

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
3 Brian Johnson, State Bar No. 235965
4 THE CHANLER GROUP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565
8 Telephone: (510) 848-8880
9 Facsimile: (510) 848-8118
10 Attorneys for Plaintiff
11 JOHN MOORE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 UNLIMITED CIVIL JURISDICTION

12 JOHN MOORE

13 Plaintiff

14 v.

15 GIBSON OVERSEAS, INC.,

16 Defendant.

Case No. 115CV283507

**[PROPOSED] CONSENT
JUDGMENT**

Action Filed: July 24, 2015

1
2 **1. INTRODUCTION**

3 **1.1 John Moore and Gibson Overseas, Inc.**

4 This Consent Judgment is entered into by and between John Moore (“Moore”) and
5 Gibson Overseas, Inc. (“Gibson”), with Moore and Gibson collectively referred to as the “Parties.”

6 **1.2 John Moore**

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

10 **1.3 Gibson Overseas, Inc.**

11 Gibson 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 &
13 Safety Code §§ 25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Gibson has manufactured, imported, sold and/or distributed for sale
16 in California, products with soft touch vinyl/PVC components containing di(2-ethylhexyl)phthalate
17 (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California
18 to cause cancer and birth defects and other reproductive harm.

19 **1.5 Listed Chemicals**

20 DEHP is a phthalate chemical listed under Proposition 65 as a chemical known to the
21 State of California to cause birth defects or other reproductive harm. Other phthalate chemicals listed
22 under Proposition 65 as chemicals known to the State of California to cause birth defects or other
23 reproductive harm include, but are not limited to, butyl benzyl phthalate (“BBP”), di-n-butyl
24 phthalate (“DBP”) and Di-isodecyl phthalate (“DIDP”). In addition, DEHP and Diisononyl phthalate
25 (“DINP”) have been listed under Proposition 65 as chemicals known to the State of California to
26 cause cancer. DEHP, BBP, DBP, DIDP and DINP are collectively referred to herein as the “Listed
27 Chemicals.”
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2 **1.6 Product Description**

3 The products that are covered by this Settlement Agreement are defined as household
4 and kitchen accessories with vinyl/PVC gripping components including, but not limited to, Clip Item
5 #9136701, UPC #0 85081 14548 2, and which are or have been manufactured, imported, sold and/or
6 distributed for sale in California by Gibson (hereinafter the “Products”). Gibson has in the past
7 manufactured, imported, acquired, sold and/or distributed for sale in California a variety of additional
8 household and kitchen accessories which may have contained DEHP or other phthalates listed under
9 Proposition 65, including (a) cookware sets or travel mugs with soft touch vinyl/PVC components,
10 and (b) kitchen gadgets and tools with soft touch vinyl/PVC components (“Additional Products”).

11 **1.7 Notice of Violation**

12 On May 21, 2015, Moore served Gibson and certain requisite public enforcement
13 agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of
14 alleged violations of Proposition 65 based on Gibson’s alleged failure to warn its customers,
15 consumers, and other individuals that the Products exposed users in California to DEHP. To the best
16 of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the
17 allegations set forth in the Notice.

18 **1.8 Complaint**

19 As no authorized public prosecutor of Proposition 65 filed a claim against Gibson
20 based on the allegations set forth in the Notice within 60 days of its issuance, Moore filed a complaint
21 on July 24, 2015 in the Superior Court of California for the County of Santa Clara (the “Court”),
22 *Moore v. Gibson Overseas, Inc., et al.*, Case No. 115CV283507, naming Gibson as a defendant and
23 alleging claims for violations of Health and Safety Code section 25249.6, based on the alleged
24 exposures to DEHP in Products distributed for sale or sold by Gibson in the State of California
25 (hereinafter “Action” or “Complaint”).

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that the Court has
28 subject matter jurisdiction over the allegations in the Complaint and personal jurisdiction over Gibson
as to the allegations in the Complaint, that venue is proper in the County of Santa Clara, and that the

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2 Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

3 **1.10 No Admission**

4 Gibson denies the material, factual, and legal allegations contained in Moore’s Notice
5 and Complaint and maintains that all products that it has sold, manufactured, imported and/or
6 distributed in California, including the Products and Additional Products, have been and are in
7 compliance with all laws. Nothing in this Consent Judgment is or shall be construed as an admission
8 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
9 with the Consent Judgment constitute or be construed as an admission by Gibson of any fact,
10 conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or
11 otherwise affect Gibson’s obligations, responsibilities, and duties under this Consent Judgment.

12 **1.11 Effective Date**

13 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
14 on which this Consent Judgment is approved by the Court, including any tentative ruling that is
15 unopposed.

16 **2. INJUNCTIVE RELIEF**

17 **2.1 Reformulation Standards**

18 Reformulated Products are defined as those containing DEHP in concentrations at or less than
19 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection
20 Agency (“EPA”) testing methodologies 3580A and 8270C or any other methodology utilized by
21 federal or state agencies for the purpose of determining the DEHP content in a solid substance.

22 **2.2 Reformulation Commitment**

23 As of the Effective Date, all Products manufactured, imported, or acquired for sale in
24 the State of California by Gibson shall qualify as Reformulated Products as defined in Section 2.1
25 above. Gibson shall label all previously-acquired Products remaining in its inventory with the
26 following Proposition 65 warning by means of affixing a warning to the packaging of, or, if no
27 packaging exists, directly on, each non-reformulated Product sold in California that states:
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2 **WARNING:** This product contains DEHP, a chemical known
3 to the State of California to cause cancer, and
 birth defects and other reproductive harm.¹

4 Any warning issued pursuant to this Section 2.2 shall be prominently placed with such
5 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
6 to be read and understood by an ordinary individual under customary conditions before purchase.

7 **2.3 Extended Reformulation Commitment**

8 As of November 30, 2015, Gibson shall no longer knowingly manufacture, import, or
9 acquire for sale in the State of California any Products or Additional Products containing any Listed
10 Chemicals in concentrations greater than 1,000 parts per million each when analyzed pursuant to U.S.
11 Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or any other
12 methodology utilized by federal or state agencies for the purpose of determining the phthalate content
13 in a solid substance. Such Products and Additional Products are deemed “Phthalate Free” hereunder.

14 **3. MONETARY PAYMENTS**

15 **3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(b)**

16 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the matters
17 referred to in this Consent Judgment and addressed in Section 2 above, Gibson shall pay civil
18 penalties totaling \$28,000 in two separate installments. The \$28,000 penalty amount reflects a
19 reduction of \$18,000 due to Gibson’s commitment to Extended Reformulation under Section 2.3
20 above. Each civil penalty payment Gibson makes shall be allocated according to Health & Safety
21 Code § 25249.12(c)(1) and (d) with 75% of the penalty amount paid to the California Office of
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25 _____
26 ¹ Gibson may substitute the word “chemicals” for “DEHP, a chemical” where it has obtained
27 information indicating that a Product contains DEHP in amount that meets the Reformulation Standard set
28 forth in Section 2.1 above, but has reason to believe the Product contains other Proposition 65-listed chemicals
at levels at which a warning is likely required if the Product is sold in California. Gibson may also add the
term “and other chemicals” to the above warning statement where it has reason to believe the Product contains
both DEHP and other Proposition 65-listed chemicals.

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2 Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% of the penalty paid
3 to Moore.

4 **3.1.1 Initial Civil Penalty**

5 On or before five (5) days following the mutual execution of this Consent Judgment
6 by the Parties, Gibson shall deposit an initial civil penalty amount of \$4,000 in its counsel’s client
7 trust account, which shall be held pending the Court’s approval of this Consent Judgment. Gibson or
8 its counsel shall provide The Chanler Group with written confirmation within five days of the funds
9 being so deposited. Within five days of the date that this Consent Judgment is approved by the
10 Court, counsel for Gibson shall direct its client trust account to issue two separate checks for the
11 initial civil penalty payment to: (a) “OEHHA” in the amount of \$3,000; and (b) “John Moore, Client
12 Trust Account” in the amount of \$1,000. The checks shall then be transmitted to the address show in
13 Section 3.3.A below.

14 **3.1.2 Final Civil Penalty**

15 Gibson will make a final civil penalty payment of \$24,000 by no later than January 31,
16 2016. Pursuant to title 11 California Code of Regulations, section 3203(c), this final civil penalty
17 payment shall be waived, however, if by no later than September 30, 2015, a duly authorized official
18 of Gibson certifies in writing to Moore that it has implemented the Phthalate Free requirements for
19 the Products and Additional Products on or before that date. Time is of the essence with respect to
20 the date identified for the provision of the certification to implementing reformulation for the
21 Products and Additional Products in lieu of making the final civil penalty payment under this
22 subsection. Unless waived, the final penalty payment shall be allocated according to Health & Safety
23 Code § 25249.12(c)(1) and (d) with 75% of the penalty amount paid to OEHHA, and the remaining
24 25% of the penalty paid to Moore, and it shall be delivered to the address listed in Section 3.3.A
25 below.

26 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

27 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
28 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 the agreement had been settled. Shortly after all other

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2 settlement terms had been finalized, Gibson expressed a desire to resolve the fees and costs. The
3 Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
4 counsel under general contract principles and the private attorney general doctrine codified at Code
5 of Civil Procedure section 1021.5 for all work performed or to be performed by Moore and his
6 counsel in this matter, exclusive of fees and costs incurred on appeal, if any. Under these legal
7 principles, on or before five (5) days following the mutual execution of this Consent Judgment by the
8 Parties, Gibson shall issue a check in the amount of \$36,000 to its counsel's client trust account,
9 which shall be held pending the Court's approval of this Consent Judgment. Gibson or its counsel
10 shall provide The Chanler Group with written confirmation within five days of the funds being
11 deposited as specified above. Within five days of the date that this Consent Judgment is approved by
12 the Court, counsel for Gibson shall direct its client trust account to issue a check payable to "The
13 Chanler Group" in the amount of \$36,000 and send it to the address found in Section 3.3.A below.

14 **3.3 Payment Procedures**

15 **3.3.A Issuance of Payments.**

16 All payments owed pursuant to Section 3.1 and 3.2 shall be delivered to the following
17 address:

18 The Chanler Group
19 Attn: Proposition 65 Controller
20 (Moore v. Gibson Consent Judgment)
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 **3.3.B Court Approval; Reimbursement.** If the Court does not approve the Consent
25 Judgment, all funds tendered into any trust or escrow account, or otherwise received by The Chanler
26 Group from Gibson in settlement of this Action, shall be refunded in full as required by Section 6
27 below.

28 **4. CLAIMS COVERED AND RELEASED**

4.1 Plaintiff's Public Release of Proposition 65 Claims

In consideration of the promises and commitments contained herein, Plaintiff on
behalf of himself and in the public interest, hereby releases Gibson, its parents, subsidiaries, affiliated

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2 entities that are under common ownership or control, directors, officers, employees, and attorneys
3 (“Releasees”), and each entity to whom they directly or indirectly distribute or sell Products,
4 including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative
5 members, licensors, and licensees (“Downstream Defendant Releasees”), from all claims for
6 violations of Proposition 65 based on unwarned exposure to DEHP from Products acquired,
7 distributed or sold by Gibson prior to the Effective Date. Upon entry of this Consent Judgment by
8 the Court, going forward, Gibson’s compliance with the terms of Section 2.1 of this Consent
9 Judgment shall be deemed to constitute compliance with Proposition 65 with respect to DEHP in the
10 Products.

11 **4.2 Plaintiff’s Release of Additional Claims**

12 Moore, in his individual capacity only and *not* in his representative capacity, also
13 provides a release to Gibson, its Releasees, and its Downstream Defendant Releasees which shall be
14 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
15 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of
16 Moore of any nature, character or kind, whether known or unknown, suspected or unsuspected,
17 arising out of alleged or actual exposures to the Listed Chemicals in the Products or Additional
18 Products acquired, distributed, or sold by Gibson before the Effective Date. Upon entry of this
19 Consent Judgment by the Court, going forward, Gibson’s compliance with the terms of Section 2 of
20 this Consent Judgment shall be deemed to constitute compliance with Proposition 65 with respect to
21 Listed Chemicals in the Products and Additional Products.

22 **4.3 Gibson’s Release of Moore**

23 Gibson on behalf of itself, its past and current agents, representatives, attorneys,
24 successors and/or assignees, hereby waives any and all claims against Moore, his attorneys, and other
25 representatives for any and all actions taken or statements made (or those that could have been taken
26 or made) by Moore and his attorneys and other representatives, whether in the course of investigating
27 claims or otherwise seeking enforcement of Proposition 65 against Gibson in this matter.
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2 **5. SEVERABILITY**

3 If, subsequent to the Court’s approval of this Consent Judgment, any of the provisions
4 contained herein are held by a court to be unenforceable, the validity of the enforceable provisions
5 remaining shall not be adversely affected unless the Court finds that any unenforceable provision is
6 not severable from the remainder of the Consent Judgment.

7 **6. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court
9 and shall be null and void if, for any reason, it is not approved and entered by Court within twelve
10 months of it being fully executed by the Parties, at which time, any funds being held in Trust or in
11 escrow for purposes of this agreement shall be fully reimbursed to Gibson.

12 **7. GOVERNING LAW**

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

21 **8. ENFORCEMENT**

22 Any Party may, by motion or application for an order to show cause before this Court,
23 enforce the terms and conditions contained in this Consent Judgment.

24 **9. NOTICES**

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

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2 To Moore:

3 The Chanler Group
4 Attn: Proposition 65 Coordinator
(Moore v. Gibson Consent Judgment)
5 Parker Plaza
6 2560 Ninth Street, Suite 214
Berkeley, CA 94710

7 To Gibson:

8 Solomon Gabbay - CFO
9 Gibson Overseas, Inc.
2410 Yates Ave
10 Commerce, CA 90040

11 with a copy to

12 Robert Falk
13 Morrison & Foerster LLP
425 Market Street, 32nd Floor
14 San Francisco, CA 94105

15 Any Party may modify the person and address to whom the notice is to be sent by sending each other
16 Party notice by mail and/or other verifiable form of written communication.

17 **10. MODIFICATION**

18 Except as provided in this Section, this Consent Judgment may be modified only by a
19 written agreement of the Parties and upon entry of a modified Consent Judgment by the Court
20 thereon or by the Court upon motion for good cause shown and entry of a modified Consent
21 Judgment by the Court.

22 **11. ADDITIONAL POST-EXECUTION ACTIVITIES**

23 Moore agrees to comply with the reporting form requirements referenced in Health
24 and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to California
25 Health & Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of this
26 Consent Judgment. In furtherance of obtaining such approval, Moore shall take the lead on drafting
27 the required motion and the Parties and their respective counsel agree to mutually employ their best
28 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the
Consent Judgment by the Court in a timely manner. For purposes of this paragraph, “best efforts”

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shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval. If any third party objection to the noticed motion is filed, Moore and Gibson shall work together through counsel to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the parties. No representations, oral or otherwise, express or implied, other than those contained herein, have been made by any party hereto. No other agreements shall be deemed to exist or to bind any of the parties.

13. COUNTERPARTS, FACSIMILE SIGNATURES

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

14. AUTHORIZATION

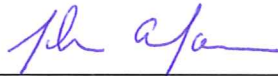
Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

AGREED TO:

AGREED TO:

Date: July 30, 2015

Date: _____

By: 
John Moore

By: _____
Solomon Gabbay, CFO
Gibson Overseas, Inc.

1 shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the
2 required motion for judicial approval. If any third party objection to the noticed motion is filed,
3 Moore and Gibson shall work together through counsel to file a joint reply and appear at any hearing
4 before the Court. This provision is a material component of the Consent Judgment and shall be
5 treated as such in the event of a breach.
6

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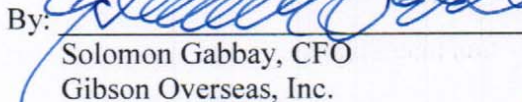
21 AGREED TO:

AGREED TO:

22 Date: _____

22 Date: 7/29/2015

23 By: _____
24 John Moore

23 By: 
24 Solomon Gabbay, CFO
25 Gibson Overseas, Inc.
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