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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.¹ (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 ¹ 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:

Date: November 22, 2010

By: *J. E. Moore*
JOHN MOORE

AGREED TO:

Date: _____

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.

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AGREED TO:

Date: _____

By: _____
JOHN MOORE

AGREED TO:

Date: 11/16/10

By: Wendell A. Cam
WESTRIM, INC.

Date: 11/16/10

By: Wendell A. Cam
CREATIVITY INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT