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10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO  
13 UNLIMITED CIVIL JURISDICTION  
14

15  
16 JOHN MOORE,

17 Plaintiff,

18 v.

19 CASCADE DESIGNS, INC. *et al.*,

20 Defendants.

Case No. CGC-18-568422

**CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”) and  
4 defendant Cascade Designs, Inc. (Cascade Designs), with Moore and Cascade Designs each referred  
5 to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Moore is a resident of the State of California who seeks to promote awareness of exposures  
8 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances  
9 contained in consumer products.

10 **1.3 Defendant**

11 Cascade Designs employs ten or more persons and is a person in the course of doing business  
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and  
13 Safety Code § 25249.5 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Moore alleges that Cascade Designs manufactures, imports, sells and/or distributes for sale in  
16 California vinyl/PVC pot lifter grips containing di(2-ethylhexyl)phthalate (DEHP), and that it does  
17 so without providing the health hazard warning that Moore alleges is required by Proposition 65.  
18 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause  
19 birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are limited to the *MSR Litelifter Ultralight*  
22 *Aluminum Pot Lifter, SKU #321182, ART#80-707, UPC #0 09464 221182 5* (hereinafter the  
23 “Products”) that are manufactured, imported, distributed, sold and/or offered for sale in California by  
24 Cascade Designs.

25 **1.6 Notice of Violation**

26 On March 21, 2018, Moore served Cascade Designs and the requisite public enforcement  
27 agencies with a 60-Day Notice of Violation (the Notice), alleging that Cascade Designs violated  
28 Proposition 65 when it failed to warn its customers and consumers in California that the Products

1 expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced  
2 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On July 26, 2018, Moore commenced the instant action (“Complaint”), naming Cascade  
5 Designs as one of the defendants for the alleged violations of Proposition 65 that are the subject of  
6 the Notice.

7 **1.8 No Admission**

8 Cascade Designs denies the material, factual, and legal allegations contained in the Notice  
9 and Complaint, and maintains that all of the products that it has sold or 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, nor shall compliance with this Consent Judgment constitute  
12 or be construed as, an admission by Cascade Designs of any fact, finding, conclusion of law, issue of  
13 law, or violation of law. This section shall not, however, diminish or otherwise affect Cascade  
14 Designs’ obligations, responsibilities, and duties under this Consent Judgment.

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
17 jurisdiction over Cascade Designs as to the allegations contained in the Complaint, that venue is  
18 proper in the County of San Francisco, and that the Court has jurisdiction to enter and enforce the  
19 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure  
20 § 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this  
23 Consent Judgment is approved by the Court, including an unopposed tentative ruling.

24 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

25 **2.1 Commitment to Reformulate or Provide Warnings**

26 Commencing on the Effective Date and continuing thereafter, Cascade Designs shall only  
27 manufacture, import, sell or distribute for sale in California Products that are either: (a)  
28

1 Reformulated Products as defined by Section 2.2; or (b) Products that are labeled with a clear and  
2 reasonable warning as set forth under Sections 2.3 through 2.6.


3 **2.2 Reformulation Standard**

4 “Reformulated Products” are Products containing DEHP in concentrations of less than 0.1  
5 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory  
6 accredited by the State of California, a federal agency, or a nationally recognized accrediting  
7 organization. For purposes of compliance with this reformulation standard, testing samples shall be  
8 prepared and extracted using Consumer Product Safety Commission (CPSC) methodology  
9 CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA)  
10 methodology 8270D, or other methodologies utilized by federal or state government agencies to  
11 determine phthalate content in a solid substance.

12 **2.3 Clear and Reasonable Warnings**

13 Commencing on or before the Effective Date, Cascade Designs shall continue to provide  
14 clear and reasonable warnings for all Products provided for sale to customers in California in  
15 accordance with this Section and/or Title 27, California Code of Regulations, § 25600, *et seq.*, as  
16 amended from time to time. Each warning shall be prominently placed with such conspicuousness  
17 as compared with other words, statements, designs, or devices as to render it likely to be read and  
18 understood by an ordinary individual under customary conditions before purchase or use and shall be  
19 provided in a manner such that it is clearly associated with the specific Product to which the warning  
20 applies.

21 **(a) Warning.** The warning shall consist of the following statement (Warning):

22  **WARNING:** This product can expose you to DEHP, which is  
23 known to the State of California to cause birth  
24 defects or other reproductive harm. For more  
information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

25 **(b) Short-Form Warning.** Cascade Designs may, but is not required to, use the  
26 following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning), and  
27 subject to the additional requirements in Sections 2.5 and 2.6, as follows:

28  **WARNING:** Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

1           **2.4     Product Warnings**

2           Cascade Designs shall affix a warning to the Product label or otherwise directly on each  
3 Product provided for sale in retail outlets in California or sold via mail order catalog and/or the  
4 internet to customers located in California. For the purpose of this agreement, “Product label”  
5 means a display of written, printed or graphic material that is printed on or affixed to a Product or its  
6 immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point  
7 type and no smaller than the largest type size used for other consumer information on the product.  
8 The warning shall consist of either the Warning, or the Short-Form Warning described in subsection  
9 2.3(a) or (b), respectively.

10           **2.5     Mail Order Catalog Warnings**

11           In the event that, after the Effective Date, Cascade Designs prints new catalogs and sells  
12 Products via mail order through such catalogs to customers located in California, Cascade Designs  
13 shall provide a warning for each Product both on the Product label in accordance with Section 2.4,  
14 and in the catalog in a manner that clearly associates the warning with the specific Product being  
15 purchased. Any warning provided in a mail order catalog shall be in the same type size or larger  
16 than other consumer information provided for the Product within the catalog and shall be provided  
17 on the same page and in the same location as the display and/or description of the Product. The  
18 catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning  
19 provided on the Product label also uses the Short-Form Warning content.

20           **2.6     Internet Warnings**

21           If, after the Effective Date, Cascade Designs sells Products via the internet to customers  
22 located in California, Cascade Designs shall provide warnings for each Product both on the Product  
23 label in accordance with Section 2.4, and by prominently displaying the warning to the customer  
24 prior to completing the purchase or during the purchase of the Products without requiring customers  
25 to seek out the warning. Warnings given in conjunction with the sale of the Products via the internet  
26 shall appear either: (i) on the same web page on which the Product is displayed; (ii) on the same  
27 web page as the order form for the Product; or (iii) on one or more web pages displayed to a  
28 purchaser during the checkout process. The warning shall appear in any of the above instances

1 adjacent to or immediately following the display or description of the Product for which it is given in  
2 the same type size or larger than the Product description text. The internet warning may use the  
3 Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product  
4 label also uses the Short-Form Warning content. Cascade Designs may also comply with this  
5 section by providing the warning using a clearly marked hyperlink that includes the word  
6 “WARNING” on the same web page and in the same location as the display and/or description of  
7 the Product.

### 8 **2.7 Additional Information Regarding Warnings and Transmission**

9 Should the State or Federal Government amend or adopt new statutes or regulations  
10 regarding warning text and/or transmission methods affecting the Products at issue by varying from  
11 the text and methods detailed in the preceding Sections 2.3 through 2.6, for all Products that do not  
12 qualify as Reformulated Products, Cascade Designs may comply with this judgment by using such  
13 warning text and transmission methods, as set forth in the modified 27 Cal. Code Regs. § 25601 *et*  
14 *seq.*, as amended from time to time, or by complying with those other text or methods authorized or  
15 mandated by new regulations or legislation.

## 16 **3. MONETARY SETTLEMENT TERMS**

### 17 **3.1 Civil Penalty Payments**

18 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to  
19 in the Notice, Complaint, and this Consent Judgment, Cascade Designs agrees to pay \$2,000 in civil  
20 penalties. Cascade Designs’ civil penalty payment will be allocated according to Health and Safety  
21 Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California  
22 Office of Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five  
23 percent (25%) of the penalty payment retained by Moore. Cascade Designs shall issue its payment  
24 in two checks made payable to (a) “OEHHA” in the amount of \$1,500; and (b) “John Moore, Client  
25 Trust Account” in the amount of \$500. Moore’s counsel shall be responsible for delivering  
26 OEHHA’s portion of the penalty payment.

1           **3.2     Reimbursement of Attorneys’ Fees and Costs**

2           The parties acknowledge that Moore and his counsel offered to resolve this dispute without  
3 reaching terms on their fees and costs. Shortly after the other settlement terms had been finalized,  
4 the Parties negotiated the compensation to be paid to Moore and his counsel under general contract  
5 principles and the private attorney general doctrine codified at California Code of Civil Procedure  
6 § 1021.5 for all work performed through the mutual execution of this Consent Judgment and court  
7 approval of the same, but exclusive of fees and costs on appeal, if any. Cascade Designs agrees to  
8 pay \$25,000 by a check made payable to “The Chanler Group” for all fees and costs incurred  
9 investigating, bringing this matter to Cascade Designs’ attention, litigating, and negotiating a  
10 settlement in the public interest.

11           **3.3     Payment Timing; Payments Held in Trust**

12           All payments due under this Consent Judgment shall be held in trust until the Court approves  
13 the Parties’ settlement. Cascade Designs shall deliver its civil penalty and attorneys’ fee  
14 reimbursement payments to its counsel within fifteen (15) days of the date that this Consent  
15 Judgment is fully executed by the Parties. Cascade Designs’ counsel shall provide Moore’s counsel  
16 with written confirmation following its receipt of the settlement funds. Thereafter, Cascade  
17 Designs’ counsel shall hold the settlement funds in trust until the Court grants the motion for  
18 approval of this Consent Judgment contemplated by Section 5 and shall disburse the funds to  
19 Moore’s counsel within five (5) days after the Effective Date.

20           **3.4     Payment Address**

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

22                     The Chanler Group  
23                     Attn: Proposition 65 Controller  
24                     2560 Ninth Street  
25                     Parker Plaza, Suite 214  
26                     Berkeley, CA 94710

25           **4.     CLAIMS COVERED AND RELEASED**

26           **4.1     Moore’s Release of Proposition 65 Claims**

27           Moore, acting on his own behalf and in the public interest, releases Cascade Designs and its  
28 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and

1 attorneys (Releasees) and each entity to whom Cascade Designs directly or indirectly distributes or  
2 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,  
3 retailers, franchisers, cooperative members, licensors and licensees (Downstream Releasees) for any  
4 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products  
5 manufactured, imported, distributed or sold by Cascade Designs prior to the Effective Date, as set  
6 forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance  
7 with Proposition 65 by Cascade Designs with respect to the alleged or actual failure to warn about  
8 exposures to DEHP from Products manufactured, sold or distributed for sale by Cascade Designs  
9 after the Effective Date.

10 **4.2 Moore’s Individual Release of Claims**

11 Moore, in his individual capacity only and *not* in his representative capacity, also provides a  
12 release to Cascade Designs, Releasees, and Downstream Releasees which shall be effective as a full  
13 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
14 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature,  
15 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or  
16 actual exposures to DEHP in Products manufactured, imported, distributed or sold by Cascade  
17 Designs before the Effective Date. Nothing in Section 4 affects Moore’s right to commence or  
18 prosecute an action under Proposition 65 against a Releasee or Downstream Releasee that does not  
19 involve Cascade Designs’ Products.

20 **4.3 Cascade Designs’ Release of Moore**

21 Cascade Designs, on its own behalf and on behalf of its past and current agents,  
22 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against  
23 Moore and his attorneys and other representatives, for any and all actions taken or statements made  
24 (or those that could have been taken or made) by Moore and his attorneys and other representatives  
25 in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or  
26 with respect to the Products.



1 **5. COURT APPROVAL**

2 This Consent Judgment shall be null and void if, for any reason, it is not approved and  
3 entered by the Court within one year after it has been fully executed by all Parties. Moore and  
4 Cascade Designs agree to support the entry of this agreement as a judgment, and to obtain the  
5 Court’s approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to  
6 California Health and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval  
7 of this Consent Judgment, which motion Moore shall draft and file. In furtherance of obtaining such  
8 approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to  
9 support the entry of this agreement as a judgment, and to obtain judicial approval of their settlement  
10 in a timely manner. For purposes of this section, “best efforts” shall include, at a minimum,  
11 supporting the motion for approval, responding to any objection that any third-party may file or  
12 lodge, and appearing at the hearing before the Court if so requested.

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

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

25 **8. NOTICE**

26 Unless specified herein, all correspondence and notice required by this Consent Judgment  
27 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,  
28

1 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the  
2 following addresses:

3 To Cascade Designs:

4 Eric Hobbs, General Counsel  
5 Cascade Designs, Inc.  
6 4000 1<sup>st</sup> Avenue S.  
7 Seattle, WA 98134

To Moore:

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

8 With a Copy To:

9 Bruce Nye, Esq.  
10 Sacll Rasmussen  
11 1901 Harrison Street, 14<sup>th</sup> Floor  
12 Oakland, CA 94612

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

15 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

19 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

20 Moore and his counsel agree to comply with the reporting form requirements referenced in  
21 California Health and Safety Code § 25249.7(f).

22 **11. ENTIRE AGREEMENT**

23 This Consent Judgment contains the sole and entire agreement and understanding of the  
24 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
25 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and  
26 therein. There are no warranties, representations, or other agreements between the Parties except as  
27 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those  
28 specifically referred to in this Consent Judgment have been made by any Party hereto. No other  
agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to  
exist or to bind any of the Parties hereto.

1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their  
7 respective Parties and have read, understood, and agreed to all of the terms and conditions of this  
8 Consent Judgment.

9  
10 **AGREED TO:**

**AGREED TO:**

11 Date: 4/19/2019

Date: 04.18.2019

12  
13 By:   
14 JOHN MOORE

13 By:   
14 {Def Signatory}  
15 CASCADE DESIGNS, INC.