

1 Josh Voorhees, State Bar No. 241436
Christopher Tuttle, State Bar No. 264545
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 ctuttle@chanler.com

6 Attorneys for Plaintiff
JOHN MOORE
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MARIN

11 UNLIMITED CIVIL JURISDICTION
12

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 CROWN BRANDS LLC, *et al.*,

17 Defendants.
18

Case No. CIV1704440

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)
19
20
21
22
23
24
25
26
27
28

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”), and
4 defendant Crown Brands, LLC (“Crown”), with Moore and Crown each individually referred to as a
5 “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 Crown employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Crown imports, sells, or distributes for sale in California, vinyl/PVC
16 gloves that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure warning
17 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause
18 cancer and birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC gloves containing DEHP
21 including, but not limited to, the *Crown Johnson-Rose Corp Pot/Sink Glove, #30918, UPC #6 12941*
22 *30918 2* that are manufactured, imported, distributed, sold and/or offered for sale in California by
23 Crown (“Products”).

24 **1.6 Notice of Violation**

25 On September 12, 2017, Moore served Crown, and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation (“Notice”) alleging that Crown violated Proposition 65 by failing
27 to warn its customers and consumers in California of the health hazards associated with exposures to
28

1 DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action
2 to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On December 4, 2017, Moore filed the instant action (“Complaint”), naming Crown as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Crown 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 Crown’s obligations, responsibilities, and duties under this
15 Consent Judgment.

16 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
23 the Court approves this Consent Judgment, including any unopposed tentative ruling granting
24 approval of this Consent Judgment that becomes the final order of the Court.

25 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNINGS**

26 **2.1 Commitment to Reformulate or Warn**

27 Commencing on the Effective Date and continuing thereafter, Crown agrees to only
28 manufacture, import, distribute, sell or offer for sale in California, Products that are either (a)

1 Reformulated Products as defined by Section 2.2, below, or (b) Products that bear a clear and
2 reasonable health hazard warning pursuant to Section 2.3 below.

3 **2.2 Reformulation Standard**

4 For the purposes of this Consent Judgment, "Reformulated Products" are defined as Products
5 that contain DEHP in concentrations that do not exceed 1,000 parts per million (0.1%) when analyzed
6 pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C
7 or equivalent methodologies utilized by state or federal agencies for the purpose of determining
8 DEHP content in a solid substance.

9 **2.3 Clear and Reasonable Warnings**

10 Commencing on the Effective Date and continuing thereafter, for any Products sold or
11 distributed for sale in California by Crown that are not Reformulated Products, Crown agrees to only
12 sell or distribute such Products for sale in California with a clear and reasonable warning in
13 accordance with this Section. Crown further agrees that any warning used will be prominently placed
14 in relation to the Products with such conspicuousness when compared with other words, statements,
15 designs, or devices as to render it likely to be read and understood by an ordinary individual under
16 customary conditions of purchase or use. For purposes of this Consent Judgment, a warning
17 satisfying the above criteria that is affixed directly to a Product or its accompanying labeling or
18 packaging containing either of the following statements shall be deemed clear and reasonable:

19  **WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.**

20 Or, for products manufactured before August 30, 2018:

21
22 **WARNING: This product contains chemicals known to the State of**
23 **California to cause cancer and birth defects or other**
24 **reproductive harm.**

25 **3. MONETARY SETTLEMENT TERMS**

26 **3.1 Civil Penalty Payments**

27 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims
28 referred to in the Notice, Complaint, and this Consent Judgment, Crown shall pay \$2,500 in civil

1 penalties. The civil penalty payment shall be allocated according to Health and Safety Code section
2 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
3 of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent
4 (25%) of the penalty retained by Moore. Moore’s counsel shall be responsible for delivering
5 OEHHA’s portion of any penalty payment(s) made under this Consent Judgment. Crown shall
6 provide its payment in a check made payable to “John Moore, Client Trust Account” in the amount of
7 \$625 and a check made payable to “OEHHA” in the amount of \$1,875 to be delivered to the address
8 provided in Section 3.3, below.

9 **3.2 Reimbursement of Attorney’s Fees and Costs**

10 After reaching an agreement in principle on the injunctive provisions, and civil penalties to be
11 paid under this Consent Judgment, the Parties then negotiated the compensation due to Moore and his
12 counsel under general contract principles and the private attorney general doctrine codified at
13 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
14 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs
15 on appeal, if any. Under these legal principles, Crown shall pay \$24,000 for all fees and costs
16 incurred by Moore investigating, bringing this matter to Crown’s attention, litigating and negotiating
17 a settlement in the public interest. Crown’s payment shall be delivered to the address in Section 3.4
18 in a check payable to “The Chanler Group.”

19 **3.3 Payment Timing; Payments Held in Trust**

20 All payments due under this Consent Judgment shall be held in trust until such time as the
21 Court approves the Parties’ settlement. Within five (5) days of the date that this Consent Judgment is
22 fully executed by the Parties, all payments due under this agreement shall be delivered to Crown’s
23 counsel and held in trust until the Effective Date. Crown’s counsel shall provide Moore’s counsel
24 with written confirmation by email upon its receipt of the settlement payments. Within five days of
25 the Effective Date, Crown’s counsel shall deliver the civil penalty and attorneys’ fee reimbursement
26 payments to Moore’s counsel.

27 **3.4 Payment Address**

28 All payments required by this Consent Judgment shall be delivered to:

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

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Moore's Public Release of Proposition 65 Claims**

8 Moore, acting on his own behalf and in the public interest, releases Crown and the parents,
9 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
10 attorneys of Crown, including, but not limited to, defendant Johnson-Rose Corp. ("Releasees"), and
11 each entity to whom Crown directly or indirectly distributed or sold the Products including, without
12 limitation, its downstream customers, distributors, wholesalers, and retailers, including, but not
13 limited to, Cash & Carry Warehouse ("Downstream Releasees") from all claims for violations of
14 Proposition 65 pertaining to the failure to warn about exposures to DEHP from the Products sold or
15 distributed for sale by Crown up through the Effective Date, as set forth in the Notice. Compliance
16 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
17 exposures to DEHP from Products sold or distributed for sale by Crown after the Effective Date.

18 **4.2 Moore's Individual Release of Claims**

19 Moore, in his individual capacity only and *not* in any representative capacity, also provides a
20 release to Crown, Releasees, and Downstream Releasees, which shall be effective as a full and final
21 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
22 attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or
23 kind, whether known or unknown, suspected or unsuspected, arising out of the Products before the
24 Effective Date.

25 **4.3 Crown's Release of Moore**

26 Crown, on its own behalf, and on behalf of its past and current agents, representatives,
27 attorneys, successors, and assignees, hereby waives any and all claims against Moore, and his
28 attorneys and other representatives, for any and all actions taken or statements made by Moore, and
his attorneys and other representatives, whether in the course of investigating claims, otherwise

1 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products before the
2 Effective Date.

3 **4.4 Mutual Waiver of California Civil Code Section 1542**

4 The Parties each acknowledge that they are familiar with Section 1542 of the Civil Code,
5 which provides as follows:

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

10 The Parties, each on their own behalf, and on behalf of their past and current agents, representatives,
11 attorneys, successors, and/or assignees, (but not in Moore's representative capacity) expressly waive
12 and relinquish any and all rights and benefits which they may have under, or which may be conferred
13 upon them by the provisions of Civil Code section 1542 as well as under any other state or federal
14 statute or common law principle of similar effect, to the fullest extent they may lawfully waive such
15 rights or benefits pertaining to the released matters, as specifically defined by Sections 4.1 through
16 4.3, above.

17 **5. COSTS AND EXPENSES**

18 Except as provided in Sections 3.1 and 3.2 above, the Parties agree that each Party shall be
19 responsible for the payment of his or its own costs, attorneys' fees, and all other expenses in
20 connection with or arising out of the Products, the Notice, the Complaint, the negotiation of this
21 Consent Judgment, or any matter released under this Consent Judgment.

22 **6. COURT APPROVAL**

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

26 **7. SEVERABILITY**

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

1 **8. 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 is amended or modified, or if any of the
5 provisions of this Consent Judgment are rendered inapplicable or no longer required as a result of any
6 such repeal, preemption, inapplicability or amendment or modification as to the Products, then
7 Crown may 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 **9. NOTICE**

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

14 For Crown:

15 Samson R. Elsbernd, Esq.
16 Wilke, Fleury, Hoffelt,
17 Gould & Birney, LLP
 400 Capitol Mall, 22nd Floor
 Sacramento, CA 95814

18 For Moore:

19 Proposition 65 Coordinator
20 The Chanler Group
21 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

22
23 Any Party may, from time to time, specify in writing to the other, a change of address to which all
24 notices and other communications shall be sent.

25 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

26 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
27 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
28 same document.

1 **11. POST EXECUTION ACTIVITIES**

2 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
3 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
4 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
5 motion Moore shall draft and file. In furtherance of obtaining such approval, the Parties agree to
6 mutually employ their best efforts, and those of their counsel, to support the entry of this agreement
7 as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of
8 this Section, "best efforts" shall include, at a minimum, supporting the motion for approval,
9 responding to any objection that any third-party may file or lodge, and appearing at the hearing
10 before the Court if so requested.

11 **12. MODIFICATION**

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

15 **13. AUTHORIZATION**


16 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
17 have read, understand, and agree to all of the terms and conditions contained herein.

18
19 **AGREED TO:**

AGREED TO:

20
21 Date: 5/24/2018

Date: 5/22/18

22
23 By: 
JOHN MOORE

By: 
Mark Hedstrom, Chief Financial Officer
CROWN BRANDS, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28