

1 Josh Voorhees, State Bar No. 241436
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5 E-mail: josh@chanler.com

6 Attorneys for Plaintiff
JOHN MOORE

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION
11

12 JOHN MOORE,

13 Plaintiff,

14 v.

15 TOTAL RESOURCES INTERNATIONAL
16 INC., *et al.*

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No. CGC-16-550996

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Total Resources 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 and
13 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Total Resources manufactures, imports, sells, or distributes for sale in
16 California, vinyl/PVC gloves that contain the chemical diisononyl phthalate (“DINP”) without first
17 providing the exposure warning required by Proposition 65. DINP is listed pursuant to Proposition
18 65 as a chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP that
21 are manufactured, imported, sold, or distributed for sale in California by Total Resources including,
22 but not limited to, the gloves included with the *50-Person Industrial-Construction First Aid Kit, Item*
23 *#10-HBC-01059, UPC # 0 20424 10159 6*, hereinafter the “Products”.

24 **1.6 Notice of Violation**

25 On or about December 22, 2014, Moore served Total Resources, and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Total Resources
27 violated Proposition 65 by failing to warn its customers and consumers in California that the Products
28

1 expose users to DINP. To the best of the Parties' knowledge, no public enforcer has commenced and
2 is diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On March 17, 2016, Moore filed the instant action ("Complaint") naming Total Resources as
5 a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject
6 of the Notice.

7 **1.8 No Admission**

8 Total Resources denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
14 not, however, diminish or otherwise affect Total Resources' obligations, responsibilities, and duties
15 under this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Total Resources as to the allegations contained in the Complaint, that venue is
19 proper in the County of San Francisco, and that the Court has jurisdiction to enter and enforce the
20 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section
21 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
24 motion to approve this Consent Judgment is granted, including an uncontested tentative ruling.

25 **2. INJUNCTIVE RELIEF: REFORMULATION**

26 **2.1 Reformulation and Warning Commitments**

27 Commencing on or before the Effective Date, and continuing thereafter, Total Resources
28 agrees to only manufacture, import, distribute or sell into California: "Reformulated Products." For

1 purposes of this Consent Judgment, "Reformulated Products" are Products that contain no more than
2 1,000 parts per million (0.1%) DINP when analyzed pursuant to Environmental Protection Agency
3 testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state
4 agencies for the purpose of determining DINP content in a solid substance.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Civil Penalty Payment**

7 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
8 this Consent Judgment, Total Resources shall pay \$6,000 in civil penalties. The civil penalty
9 payment shall be allocated in accordance with California Health and Safety Code section
10 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of
11 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
12 amount paid to Moore.

13 **3.2 Reimbursement of Attorney's Fees and Costs**

14 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
16 to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
17 other settlement terms had been finalized, Total Resources expressed a desire to resolve Moore's
18 fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
19 Moore and his counsel under general contract principles and the private attorney general doctrine
20 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
21 mutual execution of this Consent Judgment. Total Resources shall pay \$18,000 for the fees and
22 costs incurred by Moore investigating, bringing this matter to Total Resource's attention, litigating
23 and negotiating a settlement in the public interest.

24 **3.3 Payments**

25 All payments shall be held in trust by Defendant's counsel until the Consent Judgment is
26 approved by the court. Once approved, Defendant's counsel shall tender the civil penalty payment
27 and attorneys' fee and costs reimbursements required by Sections 3.1 and 3.2, as follows:

28 //

1 **3.3.1** On or before November 15, 2016, Total Resources shall make the following
2 payments: (1) \$4,500 to “OEHHA;” (2) \$1,500 to “John Moore, Client Trust Account;”

3 **3.3.2** On or before December 15, 2016, Total Resources shall make the following
4 payment: \$9,000 to “The Chanler Group;”

5 **3.3.3** On or before January 15, 2017, Total Resources shall make the following
6 payment: \$9,000 to “The Chanler Group.”

7 **3.4 Payment Address**

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

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

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 Moore’s Public Release of Proposition 65 Claims**

14 Moore, acting on his own behalf and in the public interest, releases Total Resources and it’s
15 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
16 and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
17 Products including, but not limited to, it’s downstream distributors, wholesalers, customers,
18 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
19 any violations arising under Proposition 65 for unwarned exposures to DINP from Products sold by
20 Total Resources prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
21 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
22 failures to warn about DINP from the Products sold by Total Resources before the Effective Date,
23 as set forth in the Notice.

24 **4.2 Moore’s Individual Release of Claims**

25 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
26 release to Total Resources, Releasees, and Downstream Releasees which shall be effective as a full
27 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
28 attorneys’ fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or

1 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
2 exposures to DINP in the Products sold or distributed for sale by Total Resources before the Effective
3 Date.

4 **4.3 Total Resources' Release of Moore**

5 Total Resources, on its own behalf, and on behalf of its past and current agents,
6 representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against
7 Moore and his attorneys and other representatives, for any and all actions taken or statements made
8 by Moore and his attorneys and other representatives, whether in the course of investigating claims,
9 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and shall
12 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
13 has been fully executed by the Parties. Any monies held in trust will be returned within five (5) days
14 of defendant's request if the settlement is not approved.

15 **6. SEVERABILITY**

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

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the state of California
21 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
22 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Total
23 Resources may provide written notice to Moore of any asserted change in the law, and shall have no
24 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
25 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Total
26 Resources from any obligation to comply with any pertinent state or federal toxics control laws.
27
28

1 **8. NOTICE**

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

5 **For Total Resources:**

6 Greg Rivera, President
7 Total Resources International Inc.
8 420 South Lemon Avenue
9 Walnut, CA 91789

5 **For Moore:**

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

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

12 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

13 This Consent Judgment may be executed in counterparts and by facsimile or portable
14 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
15 taken together, shall constitute one and the same document.

16 **10. POST EXECUTION ACTIVITIES**

17 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
18 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
19 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
20 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
21 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
22 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
23 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
24 supporting the motion, and appearing at the hearing before the Court.

25 **11. MODIFICATION**

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

1 **12. AUTHORIZATION**

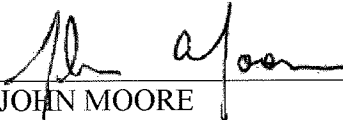
2 The undersigned are authorized to execute this Consent Judgment and have read, understood,
3 and agree to all of the terms and conditions contained herein.

4 **AGREED TO:**

AGREED TO:

5
6 Date: 9/2/2016

Date: _____

7
8 By: 
JOHN MOORE

By: _____
Greg Rivera, President
TOTAL RESOURCES INTERNATIONAL
INC.

1 **12. AUTHORIZATION**

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

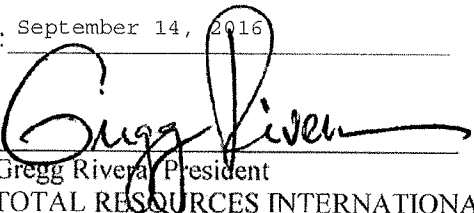
4 **AGREED TO:**

AGREED TO:

5
6 Date: _____

Date: September 14, 2016

7
8 By: _____
9 JOHN MOORE

By: 
10 Gregg Rivera, President
11 TOTAL RESOURCES INTERNATIONAL
12 INC.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28