

1 Josh Voorhees, State Bar No. 241436  
2 Harris A. Weinstein, State Bar No. 282166  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 JOHN MOORE

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SANTA CLARA  
13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 CROSCILL HOME LLC; and DOES 1-150,  
18 inclusive,

19 Defendants.

) Case No. 112CV227498

) **[PROPOSED] CONSENT JUDGMENT**

) Dept:

) Judge:

) Date: None set

) Action Filed: June 29, 2012

1       **1. INTRODUCTION**

2               **1.1 John Moore and Croscill Home LLC**

3               This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or  
4               “Plaintiff”) and defendant Croscill Home LLC (“Croscill” or “Defendant”), with Plaintiff and  
5               Defendant collectively referred to as 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 Croscill Home LLC**

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

14              **1.4 General Allegations**

15              Moore alleges that Croscill has manufactured, imported, distributed and/or sold curtains that  
16              contain phthalates, including di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition  
17              65 warnings. DEHP is on the Proposition 65 list as known to cause birth defects and other  
18              reproductive harm.

19              **1.5 Product Description**

20              The products that are covered by this Consent Judgment are curtains containing DEHP  
21              including, but not limited to, *Chapel Hill West End Tab Top Panel, Style No. 5HO-336AO-9883,*  
22              *PN 99319F (#7 62416 07681 8)*, manufactured, imported, distributed and/or sold by Croscill in the  
23              State of California, referred to hereinafter as the “Products.”

24              **1.6 Notice of Violation**

25              On December 13, 2011, Moore served Croscill and various public enforcement agencies  
26              with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients  
27              with notice of alleged violations of California Health & Safety Code § 25249.6 based on Croscill’s  
28              alleged failure to warn consumers that the Products exposed users in California to DEHP. To the

1 best of the parties' knowledge, no public enforcer has prosecuted the allegations set forth in the  
2 Notice.

3 **1.7 Complaint**

4 On June 29, 2012, Moore filed a complaint (the "Complaint") in the Superior Court in and  
5 for the County of Santa Clara against Croscill Home LLC and Does 1 through 150, *Moore v.*  
6 *Croscill Home LLC, et al.*, Case No. 112CV227498 (the "Action"), alleging violations of California  
7 Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain  
8 curtains sold by Croscill.

9 **1.8 No Admission**

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

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
20 jurisdiction over Croscill as to the allegations contained in the Complaint, that venue is proper in the  
21 County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of this  
22 Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean February 15,  
25 2013.

1       **2. INJUNCTIVE RELIEF: REFORMULATION**

2               **2.1 Reformulation Standards**

3               Reformulated Products are defined as those Products containing no DEHP or in the event  
4               the Products contain DEHP the Products shall contain DEHP in concentrations less than 0.1 percent  
5               (1,000 parts per million) pursuant to U.S. Environmental Protection Agency testing methodologies  
6               3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of  
7               determining the DEHP content in a solid substance.

8               **2.2 Reformulation Commitment**

9               As of the Effective Date Croscill shall only acquire for potential distribution to or sale in  
10              California Reformulated Products as defined in section 2.1 above.

11       **3. MONETARY PAYMENTS**

12              In settlement of all the claims referred to in this Consent Judgment, Croscill shall pay  
13              \$19,000 in civil penalties as follows:

14              **3.1 Initial Civil Penalty**

15              Croscill shall make an initial civil penalty payment of \$5,000 to be apportioned in  
16              accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of  
17              these funds earmarked for the State of California's Office of Environmental Health Hazard  
18              Assessment ("OEHHA") and the remaining 25% of these penalty monies earmarked for Moore.

19              **3.2 Final Civil Penalty**

20              Croscill shall make a final payment of \$14,000 on or before April 30, 2013, to be  
21              apportioned in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and  
22              (d), with 75% of these funds earmarked for the State of California's Office of Environmental  
23              Health Hazard Assessment ("OEHHA") and the remaining 25% of these penalty monies earmarked  
24              for Moore. As incentive to reformulate the Products, however, the final civil penalty identified in  
25              this Section 3.2 shall be waived in its entirety if an Officer of Croscill or its designee certifies in  
26              writing that as of April 15, 2013, Croscill will only distribute or sell in California Reformulated  
27              Products and will continue to acquire for distribution to or sale in California only Reformulated  
28              Products. Such certification must be received by The Chanler Group on or before April 15, 2013.

1                   **3.3    Reimbursement of Plaintiff's Fees and Costs**

2                   The Parties acknowledge that Moore and his counsel offered to resolve this dispute without  
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
4 issue to be resolved after the material terms of the agreement had been settled. Croscill then  
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
6 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
7 Moore and his counsel under general contract principles and the private attorney general doctrine  
8 codified at California Code of Civil Procedure section 1021.5, for all work performed in this  
9 matter, except fees that may be incurred on appeal. Under these legal principles, Croscill shall pay  
10 the amount of \$30,000 for fees and costs incurred investigating, litigating and enforcing this  
11 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting and  
12 obtaining the Court's approval of this Consent Judgment in the public interest.

13                   **3.4    Payment Procedures**

14                   **3.4.1 Funds Held In Trust:** All payments required by Sections 3.1 through 3.3  
15 shall be delivered on or before December 21, 2012, to either The Chanler Group or the attorney of  
16 record for Croscill, and shall be held in trust pending the Court's approval of this Consent  
17 Judgment.

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

- 19                   (a)    One check made payable to "The Chanler Group in Trust for  
20                   OEHHA" in the amount of \$3,750;  
21                   (b)    One check made payable to "The Chanler Group in Trust for John  
22                   Moore" in the amount of \$1,250; and  
23                   (c)    One check made payable to "The Chanler Group in Trust" in the  
24                   amount of \$30,000.

25                   Payments delivered to Buchanan Ingersoll & Rooney LLP shall be made payable, as  
26 follows:

- 1 (a) One check made payable to “Buchanan Ingersoll & Rooney LLP in  
2 Trust for OEHHA” in the amount of \$3,750;  
3 (b) One check made payable to “Buchanan Ingersoll & Rooney LLP in  
4 Trust for John Moore” in the amount of \$1,250; and  
5 (c) One check made payable to “Buchanan Ingersoll & Rooney LLP in  
6 Trust for The Chanler Group” in the amount of \$30,000.

7 If Croscill elects to deliver payments to its attorney of record, such attorney of record shall:

8 (a) confirm in writing within five days of receipt that the funds have been deposited in a trust  
9 account; and (b) within two days of the date of the hearing on which the Court approves the  
10 Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as follows:

- 11 (a) One check made payable to “The Chanler Group in Trust for  
12 OEHHA” in the amount of \$3,750;  
13 (b) One check to “The Chanler Group in Trust for John Moore” in the  
14 amount of \$1,250; and  
15 (c) One check to “The Chanler Group” in the amount of \$30,000.

16 **3.4.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved  
17 and the settlement funds have been transmitted to plaintiff’s counsel, Croscill shall issue three  
18 separate 1099 forms, as follows:

- 19 (a) The first 1099 shall be issued to the Office of Environmental Health  
20 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:  
21 68-0284486) in the amount of \$3,750;  
22 (b) The second 1099 shall be issued to John Moore in the amount of  
23 \$1,250, whose address and tax identification number shall be  
24 furnished upon request; and  
25 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-  
26 3171522) in the amount of \$30,000.

1                   **3.4.3 Payment Address:** All payments to the Chanler Group shall be delivered to  
2 the following payment address:

3                   The Chanler Group  
4                   Attn: Proposition 65 Controller  
5                   2560 Ninth Street  
6                   Parker Plaza, Suite 214  
7                   Berkeley, CA 94710

8                   **4.     CLAIMS COVERED AND RELEASED**

9                   **4.1    Moore's Public Release of Proposition 65 Claims**

10                  Moore acting on his own behalf and in the public interest releases Croscill from all claims  
11 for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the  
12 Products as set forth in the Notice and Complaint. Compliance with the terms of this Consent  
13 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the  
14 Products as set forth in the Notice.

15                  **4.2    Moore's Individual Release of Claims**

16                  Plaintiff also, in his individual capacity only and *not* in his representative capacity, provides  
17 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
18 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
19 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,  
20 suspect or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the  
21 Products manufactured, distributed or sold by Croscill.

22                  **4.3    Croscill's Release of Moore**

23                  Croscill on behalf of itself, its past and current agents, representatives, attorneys, successors  
24 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  
26 taken or made) by Moore and his attorneys and other representatives, whether in the course of  
27 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
28 respect to the Products.

1       **5.       COURT APPROVAL**

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

5       **6.       SEVERABILITY**

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

9       **7.       GOVERNING LAW**

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

19       **8.       NOTICES**

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

24                   To Croscill:

25                   Marc Navarre, President  
26                   Croscill Home LLC  
27                   1500 North Carolina Street  
28                   Goldsboro, NC 27530

                    To Moore:

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



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

3 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

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

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

10 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

11 Moore and Croscill agree to mutually employ their best efforts to support the entry of this  
12 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
13 timely manner. The parties acknowledge that, pursuant to California Health & Safety Code  
14 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which  
15 Moore shall draft and file, and Croscill shall join. If any third party objection to the noticed motion  
16 is filed, Moore and Croscill shall work together to file a joint reply and appear at any hearing before  
17 the Court. This provision is a material component of the Consent Judgment and shall be treated as  
18 such in the event of a breach.

19 **12. MODIFICATION**

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

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1 **13. AUTHORIZATION**

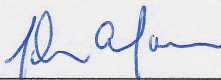
2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective parties and have read, understood, and agree to all of the terms and conditions of this  
4 Consent Judgment.

5  
6 AGREED TO:

AGREED TO:

7  
8 Date: JANUARY 2, 2013

Date: \_\_\_\_\_

9  
10 By:   
John Moore

By: \_\_\_\_\_  
Joe Granger, Chief Executive Officer  
Croscill Home LLC

1     **13.    AUTHORIZATION**

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

6     AGREED TO:

6     AGREED TO

8     Date: \_\_\_\_\_

8     Date: 1/7/13

9     By: \_\_\_\_\_  
10     John Moore

9     By:   
10     Joe Granger, Chief Executive Officer  
11     Crosskill Home LLC

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