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Attorneys for Defendants
W.J. DENNIS & COMPANY and
RCR INTERNATIONAL INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,)
)
Plaintiff,)
)
v.)
)
BELL SPORTS, INC., *et al.*,)
)
Defendants.)
_____)

Case No. CIV-1002842

**[PROPOSED] CONSENT JUDGMENT
AS TO W.J. DENNIS & COMPANY
AND RCR INTERNATIONAL INC.**

Dept:
Judge:
Date: None set

1 **1. INTRODUCTION**

2 **1.1 John Moore, W.J. Dennis & Company and RCR International Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) on the one hand, and W.J. Dennis & Company and RCR International Inc. (collectively
5 “Defendants”), on the other hand, with Plaintiff and Defendants collectively referred to as the
6 “parties.”

7 **1.2 John Moore**

8 Moore is an individual residing in the State of California who seeks to promote awareness of
9 exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
10 substances contained in consumer and commercial products.

11 **1.3 W.J. Dennis & Company and RCR International Inc.**

12 Plaintiff alleges that Defendants each employ ten or more persons and are each persons in
13 the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
14 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Moore alleges that Defendants have manufactured, imported, distributed and/or sold vinyl
17 flooring which contains di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65
18 warnings. DEHP is on the Proposition 65 list as known to cause cancer as well as birth defects and
19 other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: vinyl
22 flooring containing DEHP including, but not limited to, *Crystal Clear Vinyl Carpet Protector*,
23 *VPCLP06 (# 0 59494 00713 2)* All such vinyl flooring products containing DEHP are referred to
24 hereinafter as the “Products”).

25 **1.6 Notice of Violation**

26 On April 9, 2010, Moore served W.J. Dennis & Company, RCR International Inc., and
27 various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the
28

1 “Notice”) that provided Defendants and public enforcers with notice of alleged violations of
2 California Health & Safety Code § 25249.6 for failing to warn consumers that the Products sold by
3 Defendants exposed users in California to DEHP. To the best of the parties’ knowledge, no public
4 enforcer has prosecuted the allegations set forth in the Notice.

5 **1.7 Complaint**

6 On June 2, 2010, Moore filed a complaint in the Superior Court in and for the County of
7 Marin against Natco Products Corporation and Does 1 through 150, *Moore v. Natco, et al.*, Case
8 No. CIV-1002842 (the “Action”), alleging violations of California Health & Safety Code § 25249.6,
9 based on the alleged exposures to DEHP contained in certain vinyl flooring products sold by Natco.
10 On July 2, 2010, Moore filed a First Amended Complaint (the “Complaint”) in the Action,
11 renaming it as *Moore v. Bell Sports, Inc., et al.*, adding W. J. Dennis & Company, RCR
12 International Inc., and others as defendants, alleging additional violations of California Health &
13 Safety Code § 25249.6 based on the alleged exposures to DEHP contained in Products sold by the
14 Defendants.

15 **1.8 Answer**

16 On August 13, 2010, Defendants responded to the Complaint by filing a general denial and
17 affirmative defenses, denying all claims alleged by Plaintiff.

18 **1.9 No Admission**

19 Defendants deny the material, factual and legal allegations contained in Moore’s Notice and
20 Complaint and maintain that all products that they have sold, manufactured, imported and/or
21 distributed in California, including the Products, have been and are in compliance with all laws.
22 Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact,
23 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
24 constitute or be construed as an admission by Defendants of any fact, finding, conclusion, issue of
25 law, or violation of law, such being specifically denied by Defendants. However, this section shall
26 not diminish or otherwise affect Defendants’ obligations, responsibilities, and duties under this
27 Consent Judgment.
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1 **1.10 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the parties stipulate that this Court has
3 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper in
4 the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
5 Consent Judgment.

6 **1.11 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” shall mean January 25,
8 2011.

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

10 **2.1 Reformulation Standards**

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

16 **2.2 Product Warnings**

17 Commencing on the Effective Date, Defendants shall, for all Products other than
18 Reformulated Products, provide clear and reasonable warnings as set forth in subsections 2.2(a)
19 and (b). Each warning shall be prominently placed with such conspicuousness as compared with
20 other words, statements, designs, or devices as to render it likely to be read and understood by an
21 ordinary individual under customary conditions before purchase or use. Each warning shall be
22 provided in a manner such that the consumer or user understands to which *specific* Product the
23 warning applies, so as to minimize the risk of consumer confusion. The parties agree and
24 acknowledge that Defendants may use the warning labels attached hereto as Exhibits A & B, as
25 interim warnings for all Products currently in the stream of commerce in the State of California.
26 Any Product not yet shipped from Defendants’ headquarters shall contain the following language:
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1 **WARNING:** This product contains DEHP, a phthalate
2 chemical known to the State of California to
3 cause cancer, and birth defects or other
4 reproductive harm.

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

6 **(i) Product Labeling.** Defendants shall affix a warning to the
7 packaging, labeling, or directly on each Product sold in retail outlets in California by Defendants or
8 any person selling the Products, that states:

9 **WARNING:** This product contains DEHP, a phthalate
10 chemical known to the State of California to
11 cause cancer, and birth defects or other
12 reproductive harm.

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

17 **WARNING:** This product contains DEHP, a phthalate
18 chemical known to the State of California to
19 cause cancer, and birth defects or other
20 reproductive harm.

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

24 **WARNING:** The following products contain DEHP, a
25 phthalate chemical known to the State of
26 California to cause cancer, and birth defects or
27 other reproductive harm:

28 [*list products for which warning is required*]

(b) Mail Order Catalog and Internet Sales. In the event that Defendants sell
Products via mail order catalog and/or the internet, to customers located in California, after the
Effective Date, that are not Reformulated Products, Defendants shall provide a warning for such

¹For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another 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 Products sold via mail order catalog or the internet to California residents. Warnings given in the
2 mail order catalog or on the internet shall identify the *specific* Product to which the warning applies
3 as further specified in Sections 2.2(b)(i) and (ii).

4 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
5 order catalog shall be in the same type size or larger than the Product description text within the
6 catalog. The following warning shall be provided on the same page and in the same location as the
7 display and/or description of the Product:

8 **WARNING:** This product contains DEHP, a phthalate
9 chemical known to the State of California to
10 cause cancer, and birth defects or other
11 reproductive harm.

12 Where it is impracticable to provide the warning on the same page and in the same location
13 as the display and/or description of the Product, Defendants may utilize a designated symbol to
14 cross reference the applicable warning and shall define the term “designated symbol” with the
15 following language on the inside of the front cover of the catalog or on the same page as any order
16 form for the Product(s):

17 **WARNING:** Certain products identified with this symbol
18 ▼ and offered for sale in this catalog contain
19 DEHP, a phthalate chemical known to the
20 State of California to cause cancer, and birth
21 defects or other reproductive harm.

22 The designated symbol must appear on the same page and in close proximity to the display
23 and/or description of the Product. On each page where the designated symbol appears, Defendants
24 must provide a header or footer directing the consumer to the warning language and definition of
25 the designated symbol.

26 (ii) **Internet Website Warning.** A warning shall be given in conjunction
27 with the sale of the Products via the internet, and shall appear either: (a) on the same web page on
28 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the
same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
during the checkout process. The following warning statement shall be used and shall appear in any
of the above instances adjacent to or immediately following the display, description, or price of the

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Product for which it is given in the same type size or larger than the Product description text:

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

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

WARNING: Products identified on this page with the following symbol ▼ contain DEHP, a phthalate chemical known to the State of California to cause cancer, and birth defects or other reproductive harm.

3. PAYMENT OF PENALTIES

3.1 Initial Civil Penalty

In settlement of all the claims referred to in this Consent Judgment, Defendants shall collectively pay \$8,500 in initial civil penalties, to be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to John Moore. Defendants shall issue two separate checks for the penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount of \$6,375, representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for John Moore” in the amount of \$2,125, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall be provided five calendar days before the payment is due.

Payment shall be delivered to Moore’s counsel on or before January 28, 2011, at the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

1 **3.2 Final Civil Penalty**

2 Defendants shall collectively pay a final civil penalty of \$30,000 on May 15, 2011. As an
3 incentive for achievement reformulating the Products, however, the final civil penalty shall be
4 waived in its entirety if an Officer of each of the Defendants certifies in writing that it, as of May 1,
5 2011, has sold, shipped and offered for sale in California only Reformulated Products and that it
6 will continue to sell, ship and offer for sale in California only Reformulated Products. Such
7 certification must be received by The Chanler Group on or before May 15, 2011. The final civil
8 penalty payment shall be apportioned in accordance with California Health & Safety Code
9 §25249.12(c) & (d), with 75% of these funds remitted to the State of California’s Office of
10 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
11 remitted to John Moore. Defendants shall issue two separate checks for the final civil penalty
12 payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount
13 of \$22,500 representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust
14 for John Moore” in the amount of \$7,500 representing 25% of the total penalty. Two separate
15 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814
16 (EIN: 68-0284486); and (b) John Moore, whose information shall be provided five calendar days
17 before the payment is due (if different than the information already provided to Defendants under
18 Section 3.1 above).

19 Payment shall be delivered to Moore’s counsel at the following address:

20 The Chanler Group
21 Attn: Proposition 65 Controller
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710

25 **4. REIMBURSEMENT OF ATTORNEY’S FEES AND COSTS**

26 The parties reached an accord on the compensation due to Moore and his counsel under
27 general contract principles and the private attorney general doctrine codified at California Code of
28 Civil Procedure (CCP) §1021.5. Defendants shall reimburse Moore and his counsel \$37,500 for
 fees and costs incurred as a result of investigating, bringing this matter to its attention, and

1 negotiating a settlement in the public interest. This figure includes Moore's future fees and costs
2 including attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as
3 well as any other legal work performed after the execution of this Consent Judgment incurred in an
4 effort to obtain finality of the case. This Section 4 of the Consent Judgment defines the extent to
5 which Defendant shall have any obligation to Plaintiff and/or his counsel attorneys' fees and costs
6 in connection with this action.

7 The check for reimbursement of fees and costs shall be made payable to "The Chanler
8 Group" and shall be delivered to the following address on or before January 28, 2011, at the
9 following address:

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

15 A separate 1099 shall be issued to "The Chanler Group" (EIN: 94-3171522) for the amount
16 of the reimbursement of Plaintiff's fees and costs.

17 **5. JOINT AND SEVERAL LIABILITY**

18 Defendants shall be jointly and severally liable for the payments required under Sections 3
19 and 4 of this Consent Judgment.

20 **6. RELEASE OF ALL CLAIMS**

21 **6.1 Moore's Release of Defendants**

22 In further consideration of the promises and agreements herein contained, and for the
23 payments to be made pursuant to Sections 3 and 4, Moore, on behalf of himself, his past and current
24 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
25 public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or
26 participate in, directly or indirectly, any form of legal action and releases all claims, including,
27 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
28 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) of any

1 nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against
2 Defendants and each of their downstream wholesalers, licensors, licensees, auctioneers, retailers,
3 distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
4 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
5 shareholders, agents, and employees, and sister and parent entities, (collectively "Releasees") that
6 arise under Proposition 65, as such claims relate in any way to Defendants' alleged failure to warn
7 about exposures to DEHP contained in the Products. The parties further understand and agree that
8 this release shall not extend upstream to any entities that manufactured the Products for Defendants
9 or any component parts thereof or to any distributors or suppliers who sold the Products or any
10 component parts thereof to Defendants.

11 Moore also, on behalf of himself and his agents, attorneys, representatives, successors and
12 assigns, in his individual capacity only and *not* in his representative capacity, provides a general
13 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
14 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
15 liabilities and demands of Moore of any nature, character or kind, known or unknown, suspected or
16 unsuspected, arising out of the subject matter of this dispute. Moore acknowledges that he is
17 familiar with Section 1542 of the California Civil Code, which provides as follows:

18 A general release does not extend to claims which the creditor does not know or suspect to
19 exist in his or her favor at the time of executing the release, which if known by him or her must
20 have materially affected his or her settlement with the debtor. Moore, in his individual capacity
21 only and *not* in his representative capacity, on behalf of himself and his agents, attorneys,
22 representatives, successors and assigns, expressly waives and relinquishes any and all rights and
23 benefits which he may have under, or which may be conferred on him by the provisions of Section
24 1542 of the California Civil Code as well as under any other state or federal statute or common law
25 principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits
26 pertaining to the released matters. In furtherance of such intention, the release hereby given shall be
27 and remain in effect as a full and complete release notwithstanding the discovery or existence of
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1 any such additional or different claims or facts arising out of the released matters.

2 The parties further understand and agree that this release shall not extend upstream to any
3 entities that manufactured the Products for the Defendants or any component parts thereof or to any
4 distributors or suppliers who sold the Products or any component parts thereof to the Defendants.

5 **6.2 Defendants' Release of Moore**

6 Defendants, on behalf of themselves and their Releasees, waive any and all claims against
7 Moore, his attorneys, and other representatives for any and all actions taken by Moore and his
8 attorneys and other representatives in the course of investigating claims or otherwise seeking
9 enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.

10 **7. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and
12 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
13 after it has been fully executed by all parties.

14 **8. SEVERABILITY**

15 If, subsequent to the entry of this Consent Judgment, any of the provisions of this Consent
16 Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
17 remaining shall not be adversely affected.

18 **9. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of California
20 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
21 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
22 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
23 preemption or rendered inapplicable by reason of law generally as to the Products, then Defendants
24 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
25 extent that, the Products are so affected.
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1 **10. NOTICES**

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

6 To Defendants:

7 Douglas A. Winthrop, Esq.
8 Howard Rice Nemerovski
9 Canady Falk & Rabkin
10 A Professional Corporation
11 Three Embarcadero Center, Seventh Floor
12 San Francisco, CA 94111-4024

To Moore:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

15 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

19 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

20 Moore and his attorneys agree to comply with the reporting form requirements referenced in
21 California Health & Safety Code § 25249.7(f).

22 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

23 Moore and Defendants agree to mutually employ their, and their counsel's, best efforts to
24 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
25 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
26 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
27 Consent Judgment, which Moore shall draft and file, and Defendants shall join. If any third party
28 objection to the noticed motion is filed, Moore and Defendants shall work together 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. If the Superior Court does

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14. **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.

15. **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.

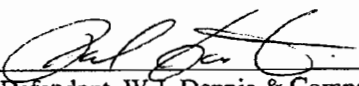
AGREED TO:

Date: _____

By: _____
Plaintiff, John Moore


AGREED TO:

Date: 2011-01-21

By: 
Defendant, W.J. Dennis & Company
PAUL GAUTHIER

AGREED TO:

Date: 2011-01-21

By: 
Defendant, RCR International Inc.
André Daigle

IT IS SO ORDERED:

JUDGE OF THE SUPERIOR COURT

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14. MODIFICATION

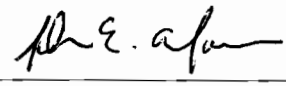
This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

15. 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: DECEMBER 13, 2010

By: 
Plaintiff, John Moore

AGREED TO:

Date: _____

By: _____
Defendant, W.J. Dennis & Company

AGREED TO:

Date: _____

By: _____
Defendant, RCR International Inc.

IT IS SO ORDERED:

JUDGE OF THE SUPERIOR COURT