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Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

FILED
ALAMEDA COUNTY

JUL 06 2012

CLERK OF THE SUPERIOR COURT
By Nancy A. Poole
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

SENTRY INDUSTRIES, INC.; *et al.*,

Defendants.

) Case No.: RG11598315

) ~~PROPOSED~~ JUDGMENT PURSUANT
) TO TERMS OF PROPOSITION 65
) SETTLEMENT AND CONSENT
) JUDGMENT

) Date: July 6, 2012
) Time: 2:30 p.m.
) Dept.: 516
) Judge: Hon. Brenda Harbin-Forte
) Res. No.: R-1289851

1 In the above-entitled action, Plaintiff John Moore and Defendant Sentry Industries, Inc.,
2 having agreed that a judgment be entered pursuant to the terms of the Consent Judgment entered into
3 by the parties, and following the issuance of an order approving this Proposition 65 settlement
4 agreement on July 6, 2012:

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety
6 Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance
7 with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties,
8 the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

9
10 **IT IS SO ORDERED.**

11 **JUL 06 2012**
12 Dated: _____



JUDGE OF THE SUPERIOR COURT
BRENDA HARBIN-FORTE

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Exhibit 1

RECEIVED
MAY - 2 2012

1 Josh Voorhees, State Bar No. 241436
2 Rachel S. Doughty, State Bar No. 255904
3 Troy C. Bailey, State Bar No. 277424
4 THE CHANLER GROUP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710
8 Telephone: (510) 848-8880
9 Facsimile: (510) 848-8118

10 Attorneys for Plaintiff
11 JOHN MOORE

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 SENTRY INDUSTRIES, INC.; and DOES 1-
19 150, inclusive,

20 Defendants.

Case No. RG11598315

[PROPOSED] CONSENT JUDGMENT

(Cal. Health & Saf. Code, § 25249.6 et seq.)

1 **1. INTRODUCTION**

2 **1.1 John Moore and Sentry Industries, Inc.**

3 This Consent Judgment is entered into by and between John Moore (“Moore” or
4 “Plaintiff”) and Sentry Industries, Inc. (“Sentry” or “Defendant”), with Moore and Sentry
5 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 improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Sentry Industries, Inc.**

11 Sentry 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, Health & Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Sentry has manufactured, distributed, and/or offered for sale in
16 California watches and cases for CDs/DVDs containing di(2-ethylhexyl)phthalate (“DEHP”), and
17 cases for CDs/DVDs containing di-n-butyl phthalate (“DBP”) without the requisite Proposition 65
18 warnings. DEHP and DBP are listed pursuant to Proposition 65 as chemicals known to the State
19 of California to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are: (1) cases for CDs/DVDs
22 distributed or sold by Sentry, directly or through others to consumers in California, that contain
23 DEHP including, but not limited to, *Sentry 36 Disc Capacity CD/DVD Wallet, CD036-NU (#0*
24 *80068 50036 0)*, *Sentry 96 Disc Capacity CD/DVD Wallet, CD096-NU (#0 80068 50096 4)*, and
25 *Sentry 208 Disc Capacity CD/DVD Wallet, CD200-NU (#0 80068 50200 5)* and cases for
26 CDs/DVDs distributed or sold by Sentry, directly or through others, to consumers in California,
27 that contain DEHP and DBP including, but not limited to, *Sentry 36 Disc Capacity CD/DVD*
28 *Wallet, CD036-NU (#0 80068 50036 0)* (hereinafter collectively referred to as “Case Products”);

1 (2) watches distributed or sold by Sentry, directly or through others to consumers in California,
2 that contain DEHP including, but not limited to, *Sentry Calculator Bonus Pack with Watch*,
3 *CA339 (#0 80068 20339 1)* (hereinafter “Watch Products” and collectively Watch Products and
4 Case Products referred to hereinafter as “Products”) and (3) calculators, flashlights, and
5 clocks/radios containing DEHP, manufactured, imported, distributed, sold, and/or offered for sale
6 by Sentry (hereinafter referred to as “Additional Products”).

7 **1.6 Notices of Violation**

8 On or about March 17, 2011, Moore served Sentry and various public enforcement
9 agencies with a document entitled 60-Day Notice of Violation that provided recipients with notice
10 that alleged that Sentry was in violation of Proposition 65 for failing to warn consumers that the
11 cases for CDs/DVDs exposed users in California to DEHP. On or about July 20, 2011, Moore
12 served Sentry and various public enforcement agencies with a Supplemental 60-Day Notice of
13 Violation that provided recipients with notice that alleged that Sentry was in violation of
14 Proposition 65 for failing to warn consumers that its CDs/DVDs exposed users in California to
15 DEHP and DBP and that its watches exposed users in California to DEHP. The March 17, 2011,
16 60-Day Notice of Violation and the July 20, 2011, Supplemental 60-Day Notice of Violation will
17 hereinafter be referred to as the “Notices.”

18 **1.7 Complaint**

19 On October 4, 2011, Moore filed a complaint in the Superior Court in and for the County
20 of Alameda against Sentry and Does 1 through 150, *Moore v. Sentry Industries, Inc., et al.*, Case
21 No. RG11598315 (the “Complaint” or “Action”), alleging violations of Proposition 65, based on
22 the alleged exposures to DEHP and/or DBP contained in certain cases for CDs/DVDs and DEHP
23 in watches sold by Sentry.

24 **1.8 No Admission**

25 Sentry denies the material, factual and legal allegations contained in the Notices and
26 Complaint and maintains that all products that it has sold in California, including the Products,
27 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
28

1 construed as an admission by Sentry of any fact, finding, conclusion of law, issue of law, or
2 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
3 an admission by Sentry of any fact, finding, conclusion of law, issue of law, or violation of law,
4 such being specifically denied by Sentry. However, this Section shall not diminish or otherwise
5 affect Sentry's obligations, responsibilities and duties under this Consent Judgment.

6 **1.9 Consent to Jurisdiction**

7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
8 jurisdiction over Sentry as to the allegations contained in the Complaint, that venue is proper in
9 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
10 this Consent Judgment, pursuant to California Code of Civil Procedure section 664.6, as a full and
11 binding resolution of all claims that were or could have been raised in the Complaint against
12 Sentry based on the facts alleged therein and in the Notices.

13 **1.10 Effective Date**

14 For purposes of this Consent Judgment, the term "Effective Date" shall mean April 27,
15 2012.

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

17 **2.1 Reformulation Standards**

18 Reformulated Products are defined as those Products and Additional Products containing
19 DEHP and DBP in concentrations less than 0.1 percent (1,000 parts per million) each, pursuant to
20 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other
21 methodology commonly utilized by federal or state agencies for the purpose of determining the
22 DEHP and DBP content in a solid substance. Sentry has already begun implementing the
23 reformulation standards, and some of its Products and Additional Products may currently qualify as
24 Reformulated Products.

25 **2.2 Reformulation Commitment**

26 As of the Effective Date, all Watch Products manufactured, imported, distributed, sold or
27 offered for sale in the State of California by Sentry shall be Products that qualify as Reformulated
28 Products as defined in Section 2.1 above. All Products other than Watch Products shall qualify as

1 Reformulated Products as defined in Section 2.1, or if they do not qualify as Reformulated Products
2 shall carry the Proposition 65 health hazard warnings as further set forth in Section 2.3 below.

3 **2.3 Product Warnings**

4 Commencing on October 15, 2012, Sentry shall, for all Products and Additional Products
5 other than Reformulated Products, provide clear and reasonable warnings as set forth in subsection
6 2.3.1. The Parties hereby acknowledge and agree that Sentry has already implemented a labeling
7 program ("The Current Warning Label") that uses the following language:

8 **WARNING:** This product contains chemicals known to the
9 State of California to cause cancer, and birth defects
and other reproductive harm.

10 Therefore, the Parties agree that Sentry need not re-label any Products and Additional
11 Products containing such warning as of the Effective Date. No later than October 15, 2012, however,
12 Sentry shall use the specific language provided in subsection 2.3.1 below for all Products and
13 Additional Products that do not qualify as Reformulated Products. In all cases each warning shall be
14 prominently placed with such conspicuousness as compared with other words, statements, designs, or
15 devices as to render it likely to be read and understood by an ordinary individual under customary
16 conditions before purchase or use. Each warning shall be provided in a manner such that the
17 consumer or user understands to which *specific* Product and Additional Product the warning applies,
18 so as to minimize the risk of consumer confusion.

19 **2.3.1** As of October 15, 2012, Sentry shall provide a warning that is affixed to the
20 packaging of, or if no packaging exists, directly on, all Products and Additional Product that do not
21 qualify as Reformulated Products ("The New Warning Label"), that includes one of the statements in
22 (a) or one of the statements in (b), as follows:

23 (a) If the Product and/or Additional Product contain DEHP:

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

26 (b) If the Product and/or Additional Product contain DEHP and DBP:

27 **WARNING:** This product contains DEHP and DBP, phthalate
28 chemicals known to the State of California to
cause birth defects and other reproductive harm.

1 For Products and Additional Products sold by Sentry by catalog or via the internet or by
2 telephone, Sentry shall advise the purchaser that he or she may return the Product for a full refund
3 (including shipping costs for both the receipt and the return of the product). The information
4 regarding return of the Product and/or Additional Product required by this Section shall be
5 sufficiently conspicuous as to be read and understood by a consumer under normal conditions of
6 purchase or use.

7 **3. MONETARY PAYMENTS**

8 In settlement of the claims covered by this Consent Judgment, Sentry has been assessed civil
9 penalties in the amount of \$25,000, to be paid pursuant to Sections 3.1 and 3.2 below.

10 **3.1 Initial Civil Penalty**

11 In settlement of all the claims referred to in this Settlement Agreement, Sentry shall pay a
12 civil penalty of \$5,000. This reflects a credit of \$10,000 based on Sentry's commitment to
13 reformulate the Watch Products pursuant Section 2.2 above. The initial civil penalty shall be
14 apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of
15 these funds remitted to the State of California's Office of Environmental Health Hazard Assessment
16 ("OEHHA") and the remaining 25% of the penalty remitted to Moore.

17 **3.2 Final Civil Penalty**

18 Sentry shall pay a second and final civil penalty of \$20,000 on October 15, 2012. As
19 incentive for Sentry to reformulate its Products or utilize the new warnings, however, the final civil
20 penalty shall be waived in its entirety if an Officer of Sentry certifies in writing that it, as of October
21 1, 2012, Sentry will sell, ship and offer for sale in California only Reformulated Products or products
22 with the new warning. Such certification must be received by The Chanler Group on or before
23 October 15, 2012. The final civil penalty payment shall be apportioned in accordance with California
24 Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the
25 remaining 25% of the penalty remitted to Moore. Sentry shall issue two separate checks for the final
26 civil penalty payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in
27 the amount of \$15,000 representing 75% of the total penalty; and (b) one check to "The Chanler
28 Group in Trust for Moore" in the amount of \$5,000, representing 25% of the total penalty. Two

1 separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA,
2 95814 (EIN: 68-0284486); and (b) Moore, whose information shall be provided five calendar days
3 before the payment is due (if different than the information already provided to Sentry under Section
4 3.1 above). Payment shall be delivered to Moore's counsel at the following address:

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

8 **3.3 Reimbursement of Plaintiff's Fees and Costs**

9 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
11 this fee issue to be resolved after the material terms of the agreement had been settled. Sentry
12 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
13 had been finalized. The Parties then attempted to (and did) reach an accord on the compensation
14 due to Moore and his counsel under general contract principles and the private attorney general
15 doctrine for all work performed in this matter, except fees that may be incurred on appeal. Under
16 these legal principles, Sentry shall pay the amount of \$35,000 for fees and costs incurred
17 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to
18 be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in
19 the public interest.

20 **3.4 Payment Procedures**

21 **3.4.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.3 shall
22 be delivered on or before the Effective Date to The Chanler Group and shall be held in trust
23 pending the Court's approval of this Consent Judgment, at which time The Chanler Group shall
24 disburse the payments.

25 Payments delivered to The Chanler Group shall be made payable, as follows:

- 26 (a) One check made payable to "The Chanler Group in Trust for
27 OEHHA" in the amount of \$3,750;
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(b) One check made payable to "The Chanler Group in Trust for Moore" in the amount of \$1,250; and

(c) One check made payable to "The Chanler Group in Trust" in the amount of \$35,000.

3.4.2 Issuance of 1099 Forms. After the settlement funds have been transmitted to plaintiff's counsel and the Consent Judgment has been approved, Sentry shall issue three separate 1099 forms, as follows:

(a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$3,750;

(b) The second 1099 shall be issued to Moore in the amount of \$1,250, whose address and tax identification number shall be furnished upon request; and

(c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of \$35,000.

4. CLAIMS COVERED AND RELEASED

4.1 Moore's Public Release of Proposition 65 Claims

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3, Moore, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Moore may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees but exclusive of fees and costs on appeal) of any nature whatsoever, fixed or contingent, against Defendant and any or all or each of its downstream wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies,

1 corporate affiliated entities under common ownership (including, but not limited to, Sentry Ltd.),
2 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents,
3 and employees, and sister and parent entities (collectively "Releasees") that arise under Proposition
4 65 that was or could have been asserted by Moore, as such claims relate to Defendant's alleged
5 failure to warn about exposures to DEHP and/or DBP contained in any of the Products
6 manufactured, imported, distributed, sold and/or offered for sale by Sentry before the Effective Date
7 (collectively "claims").

8 **4.2 Moore's Individual Release of Claims**

9 Moore also, in his individual capacity only and *not* in his representative capacity, provides a
10 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
11 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
12 liabilities and demands of Moore of any nature, character or kind, known or unknown, suspected
13 or unsuspected, arising out of the subject matter of this dispute including but not limited to with
14 respect to DEHP and DBP in the Products and Additional Products. Moore acknowledges that he is
15 familiar with Section 1542 of the California Civil Code, which provides as follows:

16 A general release does not extend to claims which the creditor does not
17 know or suspect to exist in his or her favor at the time of executing the
18 release, which if known by him or her must have materially affected his
19 or her settlement with the debtor.

20 Moore, in his individual capacity only and *not* in his representative capacity, expressly
21 waives and relinquishes any and all rights and benefits which he may have under, or which may be
22 conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any
23 other state or federal statute or common law principle of similar effect, to the fullest extent that he
24 may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such
25 intention, the release hereby given shall be and remain in effect as a full and complete release
26 notwithstanding the discovery or existence of any such additional or different claims or facts arising
27 out of the released matters, as to DEHP and DBP contained in the Additional Products,
28 manufactured, distributed, sold and/or offered for sale by Sentry.

1 **4.3 Sentry's Release of Moore**

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

8 **5. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and
10 shall be null and void if, for any reason, it is not approved and entered by the Court within one
11 year after it has been fully executed by the Parties, in which event any monies that have been
12 provided to Moore or his counsel pursuant to Section 3 above shall be refunded within fifteen
13 (15) days after receiving written notice from Sentry that the one-year period has expired.

14 **6. SEVERABILITY**

15 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
16 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
17 provisions remaining 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.

21 **8. ENFORCEMENT OF CONSENT JUDGMENT**

22 Either Party may, by motion or application for an order to show cause before the Superior
23 Court of the County of Alameda, enforce the terms and conditions contained in this Consent
24 Judgment. A Party may file such motion or application only after that Party first provides thirty
25 (30) days notice to the Party allegedly failing to comply with the terms and conditions of this
26 Consent Judgment and attempt to resolve such Party's failure in an open and good faith manner
27 for a period of no less than thirty (30) days.
28

1 **9. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant
3 to this Consent Judgment shall be in writing and sent by (i) personal delivery, (ii) first-class,
4 registered or certified mail, return receipt requested, or (iii) overnight courier on any party by the
5 other party at the following addresses:

6 For Sentry:

7 Scott R. Hirsch, Esq.
8 Hirsch & Hirsch, LLP
9 64 Hilton Avenue
 Hempstead, NY 11550

10 For Moore:

11 Proposition 65 Coordinator
12 The Chanler Group
13 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

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

16 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

20 **11. POST EXECUTION ACTIVITIES**

21 Moore agrees to comply with the reporting form requirements referenced in Health &
22 Safety Code section 25249.7, subdivision (f). In addition, the Parties acknowledge that, pursuant
23 to Health & Safety Code section 25249.7, a noticed motion is required to obtain judicial approval
24 of this Consent Judgment. In furtherance of obtaining such approval, Moore and Sentry and their
25 respective counsel agree to mutually employ their best efforts to support the entry of this
26 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
27 timely manner. For purposes of this section, best efforts shall include, at a minimum, cooperating
28 on the drafting and filing of any papers in support of the required motion for judicial approval.

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12. 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.

13. COMPLIANCE

Compliance with the terms of this Consent Judgment by Sentry constitutes compliance with Proposition 65 with respect to DEHP and DBP in the Products and Additional Products.

14. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

By: John Moore

By: Daniel Rosen, Chief Executive Officer
Sentry Industries, Inc.

Date: 5/9/12

Date: 4/30/12