

FILED

OCT 01 2015

L. M. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara

DEPUTY

David K. Walker

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
3 Brian C. Johnson, State Bar No. 235965
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

6 Attorneys for Plaintiff
7 JOHN MOORE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,

12 Plaintiff,

13 v.

14 GIBSON OVERSEAS, INC.,

15 Defendant.

Case No. 115CV283507

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**

Date: October 1, 2015

Time: 9:00 a.m.

Dept.: 9

Judge: Hon. Mary E. Arand

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1 In the above-entitled action, plaintiff John Moore and defendant Gibson Overseas,
2 Inc., having agreed through their respective counsel that Judgment be entered pursuant to the
3 terms of their settlement agreement in the form of a [Proposed] Consent Judgment (“Consent
4 Judgment”), and following this Court’s issuance of an Order approving this Proposition 65
5 settlement and Consent Judgment on 10/1, 2015.

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

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12 **IT IS SO ORDERED.**

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14 Dated: 10/1/2015

Mary E. Arand
15 JUDGE OF THE SUPERIOR COURT
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9 Facsimile: (510) 848-8118
10 Attorneys for Plaintiff
11 JOHN MOORE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION

12 JOHN MOORE

13 Plaintiff

14 v.

15 GIBSON OVERSEAS, INC.,

16 Defendant.

Case No. 115CV283507

**[PROPOSED] CONSENT
JUDGMENT**

Action Filed: July 24, 2015

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1. INTRODUCTION

1.1 John Moore and Gibson Overseas, Inc.

This Consent Judgment is entered into by and between John Moore (“Moore”) and Gibson Overseas, Inc. (“Gibson”), with Moore and Gibson collectively referred to as the “Parties.”

1.2 John Moore

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 Gibson Overseas, Inc.

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

1.4 General Allegations

Moore alleges that Gibson has manufactured, imported, sold and/or distributed for sale in California, products with soft touch vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

1.5 Listed Chemicals

DEHP is a phthalate chemical listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Other phthalate chemicals listed under Proposition 65 as chemicals known to the State of California to cause birth defects or other reproductive harm include, but are not limited to, butyl benzyl phthalate (“BBP”), di-n-butyl phthalate (“DBP”) and Di-isodecyl phthalate (“DIDP”). In addition, DEHP and Diisononyl phthalate (“DINP”) have been listed under Proposition 65 as chemicals known to the State of California to cause cancer. DEHP, BBP, DBP, DIDP and DINP are collectively referred to herein as the “Listed Chemicals.”

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1.6 Product Description

The products that are covered by this Settlement Agreement are defined as household and kitchen accessories with vinyl/PVC gripping components including, but not limited to, Clip Item #9136701, UPC #0 85081 14548 2, and which are or have been manufactured, imported, sold and/or distributed for sale in California by Gibson (hereinafter the “Products”). Gibson has in the past manufactured, imported, acquired, sold and/or distributed for sale in California a variety of additional household and kitchen accessories which may have contained DEHP or other phthalates listed under Proposition 65, including (a) cookware sets or travel mugs with soft touch vinyl/PVC components, and (b) kitchen gadgets and tools with soft touch vinyl/PVC components (“Additional Products”).

1.7 Notice of Violation

On May 21, 2015, Moore served Gibson and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on Gibson’s alleged failure to warn its customers, consumers, and other individuals that the Products exposed users in California to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.8 Complaint

As no authorized public prosecutor of Proposition 65 filed a claim against Gibson based on the allegations set forth in the Notice within 60 days of its issuance, Moore filed a complaint on July 24, 2015 in the Superior Court of California for the County of Santa Clara (the “Court”), *Moore v. Gibson Overseas, Inc., et al.*, Case No. 115CV283507, naming Gibson as a defendant and alleging claims for violations of Health and Safety Code section 25249.6, based on the alleged exposures to DEHP in Products distributed for sale or sold by Gibson in the State of California (hereinafter “Action” or “Complaint”).

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that the Court has subject matter jurisdiction over the allegations in the Complaint and personal jurisdiction over Gibson as to the allegations in the Complaint, that venue is proper in the County of Santa Clara, and that the

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Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 No Admission

Gibson denies the material, factual, and legal allegations contained in Moore’s Notice and Complaint and maintains that all products that it has sold, manufactured, imported and/or distributed in California, including the Products and Additional Products, have been and are in compliance with all laws. Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by Gibson of any fact, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Gibson’s obligations, responsibilities, and duties under this Consent Judgment.

1.11 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on which this Consent Judgment is approved by the Court, including any tentative ruling that is unopposed.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standards

Reformulated Products are defined as those containing DEHP in concentrations at or less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, all Products manufactured, imported, or acquired for sale in the State of California by Gibson shall qualify as Reformulated Products as defined in Section 2.1 above. Gibson shall label all previously-acquired Products remaining in its inventory with the following Proposition 65 warning by means of affixing a warning to the packaging of, or, if no packaging exists, directly on, each non-reformulated Product sold in California that states:

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2 Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% of the penalty paid
3 to Moore.

4 **3.1.1 Initial Civil Penalty**

5 On or before five (5) days following the mutual execution of this Consent Judgment
6 by the Parties, Gibson shall deposit an initial civil penalty amount of \$4,000 in its counsel’s client
7 trust account, which shall be held pending the Court’s approval of this Consent Judgment. Gibson or
8 its counsel shall provide The Chanler Group with written confirmation within five days of the funds
9 being so deposited. Within five days of the date that this Consent Judgment is approved by the
10 Court, counsel for Gibson shall direct its client trust account to issue two separate checks for the
11 initial civil penalty payment to: (a) “OEHHA” in the amount of \$3,000; and (b) “John Moore, Client
12 Trust Account” in the amount of \$1,000. The checks shall then be transmitted to the address show in
13 Section 3.3.A below.

14 **3.1.2 Final Civil Penalty**

15 Gibson will make a final civil penalty payment of \$24,000 by no later than January 31,
16 2016. Pursuant to title 11 California Code of Regulations, section 3203(c), this final civil penalty
17 payment shall be waived, however, if by no later than September 30, 2015, a duly authorized official
18 of Gibson certifies in writing to Moore that it has implemented the Phthalate Free requirements for
19 the Products and Additional Products on or before that date. Time is of the essence with respect to
20 the date identified for the provision of the certification to implementing reformulation for the
21 Products and Additional Products in lieu of making the final civil penalty payment under this
22 subsection. Unless waived, the final penalty payment shall be allocated according to Health & Safety
23 Code § 25249.12(c)(1) and (d) with 75% of the penalty amount paid to OEHHA, and the remaining
24 25% of the penalty paid to Moore, and it shall be delivered to the address listed in Section 3.3.A
25 below.

26 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

27 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
28 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
issue to be resolved after the material terms of the agreement had been settled. Shortly after all other

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2 settlement terms had been finalized, Gibson expressed a desire to resolve the fees and costs. The
3 Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
4 counsel under general contract principles and the private attorney general doctrine codified at Code
5 of Civil Procedure section 1021.5 for all work performed or to be performed by Moore and his
6 counsel in this matter, exclusive of fees and costs incurred on appeal, if any. Under these legal
7 principles, on or before five (5) days following the mutual execution of this Consent Judgment by the
8 Parties, Gibson shall issue a check in the amount of \$36,000 to its counsel's client trust account,
9 which shall be held pending the Court's approval of this Consent Judgment. Gibson or its counsel
10 shall provide The Chanler Group with written confirmation within five days of the funds being
11 deposited as specified above. Within five days of the date that this Consent Judgment is approved by
12 the Court, counsel for Gibson shall direct its client trust account to issue a check payable to "The
13 Chanler Group" in the amount of \$36,000 and send it to the address found in Section 3.3.A below.

14 **3.3 Payment Procedures**

15 **3.3.A Issuance of Payments.**

16 All payments owed pursuant to Section 3.1 and 3.2 shall be delivered to the following
17 address:

18 The Chanler Group
19 Attn: Proposition 65 Controller
20 (Moore v. Gibson Consent Judgment)
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 **3.3.B Court Approval; Reimbursement.** If the Court does not approve the Consent
25 Judgment, all funds tendered into any trust or escrow account, or otherwise received by The Chanler
26 Group from Gibson in settlement of this Action, shall be refunded in full as required by Section 6
27 below.

28 **4. CLAIMS COVERED AND RELEASED**

4.1 Plaintiff's Public Release of Proposition 65 Claims

 In consideration of the promises and commitments contained herein, Plaintiff on
behalf of himself and in the public interest, hereby releases Gibson, its parents, subsidiaries, affiliated

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2 entities that are under common ownership or control, directors, officers, employees, and attorneys
3 (“Releasees”), and each entity to whom they directly or indirectly distribute or sell Products,
4 including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative
5 members, licensors, and licensees (“Downstream Defendant Releasees”), from all claims for
6 violations of Proposition 65 based on unwarned exposure to DEHP from Products acquired,
7 distributed or sold by Gibson prior to the Effective Date. Upon entry of this Consent Judgment by
8 the Court, going forward, Gibson’s compliance with the terms of Section 2.1 of this Consent
9 Judgment shall be deemed to constitute compliance with Proposition 65 with respect to DEHP in the
10 Products.

11 **4.2 Plaintiff’s Release of Additional Claims**

12 Moore, in his individual capacity only and *not* in his representative capacity, also
13 provides a release to Gibson, its Releasees, and its Downstream Defendant Releasees which shall be
14 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
15 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of
16 Moore of any nature, character or kind, whether known or unknown, suspected or unsuspected,
17 arising out of alleged or actual exposures to the Listed Chemicals in the Products or Additional
18 Products acquired, distributed, or sold by Gibson before the Effective Date. Upon entry of this
19 Consent Judgment by the Court, going forward, Gibson’s compliance with the terms of Section 2 of
20 this Consent Judgment shall be deemed to constitute compliance with Proposition 65 with respect to
21 Listed Chemicals in the Products and Additional Products.

22 **4.3 Gibson’s Release of Moore**

23 Gibson on behalf of itself, its past and current agents, representatives, attorneys,
24 successors and/or assignees, hereby waives any and all claims against Moore, his attorneys, and other
25 representatives for any and all actions taken or statements made (or those that could have been taken
26 or made) by Moore and his attorneys and other representatives, whether in the course of investigating
27 claims or otherwise seeking enforcement of Proposition 65 against Gibson in this matter.
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5. SEVERABILITY

If, subsequent to the Court’s approval of this Consent Judgment, any of the provisions contained herein are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected unless the Court finds that any unenforceable provision is not severable from the remainder of the Consent Judgment.

6. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by Court within twelve months of it being fully executed by the Parties, at which time, any funds being held in Trust or in escrow for purposes of this agreement shall be fully reimbursed to Gibson.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, or as to the Covered Products or the Additional Products, then Gibson shall provide written notice to Moore of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products or Additional Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Gibson from any obligation to comply with any other state or federal law.

8. ENFORCEMENT

Any Party may, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment.

9. NOTICES

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

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To Moore:

The Chanler Group
Attn: Proposition 65 Coordinator
(Moore v. Gibson Consent Judgment)
Parker Plaza
2560 Ninth Street, Suite 214
Berkeley, CA 94710

To Gibson:

Solomon Gabbay - CFO
Gibson Overseas, Inc.
2410 Yates Ave
Commerce, CA 90040

with a copy to

Robert Falk
Morrison & Foerster LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by mail and/or other verifiable form of written communication.

10. MODIFICATION

Except as provided in this Section, this Consent Judgment may be modified only by a written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon or by the Court upon motion for good cause shown and entry of a modified Consent Judgment by the Court.

11. ADDITIONAL POST-EXECUTION ACTIVITIES

Moore agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to California Health & Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Moore shall take the lead on drafting the required motion and the Parties and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of this paragraph, “best efforts”

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shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval. If any third party objection to the noticed motion is filed, Moore and Gibson shall work together through counsel to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the parties. No representations, oral or otherwise, express or implied, other than those contained herein, have been made by any party hereto. No other agreements shall be deemed to exist or to bind any of the parties.

13. COUNTERPARTS, FACSIMILE SIGNATURES

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

14. AUTHORIZATION

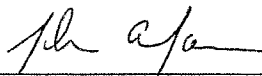
Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

AGREED TO:

AGREED TO:

Date: July 30, 2015

Date: _____

By: 
John Moore

By: _____
Solomon Gabbay, CFO
Gibson Overseas, Inc.

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Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

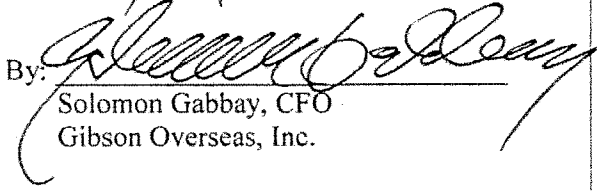
AGREED TO:

AGREED TO:

Date: _____

Date: 7/29/2015


By: _____
John Moore

By: 
Solomon Gabbay, CFO
Gibson Overseas, Inc.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

FILED

OCT 01 2015

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY 

David K. Walker

TO: FILE COPY

RE: J. Moore vs Gibson Overseas, Inc
Case Nbr: 1-15-CV-283507

PROOF OF SERVICE

JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

CC: Clifford A. Chanler , The Chanler Group
2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 10/1/15. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by David Walker, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

TO: Clifford A. Chanler
The Chanler Group
2560 Ninth Street Parker Plaza, Suite 214
Berkeley, CA 94710

RE: J. Moore vs Gibson Overseas, Inc
Case Nbr: 1-15-CV-283507

PROOF OF SERVICE

JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

Parties/Attorneys of Record:

CC:

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 10/1/15. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by David Walker, Deputy