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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 JOHN MOORE,
13 Plaintiff,
14 v.
15 HUNTER'S SPECIALTIES, INC.; and
DOES 1-150, inclusive,
16 Defendants.
17

Case No. RG 16830936

[PROPOSED] CONSENT JUDGMENT

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

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”) and
4 defendant Hunter’s Specialties, Inc. (“HSI”), with Moore and HSI each referred to individually as a
5 “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 and commercial products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Moore alleges that HSI manufactures, imports, sells and/or distributes for sale in California,
16 products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without first providing
17 a health hazard warning required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are vinyl/PVC tool grips containing DEHP
20 that are manufactured, imported, sold, or distributed for sale in California by HSI including, but not
21 limited to, *Hunter’s Specialties Saw & Ratchet Pruner, Model 00633, Z00633, UPC #0 21291*
22 *00633 5*, hereinafter the “Products.”

23 **1.6 Notice of Violation**

24 On May 26, 2016, Moore served HSI and the requisite public enforcement agencies with a
25 60-Day Notice of Violation (the “Notice”), alleging that HSI violated Proposition 65 when it failed
26 to warn its customers and consumers in California that the Products expose users to DEHP. To the
27 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an
28 action to enforce the allegations set forth in the Notice.

1 **1.7 Complaint**

2 On September 13, 2016, Moore filed a complaint in the Superior Court in and for the
3 County of Alameda against HSI and Does 1 through 150, *Moore v. Hunter’s Specialties, Inc., et al.*,
4 Case No. RG 16830936 (“Complaint”), alleging violations of Proposition 65, based on the alleged
5 exposure to DEHP contained in certain vinyl/PVC tool grips manufactured, imported, sold or
6 distributed for sale in California by HSI.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over HSI as to the allegations contained in the Complaint, that venue is proper in the
19 County of Alameda, 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
23 the Court grants the motion for approval of this Consent Judgment, including any unopposed
24 Tentative Ruling.

25 **2. INJUNCTIVE SETTLEMENT TERMS**

26 **2.1 Reformulation Standards**

27 “Reformulated Products” are defined as those Products containing DEHP in concentrations
28 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental

1 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by
2 federal or state government agencies for the purpose of determining DEHP content in a solid
3 substance.

4 **2.2 Reformulation Commitment**

5 As of the Effective Date all Products manufactured, imported, distributed, sold and/or
6 offered for sale in the State of California by HSI shall be Products that qualify as Reformulated
7 Products as defined in Section 2.1, or shall carry appropriate health hazard warnings per section 2.3,
8 below.

9 **2.3 Product Warnings**

10 Commencing on or before the Effective Date, HSI shall provide clear and reasonable
11 warnings for all Products as set forth in subsections 2.3(a) and (b) for all Products that do not
12 qualify as Reformulated Products. Each warning shall be prominently placed with such
13 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
14 to be read and understood by an ordinary individual under customary conditions before purchase or
15 use. Each warning shall be provided in a manner such that the consumer or user understands to
16 which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

17 **(a) Retail Store Sales.**

18 **(i) Product Labeling.** HSI shall affix a warning to the packaging, labeling, or
19 directly on each Product provided for sale in retail outlets in California that states:

20 WARNING: This product contains DEHP, a chemical
21 known to the State of California to cause
22 birth defects and other reproductive harm.

23 **(b) Mail Order Catalog and Internet Sales.** In the event that HSI sells Products via
24 mail order catalog and/or the internet to customers located in California after the Effective Date that
25 are not Reformulated Products, HSI shall provide warnings for such Products sold via mail order
26 catalog or the internet to California residents. Warnings given in the mail order catalog or on the
27 internet shall identify the *specific* Product to which the warning applies as further specified in
28 Sections 2.3(b)(i) and (ii).

1 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order
2 catalog shall be in the same type size or larger than the Product description text within the catalog.
3 The following warning shall be provided on the same page and in the same location as the display
4 and/or description of the Product:

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

8 Where it is impracticable to provide the warning on the same page and in the same location
9 as the display and/or description of the Product, HSI may utilize a designated symbol to cross
10 reference the applicable warning and shall define the term “designated symbol” with the following
11 language on the inside of the front cover of the catalog or on the same page as any order form for
12 the Product(s):

13 WARNING: Certain products identified with this symbol ▼
14 and offered for sale in this catalog contain DEHP,
15 a chemical known to the State of California
16 to cause birth defects and other reproductive harm.

17 The designated symbol must appear on the same page and in close proximity to the display
18 and/or description of the Product. On each page where the designated symbol appears, HSI must
19 provide a header or footer directing the consumer to the warning language and definition of the
20 designated symbol.

21 (ii) **Internet Website Warning.** A warning shall be given in conjunction with
22 the sale of the Products via the internet, which warning shall appear either: (a) on the same web
23 page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)
24 on the same page as the price for any Product; or (d) on one or more web pages displayed to a
25 purchaser during the checkout process. The following warning statement shall be used and shall
26 appear in any of the above instances adjacent to or immediately following the display, description,
27 or price of the Product for which it is given in the same type size or larger than the Product
28 description text:

29 WARNING: This product contains DEHP, a
30 chemical known to the State of California
31 to cause birth defects and other reproductive harm.

1 Alternatively, the designated symbol may appear adjacent to or immediately following the
2 display, description, or price of the Product for which a warning is being given, provided that the
3 following warning statement also appears elsewhere on the same web page, as follows:

4 WARNING: Certain products identified with this
5 symbol ▼ and offered for sale in this
6 catalog contain DEHP, a chemical
 known to the State of California to cause birth
 defects and other reproductive harm.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Payments Pursuant to Health and Safety Code section 25249.7(b)(2)**

9 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all
10 the claims referred to in this Consent Judgment, HSI shall pay \$4,000 in civil penalties in
11 accordance with this Section. Each penalty payment will be allocated in accordance with California
12 Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the
13 California Office of Environmental Health Hazard Assessment (“OEHHA”) by Moore. HSI shall
14 provide its payment in a check made payable to “John Moore, Client Trust Account” in the amount
15 of \$1,000, and a check made payable to “OEHHA” in the amount of \$3,000, to be delivered to the
16 address provided in Section 3.3, within two (2) business days of the Effective Date. Moore’s
17 counsel shall be responsible for remitting HSI’s penalty payment(s) under this Consent Judgment to
18 OEHHA.

19 **3.2 Reimbursement of Attorneys’ Fees and Costs**

20 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
21 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
22 to be resolved after the material terms of the agreement had been settled. Shortly after the other
23 settlement terms had been finalized, HSI expressed a desire to resolve Moore’s fees and costs. The
24 Parties then negotiated a resolution of the compensation due to Moore and his counsel under
25 general contract principles and the private attorney general doctrine codified at California Code of
26 Civil Procedure section 1021.5. For all work performed through the mutual execution of this
27 agreement and the Court’s approval of the same, but exclusive of fees and costs on appeal, if any,
28 HSI shall reimburse Moore and his counsel \$23,000. The reimbursement shall cover all fees and

1 costs incurred by Moore investigating, bringing this matter to HSI's attention, litigating, and
2 negotiating a settlement of the matter in the public interest.

3 **3.3 Payment Address**

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

6 The Chanler Group
7 Attn: Proposition 65 Controller
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 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 HSI and its parents,
14 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
15 attorneys ("Releasees") and each entity to whom HSI directly or indirectly distributes or sells the
16 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
17 franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any
18 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
19 manufactured, imported, distributed or sold by HSI prior to the Effective Date, as set forth in the
20 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
21 Proposition 65 by HSI with respect to the alleged or actual failure to warn about exposures to
22 DEHP from Products manufactured, sold or distributed for sale by HSI after the Effective Date.

23 **4.2 Moore's Individual Release of Claims**

24 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
25 release to HSI, Releasees, and Downstream Releasees which shall be effective as a full and final
26 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
27 attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character
28 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual

1 exposures to DEHP in Products manufactured, imported, distributed or sold by HSI before the
2 Effective Date.

3 **4.3 HSI's Release of Moore**

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

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and
12 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
13 after it has been fully executed by all Parties. Moore and HSI agree to support the entry of this
14 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
15 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
16 noticed motion is required for judicial approval of this Consent Judgment, which motion Moore
17 shall draft and file and HSI shall support, appearing at the hearing if so requested. If any third-party
18 objection to the motion is filed, Moore and HSI agree to work together to file a reply and appear at
19 any hearing. This provision is a material component of this Consent Judgment and shall be treated
20 as such in the event of a breach.

21 **6. SEVERABILITY**

22 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
23 any provision of this Consent Judgment is Moore by a court to be unenforceable, the validity of the
24 remaining provisions shall not be adversely affected.

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California
27 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
28 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then HSI may

1 provide Moore with written notice of any asserted change in the law, and shall have no further
2 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
3 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve HSI from its
4 obligation to comply with any pertinent state or federal law or regulation.

5 **8. NOTICE**

6 Unless specified herein, all correspondence and notice required by this Consent Judgment
7 shall be in writing and sent by: (i) personal delivery; (ii) first-class registered or certified mail,
8 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
9 following addresses:

10 To HSI:

11 Sandra A. Edwards, Esq.
12 Farella Braun + Martel LLP
13 235 Montgomery Street
14 17th Floor
San Francisco, CA 94104

To Moore:

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

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

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

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

21 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

22 Moore and his counsel agree to comply with the reporting form requirements referenced in
23 California Health and Safety Code section 25249.7(f).

24 **11. MODIFICATION**

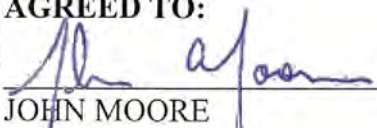
25 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
26 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
27 any party and the entry of a modified Consent Judgment by the Court thereon.

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1 **12. AUTHORIZATION**

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

5
6 **AGREED TO:**
7 
8 JOHN MOORE

9 Dated: 3/2/2017

AGREED TO:

HUNTER'S SPECIALTIES, INC.

By: Brian Grant
(Print Name)

Its: CFO
(Title)

Dated: 2/24/17

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