

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

8 Attorneys for Plaintiffs
9 JOHN MOORE and
10 ANTHONY E. HELD, PH.D., P.E.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF MARIN
13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE, *et al.*,

15 Plaintiff,

16 v.

17 UNILEVER UNITED STATES, INC., *et al.*,

18 Defendants.

Case No. CIV1500844

**[PROPOSED] CONSENT JUDGMENT
AS TO SHOWA BEST GLOVE, INC.**

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

1 **1. INTRODUCTION**

2 **1.1 John Moore and Showa Best Glove, Inc.**

3 This Consent Judgment is entered into by and between John Moore (“Moore”) and Showa
4 Best Glove, Inc. (“Showa”). Moore and Showa collectively referred to as the “Parties.”

5 **1.2 Plaintiff**

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

9 **1.3 Defendant**

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

13 **1.4 General Allegations**

14 Moore alleges that Showa has manufactured, imported, sold, or distributed vinyl/PVC gloves
15 containing diisononyl phthalate (“DINP”) without requisite Proposition 65 warnings. DINP is listed
16 under to Proposition 65 as a chemical known to cause cancer.

17 **1.5 Product Description**

18 The products that are covered by this Consent Judgment are vinyl/PVC gloves containing
19 DINP including, but not limited to, the *ATLAS Glove, #620-L, UPC #7 13740 39349 2*, and the *Black*
20 *Knight Gloves, #7712R-10* that are manufactured, imported, sold, offered for sale, and/or distributed
21 for sale in California by Showa, hereinafter the “Products”.

22 **1.6 Notice of Violation**

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

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

3 **1.7 Complaint**

4 On March 5, 2015, plaintiffs John Moore and Moore filed an instant action ("Complaint"),
5 naming various defendants for Proposition 65 allegations concerning exposures to DINP in
6 California. Among them, Showa was named for its alleged violations of Health and Safety Code
7 section 25249.6, that are the subject of the Notice.

8 **1.8 No Admission**

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

17 **1.9 Jurisdiction**

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

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall be the date this
24 Consent Judgment is entered by the Court.

25 **2. INJUNCTIVE RELIEF: REFORMULATION**

26 **2.1 Reformulated Products**

27 Commencing on the Effective Date, and continuing thereafter, the only vinyl/PVC gloves that
28 Showa sells, offers for sale, or distributes for sale in California shall be "Reformulated Products."

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

6 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

7 **3.1 Civil Penalty Payments**

8 In settlement of all the claims referred to in this Consent Judgment, Showa shall pay a total of
9 \$2,000 in civil penalties in accordance with this Section. The penalty payment will be allocated in
10 accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with seventy-five percent
11 (75%) of the funds remitted to the California Office of Environmental Health Hazard Assessment
12 (“OEHHA”) by Moore. Moore’s counsel shall be responsible for remitting Showa’s penalty
13 payment(s) under this Consent Judgment to OEHHA. No later than 14 days after Venable LLP
14 receives written notice that this Consent Judgment has been entered by the Court, Showa shall make a
15 civil penalty payment of \$2,000, via two checks, as follow: (i) a check made payable to “John
16 Moore, Client Trust Account” in the amount of \$500 and (ii) a check made payable to “OEHHA” in
17 the amount of \$1,500. The checks shall be delivered to the address provided in Section 3.3.

18 **3.2 Reimbursement of Attorney’s Fees and Costs**

19 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
21 be resolved after the material terms of the agreement had been settled. Showa then expressed a desire
22 to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The
23 Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
24 counsel under general contract principles and the private attorney general doctrine codified at
25 California Code of Civil Procedure section 1021.5, for all work performed (and to be performed) in
26 this matter, except fees that may be incurred in connection with a third-party, including the Office of
27 the Attorney General, appeal (if any). Under these legal principles, Showa shall pay \$16,000 to
28 reimburse Moore’s fees and costs incurred investigating, litigating and enforcing this matter,

1 including fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the
2 Court's approval of this Consent Judgment in the public interest. Showa shall make this payment by
3 check payable to "The Chanler Group" no later than 14 days after Venable LLP receives written
4 notice that this Consent Judgment has been entered by the Court. The check shall be delivered to the
5 address provided in Section 3.3.

6 **3.3 Payments Procedures**

7 All payments owed to Moore, pursuant to Sections 3.1 through 3.3, shall be delivered to the
8 following payment 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 Release of Proposition 65 Claims**

14 Moore, acting on his own behalf and in the public interest, releases Showa and its past,
15 present, and future parent companies, subsidiaries, affiliated entities under common ownership,
16 directors, officers, stockholders, employees, agents, and attorneys and each entity to whom Showa
17 directly or indirectly distributes or sells the Products including, but not limited to, its downstream
18 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and
19 licensees and their past, present and future parent companies, subsidiaries, affiliated entities under
20 common ownership, directors, officers, agents, employees, and attorneys ("Releasees") from all
21 claims for violations of Proposition 65 based on their failure to warn about any alleged or actual
22 exposures to DINP from Products prior to the Effective Date or Reformulated Products.

23 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
24 with respect to any alleged or actual exposures to DINP from Products or Reformulated Products.

25 **4.2 Moore's Individual Release of Claims**

26 Moore, acting on behalf of himself, his past and current agents, representatives, attorneys,
27 successors and/or assignees, and *not* in his representative capacity, provides a release herein which
28 shall be effective as a full and final accord and satisfaction and as a bar to all actions, causes of

1 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands
2 of Moore of any nature, character or kind, whether known or unknown, suspected or unsuspected,
3 arising out of any alleged or actual exposures to DINP from the Products or Reformulated Products.

4 **4.3 Showa's Release of Moore**

5 Showa, on behalf of itself, its past and current agents, representatives, attorneys, successors,
6 and/or assignees, hereby waives any and all claims against Moore and his attorneys and other
7 representatives, for any and all actions taken or statements made by Moore and his attorneys and
8 other representatives prior to the Effective Date, whether in the course of investigating claims or
9 otherwise seeking to enforce Proposition 65 against it in this matter 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 all Parties.

14 **6. SEVERABILITY**

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

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of California
20 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
21 otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
22 Judgment are rendered inapplicable by preemption or reason of law generally as to the Products, then
23 Showa shall have no further injunctive obligations pursuant to this Consent Judgment with respect to,
24 and to the extent that, the Products are so affected.

25 **8. NOTICE**

26 Unless specified herein, all correspondence and notices required to be provided pursuant to
27 this Consent Judgment shall be in writing and personally delivered or sent by first-class (registered,
28

1 or certified mail) return receipt requested; or by overnight courier on any Party by the other party at
2 the following addresses:

3
4 **Showa**

5 Bill Alico, President
6 Showa Best Glove, Inc.
7 579 Edison Street
8 Menlo, GA 30731

Ben D. Whitwell, Esq.
Venable LLP
Century Park East, Suite 2100
Los Angeles, CA 90067

7 William N. Hall
8 Venable LLP
9 575 7th Street, NW
10 Washington, D.C. 20004

11 **Moore**

12 The Chanler Group
13 Attn: Proposition 65 Coordinator
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710-2565

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

20 This Consent Judgment may be executed in counterparts and by facsimile or portable
21 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
22 taken together, shall constitute one and the same document. A facsimile or PDF signature shall be as
23 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 section 25249.7(f).

27 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

28 Moore and Showa 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

1 Moore shall draft and file, and Showa shall not oppose. If any third party objection to the noticed
2 motion is filed, Moore and Showa shall work together to file a joint reply and appear at any hearing
3 before the Court. This provision is a material component of the Consent Judgment and shall be
4 treated as such in the event of a breach.

5 **12. MODIFICATION**

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

9 **13. AUTHORIZATION**

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

13 **AGREED TO:**

AGREED TO:

14
15 Date: 6/22/2016

Date: 07/12/16

16
17 By: 
JOHN MOORE

18 By: 
~~Bill Aliso~~, President Shuji Kondo
SHOWA BEST GLOVE, INC. 

19
20
21
22
23
24
25
26
27
28