

ENDORSED  
FILED  
San Francisco County Superior Court

OCT 28 2016

CLERK OF THE COURT

BY: FELICIA M. GREEN  
Deputy Clerk

1  
2 Clifford Chanler, State Bar No. 135534  
3 Christopher Tuttle, State Bar No. 264545  
4 THE CHANLER GROUP  
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12 Attorneys for Plaintiff  
13 MARK MOORBERG

14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF SAN FRANCISCO  
17 UNLIMITED CIVIL JURISDICTION  
18

19 MARK MOORBERG,

20 Plaintiff,

21 v.

22 WILLIAM PRYM, INC., *et al.*,

23 Defendants.

Case No. CGC-16-549929

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

Date: October 28, 2016

Time: 9:30 a.m.

Dept. 302

Judge: Hon. Harold Kahn

Reservation No. 09071028-03

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Plaintiff Mark Moorberg and Defendant Prym Consumer USA, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a consent judgment, and following this Court's issuance of an order approving their Proposition 65 settlement and Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the terms of the settlement under Code of Civil Procedure section 664.6.

**IT IS SO ORDERED.**

Dated: OCT 28 2016

HAROLD KAHN  
JUDGE OF THE SUPERIOR COURT

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# **EXHIBIT 1**

1 Clifford Chanler, State Bar No. 135534  
2 Christopher Tuttle, State Bar No. 264545  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710  
7 Telephone: (510) 848-8880  
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9 E-mail: cliff@chanler.com  
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11 Attorneys for Plaintiff  
12 MARK MOORBERG

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SAN FRANCISCO  
15 UNLIMITED CIVIL JURISDICTION

16 MARK MOORBERG,

17 Plaintiff,

18 v.

19 WILLIAM PRYM, INC., *et al.*,

20 Defendants.

Case No. CGC-16-549929

**[PROPOSED] CONSENT JUDGMENT**

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

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CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Mark Moorberg,  
4 ("Moorberg") and defendant Prym Consumer USA, Inc. ("Prym"), with Moorberg and Prym each  
5 referred to individually as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

7 Moorberg is a resident of the State of California who seeks to promote awareness of  
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful  
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 Prym 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 and  
13 Safety Code section 25249.5 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Moorberg alleges that Prym manufactures, imports, sells and/or distributes for sale in  
16 California, vinyl/PVC cutting mats containing di(2-ethylhexyl)phthalate ("DEHP"), and that it does  
17 so without providing the health hazard warning that Moorberg alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are vinyl/PVC cutting mats containing  
20 DEHP, including, but not limited to, the *Dritz Cutting Mat-6"x 8," #1047, UPC #0 72879 25014 5*  
21 (collectively, "Products").

22 **1.6 Notice of Violation**

23 On June 26, 2015, Moorberg served Prym and the requisite public enforcement agencies  
24 with a 60-Day Notice of Violation ("Notice"), alleging that Prym violated Proposition 65 when it  
25 failed to warn its customers and consumers in California that the Products expose users to DEHP.  
26 To the best of the Parties' knowledge, no public enforcer has commenced and is diligently  
27 prosecuting an action to enforce the allegations set forth in the Notice.  
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**1.7 Complaint**

On January 15, 2016, Moorberg commenced the instant action, naming Prym, among others, as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

**1.8 No Admission**

Prym denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Prym of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Prym of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Prym’s obligations, responsibilities, and duties under this Consent Judgment.

**1.9 Jurisdiction**

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

**1.10 Effective Date**

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

**2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS**

**2.1 Commitment to Reformulate or Warn**

Prym agrees that as of the Effective Date, all products it sells and/or distributes for sale in California will either: (a) meet the definition of “Reformulated Products” established by this Section; or (b) bear a clear and reasonable warning pursuant to Section 2.2, below.

For purposes of this Settlement Agreement, “Reformulated Products” shall mean Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched during use) when analyzed pursuant to U. S. Environmental

1 Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized  
2 by federal or state agencies for the purpose of determining DEHP content in a solid substance.

3 **2.2 Clear and Reasonable Warnings**

4 Prym agrees that as of the Effective Date, all Products it sells and/or distributes in  
5 California which do not qualify as Reformulated Products, will bear a clear and reasonable warning  
6 pursuant to this Section. Prym further agrees that the warnings will be prominently placed with  
7 such conspicuousness when compared with other words, statements, designs or devices as to render  
8 it likely to be read and understood by an ordinary individual under customary conditions of use.  
9 For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall  
10 consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California  
11 and containing one of the following statements:

12 **WARNING:** This product contains DEHP, a chemical  
13 known to the State of California to cause  
14 birth defects or other reproductive harm.  
or

15 **WARNING:** This mat contains phthalates, substances known to the  
16 State of California to cause  
17 birth defects and other reproductive harm.

17 **3. MONETARY SETTLEMENT TERMS**

18 **3.1 Civil Penalty Payment Pursuant to Health and Safety Code § 25249.7(b)(2)**

19 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in  
20 this Consent Judgment, Prym shall pay \$5,000 in civil penalties. The civil penalty payment will be  
21 allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with  
22 75% of the penalty amount remitted to the California Office of Environmental Health Hazard  
23 Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Plaintiff. Prym will  
24 provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the  
25 amount of \$3,750; and (b) "Mark Moorberg, Client Trust Account" in the amount of \$1,250.

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1           **3.2 Reimbursement of Attorneys' Fees and Costs**

2           The Parties acknowledge that Moorberg and his counsel offered to resolve this dispute  
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
4 the issue to be resolved after the material terms of the agreement had been settled. The Parties then  
5 negotiated a resolution of the compensation due to Moorberg and his counsel under general contract  
6 principles and the private attorney general doctrine codified at California Code of Civil Procedure §  
7 1021.5. For all work performed through the mutual execution of this agreement and the Court's  
8 approval of the same, but exclusive of fees and costs on appeal, if any, Prym shall reimburse  
9 Moorberg and his counsel \$12,000. Prym's payment shall be delivered to the address in Section 3.4  
10 in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and  
11 costs incurred by Moorberg investigating, bringing this matter to Prym's attention, litigating, and  
12 negotiating a settlement of the matter in the public interest.

13           **3.3 Payment Timing; Payments Held in Trust**

14           Prym shall deliver all payments required by this Consent Judgment to its counsel within  
15 two weeks of the date that this agreement is fully executed by the Parties. Prym's counsel shall  
16 confirm receipt of settlement funds in writing to Moorberg's counsel and, thereafter, hold the  
17 amounts paid in trust until such time as the Court grants the motion for approval of the Parties'  
18 settlement contemplated by Section 5. Within one week of the Effective Date, Prym's counsel  
19 shall deliver all settlement payments it has held in trust to Moorberg's counsel at the address  
20 provided in Section 3.4.

21           **3.4 Payment Address**

22           All payments required by this Consent Judgment shall be delivered to the following  
23 address:

24                           The Chanler Group  
25                           Attn: Proposition 65 Controller  
26                           2560 Ninth Street  
27                           Parker Plaza, Suite 214  
28                           Berkeley, CA 94710



1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Moorberg's Release of Proposition 65 Claims**

3 Moorberg, acting on his own behalf and in the public interest, releases Defendants (defined  
4 as Prym Consumer USA and all predecessor companies, including but not limited to William Prym,  
5 Inc.) and its parents, subsidiaries, affiliated entities under common ownership, directors, officers,  
6 employees, and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes  
7 or sells the Products including, but not limited to, its downstream distributors, wholesalers,  
8 customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream  
9 Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP from  
10 the Products manufactured, imported, distributed or sold by Prym prior to the Effective Date.  
11 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by  
12 Prym with respect to the alleged or actual failure to warn about exposures to DEHP from Products  
13 manufactured, sold or distributed for sale by Prym after the Effective Date. The Parties agree and  
14 understand that the releases provided under this Consent Judgment shall not extend upstream to any  
15 entity who manufactures the Products, or who supplied the Products to Prym, except to the extent  
16 such Products are/were actually sold by Prym.

17 **4.2 Moorberg's Individual Release of Claims**

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

25 **4.3 Prym Consumer USA's Release of Moorberg**

26 Prym, on its own behalf and on behalf of its past and current agents, representatives,  
27 attorneys, successors and/or assignees, hereby waives any and all claims against Moorberg and his  
28 attorneys and other representatives, for any and all actions taken or statements made (or those that

1 could have been taken or made) by Moorberg and his attorneys and other representatives in the  
2 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with  
3 respect to the Products.

4 **5. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and  
6 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
7 after it has been fully executed by the Parties. Moorberg and Prym agree to support the entry of this  
8 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.  
9 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a  
10 noticed motion is required for judicial approval of this Consent Judgment, which motion Moorberg  
11 shall draft and file and Prym shall support, including by appearing at the hearing if so requested. If  
12 any third-party objection to the motion is filed, Moorberg and Prym agree to work together to file a  
13 reply and appear at any hearing. This provision is a material component of the Consent Judgment  
14 and shall be treated as such in the event of a breach.

15 **6. SEVERABILITY**

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

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California  
21 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or  
22 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Prym may  
23 provide Moorberg with written notice of any asserted change in the law, and shall have no further  
24 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the  
25 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Prym  
26 from its obligation to comply with any pertinent state or federal law or regulation.

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1 **8. NOTICE**

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

6 To Prym:

7  
8 Steve Mills, President  
9 Prym Consumer USA, Inc.  
10 950 Brisack Road  
11 Spartanburg, SC 29303

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  
13 to which all notices and other communications shall be sent.

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

15 This Consent Judgment 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 Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
23 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
24 any party and the entry of a modified Consent Judgment by the Court thereon.

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1 **12. AUTHORIZATION**

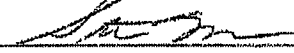
2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
4 Consent Judgment.

6 **AGREED TO:**

7   
8 \_\_\_\_\_  
9 MARK MOORBERG

9 Dated: August 15, 2016

**AGREED TO:**

  
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PRYM CONSUMER USA INC.

By: Steve Mills  
(Print Name)

Its: CEO  
(Title)

Dated: August 12, 2016

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