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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF MARIN  
10 UNLIMITED CIVIL JURISDICTION

11  
12 MARK MOORBERG,  
13 Plaintiff,

14 v.

15 SPECTRUM DIVERSIFIED DESIGNS,  
INC.; *et al.*,  
16 Defendants.

) Case No. CIV1402968  
)  
)

) **[PROPOSED] CONSENT JUDGMENT**  
)

) Action Filed: August 4, 2014  
)  
)  
)

1       **1. INTRODUCTION**

2               **1.1 Mark Moorberg and Spectrum Diversified Designs, Inc.**

3               This Consent Judgment is entered into by and between plaintiff Mark Moorberg  
4 ("Moorberg" or "Plaintiff") and defendant Spectrum Diversified Designs, Inc. ("Spectrum" or  
5 "Defendant") with Plaintiff and Defendant collectively referred to as the "Parties."

6               **1.2 Mark Moorberg**

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

10              **1.3 Spectrum Diversified Designs, Inc.**

11              Moorberg alleges that Defendant employs ten or more persons and is a person in the course  
12 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
13 California Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

14              **1.4 General Allegations**

15              Moorberg alleges that Defendant has manufactured, imported, distributed and/or sold in the  
16 State of California vinyl/PVC coasters containing di(2-ethylhexyl)phthalate ("DEHP"). DEHP is  
17 listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth  
18 defects and other reproductive harm.

19              **1.5 Product Description**

20              The products that are covered by this Consent Judgment are defined as vinyl/PVC coasters  
21 containing DEHP including, but not limited to, *Spectrum Pantry Works 6 Coasters with*  
22 *Container, PW CSTR ST - CHM, UPC #0 10591 42170 2*, which are manufactured, imported,  
23 distributed, sold and/or offered for sale by Defendant in the State of California, hereinafter the  
24 "Products."

25              **1.6 Notice of Violation**

26              On April 16, 2014, Moorberg served Spectrum and certain requisite public enforcement  
27 agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided the  
28 recipients with notice that Spectrum was in violation of California Health & Safety Code §

1 25249.6 for failing to warn consumers that its vinyl/PVC coasters exposed users in California to  
2 DEHP.

3 **1.7 Complaint**

4 On August 4, 2014, Moorberg filed a complaint in the Superior Court in and for the County  
5 of Marin against Spectrum and Does 1 through 150, *Moorberg v. Spectrum Diversified Designs,*  
6 *Inc., et al.*, Case No. CIV1402968 (the "Action"), alleging violations of California Health & Safety  
7 Code § 25249.6, based on the alleged exposures to DEHP contained in certain vinyl/PVC coasters  
8 sold by Defendant in the State of California.

9 **1.8 No Admission**

10 Defendant denies the material, factual and legal allegations contained in Moorberg's Notice  
11 and Complaint and maintains that all products that its has sold, manufactured, imported and/or  
12 distributed in California, including the Products, have been and are in compliance with all laws.  
13 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,  
14 finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute  
15 or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or  
16 violation of law. However, this section shall not diminish or otherwise affect Defendant's  
17 obligations, responsibilities and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
20 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in  
21 the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this  
22 Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean September 15,  
25 2014.

26 **2. INJUNCTIVE RELIEF**

27 **2.1 Reformulation Standards**

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1           “Reformulated Products” are defined as those Products containing DEHP in  
2 concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.  
3 Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology  
4 utilized by federal or state government agencies for the purpose of determining DEHP content in  
5 a solid substance.

6           **2.2    Reformulation Commitment**

7           As of the Effective Date all Products manufactured, imported or purchased for sale in the  
8 State of California by Defendant shall be Products that qualify as Reformulated Products as  
9 defined in Section 2.1 above.

10          **3.    MONETARY PAYMENTS**

11          **3.1   Civil Penalty Payments**

12           In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay a  
13 total of \$30,000 in civil penalties in accordance with this Section. Each penalty payment will be  
14 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75%  
15 of the funds remitted to the California Office of Environmental Health Hazard Assessment  
16 (“OEHHA”) and the remaining 25% of the penalty remitted to Moorberg. Each penalty payment  
17 shall be made within two business days of the date it is due and be delivered to the addresses  
18 listed in Section 3.3 below.

19           **3.1.1   Initial Civil Penalty**

20           Within five days of the mutual execution of this Consent Judgment, Spectrum shall  
21 issue a check for its initial civil penalty payment in the amount of \$10,000 to “Adams Nye Becht  
22 LLP”. Adams Nye Becht LLP shall provide The Chanler Group with written confirmation within  
23 five days of receipt that the funds have been deposited in a trust account. Within two days of the  
24 date that this Consent Judgment is approved by the Court, Adams Nye Becht LLP shall issue two  
25 separate checks for the initial civil penalty payment to: (a) “OEHHA” in the amount of \$7,500;  
26 and (b) “Mark Moorberg, Client Trust Account” in the amount of \$2,500.

27           **3.1.2   Final Civil Penalty**

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1                   Spectrum shall pay a final civil penalty of \$20,000 on or before January 30, 2015.  
2 The final civil penalty shall be waived in its entirety, however, if, no later than January 15, 2015,  
3 an officer of Spectrum provides Moorberg with written certification that, as of the date of such  
4 certification and continuing into the future, all Products manufactured, imported, distributed, sold  
5 and offered for sale in California by, or on behalf of, Defendant are Reformulated Products.  
6 Moorberg must receive any such certification on or before January 15, 2015. The certification in  
7 lieu of a final civil penalty payment provided by this Section is a material term, and time is of the  
8 essence. Defendant shall issue two separate checks for its final civil penalty payments to: (a)  
9 "OEHHA" in the amount of \$15,000; and (b) "Mark Moorberg, Client Trust Account" in the  
10 amount of \$5,000.

11                   **3.2    Reimbursement of Fees and Costs**

12                   The Parties acknowledge that Moorberg 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 this fee issue to be resolved after the material terms of the agreement had been settled. Moorberg  
15 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
16 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
17 Moorberg and his counsel under general contract principles and the private attorney general  
18 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through  
19 the mutual execution of this agreement. Spectrum shall, within five days of the mutual execution  
20 of this Consent Judgment by the Parties, issue a check payable to "Adams Nye Becht LLP" in the  
21 amount of \$32,000 to be held in trust by Adams Nye Becht LLP for The Chanler Group. Adams  
22 Nye Becht LLP shall provide The Chanler Group with written confirmation within five days of  
23 receipt that the funds have been deposited in a trust account. Within two business days of the date  
24 this Consent Judgment is approved by the Court, Adams Nye Becht LLP shall issue a check  
25 payable to "The Chanler Group" to the address found in Section 8 below.

26                   **3.3    Payment Procedures**

27                   **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

28                   (a) All payments owed to Moorberg and his counsel, pursuant to Sections

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3.1 through 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA, pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

**4. CLAIMS COVERED AND RELEASED**

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

Moorberg, acting on his own behalf and in the public interest, releases Spectrum and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the Products including, but not limited to, their downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products sold by Defendant prior to the Effective Date, as set forth in the Notice. Compliance

1 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect  
2 to exposures to DEHP from the Products.

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4 **4.2 Moorberg's Individual Release of Claims**

5 Moorberg, in his individual capacity only and *not* in his representative capacity, also  
6 provides a release to Spectrum, Releasees, and Downstream Releasees which shall be effective as  
7 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
8 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moorberg of any  
9 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of  
10 alleged or actual exposures to DEHP in the Products sold or distributed for sale by Defendant  
11 before the Effective Date.

12 **4.3 Spectrum's Release of Moorberg**

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

19 **5. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and  
21 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
22 after it has been fully executed by all Parties.

23 **6. SEVERABILITY**

24 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
25 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions  
26 remaining shall not be adversely affected.

27 **7. GOVERNING LAW**

28 The terms of this Consent Judgment shall be governed by the laws of the State of California

1 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or  
2 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this  
3 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or  
4 preemption or rendered inapplicable by reason of law generally as to the Products, then Defendant  
5 shall provide written notice to Moorberg of any asserted change in the law, and shall have no  
6 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
7 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve  
8 Defendant from any obligation to comply with any pertinent state or federal toxics control law.

9 **8. NOTICES**

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

14	To Spectrum Diversified Designs, Inc.:	To Mark Moorberg:
15		Proposition 65 Coordinator
16	Sheldon Goodman, President Spectrum Diversified Designs, Inc.	The Chanler Group 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565
17	675 Mondial Parkway Streetsboro, OH 44241	

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

20 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,  
22 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
23 one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

25 Moorberg and his attorneys agree to comply with the reporting form requirements  
26 referenced in California Health & Safety Code § 25249.7(f).

27 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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1 The Parties agree to mutually employ their best efforts to support the entry of this agreement  
2 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
3 manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a  
4 noticed motion is required to obtain judicial approval of this Consent Judgment, which  
5 Moorberg shall draft and file, and Defendant shall join. If any third party objection to the noticed  
6 motion is filed, Moorberg and Defendant shall work together to file a joint reply and appear at any  
7 hearing before the Court. This provision is a material component of the Consent Judgment and  
8 shall be treated as such in the event of a breach.

9 **12. MODIFICATION**

10 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
11 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
12 of any party and entry of a modified Consent Judgment by the Court.

13 **13. AUTHORIZATION**

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

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18 AGREED TO:

AGREED TO:

19  
20 Date: 8.22.14

Date: 8/20/2014

21  
22 By:   
Mark Moorberg

By:   
Sheldon Goodman, President  
Spectrum Diversified Designs, Inc.