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12 ROSS STORES, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF MARIN
15 UNLIMITED CIVIL JURISDICTION
16

17 JOHN MOORE,
18 Plaintiff,
19
20 v.

21 BRIDGEPORT PRODUCTS, INC.; ROSS
STORES, INC.; and DOES 1-150, inclusive.

22 Defendants.
23
24

Case No. CIV1200042

Assigned For All Purposes To The
Honorable M. Lynn Duryee, Dept. L

**CONSENT JUDGMENT [PROPOSED] AS
TO DEFENDANT ROSS STORES, INC.**

1 **1. INTRODUCTION**

2 **1.1 John Moore, and Ross Stores, Inc..**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and defendant Ross Stores, Inc. (“Ross” or “Defendant”), with Moore and Ross
5 collectively referred to as the “Parties.”

6 **1.2 Plaintiff.**

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

10 **1.3 Defendant.**

11 Ross employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Moore alleges that Ross has manufactured, distributed, sold, and/or offered for sale
16 coverings for books containing di(2-ethylhexyl)phthalate (“DEHP”) for use in the State of
17 California without the requisite Proposition 65 health hazard warnings. DEHP is listed pursuant
18 to Proposition 65 as a chemical known to the State of California to cause birth defects and other
19 reproductive harm.

20 **1.5 Notice of Violation.**

21 On September 19, 2011, Moore served Bridgeport Products, Inc. (“Bridgeport”) and
22 various public enforcement agencies with a document entitled “60-Day Notice of Violation”
23 (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 for
24 failing to warn consumers that the Covered Products, defined below, exposed users in California
25 to DEHP. On March 29, 2012, Moore served Bridgeport, Ross and various public enforcement
26 agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“Supplemental
27 Notice”) that provided the recipients with notice of alleged violations of Proposition 65 for
28 failing to warn consumers that the Covered Products exposed users in California to DEHP. The

1 Notice and Supplemental Notice are hereinafter referred to as the “Notices.” To the best of the
2 Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
3 allegations set forth in the Notices.

4 **1.6 Complaint.**

5 On or about January 4, 2012, Moore, who was and is acting in the interest of the general
6 public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for
7 the County of Marin against Bridgeport and Does 1 through 150, alleging, *inter alia*, violations
8 of Proposition 65 based on the alleged exposures to DEHP contained in coverings for books. On
9 or about September 24, 2012, Moore, who was and is acting in the interest of the general public
10 in California, filed a first amended complaint (“First Amended Complaint”) in the Superior
11 Court in and for the County of Marin, which added Ross as a defendant to the action, and
12 alleged, *inter alia*, violations of Proposition 65 based on the alleged exposures to DEHP
13 contained in coverings for books. The Complaint and First Amended Complaint are collectively
14 referred to herein as “Complaints.”

15 **1.7 No Admission.**

16 The Parties enter into this Consent Judgment as a full and final settlement of all claims
17 that were raised in the Complaints, or that could have been raised in the Complaints, as to
18 Covered Products arising out of the facts or conduct alleged therein. By execution of this
19 Consent Judgment and agreeing to comply with its terms, Ross does not admit any facts or
20 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
21 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
22 requirements relating to DEHP in Covered Products. This Consent Judgment is the product of
23 negotiation and compromise and is accepted by Ross for purposes of settling, compromising, and
24 resolving issues disputed in this action. However, this section shall not diminish or otherwise
25 affect the obligations, responsibilities and duties of Ross under this Consent Judgment.

26 **1.8 Consent to Jurisdiction.**

27 For purposes of this Consent Judgment only, Ross stipulates that this Court has
28 jurisdiction over Ross as to the allegations contained in the Complaints, that venue is proper in

1 the County of Marin and that this Court has, and will retain, jurisdiction to enter and enforce the
2 provisions of this Consent Judgment pursuant to Code of Civil Procedure § 664.6.

3 **2. DEFINITIONS**

4 **2.1** “Covered Products” means coverings for books supplied to Ross by Bridgeport
5 and offered for sale by Ross in California including, but not limited to, the Bridgeport product
6 *Soft Touch Classics Bible & Book Cover, bbc-001*.

7 **2.2** “Effective Date” means the date of entry of this Consent Judgment.

8 **3. INJUNCTIVE RELIEF**

9 **3.1** Commencing no later than 60 days after the Effective Date, Ross shall not sell
10 and/or offer for sale in California Covered Products unless Ross has obtained a written
11 certification from Bridgeport that it will not supply to Ross any Covered Product with Accessible
12 Components containing a DEHP concentration in excess of 1,000 parts per million (“ppm”).
13 Ross shall maintain this certification for three years following the last purchase of Covered
14 Products from Bridgeport. “Accessible Component” is defined as any component of a Covered
15 Product that could be touched by a person during reasonably foreseeable use.

16 **4. ENFORCEMENT OF CONSENT JUDGMENT**

17 **4.1 General Enforcement Provisions.**

18 Any Party may, by motion, application or any other remedy afforded by law, enforce the
19 terms and conditions contained in this Consent Judgment. A Party may file such a motion or
20 application only after that Party first provides 30 days’ notice to the Party allegedly failing to
21 comply with the terms and conditions of this Consent Judgment and attempts to resolve such
22 Party’s failure to comply in an open and good faith manner for a period of no less than 30 days.
23 Any action to enforce alleged violations of Section 3.1 shall be brought exclusively pursuant to
24 Section 4.2.

25 **4.2 Notice Regarding Violation.**

26 Within 10 days of receiving a written notice of violation from Moore (“NOV”)
27 containing: (a) a copy of the sales receipt from Ross showing the date and location from which
28 the Covered Product was purchased, and the identification of the Covered Product, including the

1 SKU and/or other identification number(s); and (b) all test data obtained by Moore regarding the
2 Covered Product and supporting documentation sufficient for validation of the test results,
3 including any laboratory reports, quality assurance reports and quality control reports associated
4 with the testing of the Covered Products demonstrating that an Accessible Component of a
5 Covered Product contains more than 1,000 ppm DEHP, Ross shall discontinue the sale of that
6 item in California and provide a copy of the certification obtained from Bridgeport with respect to
7 the Covered Product at issue, and shall have no further liability under this Consent Judgment or
8 Proposition 65 with respect to the Covered Product and DEHP. An NOV shall be based upon
9 testing from an independent laboratory pursuant to Environmental Protection Agency testing
10 methodologies 3580A and 8270C or any other methodology utilized by federal and state agencies
11 for the purpose of determining DEHP content in a solid substance.

12 **4.3 Monetary Payments for Violating Section 3.1.**

13 **4.3.1 No Certification Obtained from Supplier**

14 In the event that Moore purchases a Covered Product in California that contains more than
15 1,000 ppm DEHP more than 60 days after the Effective Date and Ross fails to provide a copy of
16 the certification obtained from Bridgeport regarding the Covered Product at issue, in addition to
17 Ross discontinuing sale of the Covered Product in California, Ross shall pay \$5,000 in civil
18 penalties. The civil penalty shall be apportioned in accordance with Section 5.1 below.

19 In addition to the above, Ross shall reimburse Moore and his counsel \$12,000 for fees and
20 costs incurred as a result of investigating and identifying the violation. Payment shall be made in
21 accordance with Section 5.3 below. Any payments stemming from Section 4.3.1 shall be
22 delivered to Moore's counsel at the address found in Section 5.5 within five business days of the
23 expiration of the 30 day period Ross has to provide the written certification.

24 **5. MONETARY PAYMENTS**

25 **5.1 Initial Civil Payment.**

26 Pursuant to Health & Safety Code §§ 25249.12(c)(1) and (d), Ross shall pay an initial
27 civil penalty in the amount of \$6,250 to be apportioned in accordance with California Health &
28 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of

1 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% remitted to
2 Moore as provided by California Health & Safety Code § 25249.12(d).

3 **5.2 Final Civil Penalty Payment; Waiver Upon Certification.**

4 Pursuant to Health & Safety Code §§ 25249.12(c)(1) and (d), Ross shall pay a final civil
5 penalty in the amount of \$13,500 on February 28, 2013. However, the final civil penalty shall be
6 waived in its entirety if an officer of Ross provides Moore with written certification that, as of the
7 Effective Date, and continuing on into the future, Ross shall not sell and/or offer for sale in
8 California Covered Products unless Ross has obtained the required written certification from
9 Bridgeport pursuant to Section 3.1 above. Such certification shall be received by The Chanler
10 Group on or before February 28, 2013.

11 **5.3 Reimbursement of Fees and Costs.**

12 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
14 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
15 all other settlement terms had been finalized, Ross expressed a desire to resolve the issue. The
16 Parties then attempted to (and did) reach an accord on the compensation due Moore and his
17 counsel under general contract principles and the private attorney general doctrine codified at
18 California Code of Civil Procedure § 1021.5 for all work performed in this matter exclusive of
19 fees and costs that may be incurred on appeal, if any. Under these legal principles, Ross shall pay
20 \$34,000 for fees and costs incurred investigating, litigating, and enforcing this matter, including
21 the fees and costs incurred (and to be incurred) negotiating a settlement, drafting the motion for
22 judicial approval, and moving the Court for, and obtaining its approval of, this Consent Judgment
23 in the public interest.

24 **5.4 Payment Procedure.**

25 **5.4.1 Initial Civil Penalty and Reimbursement of Fees and Costs**

26 All payments made under Sections 5.1 and 5.3 of this Consent Judgment shall be
27 delivered within five business days of the Effective Date (provided Moore shall have provided
28 Ross with completed applicable Forms W-9), and in the form of three checks for the following

1 amounts, made payable to:

- 2 (a) "The Chanler Group in Trust for OEHHA" in the amount of
3 \$4,687.50;
4 (b) "The Chanler Group in Trust for John Moore" in the amount of
5 \$1,562.50; and
6 (c) "The Chanler Group" in the amount of \$34,000.

7 **5.4.2 Final Civil Penalty Payment**

8 Unless waived, the final civil penalty payment shall be allocated according to Health &
9 Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent of the amount earmarked for
10 OEHHA, and the remaining twenty-five percent retained by Moore. On February 28, 2013, Ross
11 shall deliver two checks for the following amounts, made payable to:

- 12 (a) "The Chanler Group in Trust for OEHHA" in the amount of
13 \$10,125; and
14 (b) "The Chanler Group in Trust for John Moore" in the amount of
15 \$3,375;

16 **5.5 Payment Address.**

17 All payments required by this Consent Judgment shall be delivered to Moore's counsel at
18 the following address:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 **6. CLAIMS COVERED AND RELEASED**

25 **6.1** This Consent Judgment is a full, final, and binding resolution between Moore, on
26 behalf of himself and in the public interest, and Ross, its parents, subsidiaries, affiliated entities,
27 sister and related companies, directors, officers, shareholders, employees, attorneys, successors
28 and assigns, (collectively "Defendant Releasees") and each entity to whom Defendant directly
or indirectly distributes or sells Covered Products, including but not limited to downstream
distributors, wholesalers, customers, resellers, retailers, franchisees, cooperative members,

1 licensors, and licensees that sold or distributed the Covered Products (collectively “Downstream
2 Defendant Releasees”), regarding the failure to warn about exposure to DEHP arising in
3 connection with Covered Products manufactured, sourced, distributed, sold, offered for sale by
4 Defendant Releasees prior to the Effective Date. Compliance with the terms of this Consent
5 Judgment by Ross and Defendant Releasees constitutes compliance with Proposition 65 with
6 respect to DEHP in Covered Products.

7 **6.2** In further consideration of the promises and agreements herein contained, Moore
8 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
9 assignees, and in the interest of the general public, hereby waives all rights to institute or
10 participate in, directly or indirectly, any form of legal action and releases all claims, including,
11 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
12 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
13 limited to, investigation fees, expert fees, and attorneys’ fees) limited to and arising out of
14 alleged or actual exposures to DEHP in the Covered Products up through the Effective Date
15 (collectively “Claims”), against Ross, Defendant Releasees, and Downstream Defendant
16 Releasees.

17 **6.3** Moore also, in his individual capacity only and not in his representative capacity,
18 provides a general release herein which shall be effective as a full and final accord and
19 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
20 damages, losses, claims, liabilities and demands of Moore of any nature, character or kind,
21 whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or
22 actual exposures to DEHP pursuant to Proposition 65 in the Covered Products manufactured,
23 distributed, sold and/or offered for sale by Defendant Releasees and Downstream Defendant
24 Releasees.

25 **6.4** Moore acknowledges that he is familiar with Section 1542 of the California Civil
26 Code, which provides as follows:
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1
2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
3 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
4 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
5 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
6 HER SETTLEMENT WITH THE DEBTOR.

7 Moore, expressly waives and relinquishes any and all rights and benefits which he may
8 have under, or which may be conferred on him by the provisions of Section 1542 of the
9 California Civil Code as well as under any other state or federal statute or common law
10 principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits
11 pertaining to alleged exposures to DEHP from the Covered Products sold by Ross in California
12 before the Effective Date. In furtherance of such intention, the release hereby given shall be and
13 remain in effect as a full and complete release notwithstanding the discovery or existence of any
14 such additional or different claims or facts arising out of alleged or actual exposure now or in
15 the future to DEHP in the Covered Products manufactured, imported, distributed, sold and/or
16 offered for sale by Ross, that could otherwise be made against Ross, Defendant Releasees, and
17 Downstream Defendant Releasees.

18 **6.5** Ross on behalf of itself, its past and current agents, representatives, attorneys,
19 successors, and/or assignees, hereby waives any and all Claims against Moore, his attorneys,
20 and other representatives for any and all actions taken or statements made (or those that could
21 have been taken or made) by Moore and his attorneys and other representatives, whether in the
22 course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in
23 this matter with respect to the Covered Products.

24 Ross also provides a general release herein which shall be effective as a full and final
25 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
26 attorneys' fees, damages, losses claims, liabilities and demands of Ross of any nature, character
27 or kind, known or unknown, suspected or unsuspected, limited to and arising out of alleged or
28 actual exposures to DEHP pursuant to Proposition 65 in the Covered Products manufactured,
distributed, sold and/or offered for sale by Defendant Releasees and Downstream Defendant

1 Releasees. Ross acknowledges that it is familiar with Section 1542 of the California Civil Code,
2 which provides as follows:

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

7 Ross expressly waives and relinquishes any and all rights and benefits which it may have
8 under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil
9 Code as well as under any other state of federal statute or common law principle of similar
10 effect, to the fullest extent that Ross may lawfully waive such rights or benefits pertaining to
11 alleged exposures to DEHP from the Covered Products sold by Ross in California before the
12 Effective Date.

13 **7. COURT APPROVAL**

14 **7.1** Plaintiff shall file a motion seeking approval of this Consent Judgment pursuant to
15 California Health & Safety Code § 25249.7(f), and Ross shall support the entry of such motion.

16 **7.2** If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
17 and any and all prior agreements between the Parties shall terminate and become null and void,
18 and the action shall revert to the status that existed prior to the execution date of this Consent
19 Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation,
20 documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect,
21 nor shall any such matter be admissible in evidence for any purpose in this action, or in any other
22 proceeding; and (c) the parties agree to meet and confer to determine whether to modify the terms
23 of the Consent Judgment and to resubmit it for approval.

24 **8. GOVERNING LAW**

25 **8.1** The terms of this Consent Judgment shall be governed by the laws of the State of
26 California, and shall apply only to Covered Products offered for sale in the State of California. In
27 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
28 generally, or as to the Covered Products, then Ross may provide written notice to Moore of any

1 asserted change in the law, and shall have no further obligations pursuant to this Consent
2 Judgment with respect to, and to the extent that, the Covered Products are so affected.

3 **8.2** The Parties, including their counsel, have participated in the preparation of this
4 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
5 Consent Judgment was subject to revision and modification by the Parties and has been accepted
6 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
7 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
8 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
9 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
10 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
11 this regard, the Parties hereby waive California Civil Code § 1654.

12 **9. NOTICES**

13 **9.1** Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
15 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
16 Party by the other Party at the following addresses:

17 To Ross:

18 Mark LeHocky
19 Senior Vice President and General Counsel
20 Ross Stores, Inc.
21 4440 Rosewood Drive
22 Pleasanton, CA 94588

To Moore:

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

23 With a copy to:

24 Jeffrey B. Margulies, Esq.
25 Fulbright & Jaworski LLP
26 555 South Flower Street
27 41st Floor
28 Los Angeles, California 90071
29 213-892-9286
30 213-892-9494 fax
31 jmargulies@fulbright.com

32 **9.2** Any Party, from time to time, may specify in writing to the other Party a change of
33 address to which all notices and other communications shall be sent.

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10. MODIFICATION

10.1 Modification.

This Consent Judgment may be modified by written agreement of the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a modified Consent Judgment by the court.

10.2 Notice; Meet and Confer.

Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

11. ENTIRE AGREEMENT AND SEVERABILITY

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are deemed merged. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar. If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable or invalid, the validity of the enforceable provisions remaining shall not be adversely affected.

12. RETENTION OF JURISDICTION

12.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

13. COUNTERPARTS; FACSIMILE SIGNATURES

13.1 This Consent Judgment may be executed in counterparts and by facsimile or portable document format (“*.pdf*”), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

14.1 Moore agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

15. AUTHORIZATION

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

AGREED TO:	AGREED TO:
Date: _____	Date: <u>January 22, 2013</u>
By: _____ Plaintiff JOHN MOORE	By: <u>[Signature]</u> Defendant ROSS STORES, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT