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MARK MOORBERG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

UNLIMITED CIVIL JURISDICTION

MARK MOORBERG Plaintiff, v. ASUS COMPUTER INTERNATIONAL; *et al.*, 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. INTRODUCTION

1.1 Parties

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

1.2 General Allegations

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

1.3 Product Description

The products covered by this Settlement Agreement are defined as Asus headsets with vinyl/PVC components containing DEHP, including but not limited to Part No.: 90-YAHI8110-UA00 (UPC No. 8 86227 20202 7 and Part No.: 90-YAHIA 110-UA00, UPC #8 86227 26643 2 (the "Products").

1.4 Notice of Violation

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

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

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

1.5 Complaint

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

1.6 No Admission

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

1.7 Jurisdiction

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

1.8 Effective Date

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

2. INJUNCTIVE SETTLEMENT TERMS

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

3. MONETARY SETTLEMENT TERMS

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

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

3.2 Reimbursement of Attorneys' Fees and Costs

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

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

3.3 Payment Timing; Payments Held In Trust

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

3.4 Payment Address

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

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

4. CLAIMS COVERED AND RELEASED

4.1 Moorberg's Release of Proposition 65 Claims

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

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

4.2 Moorberg's Individual Release of Claims

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

4.3 Asus' Release of Moorberg

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

4.4 Mutal California Civil Code Section 1542 Waiver

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

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

5. COURT APPROVAL

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

6. SEVERABILITY

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

7. GOVERNING LAW

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

8. NOTICE

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

To Asus:

Steve Chang, President
Asus Computer International
800 Corporate Way
Fremont, CA 94539

To Moorberg:

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

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

10. COMPLIANCE WITH REPORTING REQUIREMENTS

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

11. MODIFICATION

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

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 BG/NA
(Title)

Dated: 12/21/2015