

1 Josh Voorhees, State Bar No. 241436
Kimberly Gates, State Bar No. 282369
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

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6 Attorneys for Plaintiff
JOHN MOORE
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

12 JOHN MOORE,
13 Plaintiff,
14 v.
15 WRIGHT & MCGILL CO., *et al.*
16 Defendants.

CASE NO. CIV1503343
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*)

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1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”), and Wright & McGill Co. (“Wright & McGill”), with Moore and Wright & McGill each individually referred to as a “Party” and collectively as the “Parties.”

1.2 Plaintiff

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

1.3 Wright & McGill

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

1.4 General Allegations

Moore alleges that Wright & McGill imports, sells, or distributes for sale in California, knives with vinyl/PVC grips that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.5 Product Description

The products covered by this Consent Judgment are knives with vinyl/PVC grips containing DEHP that are imported, sold, or distributed for sale in California by Wright & McGill including, including, but not limited to, the *Eagle Claw Soft Handle Fillet Knife, ECK6, KSH-6, UPC #0 83941 05400 4*, hereinafter the “Products”.

1.6 Notice of Violation

On or about May 21, 2015, Moore served Wright & McGill, and the requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Wright & McGill violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. To the best of the Parties’

1 knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce
2 the violations alleged in the Notice.

3 **1.7 Complaint**

4 On September 10, 2015, Moore filed the instant action (“Complaint”) naming Wright &
5 McGill as a defendant for the alleged violations of Health and Safety Code § 25249.6 that are the
6 subject of the Notice.

7 **1.8 No Admission**

8 Wright & McGill denies the material, factual, and legal allegations contained in the Notice
9 and Complaint, and maintains that all of the products it has sold and distributed for sale in
10 California, including the Products, have been, and are, in compliance with all laws. Nothing in
11 this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
12 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
13 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.
14 This Section shall not, however, diminish or otherwise affect Wright & McGill’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 Wright & McGill as to the allegations contained in the Complaint, that venue is
19 proper in the County of Marin, and that the Court has jurisdiction to enter and enforce the
20 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure §
21 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
24 the Motion for Approval of the Consent Judgment is granted by the Court.

25 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

26 **2.1 Reformulated Products**

27 “Reformulated Products” are defined as those Products containing a maximum of 1,000
28 parts per million (“ppm”) of DEHP by weight in any accessible component (i.e., any component

1 that can be touched or handled during reasonably foreseeable use) when analyzed pursuant to
2 Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology
3 utilized by federal or state government agencies for the purpose of determining DEHP content in a
4 solid substance.

5 **2.2 Reformulation Commitment**

6 As of the Effective Date, all Products manufactured for sale and/or sold in the State of
7 California by Wright & McGill shall be Products that qualify as Reformulated Products, as
8 defined in Section 2.1 above, or shall carry the Proposition 65 warnings in accord with Section 2.3
9 below, except for those Products already in the stream of commerce, as provided for in Section
10 2.4, below.

11 **2.3 Clear and Reasonable Warnings**

12 As of the Effective Date, Wright & McGill shall provide clear and reasonable warnings for
13 all Products that do not qualify as Reformulated Products.

14 **2.3.1 General Warning Requirements**

15 Each warning shall be prominently placed with such conspicuousness as compared
16 with other words, statements, designs, or devices as to render it likely to be read and understood
17 by an ordinary individual under customary conditions before purchase or use. Each warning shall
18 be provided in a manner such that the consumer or user understands to which *specific* Product the
19 warning applies, so as to minimize the risk of consumer confusion.

20 **2.3.2 Product Warnings**

21 Wright & McGill shall affix a warning to the packaging, labeling or directly on
22 each Product provided for sale in retail outlets in California that states:

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

26 Or

27 **WARNING:** This product contains a chemical known to the state of
28 California to cause cancer and birth defects (or other reproductive

1 harm).

2 **2.4 Grace Period for Existing Inventory of Products**

3 Wright & McGill represents that, in July, it implemented a health hazard warning for the Products.
4 Moore agrees that, until it exhausts its current inventory of Products, Wright & McGill may
5 continue to sell and offer for sale in California those Products labeled with the following
6 statement: "Warning: This product contains a chemical known to the State of California to cause
7 cancer or birth defects and other reproductive harm."

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Civil Penalty Payments**

10 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims
11 referred to in the Notice, Complaint, and this Consent Judgment, Wright & McGill shall pay
12 \$11,500 in civil penalties. Each civil penalty payment shall be allocated according to Health and
13 Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the
14 California Office of Environmental Health Hazard Assessment ("OEHHA"), and twenty-five
15 percent (25%) of the funds remitted to Moore. Moore's counsel shall be responsible for delivering
16 OEHHA's portion of any penalty payment(s) made under this Consent Judgment to OEHHA.

17 **3.1.1 Initial Civil Penalty**

18 Wright & McGill shall make an initial civil penalty payment of \$4,000. Wright &
19 McGill shall provide its payment in a single check made payable to "John Moore, Client Trust
20 Account."

21 **3.1.2 Final Civil Penalty**

22 On June 1, 2016, Wright & McGill shall make a final civil penalty payment of
23 \$7,500. Pursuant to Title 11 California Code of Regulations, § 3203(c), Moore agrees that the
24 final civil penalty payment shall be waived in its entirety if, no later than May 15, 2016, an officer
25 of Wright & McGill provides Moore with a signed declaration certifying that all of the Products it
26 is selling or distributing for sale in California as of the date of its declaration are Reformulated
27 Products as defined by Section 2.1, or that Wright & McGill has ceased selling all Products into
28 California and that Wright & McGill will offer only Reformulated Products for sale in California

1 in the future. The option to certify to complete reformulation or cessation of sales in lieu of
2 making the final civil penalty payment required by this Section is a material term, and time is of
3 the essence.

4 **3.2 Reimbursement of Attorney's Fees and Costs**

5 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
6 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
7 to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
8 other settlement terms had been finalized, the Parties negotiated the compensation due to Moore
9 and his counsel under the private attorney general doctrine codified at California Code of Civil
10 Procedure § 1021.5 for all work performed through the mutual execution of this Consent
11 Judgment, and through court approval of the same, but exclusive of fees and costs on appeal, if
12 any. Five days after the Effective Date, Wright & McGill shall pay \$28,000 for all fees and costs
13 incurred by Moore investigating, bringing this matter to Wright & McGill's attention, litigating
14 and negotiating a settlement in the public interest.

15 **3.3 Payments Held in Trust**

16 All payments due under this Consent Judgment shall be held in trust until such time as the
17 Court approves the Parties' settlement. Except the final civil penalty payment required by
18 Section 3.1.2, all payments due under this agreement shall be delivered to Wright & McGill's
19 counsel within ten (10) days of the date that this Consent Judgment is filed in Marin County
20 Superior Court with the motion for court approval contemplated by Section 5, and held in trust by
21 Wright & McGill's counsel until the Court grants the motion for approval. Wright & McGill's
22 counsel shall confirm in writing to Moore's counsel that it has received Wright & McGill's
23 settlement payments. Within five days of the Court's approval of this Consent Judgment, Wright
24 & McGill's counsel shall deliver the initial civil penalty and attorneys' fee reimbursement
25 payments to Moore's counsel at the address in Section 3.4. In the event that the final civil
26 penalty payment required by subsection 3.1.2 has not been waived and becomes due prior to the
27 Effective Date, the penalty payment shall be tendered to Wright & McGill's counsel when due
28 and held in trust until, and disbursed within five (5) days after, the Effective Date.

1 **3.4 Payment Address**

2 All payments required by this Consent Judgment shall be delivered to:

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Moore’s Public Release of Proposition 65 Claims**

10 Moore, acting on his own behalf and in the public interest, releases Wright & McGill and
11 its parents, subsidiaries, affiliated entities under common ownership, directors, officers,
12 employees, and attorneys (“Releasees”) and each entity to whom Wright & McGill directly or
13 indirectly distributed or sold the Products including, but not limited to, its downstream
14 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
15 licensees (“Downstream Releasees”) for any violation arising under Proposition 65 pertaining to
16 the failure to warn about exposures to DEHP from Products sold or distributed for sale by Wright
17 & McGill prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
18 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
19 DEHP from Products sold or distributed for sale by Wright & McGill after the Effective Date.
20 The Parties agree and acknowledge that the releases provided under this Consent Judgment shall
21 not extend upstream to any entity that manufactured the Products, or any component parts
22 thereof, or to any entity that distributed or sold the Products, or any component parts thereof, to
23 Wright & McGill.

24 **4.2 Moore’s Individual Release of Claims**

25 Moore, in his individual capacity only and *not* in his representative capacity, also provides
26 a release to Wright & McGill, Releasees and Downstream Releasees which shall be effective as a
27 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
28 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature,
 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
 actual exposures to DEHP in Products sold or distributed for sale by Wright & McGill before the

1 Effective Date.

2 **4.3 Wright & McGill's Release of Moore**

3 Wright & McGill, on its own behalf, and on behalf of its past and current agents,
4 representatives, attorneys, successors, and assignees, hereby waives any and all claims against
5 Moore and his attorneys and other representatives, for any and all actions taken or statements
6 made by Moore and his attorneys and other representatives, whether in the course of
7 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
8 respect to the Products.

9 **5. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved and entered by the Court and
11 shall be null and void if it is not approved and entered by the Court within one year after it has
12 been fully executed by the Parties, or within such additional time as the Parties may agree to in
13 writing.

14 **6. SEVERABILITY**

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

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the state of
20 California and apply within the state of California. In the event that Proposition 65 is repealed, or
21 is otherwise rendered inapplicable by reason of law generally or as to the Products, then Wright &
22 McGill may provide written notice to Moore of any asserted change in the law, and shall have no
23 further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent
24 that, the Products are so affected.

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 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

1 For Wright & McGill:

2 Donn Schaible, President
3 Wright & McGill Co.
4 4245 East 46th Avenue
5 Denver, CO 80216

6 with a copy to:

7 James A. Geocaris, Esq.
8 Lewis Brisbois Bisgaard & Smith LLP
9 650 Town Center Drive, Suite 1400
10 Costa Mesa, CA 92626

11 For Moore:

12 Proposition 65 Coordinator
13 The Chanler Group
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710-2565

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. POST EXECUTION ACTIVITIES**

24 Moore agrees to comply with the reporting form requirements referenced in Health and
25 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
26 Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
27 furtherance of obtaining such approval, Moore shall draft and file the motion for approval, and the
28 Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry
of this agreement as a judgment, and to obtain judicial approval of their settlement in a timely
manner. For purposes of this Section, “best efforts” shall include, at a minimum, cooperating on
the drafting and filing of the necessary moving papers, supporting the motion, and appearing at the
hearing before the Court.

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and acknowledge that
7 they have read, understand, and agree to all of the terms and conditions contained herein.

8

9 **AGREED TO:**

AGREED TO:

10

11 Date: 12/21/2015

11 Date: 12/14/15

12

12 By: 
13 JOHN MOORE

12 By: 
13 DONN SCHAIBLE, President
14 WRIGHT & MCGILL CO.

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