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15 Attorneys for Plaintiff
16 MARK MOORBERG

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF SAN FRANCISCO, UNLIMITED CIVIL JURISDICTION

19 MARK MOORBERG,) Case No. CGC 14-542103
20 Plaintiff,)
21 v.) [PROPOSED] CONSENT
22 HYDE GROUP, INC.; HYDE TOOLS, INC.;) JUDGMENT
23 and DOES 1-150, inclusive)
24 Defendants.)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 The parties to this Consent Judgment (“Consent Judgment”) are Plaintiff Mark Moorberg
4 (“Moorberg”) on the one hand, and Defendants Hyde Group, Inc. and Hyde Tools, Inc.
5 (collectively “Hyde”) on the other hand (each a “Party” and collectively “Parties”).

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Hyde 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, Health and Safety
13 Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 Moorberg alleges that Hyde sells tools with vinyl/PVC grips containing di(2-
16 ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable warning required
17 by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
18 California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are tools with vinyl/PVC grips
21 that are sold or distributed for sale in California by Hyde, including, but not limited to, the *Hyde*
22 *Wallpaper Shaver, (#33100, UPC 0 79423 33100 8)*.

23 **1.6 Notice of Violation**

24 On May 21, 2014, Moorberg served Hyde and certain requisite public enforcement
25 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Hyde was in violation of
26 Proposition 65 for failing to warn its customers and consumers in California that the Covered
27 Products expose users to DEHP. To the best of the Parties knowledge, no public enforcer has
28 commenced and is diligently prosecuting the allegations set forth in the Notice.

1 **1.7 Complaint**

2 On October 8, 2014, Moorberg filed the instant action against Hyde (“Complaint”) for the
3 alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

4 **1.8 No Admission**

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

13 **1.9 Consent to Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over Hyde as to the allegations in the Complaint, that venue is proper in San
16 Francisco County and that this Court has jurisdiction to enter and enforce the provisions of this
17 Consent Judgment.

18 **2. DEFINITIONS**

19 2.1 “Accessible Component” means a vinyl/PVC component of a Covered Product
20 used to grip or handle the Covered Product by a person during reasonably foreseeable use.

21 2.2 “Covered Products” means and is limited to hand tools with a vinyl/PVC grip
22 sold or distributed for sale in California by Hyde.

23 2.3 “Effective Date” means date this Consent Judgment is approved by the court.

24 2.4 “Reformulation Standard” means the level of DEHP in Accessible Components
25 required under Section 3.1.

26 **3. INJUNCTIVE RELIEF: REFORMULATION**

27 **3.1 Reformulation Standard**

28 Commencing no later than the Effective Date, Hyde shall not manufacture, distribute,
purchase or import for sale any Covered Product that will be sold or offered for sale to California

1 consumers with any Accessible Component that contains DEHP in concentrations exceeding 0.1
2 percent (1,000 parts per million (“ppm”)) when analyzed pursuant to any methodology utilized by
3 federal or state agencies for the purpose of determining DEHP content in a solid substance.

4 **4. ENFORCEMENT**

5 Any Party may, by motion or application for an order to show cause before this Court,
6 enforce the terms and conditions contained in this Consent Judgment.

7 **5. PAYMENTS**

8 **5.1 Payments Pursuant to Health and Safety Code § 25249.7(b)**

9 Pursuant to Health and Safety Code section 25249.7(b)(2), except as provided in Section
10 5.1.2, Hyde shall pay \$12,000 in civil penalties. Each penalty payment shall be allocated
11 according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent of
12 the penalty amount remitted to the California Office of Environmental Health Hazard Assessment
13 and the remaining twenty-five percent of each penalty payment remitted to Moorberg.

14 **5.1.1 Initial Civil Penalty**

15 Hyde shall pay an initial civil penalty of \$4,000 within 10 days of the Effective
16 Date.

17 **5.1.2 Final Civil Penalty; Waiver on Certification of Compliance with**
18 **Section 3.1**

19 On or before January 31, 2015, Hyde shall pay a final civil penalty of \$8,000, except that,
20 the final civil penalty will be waived, in its entirety, however, if no later than January 31, 2015,
21 Hyde provides Moorberg’s counsel with written certification that as of the date of its certification,
22 all Covered Products manufactured, distributed, purchased or imported for sale in California meet
23 the Reformulation Standard, and that it will continue to only manufacture, distribute, purchase or
24 import Covered Products meeting the Reformulation Standard for sale in California in the future.

25 **5.2 Reimbursement of Attorneys’ Fees and Costs**

26 The Parties acknowledge that Moorberg and his counsel offered to resolve this dispute
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
28 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
all other settlement terms had been finalized, Hyde expressed a desire to resolve the fees and

1 costs. The Parties then attempted to (and did) reach an accord on the compensation due
2 Moorberg and his counsel under general contract principles and the private attorney general
3 doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter
4 exclusive of fees and costs incurred on appeal, if any. Under these legal principles, on or before
5 the Effective Date, Hyde shall pay \$31,000 for the fees and costs incurred investigating,
6 litigating, and enforcing this matter, including the fees and costs incurred (and to be incurred)
7 drafting, negotiating, and obtaining the Court's approval of this Consent Judgment in the public
8 interest.

9 **5.3 Payment Procedures.**

10 **5.3.1 Payments**

11 All payments required by Sections 5.1 and 5.2 shall be delivered within 10 days of the
12 Effective Date.

13 **5.3.1 Payment Addresses**

14 (a) All payments to Moorberg and Moscone Emblidge Sater & Otis
15 LLP shall be delivered to the following address:

16 Moscone Emblidge Sater & Otis LLP
17 Attn: Proposition 65 Coordinator
18 220 Montgomery Street, Suite 220
19 San Francisco, CA 94104

20 (b) All payments to OEHHA (EIN: 68-0284486) shall be delivered
21 directly to OEHHA (Memo line "Prop 65 Penalties") at the following address:

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

27 With a copy of the check(s) payable to OEHHA mailed to Moscone Emblidge Sater & Otis LLP
28 at the payment address provided in section 5.3.1(a), as proof of payment to OEHHA.

1 **6. CLAIMS COVERED AND RELEASED**

2 **6.1 Public Release of Proposition 65 Claims**

3 In consideration of the promises and commitments herein contained, Moorberg, on his
4 own behalf and on behalf of his past and current agents, representatives, attorneys, successors,
5 and/or assignees, and in the public interest, hereby waives and releases Hyde, its parents,
6 subsidiaries, affiliated entities under common ownership or control, directors, officers,
7 employees, and attorneys (“Releasees”); and each entity to whom it directly or indirectly
8 distributes or sells Covered Products, including but not limited to distributors, wholesalers,
9 customers, retailers, franchisees, cooperative members, licensors, and licensees (“Downstream
10 Defendant Releasees”), from all claims for violations of Proposition 65 based on exposures to
11 DEHP from the Covered Products through the Effective Date. This waiver and release is limited
12 to those claims arising under Proposition 65 for unwarned exposures to DEHP from Covered
13 Products sold by Hyde before the Effective Date. Hyde’s and Releasees’ compliance with this
14 Consent Judgment constitute compliance with Proposition 65.

15 **6.2 Private Release in Plaintiff’s Individual, Non-representative Capacity**

16 Moorberg, in his individual capacity only and not in his representative capacity, also
17 provides a release to Hyde, Releasees, and Downstream Defendant Releasees which shall be
18 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
19 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of
20 Moorberg of any nature, character or kind, whether known or unknown, suspected or
21 unsuspected, arising out of alleged or actual unwarned exposures to DEHP from the Covered
22 Products.

23 **6.3 Hyde’s Release of Moorberg**

24 Hyde waives any and all claims against Moorberg and his attorneys and other
25 representatives, for any and all actions taken or statements made (or those that could have been
26 taken or made) by Moorberg and his attorneys and other representatives, whether in the course of
27 investigating claims, otherwise seeking enforcement of Proposition 65 against it in this matter, or
28 with respect to the Covered Products.

1 **7. NOTICE**

2 When any Party is entitled to receive any notice under this Consent Judgment, the notice
3 shall be sent by: (a) first class, registered or certified mail; (b) personal delivery; or (c) a
4 recognized overnight courier on any one Party by the other Party at the following addresses:

5 For Moorberg:

6 Moscone Emblidge Sater & Otis LLP
7 Attn: Proposition 65 Coordinator
8 220 Montgomery Street, Suite 220
9 San Francisco, CA 94104

10 For Hyde:

11 Corey Talbot
12 Hyde Group, Inc.
13 54 Eastford Rd
14 Southbridge, MA 01550

15 With a copy to:

16 Jeffrey B. Margulies, Esq.
17 Fulbright & Jaworski, LLP
18 555 South Flower Street, Forty-First Floor
19 Los Angeles, CA 90071

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

22 **8. POST SETTLEMENT ACTIVITIES AND COURT APPROVAL**

23 8.1 Moorberg agrees to comply with the reporting form requirements referenced in
24 Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to
25 Health and Safety Code section 25249.7(f)(4), a noticed motion is required to obtain judicial
26 approval of the settlement. Moorberg agrees to draft and file the necessary moving papers, and
27 Hyde shall support the motion for approval of the Consent Judgment, and appear at the hearing
28 of the motion if requested.

 8.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
and any and all prior agreements between the parties as to the Notices or Complaint referenced

1 herein shall terminate and become null and void, and the action shall revert to the status that
2 existed prior to the execution date of this Consent Judgment; (b) no term of this Consent
3 Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of
4 the Parties' settlement discussions, shall have any effect, nor shall any such matter be
5 admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the
6 parties agree to meet and confer to determine whether to modify the terms of the Consent
7 Judgment and to resubmit it for approval.

8 **9. ATTORNEYS' FEES**

9 Except as otherwise provided in this Consent Judgment including the successful
10 enforcement of this Consent Judgment under section 4, which may entitle Moorberg to attorney's
11 fees under Code of Civil Procedure section 1021.5 or any other applicable law, each Party and
12 their privies, shall bear its own attorneys' fees and costs.

13 **10. OTHER TERMS**

14 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
15 California and apply within the State of California. In the event that Proposition 65 is repealed,
16 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
17 Covered Products, then Hyde may provide written notice to Moorberg of any asserted change in
18 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,
19 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
20 shall be interpreted to relieve Hyde from any obligation to comply with any pertinent state or
21 federal toxics control laws.

22 10.2 This Consent Judgment contains the sole and entire agreement and understanding
23 of the Parties with respect to the entire subject matter set forth in this Consent Judgment, and
24 any and all prior discussions, negotiations, commitments, or understandings related thereto, if
25 any, are deemed merged. There are no warranties, representations, or other agreements between
26 the Parties except as expressly set forth in this Consent Judgment. No representations, oral or
27 otherwise, express or implied, other than those specifically referred to in this Consent Judgment
28 have been made by any Party. No other agreements not specifically contained or referenced in
this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

1 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
2 binding unless executed in writing by the Party to be bound. No waiver of any of the provisions
3 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
4 provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

5 10.3 This Consent Judgment may be modified only by: (a) an agreement or stipulation
6 of the Parties and the entry of a modified consent judgment by the Court, or (b) by the
7 successful motion, application, or such other procedure as is available at law to any Party, and
8 the entry of a modified consent judgment by the Court thereon.

9 10.3 Nothing in this Consent Judgment shall release, or in any way affect any rights
10 that Hyde might have against, any other Party.

11 10.4 This Consent Judgment may be executed in counterparts and by facsimile or
12 portable document format (PDF) signature, each of which shall be deemed an original, and all of
13 which, when taken together, shall constitute one and the same document.

14 10.5 Each signatory to this Consent Judgment certifies that he or she is fully
15 authorized by the Party he or she represents to agree to the terms and conditions of this Consent
16 Judgment, and to enter into and execute the Consent Judgment on behalf of the Party
17 represented and to legally bind that Party.

18 10.6 The Parties, including their counsel, have participated in the preparation of this
19 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
20 This Consent Judgment was subject to revision and modification by the Parties and has been
21 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
22 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
23 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
24 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are
25 to be resolved against the drafting Party should not be employed in the interpretation of this
26 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code Section
27 1654.

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AGREED TO:

Plaintiff, MARK MOORBERG



Signature

Date: October 9, 2014

AGREED TO:

Defendant, HYDE GROUP, INC.



Signature

By: RONALD P. CARLSON

Print Name

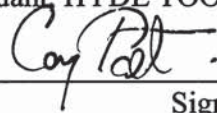
Its: TREASURER/CFO

Title

Date: 10/13/14

AGREED TO:

Defendant, HYDE TOOLS, INC.



Signature

By: Corey Talbot

Print Name

Its: Vice President of Marketing

Title

Date: 10/10/14