

1 **1. INTRODUCTION**

2 **1.1 John Moore and E.T. Browne Drug Co., Inc.**

3 This consent judgment (“Consent Judgment”) is entered into by and between John Moore
4 (“Moore”) and E.T. Browne Drug Co., Inc. (“E.T. Browne”), with Moore and E.T. Browne each
5 individually referred to as a “Party” and collectively as the “Parties.” Moore is an individual
6 residing in California who seeks to promote awareness of exposures to toxic chemicals, and to
7 improve human health by reducing or eliminating hazardous substances contained in consumer
8 products. E.T. Browne employs ten or more persons and is a person in the course of doing business
9 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
10 Code Section 25249.6 *et seq.* (“Proposition 65”).

11 **1.2 General Allegations**

12 Moore alleges that E.T. Browne manufactures, imports, sells, or distributes for sale in
13 California, octocrylene-containing sunscreen (products claiming a Sun Protection Factor)
14 containing benzophenone. On June 22, 2012, benzophenone was listed pursuant to Proposition 65
15 as a chemical known to cause cancer. Moore alleges that E.T. Browne failed to provide the health
16 hazard warning required by Proposition 65 for exposures to benzophenone from sunscreen. E.T.
17 Browne denies any violation of Proposition 65 with respect to the allegations in the Notice.

18 **1.3 Product Description**

19 The products that are covered by this Consent Judgment are octocrylene-containing
20 sunscreen (products claiming a Sun Protection Factor) alleged to contain benzophenone, including,
21 but not limited to, *Palmer’s Cocoa Butter Formula with Vitamin E Eventone Suncare SPF 50*
22 *(Octocrylene 10%), UPC #0 10181 09200 8* and *Palmer’s Cocoa Butter Formula with Vitamin E*
23 *Eventone Suncare Cocoa Butter Moisturizing Sunscreen for Face SPF 45 (Octocrylene 2.7%), UPC*
24 *#0 10181 09545 0*, that are manufactured, distributed, sold, and/or offered for sale in California by
25 E.T. Browne (the “Products”).
26
27
28

1 **1.4 Notice of Violation**

2 On or about December 6, 2016, Moore served E.T. Browne, and certain requisite public
3 enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that E.T. Browne
4 violated Proposition 65 when it failed to warn its customers and consumers in California that the
5 Products expose users to benzophenone. To the best of the Parties’ knowledge, no public enforcer
6 has commenced and is diligently prosecuting the allegations set forth in the Notice.

7 **1.5 Complaint**

8 On May 12, 2017, Plaintiff filed a complaint in the Superior Court in and for the County of
9 Alameda against E.T. Browne, alleging violation of California Health & Safety Code § 25249.6,
10 based on exposures to benzophenone contained in certain sunscreens sold by E.T. Browne in the
11 State of California (“Complaint”).

12 **1.6 No Admission**

13 E.T. Browne denies the material, factual, and legal allegations contained in the Notice and
14 Complaint and maintains that all of the products it has manufactured, sold, or distributed for sale in
15 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
16 Consent Judgment shall be construed as an admission by E.T. Browne of any fact, finding,
17 conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
18 Judgment constitute or be construed as an admission by E.T. Browne of any fact, finding,
19 conclusion of law, issue of law, or violation of law, the same being specifically denied by E.T.
20 Browne. This section shall not, however, diminish or otherwise affect E.T. Browne’s obligations,
21 responsibilities, and duties under this Consent Judgment.

22 **1.7 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over E.T. Browne as to the allegations in the Complaint, that venue is proper in the
25 County of Alameda, E.T. Browne agrees that it employs or has employed ten or more persons
26 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
27 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of
28 Civil Procedure § 664.6.

1 **1.8 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
3 which this Consent Judgment is approved and entered by the Court.

4 **2. INJUNCTIVE RELIEF: REFORMULATION**

5 **2.1 Reformulation Standards**

6 On and after the Effective Date, E.T. Browne shall not manufacture or cause to be
7 manufactured, for sale in California, Products that do not qualify as “Reformulated Products.” For
8 purposes of this Consent Judgment, “Reformulated Products” are Products that either (i) contain no
9 more than 20 parts per million (“ppm”) benzophenone in the finished Products, or (ii) contain no
10 more than 200 ppm of benzophenone in the ingredient octocrylene used in the finished Products,
11 when analyzed by an accredited laboratory pursuant to U.S. Environmental Protection Agency
12 testing methodologies 3580A and 8270C or other methodology utilized by state and federal
13 agencies for the purpose of determining benzophenone content.

14 **3. MONETARY SETTLEMENT TERMS**

15 **3.1 Civil Penalty Payments**

16 Pursuant to Health and Safety Code Section 25249.7(b)(2), and in settlement of all claims
17 alleged in the Notice or referred to in this Consent Judgment, E.T. Browne agrees to pay \$10,000 in
18 civil penalties on or before the date that is 5 days following the Effective Date. The penalty
19 payment will be allocated in accordance with California Health and Safety Code Section
20 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of
21 Environmental Health Hazard Assessment (“OEHHA”) by Moore. Moore’s counsel shall be
22 responsible for remitting E.T. Browne’s penalty payment under this Consent Judgment to OEHHA.
23 E.T. Browne shall issue one check in the amount of \$2,500 payable to “John Moore, Client Trust
24 Account” and one check in the amount of \$7,500 payable to “OEHHA,” and E.T. Browne shall
25 send both checks to the address provided in Section 3.3 below.

1 **3.2 Reimbursement of Attorneys' 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 the issue
4 to be resolved after the material terms of the agreement had been settled. Shortly after the other
5 settlement terms had been finalized, E.T. Browne expressed a desire to resolve Moore's fees and
6 costs. The Parties then negotiated a resolution of the compensation due to Moore and his counsel
7 under general contract principles and the private attorney general doctrine codified at California
8 Code of Civil Procedure Section 1021.5. For all work performed through the mutual execution of
9 this agreement, E.T. Browne shall issue a check in the amount of \$29,000 payable to "The Chanler
10 Group" and shall deliver it to the address listed in Section 3.3 below on or before the date that is 5
11 days following the Effective Date.

12 The reimbursement of \$29,000 specified in this Section 3.2 shall cover all fees and costs
13 incurred by Moore investigating, bringing this matter to E.T. Browne's attention, negotiating a
14 settlement of the matter, and seeking and obtaining court approval of this Consent Judgment.

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

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 Moore's Public Release of Proposition 65 Claims**

24 This Consent Judgment is a full, final, and binding resolution of all claims that were or
25 could have been asserted arising out of E.T. Browne's alleged failure to provide Proposition 65
26 warnings for alleged exposures to benzophenone in the Products. Moore, acting on his own behalf
27 and on behalf of his agents, representatives, attorneys, successors, and assignees (collectively,
28 "Releasers"), and acting in a representative capacity in the public interest, releases and discharges

1 all actions and causes of action in law and in equity, suits, liabilities, demands, obligations,
2 damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation
3 fees, expert fees, and attorneys' fees (collectively, "Claims"), and waives all rights to institute or
4 participate in (directly or indirectly) any form of legal action, as to E.T. Browne, its parents,
5 subsidiaries, affiliated entities under common ownership, and the directors, officers, agents,
6 employees, attorneys, and predecessors, successors, or assigns of each of them, and each entity to
7 whom E.T. Browne directly or indirectly distributes or sells the Products, including, but not limited
8 to, downstream distributors, wholesalers, customers, retailers, franchisors, franchisees, cooperative
9 members, licensors and licensees, and each of their respective agents, attorneys, representatives,
10 predecessors, successors, parents, affiliates, and subsidiaries (collectively, the "Releasees"), from
11 all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures
12 to benzophenone in the Products manufactured, distributed, or sold before the Effective Date, as set
13 forth in the Notice. The Parties further understand and agree that this section 4.1 release shall not
14 extend upstream to any entities that manufactured the Products or any component parts thereof, or
15 any distributors or suppliers who sold the Products or any component parts thereof to E.T. Browne.

16 The Parties agree that compliance by E.T. Browne with the terms of this Consent Judgment
17 constitutes compliance by any Releasee with Proposition 65 with respect to exposures to
18 benzophenone from the Products manufactured, distributed, or sold on or after the Effective Date.

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

20 In further consideration of the promises and agreements herein, Moore, on his own behalf
21 and on behalf of the other Releasers, releases and discharges all Claims, and waives all rights to
22 institute or participate in (directly or indirectly) any form of legal action, as to Releasees, whether
23 known or unknown, suspected or unsuspected, arising under Proposition 65 or any other statutory or
24 common law with respect to any exposures to benzophenone from the Products manufactured
25 before the Effective Date. Moore acknowledges that he is familiar with Section 1542 of the
26 California Civil Code, which provides as follows:
27
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

4 Moore, on his own behalf and on behalf of the other Releasors, and not on behalf of the general
5 public, expressly waives and relinquishes any and all rights and benefits which he may have, or
6 which may be conferred on him, under the provisions of Civil Code § 1542 to the fullest extent that
7 he may lawfully waive such rights or benefits pertaining to the released matters.

8 Nothing in this section affects Moore's right to commence or prosecute an action under
9 Proposition 65 against a Releasee that does not involve E.T. Browne's Products.

10 **4.3 E.T. Browne's Release of Moore**

11 E.T. Browne, on behalf of itself, its past and current agents, representatives, attorneys,
12 successors, and assignees, hereby waives any and all claims against Moore and his attorneys and
13 other representatives, for any and all actions taken or statements made (or those that could have
14 been taken or made) by Moore and his attorneys and other representatives, whether in the course of
15 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
16 respect to the Products.

17 **5. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
20 after it has been fully executed by the Parties, or by such additional time as the Parties may agree in
21 writing. The Parties acknowledge that, pursuant to Cal. Health & Safety Code § 25249.7, a noticed
22 motion is required to obtain approval of this Consent Judgment, and Moore shall draft and file such
23 motion.

24 **6. SEVERABILITY**

25 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
26 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not
27 be adversely affected.
28

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
4 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
5 Judgment are rendered inapplicable or no longer required as a result of any such repeal or
6 preemption or rendered inapplicable by reason of law generally as to the Products, then E.T.
7 Browne shall provide written notice to Moore of any asserted change in the law and shall have no
8 further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent
9 that, the Products are so affected.

10 **8. NOTICE**

11 Unless specified herein, all correspondence and notices required to be provided pursuant to
12 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,
13 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any
14 Party by the other at the following addresses:

15 For E.T. Browne:

16 Robert Neis, President
17 E.T. Browne Drug Co., Inc.
18 440 Sylvan Avenue
19 Englewood Cliffs, NJ 07632

20 With a copy to:

21 Trent Norris
22 Sarah Esmaili
23 Arnold & Porter Kaye Scholer LLP
24 Three Embarcadero Center
25 10th Floor
26 San Francisco, CA 94111-4024

27 For Moore:

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

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

1 **9. COUNTERPARTS; FACSIMILE OR PDF SIGNATURES**

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

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

6 Moore and his attorneys agree to comply with the reporting form requirements referenced in
7 California Health and Safety Code Section 25249.7(f).

8 **11. MODIFICATION**

9 This Consent Judgment may be modified only by a written stipulation of the Parties and
10 upon approval by the Court.

11 **12. DISPUTE RESOLUTION**

12 In the event that Moore alleges a violation of this Consent Judgment in the future, at least 30
13 days prior to bringing any judicial action to enforce this Consent Judgment, Moore shall provide
14 E.T. Browne with written notice of the grounds for such allegation together with all supporting
15 information. After receiving the notice, the Parties shall meet and confer in good faith in an effort
16 to resolve the alleged violation of the Consent Judgment.

17 **13. AUTHORIZATION**

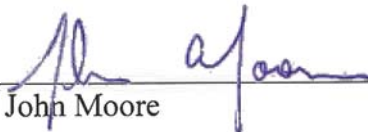
18 The undersigned are authorized to execute this Consent Judgment on behalf of their
19 respective Parties and have read, understood and agree to all of the terms and conditions herein.


20
21 **AGREED TO:**

AGREED TO:

22
23 Date: 5/26/2017

Date: May 17th 2017

24
25 By: 
26 John Moore

By: 
Robert Neis, President
E.T. Browne Drug Co., Inc.