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MARK MOORBERG

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA
11 UNLIMITED CIVIL JURISDICTION

12 MARK MOORBERG,

Plaintiff,

13 v.

14 ASUS COMPUTER INTERNATIONAL, *et al*,

15 Defendants.

Case No. 115CV275231

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT**

Date: March 1, 2016

Time: 9:00 a.m.

Dept. 27

Judge: Hon. Maureen A. Folan

Judge Beth McGowen

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1 In the above-entitled action, plaintiff Mark Moorberg and defendant Asus Computer
2 International, having agreed through their respective counsel that Judgment be entered pursuant to the
3 terms of their Settlement Agreement, and following this Court's issuance of an Order approving this
4 Proposition 65 Settlement Agreement on March 1, 2016;

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California
6 Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is
7 entered in accordance with the terms of the Settlement Agreement attached hereto as **Exhibit A**. By
8 stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of
9 Civil Procedure § 664.6.

10
11 **IT IS SO ORDERED.**

Judge Beth McGowen

12
13 Dated: 3-1-16

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 Chris Tuttle, State Bar No. 264545
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118

8 Attorneys for Plaintiff
9 MARK MOORBERG

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
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13 MARK MOORBERG

14 Plaintiff,

15 v.

16 ASUS COMPUTER INTERNATIONAL:
17 *et al.*

18 Defendants.

Case No. 115CV275231

**STIPULATED SETTLEMENT
AGREEMENT PURSUANT TO C.C.P. §
664.6**

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Settlement Agreement pursuant to C.C.P. section 664.6 (the "Settlement Agreement")
4 is entered into by and between plaintiff Mark Moorberg ("Moorberg") and defendant Asus
5 Computer International ("Asus"), with Moorberg and Asus each referred to individually as a
6 "Party" and collectively as the "Parties." Moorberg is an individual residing in the State of
7 California who seeks to promote awareness of exposures to toxic chemicals, and to improve human
8 health by reducing or eliminating harmful substances contained in consumer products. Asus
9 employs ten or more persons and is a person in the course of doing business for purposes of the
10 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code
11 section 25249.5 *et seq.* ("Proposition 65").

12 **1.2 General Allegations**

13 Moorberg alleges that Asus manufactures, imports, distributes, sells and/or offers for sale in
14 California, headsets with vinyl/PVC components containing di(2-ethylhexyl)phthalate ("DEHP"),
15 and that it has done so without the requisite Proposition 65 health hazard warning .

16 **1.3 Product Description**

17 The products covered by this Settlement Agreement are defined as Asus headsets with
18 vinyl/PVC components containing DEHP, including but not limited to Part No.: 90-YAH18110-
19 UA00 (UPC No. 8 86227 20202 7 and Part No.: 90-YAH1A 110-UA00, UPC #8 86227 26643 2 (the
20 "Products").

21 **1.4 Notice of Violation**

22 On August 28, 2014, Moorberg served Asus and various public enforcement agencies with a
23 60-Day Notice of Violation ("Notice"), alleging that Asus violated Proposition 65 when it failed to
24 warn its customers and consumers in California that the Products expose users to DEHP.

25 Thereafter, on July 1, 2015, Moorberg served Asus, and certain retail customers of Asus in
26 California, Newegg, Inc. ("Newegg") and Fry's Electronics, Inc. ("Fry's") with a Supplemental 60-
27 Day Notice of Violation ("Supplemental Notice"), alleging that Asus and certain entities in its chain
28 of distribution violated Proposition 65 when they failed to warn their customers and consumers in

1 California of the health hazards associated with exposures to DEHP from the Products. The Notice
2 and Supplemental Notice are referred to collectively hereinafter as the "Notices." No public
3 enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in
4 the Notices.

5 **1.5 Complaint**

6 On January 5, 2015, Moorberg commenced the instant action ("Complaint"), naming Asus
7 as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.
8 Thereafter, on September 23, 2015, Moorberg obtained an order from the Court allowing doe
9 amendments to the Complaint, filed and served a notice of entry of the Court's Order on September
10 28, and added ASUSTek Computer Inc. ("ASUSTek"), Fry's, and Newegg as defendants in the
11 action.

12 **1.6 No Admission**

13 Asus denies the material, factual, and legal allegations contained in the Notices and
14 Complaint, and maintains that all of the products that it has manufactured, imported, distributed,
15 sold and/or offered for sale in California, including the Products, have been, and are, in compliance
16 with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Asus of
17 any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this
18 Settlement Agreement constitute or be construed as an admission by Asus of any fact, finding,
19 conclusion of law, issue of law, or violation of law, such being specifically denied by Asus.

20 **1.7 Jurisdiction**

21 For purposes of this Settlement Agreement only, the Parties stipulate that this Court has
22 jurisdiction over Asus as to the allegations contained in the Complaint, that venue is proper in the
23 County of Santa Clara, and that the Court has jurisdiction to enforce the provisions of this
24 Settlement Agreement pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

25 **1.8 Effective Date**

26 For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date
27 that the Court grants the motion for approval of this Settlement Agreement contemplated by Section
28 5.

1 **2. INJUNCTIVE SETTLEMENT TERMS**

2 Commencing on the Effective Date, and continuing thereafter, Asus shall only distribute for
3 sale, or purchase for sale in California, Reformulated Products. For purposes of this Settlement
4 Agreement, "Reformulated Products" are defined as Products with a maximum DEHP
5 concentration 0.1 percent (1,000 parts per million) in any Accessible Component when analyzed
6 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or
7 other methodologies utilized by state, eu or federal agencies for the purpose of determining DEHP
8 content in a solid substance. For purpose of this Settlement Agreement, Accessible Component
9 shall mean a component of a Product that can be touched by a person during normal, intended, and
10 foreseeable use of the Product. Compliance with the terms of this Section constitutes compliance
11 with Proposition 65 with respect to the failure to warn about exposures to DEHP from the Products
12 manufactured, imported, caused to be imported, distributed, caused to be distributed by Asus for
13 sale and/or use in the State of California.

14 **3. MONETARY SETTLEMENT TERMS**

15 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

16 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
17 claims referred to in this Settlement Agreement, Asus shall pay a \$10,000 civil payment. The
18 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) &
19 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
20 Assessment ("OEHHA") and the remaining 25% of the payment remitted to Moorberg.
21 Moorberg's counsel shall be responsible for remitting Asus' payment under this Settlement
22 Agreement to OEHHA. Asus shall provide its payment in a single check made payable to "Mark
23 Moorberg, Client Trust Account" to be delivered to the address provided in Section 3.4, below.

24 **3.2 Reimbursement of Attorneys' Fees and Costs**

25 As a final and independent settlement term, the Parties negotiated Asus's reimbursement of
26 the compensation due to Moorberg under general contract principles and the private attorney
27 general doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed
28 through the mutual execution of this agreement and the Court's approval of the same, Asus will

1 reimburse Moorberg and his counsel \$49,700. Asus's payment shall be delivered to the address in
2 Section 3.4 in a check payable to "The Chanler Group." The payment shall cover all fees and
3 costs incurred by Moorberg including but not limited to, investigating, bringing this matter to
4 Asus's attention, litigating, and negotiating a settlement in the public interest.

5 **3.3 Payment Timing; Payments Held In Trust**

6 Asus shall deliver all payments required by this Settlement Agreement to The Chanler
7 Group within ten days of the date that this agreement is fully executed by the Parties. The Chanler
8 Group shall deposit the settlement funds into a third-party escrow account to be held in trust until
9 such time as the Court grants the motion for approval of the Parties' settlement contemplated by
10 Section 5.

11 **3.4 Payment Address**

12 All payments required by this Settlement Agreement shall be delivered to the following
13 address:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 Moorberg's Release of Proposition 65 Claims**

20 This Settlement Agreement is a full and binding resolution between Moorberg and Asus.
21 Moorberg, acting on his own behalf and his past and current agents, representatives, attorneys,
22 successors, and/or assignees, and in the public interest, releases Asus and its parents, subsidiaries,
23 affiliates (including, without limitation, ASUSTek), directors, officers, employees, and attorneys
24 ("Releasees") and each entity to whom Asus directly or indirectly distributes or sells the Products
25 including, but not limited to, its downstream distributors, wholesalers, customers (including,
26 without limitation, Newegg and Fry's), retailers, franchisers, cooperative members, licensors and
27 licensees ("Downstream Releasees") for any actual or alleged violations arising under Proposition
28 65 for unwarned exposures to DEHP from the Products manufactured, imported, distributed, sold

1 and/or offered for sale by Asus. Compliance with the terms of this Settlement Agreement
2 constitutes compliance with Proposition 65 by Asus with respect to the alleged or actual failure to
3 warn about exposures to DEHP from Products manufactured, sold or distributed for sale by Asus
4 after the Effective Date.

5 **4.2 Moorberg's Individual Release of Claims**

6 Moorberg, in his individual capacity and on behalf of his past and current agents,
7 representatives, attorneys, successors, and/or assignees, and not in his representative capacity, also
8 provides a release to Defendants, Releasees, each entity Asus directly or indirectly purchases or
9 acquires the Products, including without limitation, Merry Electronics Co. Ltd. ("Upstream
10 Releasees") and Downstream Releasees which shall be effective as a full and final accord and
11 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
12 damages, losses, claims, liabilities and demands of Moorberg of any nature, character or kind,
13 whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to
14 DEHP in Products manufactured, imported, distributed, sold, or offered for sale by Asus.

15 **4.3 Asus' Release of Moorberg**

16 Asus, on its own behalf and on behalf of its past and current agents, representatives,
17 attorneys, successors and assignees, hereby waives any and all claims against Moorberg and his
18 attorneys and other representatives, for any and all actions taken or statements made by Moorberg
19 and his attorneys and other representatives in the course of investigating claims, seeking to enforce
20 Proposition 65 against it in this Lawsuit Case No. 115CV275231.

21 **4.4 Mutual California Civil Code Section 1542 Waiver**

22 The Parties expressly acknowledge and agree that he/it is familiar with Section 1542 of the
23 Civil Code, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
24 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
25 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
26 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
27 DEBTOR." The Parties acknowledge and understand the significance and potential consequences
28 of their release of unknown claims arising under or related to the Products. The Parties, each in his

1 individual capacity or on its own behalf, and on behalf of his/its past and current agents,
2 representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes all rights
3 and benefits each may have under Section 1542 of the Civil Code of the State of California, or any
4 similar statute or law of any other jurisdiction. This section applies to Moorberg in his individual
5 capacity and not in his representative capacity.

6 **5. COURT APPROVAL**

7 This Settlement Agreement is not effective until it is approved by the Court and shall be null
8 and void if, for any reason, it is not approved within one year after it has been fully executed by the
9 Parties. Moorberg and Asus agree to support the Court's approval of this agreement, and to obtain
10 such approval in a timely manner. The Parties acknowledge that, pursuant to California Health and
11 Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Settlement
12 Agreement, which motion Moorberg shall draft and file and Asus shall support, appearing at the
13 hearing if so requested. If any third-party objection to the motion is filed, upon Moorberg's written
14 request, Asus at its discretion will provide reasonable necessary assistance.

15 **6. SEVERABILITY**

16 If, subsequent to the Court's approval of this Settlement Agreement, any provision of this
17 Settlement Agreement is held by a court to be unenforceable, the validity of the remaining
18 provisions shall not be adversely affected.

19 **7. GOVERNING LAW**

20 The terms of this Settlement Agreement shall be governed by the laws of the State of
21 California and apply within the State of California. In the event that Proposition 65 is repealed,
22 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
23 then Asus may provide Moorberg with written notice of any asserted change in the law, and shall
24 have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent
25 that, the Products are so affected.

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1 **8. NOTICE**

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

6 To Asus:

7 Steve Chang, President
8 Asus Computer International
9 800 Corporate Way
10 Fremont, CA 94539

To Moorberg:

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

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

14 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

15 This Settlement Agreement may be executed in counterparts and by facsimile or portable
16 document format (pdf) signature, each of which shall be deemed an original and, all of which, when
17 taken together, shall constitute one and the same document.

18 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

19 Moorberg and his counsel agree to comply with the reporting form requirements referenced
20 in California Health and Safety Code section 25249.7(f).

21 **11. MODIFICATION**

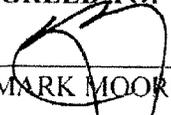
22 This Settlement Agreement may be modified only by: (i) a written agreement of the Parties
23 and the approval of a modified Settlement Agreement by the Court thereon; or (ii) upon a
24 successful motion of any party and the approval of a modified Settlement Agreement by the Court
25 thereon.
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12. AUTHORIZATION

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

AGREED TO:



MARK MOORBERG

Dated: 12/18/2015

AGREED TO:



ASUS COMPUTER INTERNATIONAL

By: Margaret Chen
(Print Name)

Its: President / Open platform PC/IA
(Title)

Dated: 12/18/2015