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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
12

13 JOHN MOORE,
14 Plaintiff,
15 v.
16 BASS PRO, LLC; *et al.*,
17 Defendants.
18

Case No. CGC-17-559688

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”)
4 and Bass Pro, LLC (“Bass Pro”), with Moore and Bass Pro each individually referred to as a
5 “Party” and, collectively, as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Bass Pro employs ten or more individuals and is a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
13 and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Bass Pro manufactures, imports, distributes, sells and/or offers for sale
16 in California :(a) cooking utensils with grips containing di(2-ethylhexyl)phthalate (“DEHP”);
17 and (b) vinyl/PVC tubing containing DEHP, and that it does so without first providing the health
18 hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
19 chemical known to cause birth defects or other reproductive harm.

20 **1.5 Product Description**

21 For purposes of this Consent Judgment “Covered Products” are defined individually as
22 (a) “Roasting Stick Products” with grips containing DEHP that are manufactured, imported,
23 distributed, sold, and/or distributed for sale, in California, by Bass Pro, including, but not limited
24 to, the *Bass Pro Shops 4-Pack Roasting Sticks, BPS-RF4OK-30, BP142588, UPC #0 92229*
25 *73025 7*; and (b) “Tubing Products” are tubes or hoses containing DEHP, sold in connection with
26 brew kits that are manufactured, imported, distributed, and sold by Craft A Brew LLP (“Craft A
27 Brew”) to Bass Pro, and sold and/or offered for sale, in California, by Bass Pro, including, but
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1 not limited to, the *Craft A Brew Premium Craft Brew Kit, UPC #8 68267 00405 3*. Roasting
2 Stick Products and Tubing Products shall be referred to, hereinafter, collectively as “Covered
3 Products.”

4 **1.6 Notice of Violation**

5 On June 14, 2016, Moore served Bass Pro and the requisite public enforcement agencies
6 with a 60-Day Notice of Violation (“Notice”), alleging that Bass Pro violated Proposition 65 by
7 failing to warn its customers and consumers in California of the health hazards associated with
8 exposures to DEHP from the Covered Products. To the best of the Parties’ knowledge, no public
9 enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged
10 in the Notices.

11 **1.7 Complaint**

12 On June 21, 2017, Moore filed the instant action (“Complaint”), naming Bass Pro as a
13 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of
14 the Notice.

15 **1.8 No Admission**

16 Bass Pro denies the material, factual, and legal allegations contained in the Notice and
17 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
18 including the Covered Products, have been, and are, in compliance with all laws. Nothing in this
19 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
20 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
21 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of
22 law. This Section shall not, however, diminish or otherwise affect Bass Pro’s obligations,
23 responsibilities, and duties under this Consent Judgment.

24 **1.9 Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Bass Pro as to the allegations in the Complaint, that venue is proper in the
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1 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions
2 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” means the date on
5 which the Court grants the motion for approval of the Consent Judgment contemplated by
6 Section 5.

7 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

8 **2.1 Commitment to Reformulate or Warn**

9 Commencing on the Effective Date and continuing thereafter, Bass Pro shall only
10 distribute, sell or offer for sale, in California, Covered Products that are either: (i) Reformulated
11 Products, as defined in Section 2.2; or (ii) contain one of the health hazard warnings specified in
12 Section 2.3, below. Specifically, Bass Pro agrees that all Tubing Products distributed, sold
13 and/or offered for sale in California after the Effective Date shall be Reformulated Products, and
14 that all Roasting Stick Products distributed, sold and/or offered for sale in California after the
15 Effective Date shall be either Reformulated Products, as defined by Section 2.2, or bear a clear
16 and reasonable warning in compliance with Section 2.3.


17 **2.2 Reformulated Products Defined**

18 For purposes of this Consent Judgment, “Reformulated Products” are defined as Covered
19 Products containing DEHP in a maximum concentration of 1,000 parts per million in any
20 accessible component (i.e., any component that may be touched during a reasonably foreseeable
21 use) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
22 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the
23 purpose of determining DEHP content in a solid substance.

24 **2.3 Clear and Reasonable Warnings**

25 Commencing on the Effective Date, Bass Pro shall provide clear and reasonable
26 warnings, as set forth in this section, for all Roasting Stick Products sold or offered for sale in
27 California that do not qualify as Reformulated Products. Each warning shall be prominently
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1 placed with such conspicuousness as compared with other words, statements, designs, or devices
2 as to render it likely to be read and understood by an ordinary individual under customary
3 conditions *before* purchase or use. Each warning shall be provided in a manner such that the
4 consumer or user understands to which *specific* Roasting Stick Product the warning applies, so as
5 to minimize the risk of consumer confusion. For purposes of this Consent Judgment, a clear and
6 reasonable warning satisfying these criteria shall consist of a warning affixed directly to the
7 packaging, labeling, or directly printed on each Roasting Stick Product provided for sale in
8 California containing one of the following statements:

9  **WARNING:** This product can expose you to chemicals, including
10 DEHP, which is known to the State of California to cause
11 cancer and birth defects or other reproductive harm. For
12 more information go to www.P65Warnings.ca.gov

13  **WARNING:** [Cancer and Reproductive Harm -
www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov) .

14
15 **WARNING:** This product contains a chemical known to the State of
16 California to cause cancer and birth defects or other
17 reproductive harm.

18 3. MONETARY SETTLEMENT TERMS

19 3.1 Civil Penalty Payments

20 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred
21 to in the Notice, Complaint, and this Consent Judgment, Bass Pro shall pay \$5,000 in civil
22 penalties. The civil penalty payment shall be allocated according to Health and Safety Code §§
23 25249.12(c)(1) and (d), with seventy-five percent (75%) of the total penalty paid to the
24 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
25 twenty-five percent (25%) of the total penalty retained by Moore.

26 The penalty payment due under this Section shall be in the form of two separate checks,
27 made payable as follows: (a) “OEHHA” in the amount of \$3,750; and (b) “John Moore, Client
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1 Trust Account” in the amount of \$1,250. Moore’s counsel shall be responsible for delivering
2 OEHHA’s portion of any penalty payment made under this Consent Judgment.

3 **3.2 Reimbursement of Attorney’s Fees and Costs**

4 The parties acknowledge that Moore and his counsel offered to resolve this dispute
5 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
6 leaving the issue to be resolved after the material terms of this Consent Judgment had been
7 settled. After the Parties reached an agreement as to all other settled terms, the Parties then
8 negotiated the compensation due to Moore and his counsel, under general contract principles and
9 the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for
10 all work performed through the mutual execution of this Consent Judgment, and court approval
11 of the same, but exclusive of fees and costs on appeal, if any. Under these legal principles, Bass
12 Pro shall pay \$35,000 for all fees and costs incurred by Moore in investigating, bringing this
13 matter to Bass Pro’s management, and negotiating a settlement in the public interest. Bass Pro’s
14 payment shall be delivered in the form of a check payable to “The Chanler Group”.

15 **3.3 Payment Timing; Payments Held in Trust**

16 All payments due under this Consent Judgment shall be held in trust until such time as
17 the Court approves the Parties’ settlement. Within thirty-five (35) days of the date that this
18 Consent Judgment is fully executed by the Parties, all payments due under this agreement shall
19 be delivered to Bass Pro’s counsel, Pillsbury Winthrop Shaw Pittman LLP (“Pillsbury”), and
20 held in trust by Pillsbury, until the Court grants the motion for approval of this Consent
21 Judgment, as contemplated by Section 5. Pillsbury shall provide Moore’s counsel with written
22 confirmation upon its receipt of the settlement payments. Within five (5) business days of the
23 Court’s approval of this Consent Judgment, Bass Pro’s counsel shall deliver all payments due
24 under this agreement to Moore’s counsel.

25 **3.4 Payment Address**

26 All payments required by this Consent Judgment shall be delivered to:

27 The Chanler Group
28 Attn: Proposition 65 Controller

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3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Moore's Public Release of Proposition 65 Claims**

5 Moore, acting on his own behalf and in the public interest, releases Bass Pro and its
6 parents, subsidiaries, affiliated entities under common ownership, directors, officers,
7 employees, and attorneys ("Releasees"), and each entity to whom Bass Pro directly or
8 indirectly distributes or sells the Covered Products, including, without limitation, its
9 downstream customers, distributors, wholesalers, and retailers ("Downstream Releasees") for
10 any violation arising under Proposition 65 pertaining to the failure to warn about exposures to
11 DEHP from Covered Products sold or distributed for sale by Bass Pro prior to the Effective
12 Date, as set forth in the Notice. The Parties agree and understand that the releases provided
13 under this Consent Judgment do not extend upstream to any entity that manufactured the
14 Covered Products or any component parts thereof, or that supplied the Covered Products or any
15 component parts thereof to Bass Pro, (collectively, the "Upstream Releasees") except to the
16 extent such Covered Products are/were sold or distributed for sale in California by Bass Pro
17 prior to the Effective Date, in which case the Upstream Releasees are subject to this release
18 only as to those Covered Products.

19 **4.2 Moore's Individual Release of Claims**

20 Moore, in his individual capacity only and *not* in any representative capacity, also
21 provides a release to Bass Pro, Releasees, the Upstream Releasees, and Downstream Releasees,
22 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes
23 of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
24 demands of Moore of any nature, character or kind, whether known or unknown, suspected or
25 unsuspected, arising out of alleged or actual exposures to DEHP in Covered Products sold or
26 distributed for sale by Bass Pro prior to the Effective Date. Compliance with the terms of this
27 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
28 DEHP from Covered Products sold or distributed for sale by Bass Pro after the Effective Date.

1 **4.3 Bass Pro’s Release of Moore**

2 Bass Pro, on its own behalf, and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims against Moore, and his
4 attorneys and other representatives, for any and all actions taken or statements made by Moore,
5 and his attorneys and other representatives, whether in the course of investigating claims,
6 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the
7 Covered 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 it is not approved and entered by the Court within one year after it has
11 been fully executed by the Parties, or by such additional time as the Parties may agree in writing.

12 **6. SEVERABILITY**

13 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment,
14 any provision is held by a court to be unenforceable, the validity of the remaining provisions
15 shall not be adversely affected.

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the state of
18 California and apply within the state of California. In the event that Proposition 65 is repealed,
19 or is otherwise rendered inapplicable by reason of law generally or as to the Covered Products,
20 then Bass Pro may provide written notice to Moore of any asserted change in the law, and shall
21 have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to
22 the extent that, the Covered Products are so affected.

23 **8. NOTICE**

24 Unless specified herein, all correspondence and notice required by this Consent Judgment
25 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
26 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

1 For Bass Pro:

2 James Hagale, President
3 Bass Pro, LLC
4 2500 East Kearney
5 Springfield, MO 65898

6 With a copy to Bass Pro's Counsel:

7 Mark E. Elliott, Counsel
8 Pillsbury Winthrop Shaw Pittman LLP
9 725 S. Figueroa Street, Suite 2800
10 Los Angeles, CA 90017-5406

11 Rebecca Lee, Counsel
12 Pillsbury Winthrop Shaw Pittman LLP
13 725 Figueroa Street, Suite 2800
14 Los Angeles, CA 90017-5406

15 For Moore:

16 Proposition 65 Coordinator
17 The Chanler Group
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710-2565

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

24 This Consent Judgment may be executed in counterparts and by facsimile signature, each
25 of which shall be deemed an original, and all of which, when taken together, shall constitute one
26 and the same document.

27 **10. POST EXECUTION ACTIVITIES**

28 Moore agrees to comply with the reporting form requirements referenced in Health and
Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
which motion Moore shall draft and file. In furtherance of obtaining such approval, the Parties
agree to mutually employ their best efforts, and those of their counsel, to support the entry of this
agreement as judgment, and to obtain judicial approval of their settlement in a timely manner.

For purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion

1 for approval, responding to any objection that any third-party may file or lodge, and appearing at
2 the hearing before the Court if so requested.

3 **11. MODIFICATION**

4 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
5 and entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or
6 application of any Party, and the entry of a modified consent judgment thereon by the Court.

7 **12. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment and acknowledge that
9 they have read, understand, and agree to all of the terms and conditions contained herein.

10 **AGREED TO:**

AGREED TO:

11
12 Date: 2/20/2018

Date: 2/14/18

13
14 By: 
JOHN MOORE

By: 
LARRY WILCHER
Group Vice President & General Counsel