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LAURENCE VINO CUR and
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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION
13

14 LAURENCE VINO CUR; and JOHN
MOORE,

15 Plaintiffs,

16 v.

17 CSS INDUSTRIES, INC.; C.R. GIBSON,
18 LLC; MADE MODERN, LLC; TARGET
CORPORATION; and DOES 1-150, inclusive,

19 Defendants.
20

CASE NO. CIV 1802647

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment (Consent Judgment) is entered into by and between John Moore
4 (Moore), Laurence Vinocur (Vinocur), CSS Industries, Inc. (CSS) and C.R. Gibson, LLC (Gibson)
5 with Moore, Vinocur, CSS and Gibson collectively referred to as the “Parties.”

6 **1.2 Plaintiffs**

7 Moore and Vinocur are individuals residing in California who seek to promote awareness
8 of exposures to toxic chemicals and to improve human health by reducing or eliminating
9 hazardous substances contained in consumer products.

10 **1.3 Defendants**

11 CSS and Gibson each employ ten or more persons and are persons in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code §§ 25249.5 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Moore and Vinocur allege that CSS and Gibson manufacture, import, sell and/or distribute
16 for sale in California, products containing di(2-ethylhexyl)phthalate (DEHP), and that they do so
17 without providing the health hazard warning that Moore and Vinocur allege is required by
18 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
19 California to cause birth defects and other reproductive harm.

20 **1.5 Product Descriptions**

21 The products that are covered by this Consent Judgment are (a) tool grips containing
22 DEHP including, but not limited to, the *Hand Made Modern Hot Springs Specialty Wire Kit*,
23 *081 22 2219 R00; IDC-000279-01-010-0260, UPC# 7 25718 03837 3* that are manufactured,
24 imported, distributed, sold and/or offered for sale by CSS and its affiliates including Gibson and
25 their respective predecessors in the State of California; (b) cases used to carry small objects and
26 made of or having components made of vinyl/PVC or other plastic containing DEHP including,
27 but not limited to, the *Emergency Kit To The Rescue, Fashion Emergency Kit, EK3-17483, UPC*
28 *#6 36225 73232 9* that are manufactured, imported, distributed, sold and/or offered for sale by

1 CSS and Gibson in the State of California; and (c) binders with clear vinyl/plastic coverings
2 containing DEHP including, but not limited to, the *San Francisco 49ERS 3-Ring Binder*,
3 *N663580B*; #06417 00992 4012659, UPC# 0 09292 66358 0 that are manufactured, imported,
4 distributed, sold and/or offered for sale by CSS and Gibson in the State of California. The
5 aforementioned cases, tool grips, and binders are hereinafter referred to as the “Products.”

6 **1.6 Notices of Violation**

7 On or about February 14, 2018, Moore served Made Modern, and certain requisite public
8 enforcement agencies with a 60-Day Notice of Violation (Moore Notice), alleging that Made
9 Modern violated Proposition 65 when it failed to warn its customers and consumers in California
10 that the tool grips expose users to DEHP.

11 On or about April 9, 2018, Vinocur served CSS and Gibson, and certain requisite public
12 enforcement agencies with a 60-Day Notice of Violation (Vinocur Notice), alleging that CSS and
13 Gibson violated Proposition 65 when they failed to warn their customers and consumers in
14 California that the vinyl/PVC/plastic cases expose users to DEHP. To the best of the Parties’
15 knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set
16 forth in the Moore Notice and the Vinocur Notice.

17 On or about August 3, 2018, Vinocur served CSS and Gibson, and certain requisite public
18 enforcement agencies with a Supplemental 60-Day Notice of Violation (Vinocur Supplemental
19 Notice), alleging that CSS and Gibson violated Proposition 65 when they failed to warn their
20 customers and consumers in California that the vinyl/PVC/plastic cases, binders with clear
21 vinyl/plastic coverings, and tool grips expose users to DEHP. To the best of the Parties’
22 knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set
23 forth in the Moore Notice, the Vinocur Notice and the Vinocur Supplemental Notice (collectively
24 “Notices”).

25 **1.7 Complaint**

26 On July 27, 2018, Vinocur and Moore filed the instant action (Complaint), naming CSS
27 and Gibson, among others, as defendants for the alleged violations of Health and Safety Code
28 section 25249.6 that are the subject of the Moore Notice and Vinocur Notice. At the time

1 plaintiffs filed the Complaint, however, Vinocur had not perfected standing to bring an action to
2 enforce the claims alleged in the Vinocur Supplemental Notice. The Parties stipulate and agree
3 that, on the later of sixty-six days after service of the Vinocur Supplemental Notice, or the Court's
4 approval of this Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc* to
5 include the claims and alleged violations that are the subject of the Vinocur Supplemental Notice.

6 **1.8 No Admission**

7 CSS and Gibson deny the material, factual and legal allegations contained in the Notices
8 and maintain that all products that they have sold and distributed in California, including the
9 Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall
10 be construed as an admission by CSS or Gibson of any fact, finding, issue of law or violation of
11 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
12 by CSS or Gibson of any fact, finding, conclusion, issue of law or violation of law. This Section
13 shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under
14 this Consent Judgment.

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over CSS and Gibson as to the allegations in the Complaint, that venue is proper in the
18 County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on
22 which CSS and Gibson receive the Notice of Entry of the Consent Judgment.

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

24 **2.1 Definitions**

25 (a) "Accessible Component" means any accessible part of the Product that can
26 be mouthed, handled, or touches the body during the ordinary and customary conditions of
27 purchase or use of the Product.

28 (b) "Listed Chemicals" means the following listed chemicals: Di[2-Ethylhexyl]

1 Phthalate (DEHP), Diisononyl Phthalate (DINP), Di-n-butyl Phthalate (DBP), Di-isodecyl
2 Phthalate (DIDP), Benzyl Butyl Phthalate (BBP), and Di-n-hexyl Phthalate (DnHP) each of which
3 are listed pursuant to Proposition 65 as a chemical known to the State of California to cause
4 cancer, birth defects, and/or other reproductive harm.

5 (c) "Phthalate Free" means that each Accessible Component of the Products
6 contains less than or equal to 1,000 parts per million (ppm) of DEHP, DINP, DBP, DIDP, BBP,
7 and DnHP when analyzed pursuant to U.S. EPA testing methodology 3580A and 8270C or similar
8 methodologies utilized by federal or state agencies for the purpose of determining phthalate
9 content in a solid substance.

10 **2.2 Reformulation Commitment**

11 No later than December 31, 2018, CSS and Gibson shall not manufacture, import,
12 distribute, sell or offer the Products for sale in the State of California unless they are either
13 Phthalate Free or carry appropriate Proposition 65 warnings per section 2.3, below.

14 **2.3 Product Warnings**

15 Commencing on or before the Effective Date, CSS and Gibson shall provide clear and
16 reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) for all products that
17 do not qualify as Reformulated Products. Each warning shall be prominently placed with such
18 conspicuousness as compared with other words, statements, designs, or devices as to render it
19 likely to be read and understood by an ordinary individual under customary conditions before
20 purchase or use. Each warning shall be provided in a manner such that the consumer or user
21 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
22 confusion.

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

24 **(i) Product Labeling.** CSS and Gibson shall affix a warning to the
25 packaging, labeling, or directly on each Product provided for sale in retail outlets in California that
26 states:
27
28

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

5 (ii) **Point-of-Sale Warnings.** Alternatively, CSS and Gibson may
6 provide warning signs in the form below to their customers in California with instructions to post
7 the warnings in close proximity to the point of display of the Products. Such instruction sent to
8 CSS and Gibson’s customers shall be sent by certified mail, return receipt requested.

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

16 **⚠ WARNING:** The following products can expose you to chemicals
17 including DEHP, which is known to the State of
18 California to cause cancer and birth defects or other
19 reproductive harm. For more information go to
20 www.P65Warnings.ca.gov.

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

22 (b) **Mail Order Catalog and Internet Sales.** In the event that CSS and
23 Gibson sell Products via mail order catalog and/or the internet, to customers located in California,
24 after the Effective Date, that are not Reformulated Products, CSS and Gibson shall provide
25 warnings for such Products sold via mail order catalog or the internet to California residents.
26 Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to
27 which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

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

¹For purposes of the Consent Judgment, “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 same location as the display and/or description of the Product, CSS and Gibson may utilize a
2 designated symbol to cross reference the applicable warning with a “designated symbol” which
3 may appear adjacent to or immediately following the display, description, or price of the Product
4 for which a warning is being given, provided that the following warning statement also appears
5 elsewhere on the same web page, as follows:

6 ▲ **WARNING:** Certain products identified with this symbol ▼ can
7 expose you to chemicals including DEHP, which is
8 known to the State of California to cause cancer and birth
9 defects or other reproductive harm. For more information
10 go to www.P65Warnings.ca.gov.

11 In lieu of the preceding warning, CSS and Gibson may use any warning language and method that
12 complies with Title 27, California Code of Regulations, section 25600 et seq., as amended
13 August 30, 2016 and subsequently thereafter.

14 **2.4 Products in the Stream of Commerce**

15 The reformulation and warning requirements of Sections 2.2 and 2.3 do not apply to any
16 Products that are already in the stream of commerce as of the Effective Date.

17 **3. MONETARY SETTLEMENT TERMS**

18 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

19 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims
20 alleged in the Notices, the Complaint or referred to in this Consent Judgment, CSS and Gibson
21 agree to pay a total of \$8,000 in civil penalties. The penalty payment will be allocated in
22 accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the
23 penalty amount paid to the California Office of Environmental Health Hazard Assessment
24 (OEHHA) and the remaining 25% of the penalty amount retained by Moore and Vinocur, to be
25 divided equally between Moore and Vinocur.

26 CSS and Gibson will deliver their payments within five (5) business days of the Effective
27 Date, in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of
28 \$6,000; and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$2,000. Counsel for
Moore and Vinocur shall be responsible for delivering OEHHA’s portion of the penalties paid
under this Consent Judgment.

1 **3.2 Reimbursement of Attorneys’ Fees and Costs**

2 The Parties acknowledge that Moore and Vinocur and their counsel offered to resolve this
3 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
4 leaving the issue to be resolved after the material terms of the agreement had been settled.
5 Shortly after the other settlement terms had been finalized, CSS and Gibson expressed a desire to
6 resolve Moore and Vinocur’s fees and costs. The Parties then negotiated a resolution of the
7 compensation due to Moore and Vinocur and their counsel under general contract principles and
8 the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For
9 all work performed through the mutual execution of this agreement, CSS and Gibson shall
10 reimburse Moore and Vinocur and their counsel \$30,000. CSS and Gibson’s payment shall be
11 delivered to the address in Section 3.3, within five (5) business days of the Effective Date, in the
12 form of a check payable to “The Chanler Group.” The aforementioned reimbursement amount
13 covers all fees and costs incurred by Moore and Vinocur investigating, bringing this matter to
14 CSS and Gibson’s attention and negotiating a settlement of the matter.

15 **3.3 Payment Address**

16 All payments required by this Consent Judgment shall be delivered to the following
17 address:

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

23 **3.4 Allocation of Civil Penalties, Attorney’s Fees and Costs**

24 The settlement payment amounts identified in Sections 3.1 and 3.2 are allocated equally
25 between the three Product types set forth in Section 1.5.

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 Moore and Vinocur’s Release of Proposition 65 Claims**

28 Moore and Vinocur acting on their own behalf, and in the public interest, release CSS and
Gibson, and their parents, subsidiaries, affiliated entities under common ownership, predecessors,
directors, officers, agents, employees, attorneys, licensors and each entity to whom CSS or Gibson

1 directly or indirectly distribute or sell Products, including, but not limited, to Target Corporation,
2 Walmart Inc., downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
3 members, and licensees (collectively, "Releasees"), from all claims for violations of
4 Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products,
5 as set forth in the Notices and Complaint. Compliance with the terms of this Consent Judgment
6 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products,
7 as set forth in the Notices and Complaint.

8 **4.2 Moore and Vinocur's Individual Releases of Claims**

9 Moore and Vinocur, in their individual capacity only and *not* in their representative
10 capacity, provide a release herein which shall be effective as a full and final accord and
11 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
12 damages, losses, claims, liabilities, and demands of Moore's and Vinocur's of any nature,
13 character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising
14 out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or
15 sold by CSS, Gibson and Releasees prior to the Effective Date. Nothing in this Section affects
16 Moore and Vinocur's right to commence or prosecute an action under Proposition 65 against a
17 Releasee that does not involve the Products.

18 **4.3 CSS and Gibson's Release of Moore and Vinocur**

19 CSS and Gibson, on behalf of themselves, their past and current agents, representatives,
20 attorneys, successors, and assignees, hereby waive any and all claims against Moore and Vinocur
21 and their attorneys and other representatives, for any and all actions taken or statements made (or
22 those that could have been taken or made) by Moore or Vinocur and their attorneys and other
23 representatives, whether in the course of investigating claims or otherwise seeking to enforce
24 Proposition 65 against them in this matter with respect to the Products.

25 **5. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court and
27 shall be null and void if it is not approved and entered by the Court within one year after it has
28 been fully executed by the Parties, or by such additional time as the Parties may agree in writing.

1 **6. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
3 Consent Judgment are deemed by a court to be unenforceable, the validity of the enforceable
4 provisions remaining shall not be adversely affected.

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California and apply within the State of California. In the event that Proposition 65 is repealed or
8 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
9 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or
10 preemption or rendered inapplicable by reason of law generally as to the Products, then CSS and
11 Gibson shall provide written notice to Moore and Vinocur of any asserted change in the law and
12 shall have no further injunctive obligations pursuant to this Consent Judgment with respect to, and
13 to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
14 interpreted to relieve CSS and Gibson from any obligation to comply with any pertinent state or
15 federal toxics control law.

16 **8. NOTICE**

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

21 For CSS:

22 Michael Santivasci, Associate General Counsel
23 CSS Industries, Inc.
24 450 Plymouth Road, Suite 300
Plymouth Meeting, PA 19462

25 For Gibson:

26 Michael Santivasci, Associate General Counsel
27 CSS Industries, Inc.
28 450 Plymouth Road, Suite 300
Plymouth Meeting, PA 19462

1 With a Copy to:

2 Peg Carew Toledo, Esq.
3 Peg Carew Toledo, Law Corporation
4 3001 Douglas Blvd, Suite 340
5 Roseville, CA 95661

6 For Moore and Vinocur:

7 Proposition 65 Coordinator
8 The Chanler Group
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710-2565

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

14 **9. COUNTERPARTS; FACSIMILE AND SIGNATURES**

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

18 **10. POST EXECUTION ACTIVITIES**

19 Moore and Vinocur agree to comply with the reporting requirements referenced in
20 Health & Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to
21 Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial
22 approval of the settlement, which motion Moore and Vinocur shall draft and file. In furtherance of
23 obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their
24 counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their
25 settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a
26 minimum, supporting the motion for approval, responding to any objection that any third-party
27 may file or lodge, and appearing at the hearing before the Court if so requested.

28 **11. MODIFICATION**

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

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12. AUTHORIZATION

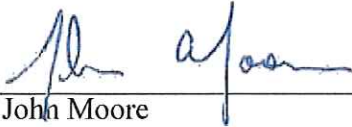
The undersigned are authorized to execute this Consent Judgment and have read, understood and agreed to all of the terms and conditions contained herein.


AGREED TO:

AGREED TO:

Dated: September 19, 2018

Dated: September 19, 2018

By: 
John Moore

By: 
Laurence Vinocur

AGREED TO:

Dated: September __, 2018

By: 
Name: *William G. Wiesinger*
Title: *vice president*
CSS Industries, Inc. and
C.R. Gibson, LLC