by an ordinary individual under customary  
7 conditions before purchase or use.)

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

10 For Products sold by catalog or via the internet or by telephone, the preceding warning statement  
11 must be supplemented with written information advising the consumer, in a conspicuous manner,  
12 that he or she may return the Product for a full refund (including shipping costs for both the  
13 receipt and the return of the product) within fifteen (15) days of his or her receipt of the Product.

#### 14 **2.2 Reformulation Standard**

15 Reformulated Products are defined as those Products containing poly vinyl chloride or  
16 other soft plastic, vinyl, or synthetic leather components that could be touched or handled by a  
17 person during reasonably foreseeable use which have less than or equal to 1,000 parts per million  
18 (“ppm”) of DEHP, when analyzed pursuant to Environmental Protection Agency (“EPA”) testing  
19 methodologies 3580A and 8270C or U.S. Consumer Product Safety Commission (“CPSC”) test  
20 method CPSC-CH-C1001-09.3, as may be amended by the U.S. CPSC or the EPA from time to  
21 time.

#### 22 **2.3 Reformulation Commitment**

23 Defendants hereby commit that one hundred percent (100%) of the Products that are  
24 manufactured by or for Defendants, for distribution and/or sale in California after the Effective  
25 Date, shall meet the reformulation standard set forth in Section 2.2 above. Further, Defendants

26 \_\_\_\_\_  
27 <sup>1</sup> The interim warning requirements set forth in this Section 2.1 shall not apply to Products  
28 already distributed by Defendants before the Effective Date.

1 represent that, as a direct result of the Notice issued on May 7, 2010, they began to immediately  
2 implement a process for the reformulation of the Products.

3 **3. MONETARY PAYMENTS**

4 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

5 In settlement of all claims related to the Products and DEHP referred to in the Complaint,  
6 and this Consent Judgment, pursuant to Health & Safety Code § 25249.7(b), Defendants shall pay  
7 \$32,000 in civil penalties. Due to the Defendants' commitment under Section 2.3 with respect to  
8 Reformulated Products, however, the Defendants shall be credited \$24,000 of the penalty. Civil  
9 penalties are to be apportioned in accordance with California Health & Safety Code § 25192, with  
10 75% of these funds remitted to the State of California's Office of Environmental Health Hazard  
11 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to John Moore as  
12 provided by California Health & Safety Code § 25249.12(d).

13 Defendants shall deliver the payment required by this Section 3.1 based on the following  
14 schedule:

- 15 (a) Defendants shall deliver payment of \$2,500 within one week of the Effective Date;  
16 (b) Defendants shall deliver payment of an additional \$2,500 by December 23, 2010;  
17 (c) Defendants shall deliver a final payment of \$3,000 by January 26, 2011.

18 Defendants shall issue two separate checks for each penalty payment: (a) one check made  
19 payable to "The Chanler Group in Trust for OEHHA" in an amount representing 75% of the penalty due;  
20 and (b) one check to "The Chanler Group in Trust for John Moore" in an amount representing  
21 25% of the penalty due. Two separate 1099s shall be issued for the above-payments: (a)  
22 OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) John Moore,  
23 whose information shall be provided ten calendar days before the payment is due.

24 Defendants shall deliver the checks for the penalties required under this Section 3.1 to  
25 Moore's counsel at the following address:

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



1     **4.     REIMBURSEMENT OF FEES AND COSTS**

2     **4.1     Attorney Fees and Costs.**

3             The Parties have reached an accord on the compensation due to Moore and his counsel  
4     under general contract principles and the private attorney general doctrine codified at California  
5     Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this  
6     agreement. Defendants shall reimburse Moore and his counsel a total of \$42,000 for fees and  
7     costs incurred as a result of investigating, bringing this matter to Defendants' attention, and  
8     litigating and negotiating a settlement in the public interest. Defendants shall issue a separate  
9     1099 for fees and costs (EIN: 94-3171522) and shall make the check payable to "The Chanler  
10    Group."

11            Defendants shall deliver the payments required by this Section 4.1 to The Chanler Group,  
12    Attn: Proposition 65 Controller, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710  
13    based on the following schedule:

- 14            (a) Defendants shall deliver payment of \$7,500 within one week of the Effective Date;
- 15            (b) Defendants shall deliver payment of an additional \$7,500 by December 23, 2010;
- 16            (c) Defendants shall deliver a final payment of \$27,000 by January 26, 2011.

17     **5.     RELEASE OF ALL CLAIMS**

18     **5.1     Moore's Release of Westrim, Inc. and Creativity Inc.**

19            In further consideration of the promises and agreements herein contained, and for the  
20    payments to be made pursuant to Sections 3 and 4 above, Moore, on behalf of himself, his past  
21    and current agents, representatives, attorneys, successors and/or assignees, and in the interest of  
22    the general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
23    form of legal action and releases all claims, including, without limitation, all actions, and causes  
24    of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
25    penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and  
26    attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
27    (collectively "Claims"), against Defendants and each of their downstream distributors,  
28    wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners,

1 purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective  
2 officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and  
3 parent entities (collectively "Releasees"). This release is limited to those claims that arise under  
4 Proposition 65, as such claims relate to Defendants' alleged failure to warn about exposures to or  
5 identification of DEHP contained in the Products. The Parties understand and agree that this  
6 release shall not extend upstream to any entities that manufactured the Products or any  
7 component parts thereof, or any distributors or suppliers who sold the Products or any component  
8 parts thereof to the Defendants.

9 **5.2 Westrim, Inc. and Creativity Inc.'s Release of Moore**

10 Defendants waive any and all claims against Moore, his attorneys and other  
11 representatives, for any and all actions taken or statements made (or those that could have been  
12 taken or made) by Moore and his attorneys and other representatives, whether in the course of  
13 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this  
14 matter, or with respect to the Products.

15 **6. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and  
17 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
18 year after it has been fully executed by all parties. If the Consent Judgment is not submitted to  
19 the Court for approval due to the failure of Defendants to make all payments as required under  
20 Sections 3.1 and 4.1 above (as further specified under Section 12 below), Moore and his counsel  
21 shall be entitled to retain any payments tendered to them by Defendants prior to December 31,  
22 2010 even if this Consent Judgment is rendered null and void due to operation of this Section 6;  
23 otherwise, if this Section 6 becomes applicable, Moore and his counsel shall refund Defendants  
24 any and all payments that have been made to them pursuant to this Consent Judgment within  
25 thirty days following the one year period specified above.

1    **7. SEVERABILITY**

2           If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
3    Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
4    provisions remaining shall not be adversely affected.

5    **8. GOVERNING LAW**

6           The terms of this Consent Judgment shall be governed by the laws of the State of  
7    California and apply within the State of California. In the event that Proposition 65 is repealed,  
8    preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,  
9    Defendants shall provide written notice to Moore of any asserted change in the law, and shall  
10   have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
11   that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to  
12   relieve Defendants from any obligation to comply with any pertinent state or federal toxics  
13   control laws.

14   **9. NOTICES**

15           Unless specified herein, all correspondence and notices required to be provided pursuant  
16   to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
17   registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the  
18   other party at the following addresses:

19   For Westrim, Inc. and Creativity Inc.:

20           Ron Cooper  
21           Westrim, Inc.  
22           7855 Hayvenhurst Ave.  
23           Van Nuys, CA 91406

23   For John Moore:

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

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

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**10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

**11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

Moore agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**12. ADDITIONAL POST EXECUTION ACTIVITIES**

The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Provided that Defendants have fulfilled their payment obligations under Sections 4.1.(a) and 4.1.(b) above, Moore shall draft a motion for approval of this Consent Judgment and file it with the Court prior to January 26, 2011. If Defendants meet all payment obligations specified under Sections 3.1 and 4.1 above prior to January 26, 2011, Moore shall draft and file the motion for approval within ten business days of the receipt of such payments. If Defendants fail to meet their payment obligations under Sections 3.1 and 4.1(c) above by January 26, 2011, Moore may withdraw his motion for approval until such time as all payment obligations under this Consent Judgment have been fulfilled by or on behalf of Defendants.

**13. MODIFICATION**

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court.

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**14. AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions hereof.

**AGREED TO:**

**AGREED TO:**

Date: November 22, 2010

Date: \_\_\_\_\_

By: *J. E. Moore*  
JOHN MOORE

By: \_\_\_\_\_  
WESTRIM, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
CREATIVITY INC.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1 **14. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective parties and have read, understood, and agree to all of the terms and conditions hereof.

4  
5 **AGREED TO:**

6 Date: \_\_\_\_\_

7  
8 By: \_\_\_\_\_  
9 JOHN MOORE

**AGREED TO:**

Date: 11/16/10

By: Wendell A. Cam  
WESTRIM, INC.

10  
11 Date: 11/16/10

12 By: Wendell A. Cam  
13 CREATIVITY INC.  
14

15 **IT IS SO ORDERED.**

16  
17 Date: \_\_\_\_\_

\_\_\_\_\_  
18 JUDGE OF THE SUPERIOR COURT  
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