

HHS

RCV'D



JUN 9 - 2014

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

FILED
ALAMEDA COUNTY

JUL 28 2014

CLERK OF THE SUPERIOR COURT
By Danielle Salas
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

NORWOOD PROMOTIONAL PRODUCTS,
LLC, *et al.*,

Defendants.

Case No. RG14714826

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

DS

Date: July 25, 2014
Time: 1:30 p.m.
Dept.: 510
Judge: Hon. Delbert C. Gee

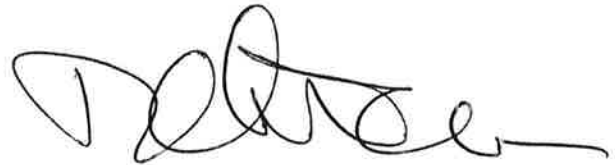
Reservation No. R-1520406

1 In the above-entitled action, plaintiff John Moore and defendant Norwood
2 Promotional Products, LLC, having agreed through their respective counsel that Judgment
3 be entered pursuant to the terms of their settlement agreement in the form of a Consent
4 Judgment, and following this Court's issuance of an Order approving this Proposition 65
5 settlement and Consent Judgment on ~~April 30, 2014~~: July 25, 2014.

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

11
12 **IT IS SO ORDERED.**

13
14 Dated: 7-28-14



JUDGE OF THE SUPERIOR COURT

Delbert C. Gee

1 **I. INTRODUCTION**

2 **1.1 John Moore and Norwood Promotional Products, LLC**

3 This Consent Judgment is entered into by and between John Moore (hereinafter “Moore”)
4 and Norwood Promotional Products, LLC (hereinafter “Norwood”), with Moore and Norwood
5 collectively referred to as the “Parties.” Moore is an individual residing in California who seeks
6 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer products. Norwood employs ten or
8 more persons and is a person in the course of doing business for purposes of the Safe Drinking
9 Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, et seq.
10 (“Proposition 65”).

11 **1.2 General Allegations**

12 Moore alleges that Norwood has manufactured, distributed, sold and offered for sale in the
13 State of California: (i) backpacks containing di(2-ethylhexyl)phthalate (“DEHP”) and di-n-butyl
14 phthalate (“DBP”); and (ii) duffel bags containing DEHP and lead. DEHP, DBP and lead are
15 listed under Proposition 65 as chemicals known to cause birth defects and other reproductive
16 harm.

17 **1.3 Product Description**

18 The products that are addressed by this Consent Judgment are (i) backpacks containing
19 DEHP and DBP including, but not limited to, the *Norwood RCC Koozie Picnic Backpack, ASI*
20 80330; and (ii) duffel bags containing DEHP and lead including, but not limited to, the *Tri-Pocket*
21 *Sport Duffel Bag, Item #658498, D42325*, both of which are manufactured, imported, distributed,
22 sold and/or offered for sale by Norwood in the State of California, hereinafter the “Products.”

23 **1.4 Notices of Violation**

24 On May 10, 2012, Moore served Norwood, others and various public enforcement
25 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the
26 recipients with notice that Norwood was in violation of California Health & Safety Code
27 § 25249.6 for failing to warn consumers that the Products exposed users in California to DEHP
28 and DBP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1 On November 15, 2013, Moore served Norwood and various public enforcement agencies
2 with a document entitled "Supplemental 60-Day Notice of Violation" ("Supplemental Notice")
3 that provided the recipients with notice that Norwood was in violation of California Health &
4 Safety Code § 25249.6 for failing to warn consumers that the Products exposed users in
5 California to DEHP and lead. No public enforcer has diligently prosecuted the allegations set
6 forth in the Supplemental Notice.

7 The Notice and the Supplemental Notice shall hereinafter collectively be referred to as the
8 "Notices."

9 **1.5 Complaint**

10 On or about February 21, 2014, Moore, acting in the interest of the general public of
11 California, filed a complaint in the Superior Court in and for the County of Alameda against
12 Norwood, and Does 1-150, *John Moore v. Norwood Promotional Products, LLC*, Case No.
13 RG14714826, alleging violations of Proposition 65, based on, *inter alia*, the alleged exposures to
14 DEHP, DBP and lead in Products ("Complaint").

15 **1.6 No Admission**

16 Norwood denies the material factual and legal allegations contained in Moore's Notices
17 and Complaint, and maintains that all products that it has sold and distributed in California,
18 including the Products, have been and are in compliance with all laws. Nothing in this Consent
19 Judgment shall be construed as an admission by Norwood, of any fact, finding, issue of law, or
20 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
21 an admission by Norwood of any fact, finding, conclusion, issue of law or violation of law, such
22 being specifically denied by Norwood. However, this section shall not diminish or otherwise
23 affect the obligations, responsibilities and duties of Norwood under this Consent Judgment.

24 **1.7 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Norwood as to the allegations contained in the Complaint, that venue is proper
27 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions
28

1 of this Consent Judgment. As an express part of this Consent Judgment, pursuant to Code of
2 Civil Procedure section 664.6, the Court in which this Complaint was filed shall retain
3 jurisdiction over the Parties to enforce the settlement until performance in full of the terms of the
4 settlement.

5 **1.8 Effective Date**

6 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
7 Consent Judgment is approved by the Court including any tentative ruling not opposed by the
8 Parties.

9 **2. INJUNCTIVE RELIEF**

10 **2.1 Reformulation Standard**

11 Reformulated Products are defined as those Products containing: (i) DEHP and DBP in
12 concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.
13 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
14 methodology utilized by federal or state agencies for the purpose of determining the DEHP and
15 DBP content in a solid substance; and (ii) less than 100 parts per million lead by weight when
16 analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or
17 6010B.

18 **2.2 Reformulation Commitment**

19 As of the Effective Date, Norwood shall not manufacture, import, distribute, sell or offer
20 the Products for sale in the State of California unless they are Reformulated Products pursuant to
21 Section 2.1 above, or shall carry the Proposition 65 warnings specified in Section 2.3 below.

22 **2.3 Product Warnings**

23 Commencing on the Effective Date, Norwood shall provide clear and reasonable warnings
24 for all Products as set forth in subsections 2.3(a) and (b) for all products that do not qualify as
25 Reformulated Products. Each warning shall be prominently placed with such conspicuousness as
26 compared with other words, statements, designs, or devices as to render it likely to be read and
27 understood by an ordinary individual under customary conditions before purchase or use. Each
28

1 warning shall be provided in a manner such that the consumer or user understands to which
2 *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

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

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

6 WARNING: This product contains DEHP and DBP, chemicals
7 known to the State of California to cause birth defects
8 and other reproductive harm.

9 or,

10 WARNING: This product contains DEHP and lead, chemicals
11 known to the State of California to cause birth defects
12 and other reproductive harm.

13 (ii) **Point-of-Sale Warnings.** Alternatively, Norwood may provide warning
14 signs in the form below to its customers in California with instructions to post the warnings in
15 close proximity to the point of display of the Products. Such instruction sent to Norwood's
16 customers shall be sent by certified mail, return receipt requested.

17 WARNING: This product contains DEHP and DBP, chemicals
18 known to the State of California to cause birth defects
19 and other reproductive harm.

20 or,

21 WARNING: This product contains DEHP and lead, chemicals
22 known to the State of California to cause birth defects
23 and other reproductive harm.

24 Where more than one Product is sold in proximity to other like items or to those that do not
25 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
26 shall be used:¹

27 WARNING: These products contains DEHP and DBP, chemicals
28 known to the State of California to cause birth defects
and other reproductive harm.

[list products for which warning is required]

or,

¹ For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 WARNING: Certain products identified with this symbol ▼
2 and offered for sale in this catalog contain DEHP and DBP,
3 chemicals known to the State of California to cause
4 birth defects and other reproductive harm.

5 or,
6 WARNING: Certain products identified with this symbol ▼
7 and offered for sale in this catalog contain DEHP and lead,
8 chemicals known to the State of California to cause
9 birth defects and other reproductive harm.

10 The designated symbol must appear on the same page and in close proximity to the
11 display and/or description of the Product. On each page where the designated symbol appears,
12 Norwood must provide a header or footer directing the consumer to the warning language and
13 definition of the designated symbol.

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

22 WARNING: This product contains DEHP and DBP, chemicals
23 known to the State of California to cause birth defects
24 and other reproductive harm.

25 or,

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

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

32 WARNING: This product contains DEHP and DBP, chemicals
33 known to the State of California to cause birth defects
34 and other reproductive harm.

35 or,

1 **3.3 Payment Procedures**

2 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

3 All payments owed to Moore and Moore’s counsel pursuant to Sections
4 3.1 and 3.2 (unless waived), shall be delivered to the following payment address:

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

10 A copy of the checks payable to OEHHA shall be mailed to The Chanler
11 Group at the address set forth above in Section 3.3.1(a), as proof of payment to OEHHA.

12 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Norwood
13 shall issue separate 1099 forms for each payment to Moore, whose address and tax identification
14 number shall be furnished upon request after this Consent Judgment has been fully executed by the
15 Parties, and OEHHA (FIN: 68-0284486) at the following addresses:

16 For United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 P.O. Box 4010
21 Sacramento, CA 95812-4010

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

28 **4. REIMBURSEMENT OF FEES AND COSTS**

 The Parties acknowledge the Moore and his counsel offered to resolve this dispute without
reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
issue to be resolved after the material terms of the agreement had been settled. Moore then
expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
been finalized. The Parties reached an accord on the compensation due to Moore and his counsel
under the private attorney general doctrine and principles codified at California Code of Civil

1 Procedure section 1021.5, for all work performed through the mutual execution of this agreement.
2 Under these legal principles, Norwood shall reimburse Moore's counsel for fees and costs,
3 incurred as a result of investigating, bringing this matter to Norwood's attention, and negotiating
4 a settlement in the public interest. Norwood shall pay Moore and his counsel \$37,000 for all
5 attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a
6 separate check made payable to "The Chanler Group" and shall be delivered no more than five
7 business days following the Effective Date, at the following address:

8 The Chanler Group
9 Attn: Proposition 65 Controller
10 Parker Plaza
11 2560 Ninth Street, Suite 214
12 Berkeley, CA 94710

11 **5. RELEASE OF ALL CLAIMS**

12 **5.1 Release of Norwood and Downstream Customers and Entities**

13 Moore acting on his own behalf and in the public interest, releases Norwood and its past,
14 present and future parents, subsidiaries, affiliated entities under common ownership, directors,
15 officers, agents, employees, attorneys and each entity to whom Norwood directly or indirectly
16 distributes or sells Products including, but not limited to, downstream distributors, wholesalers,
17 customers, retailers, franchisees, cooperative members and licensees and their past, present and
18 future parents, subsidiaries, affiliated entities under common ownership, directors, officers,
19 agents, employees, and attorneys (collectively "Releasces"), from all claims for violations of
20 Proposition 65 through the Effective Date based on their failure to warn about alleged exposures
21 to the DEHP, DBP and lead contained in the Products that were manufactured, distributed, sold
22 and/or offered for sale by Norwood. Releasees' compliance with this Consent Judgment shall
23 constitute compliance with Proposition 65 with respect to DEHP, DBP and lead in the Products,
24 as set forth in the Notices.

25 In further consideration of the promises and agreements herein contained, and for the
26 payments to be made pursuant to Sections 3 and 4 above, Moore, on behalf of himself, his past
27 and current agents, representatives, attorneys, successors and/or assignees, provides a release
28 herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions,

1 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities,
2 and demands of Norwood or the Releasees of any nature, character, or kind, whether known or
3 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposure to the
4 DEHP, DBP and lead in the Products. Moore acknowledges that he is familiar with Section 1542
5 of the California Civil Code, which provides as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
7 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF
9 EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR
HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

10 Moore, in his individual capacity only and not in his representative capacity, expressly waives
11 and relinquishes any and all rights and benefits which he may have under Section 1542 of the
12 California Civil Code.

13 **5.2 Norwood's Release of Moore**

14 Norwood, on behalf of itself, its past and current agents, representatives, attorneys,
15 successors and/or assignees, hereby waives any and all claims against Moore, his attorneys and
16 other representatives, for any and all actions taken or statements made (or those that could have
17 been taken or made) by Moore and his attorneys and other representatives, whether in the course
18 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
19 matter, and/or with respect to the Products. Norwood acknowledges that it is familiar with
20 Section 1542 of the California Civil Code, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
22 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
23 EXIST IN HIS OR HER FAVOR AT THE TIME OF
24 EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR
HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

25 Norwood expressly waives and relinquishes any and all rights and benefits which is may have
26 under Section 1542 of the California Civil Code.

1 **6. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved by the Court, including any
3 tentative ruling not challenged by either of the Parties, and shall be null and void if, for any
4 reason, it is not approved, including any tentative ruling not challenged by either of the Parties, by
5 the Court within one year after it has been fully executed by all Parties. In the event the Court
6 does not approve this Consent Judgment within one year, (a) this Consent Judgment and any and
7 all prior agreements between the Parties merged herein shall terminate and become null and void,
8 and the action shall revert to the status that existed prior to the execution date of this Consent
9 Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation,
10 documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect,
11 nor shall any such matter be admissible in evidence for any purpose in this action, or in any other
12 proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms
13 of the Consent Judgment and to resubmit it for approval.

14 **7. 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 **8. 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
22 Norwood shall provide written notice to Moore of any asserted change in the law, and shall have
23 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
24 the Products are so affected.

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 personally delivered or sent by: (i) first-class,
4 (registered or certified mail), return receipt requested; or (ii) overnight or two-day courier on any
5 party by the other party at the following addresses:

6 For Norwood:	For Moore:
7 Kathryn H. Edwards, Esq.	Proposition 65 Coordinator
8 Orrick, Herrington & Sutcliffe LLP	The Chanler Group
9 The Orrick Building	Parker Plaza
405 Howard Street	2560 Ninth Street, Suite 214
San Francisco, CA 94105-2669	Berkeley, CA 94710

10
11 Any Party may specify in writing to the other Party a change of address to which all
12 notices and other communications shall be sent.

13 **10. COUNTERPARTS; SIGNATURES**

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

17 **11. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(f)**

18 Moore agrees to comply with the reporting form requirements referenced in Health and
19 Safety Code section 25249.7(f).

20 **12. MODIFICATION**

21 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
22 upon entry of a modified Consent Judgment thereon; or (2) upon a successful motion of any Party
23 and entry of a modified Consent Judgment by the Court.

24 **13. ENTIRE AGREEMENT**

25 This Consent Judgment contains the sole and entire agreement and understanding of the
26 Parties with respect to the entire subject matter thereof, and any and all prior discussions,
27 negotiations, commitments, and understandings related hereto. No representations, oral or
28

1 otherwise, express or implied, other than those contained herein have been made by any Party
2 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
3 deemed to exist or to bind any of the Parties.

4 **14. AUTHORIZATION**

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

7
8 **AGREED TO:**

AGREED TO:

9 Date: April 15, 2014

April __, 2014

10
11 By: 

12 John Moore

11 By:

12 Emmanuel Bruno
13 Vice President and General Manager
14 Norwood Promotional Products, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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.

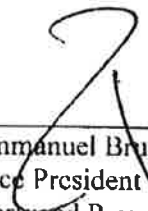
AGREED TO:

Date: April __, 2014

By: _____
John Moore

AGREED TO:

April 25, 2014

By: _____

Emmanuel Bruno
Vice President and General Manager
Norwood Promotional Products, I.I.C