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Attorneys for Defendant
WIESNER PRODUCTS, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION
15

16 JOHN MOORE,)
17 Plaintiff,)
18 v.)
19 WIESNER PRODUCTS, INC.; and DOES 1-)
20 150, inclusive,)
21 Defendants.)

Case No. CV-1104474

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 John Moore and Wiesner Products, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”) and
4 defendant Wiesner Products, Inc. (“Wiesner”), with Moore and Wiesner collectively referred to as
5 the “Parties.”

6 **1.2 John Moore**

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

10 **1.3 Wiesner Products, Inc.**

11 Wiesner 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, California Health &
13 Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Phthalate chemicals listed under Proposition 65 include di(2-ethylhexyl) phthalate
16 (“DEHP”), butyl benzyl phthalate (“BBP”), and di-n-butyl phthalate (“DBP”). DEHP, BBP, and
17 DBP are collectively referred to herein as “Listed Phthalate Chemicals.” Moore alleges that
18 Wiesner has manufactured, imported, distributed and/or sold footwear in California that contain
19 Listed Phthalate Chemicals without the requisite Proposition 65 warnings.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: footwear
22 containing Listed Phthalate Chemicals including, but not limited to, *Batman Flip Flops, #155 410*
23 *022420 8 109*, manufactured, imported, distributed and/or sold by Wiesner, hereinafter the
24 “Products.”

25 **1.6 Notice of Violation**

26 On March 17, 2011, Moore served Wiesner and various public enforcement agencies, with a
27 document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice
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1 of alleged violations of Proposition 65 based on Wiesner’s alleged failure to warn consumers that
2 the Products exposed users in California to DBP. To the best of the Parties’ knowledge, no public
3 enforcer has prosecuted the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On September 7, 2011, Moore filed a complaint in the Superior Court in and for the County
6 of Marin against Wiesner Products, Inc. and Does 1 through 150, *Moore v. Wiesner, et al.*, Case No.
7 CV-1104474 (“Complaint” or “Action”), alleging violations of Proposition 65, based on the alleged
8 exposures to DBP contained in certain footwear products manufactured, imported, distributed, or
9 sold by Wiesner.

10 **1.8 No Admission**

11 Wiesner denies the material, factual and legal allegations contained in Moore’s Notice and
12 Complaint and maintains that all products that it has sold, manufactured, imported and/or
13 distributed in California, including the Products, have been and are in compliance with all laws.
14 Nothing in this Consent Judgment shall be construed as an admission by Wiesner of any fact,
15 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
16 constitute or be construed as an admission by Wiesner of any fact, finding, conclusion, issue of law,
17 or violation of law. However, this section shall not diminish or otherwise affect Wiesner’s
18 obligations, responsibilities, and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Wiesner as to the allegations contained in the Complaint, that venue is proper in
22 the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
23 Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
26 the Court approves this Consent Judgment.

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

2 **2.1 Reformulation Standards**

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

8 **2.2 Reformulation Commitment**

9 As of January 1, 2013, all Products manufactured, imported, distributed, sold or offered for
10 sale in the state of California by Wiesner shall be Products that qualify as Reformulated Products as
11 defined in Section 2.1 above.

12 **2.3 Product Warnings**

13 Commencing on March 10, 2012 to January 1, 2013, Wiesner shall provide clear and
14 reasonable warnings as set forth in this subsection on all Products other than those that are
15 Reformulated Products (as defined in Section 2.1). Each warning shall be prominently placed with
16 such conspicuousness as compared with other words, statements, designs, or devices as to render it
17 likely to be read and understood by an ordinary individual under customary conditions before
18 purchase or use. Each warning shall be provided in a manner such that the consumer or user
19 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
20 confusion. Wiesner shall address its warning obligation by affixing a warning to the packaging,
21 labeling, or, if no packaging or labeling exists, directly on, each Product sold in California that
22 states:

23 **WARNING:** This product contains phthalate chemicals known to
24 the State of California to cause birth defects and other
25 reproductive harm.
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1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

3 Wiesner shall make a payment of \$7,500 to be apportioned in accordance with Health &
4 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for
5 the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
6 remaining 25% of these penalty monies earmarked for JohnMoore. This penalty reflects a credit of
7 \$15,000 based on Wiesner’s commitment to reformulate the Products pursuant to Section 2.1
8 above.

9 **3.2 Reimbursement of Moore’s Fees and Costs**

10 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
11 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
12 issue to be resolved after the material terms of the agreement had been settled. Wiesner then
13 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
14 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
15 Moore and his counsel under general contract principles and the private attorney general doctrine
16 codified at California Code of Civil Procedure section 1021.5, for all work performed, in this
17 matter, except fees that may be incurred on appeal. Under these legal principles, Wiesner shall pay
18 the amount of \$33,000 for fees and costs incurred investigating, litigating and enforcing this
19 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
20 obtaining the Court’s approval of this Consent Judgment in the public interest.

21 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall
22 be delivered on or before March 10, 2012 to The Chanler Group and shall be held in trust pending
23 the Court’s approval of this Consent Judgment.

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

- 25 (a) One check made payable to “The Chanler Group in Trust for
26 OEHHA” in the amount of \$5,625;

- 1 (b) One check made payable to “The Chanler Group in Trust for John
2 Moore” in the amount of \$1,875; and
3 (c) One check made payable to “The Chanler Group in Trust” in the
4 amount of \$33,000.

5 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
6 and the settlement funds have been transmitted to Moore’s counsel, Wiesner shall issue three
7 separate 1099 forms, as follows:

- 8 (a) The first 1099 shall be issued to the Office of Environmental Health
9 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
10 68-0284486) in the amount of \$5,625;
11 (b) The second 1099 shall be issued to to John Moore in the amount of
12 \$1,875, whose address and tax identification number shall be
13 furnished upon request; and
14 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
15 3171522) in the amount of \$33,000.

16 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered to
17 the following payment address:

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

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 Moore’s Public Release of Proposition 65 Claims**

25 Moore acting on his own behalf and in the public interest releases Wiesner from all claims
26 for violations of Proposition 65 up through the Effective Date based on exposure to DBP from the
27 Products as set forth in the Notice. Compliance with the terms of this Consent Judgment
28

1 constitutes compliance with Proposition 65 with respect to exposures to DBP from the Products as
2 set forth in the Notice.

3 **4.2 Moore's Individual Release of Claims**

4 Moore also, in his individual capacity only and *not* in his representative capacity, provides a
5 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
6 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
7 liabilities and demands of Moore of any nature, character or kind, whether known or unknown,
8 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Listed
9 Phthalate Chemicals in the Products manufactured, distributed or sold by Wiesner.

10 **4.3 Wiesner's Release of Moore**

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

17 **5. COURT APPROVAL**

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

21 **6. SEVERABILITY**

22 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
23 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
24 remaining shall not be adversely affected.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
4 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
5 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
6 preemption or rendered inapplicable by reason of law generally as to the Products, then Wiesner
7 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
8 extent that, the Products are so affected.

9 **8. NOTICES**

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

14 To Wiesner:

15 Melissa Jones, Esq.
16 Stoel Rives LLP
17 500 Capitol Mall, Suite 1600
 Sacramento, CA 95814

 To Moore:

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

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

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

24 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

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11. ADDITIONAL POST EXECUTION ACTIVITIES

Moore and Wiesner 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. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Moore shall draft and file, and Wiesner shall join. If any third party objection to the noticed motion is filed, Moore and Wiesner 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.

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. AUTHORIZATION

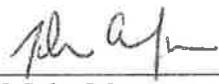
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: March 5, 2012

Date: _____

By: 
Plaintiff, John Moore

By: _____
Defendant, Wiesner Products, Inc.

1 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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16 respective parties and have read, understood, and agree to all of the terms and conditions of this
17 Consent Judgment.

18
19 AGREED TO:

AGREED TO: 

20
21 Date: _____

Date: 03/14/2012

22
23 By: _____
Plaintiff, John Moore

By: AMY M. JHA (CFU)
Defendant, Wiesner Products, Inc.