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11 PETER PAUPER PRESS. INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED JURISDICTION
15

16 MARK MOORBERG,

17 Plaintiff,

18 v.

19 PETER PAUPER PRESS, INC.,

20 Defendant.
21

Case No. RG 15762863

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code §§ 25249.6 *et seq.*)
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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Mark Moorberg (“Moorberg”) and
4 Peter Pauper Press, Inc. (“Peter Pauper”), with Moorberg and Peter Pauper each referred to
5 individually as a “Party” and collectively as the “Parties.” Moorberg is an individual residing in
6 California who seeks to promote awareness of exposures to toxic chemicals, and improve human
7 health by reducing or eliminating hazardous substances in consumer and commercial products.
8 Peter Pauper employs ten or more persons and is a person in the course of doing business for
9 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
10 Safety Code section 25249.6 et seq. (“Proposition 65”).

11 **1.2 General Allegations**

12 Moorberg alleges that Peter Pauper manufactures, imports, sells and/or distributes for sale in
13 California books with vinyl/PVC covers containing di(2-ethylhexyl)phthalate (“DEHP”) without
14 providing the requisite Proposition 65 health hazard warning. DEHP is listed pursuant to
15 Proposition 65 as a chemical known to the State of California to cause birth defects and other
16 reproductive harm.

17 **1.3 Product Description**

18 The products covered by this Consent Judgment are books with vinyl/PVC covers
19 containing DEHP that are sold or distributed for sale in California by Peter Pauper (“Products”).
20 This includes, but is not limited to, the *Essentials Fashion Sketchbook*, ISBN 978-1-4413-1172-6
21 and the *Essentials Small Black Grid-Lined Notebook*, ISBN 978-1-4413-1137-5.

22 **1.4 Notice of Violation**

23 On August 28, 2014, Moorberg served Peter Pauper, and certain requisite public
24 enforcement agencies, with a “60-Day Notice of Violation” (“Notice”) alleging that Peter Pauper
25 violated Proposition 65 by failing to warn its customers and consumers in California that the
26 Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has
27 commenced or is otherwise prosecuting the allegations set forth in the Notice.

1 **1.5 Complaint**

2 On March 18, 2015, Moorberg, who was and is acting in the interest of the general public in
3 California, filed a Complaint in the above captioned action (“Complaint”) against Peter Pauper for
4 the alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

5 **1.6 No Admission**

6 Peter Pauper denies the material, factual, and legal allegations contained in the Notice and
7 Complaint, and maintains that all of the products it has manufactured, imported, distributed, sold or
8 offered for sale in the State of California, including the Products, have been, and are, in compliance
9 with all federal, state, or local laws. Nothing in this Consent Judgment shall be construed as an
10 admission by Peter Pauper of any fact, finding, conclusion of law, issue of law, or violation of law,
11 nor shall compliance with this Consent Judgment constitute or be construed as an admission by
12 Peter Pauper of any fact, finding, conclusion of law, issue of law, or violation of law. This section
13 shall not, however, diminish or otherwise affect Peter Pauper’s obligations, responsibilities, or
14 duties under this Consent Judgment.

15 **1.7 Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that the Court has
17 jurisdiction over Peter Pauper as to the allegations in the Complaint, that venue is proper in
18 Alameda County, and that the Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment.

20 **1.8 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the
22 Consent Judgment is approved by the Court.

23 **2. INJUNCTIVE REQUIREMENTS**

24 **2.1 Reformulated Products**

25 Commencing on July 15, 2015, any Products that Peter Pauper manufactures or purchases
26 for sale or distribution in the State of California shall be Reformulated Products. For purposes of
27 this Consent Judgment, “Reformulated Products” shall mean Products containing less than or equal
28 to 1,000 parts per million (0.1%) DEHP in each Accessible Component when analyzed pursuant to

1 EPA testing methodologies 3580A and 8270C. For purposes of this Consent Judgment, “Accessible
2 Component” shall mean a component of a Product that can be touched by a person during normal,
3 intended and foreseeable use of the Product.

4 **2.2 Grace Period for Existing Inventory**

5 Liability for non-Reformulated Products that were manufactured or purchased for sale or
6 distribution in the State of California prior to the Effective Date was included in Plaintiff’s
7 determination of civil penalties contemplated by Sections 3.1 and 3.2 below, and is thus subject to
8 the releases provided by Section 4 below.

9 **3. MONETARY PAYMENTS**

10 **3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(B)**

11 Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all of the claims
12 referred to in this Consent Judgment, Peter Pauper shall pay \$20,500 in civil penalties, consisting of
13 the initial and final civil penalty referenced in Sections 3.1.1 and 3.1.2, respectively. Each penalty
14 payment shall be allocated in accordance with California Health and Safety Code section
15 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
16 Health Hazard Assessment (“OEHHA”), and the remaining 25% of the penalty retained by
17 Moorberg. Moorberg’s counsel shall be responsible for remitting Peter Pauper’s penalty
18 payment(s) under this Consent Judgment to OEHHA.

19 **3.1.1 Initial Civil Penalty.**

20 Within five (5) business days of the Parties’ execution of this Consent Judgment, Peter
21 Pauper shall make an initial civil penalty payment of \$5,500. Peter Pauper shall provide its
22 payment in a single check made payable to “Mark Moorberg, Client Trust Account” to be delivered
23 to the address provided in Section 3.4 below.

24 **3.1.2 Final Civil Penalty.**

25 On or before May 1, 2015, or within five (5) days of the Effective Date, whichever is later,
26 Peter Pauper shall pay a final civil penalty of \$15,000. Moorberg agrees, however, that the final
27 civil penalty will be waived in its entirety if on or before April 15, 2015, Peter Pauper provides
28 Moorberg’s counsel with written certification that commencing on the date of the certification and

1 continuing thereafter, Peter Pauper has met the reformulation standard specified in Section 2, above.
2 The option to provide written certification of the Product formulation in lieu of making the final
3 civil penalty payment required by this Consent Judgment is a material term, and with regard to such
4 term, time is of the essence.

5 **3.2 Reimbursement of Fees and Costs**

6 The Parties acknowledge that Moorberg and his counsel offered to resolve this dispute
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
8 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the
9 other settlement terms had been reached, Peter Pauper expressed a desire to resolve Moorberg's fees
10 and costs. Under general contract principles and the private attorney general doctrine codified at
11 California Code of Civil Procedure section 1021.5, the Parties negotiated Peter Pauper's
12 reimbursement of Moorberg's attorneys' fees and costs. Under their agreement, Peter Pauper
13 agrees to pay Moorberg and his counsel \$35,000 for all work performed through the mutual
14 execution of this Consent Judgment, including all fees and costs incurred as a result of
15 investigating, bringing this matter to Peter Pauper's attention, and negotiating a settlement in the
16 public interest. Peter Pauper shall deliver the payment required in this Section 3.2 within five (5)
17 business days of the Parties' execution of this Consent Judgment.

18 **3.3 Payments Held In Trust**

19 All payments required by this Consent Judgment shall be delivered to Moorberg's counsel
20 at the address provided in Section 3.4 on or before the date they are due to be held in trust until
21 such time as the Court grants the motion for approval of the Parties' settlement contemplated by
22 Section 5.

23 **3.4 Payment Address**

24 All payments required by this Consent Judgment shall be delivered to the following
25 address:

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

1 **4. CLAIMS COVERED AND RELEASED**

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

3 This Consent Judgment is a full, final, and binding resolution between Moorberg and Peter
4 Pauper of any violation of Proposition 65 that was or could have been asserted by Moorberg, acting
5 on his own behalf and on behalf of his past and current attorneys, agents, representatives,
6 successors, and assignees, and acting in a representative capacity in the public interest pursuant to
7 Health & Safety Code § 25249.7(d), against (a) Peter Pauper and each entity to whom Peter Pauper
8 has directly or indirectly distributed or sold the Products, including, but not limited to, Tuesday
9 Morning Corporation, Tuesday Morning, Inc., Barnes & Noble, Inc., and Barnes & Noble
10 Booksellers, Inc.; (b) all downstream distributors, wholesalers, customers, retailers, franchisees,
11 cooperative members, and licensees of the entities identified in (a), above; and (c) all past and
12 current parents, subsidiaries, affiliates, directors, officers, employees, shareholders, agents,
13 attorneys, successors, and assignees of the entities and individuals identified in (a) and (b), above
14 (the released entities and individuals identified in (a), (b), and (c), above, are collectively referred to
15 as “Releasees”), for alleged violations of Proposition 65 with respect to any DEHP in the Products.
16 Compliance with the terms of this Consent Judgment by Peter Pauper shall constitute compliance
17 with Proposition 65 with respect to any exposures to DEHP in the Products.

18 **4.2 Moorberg’s Individual Release of Claims**

19 In further consideration of the promises and agreements herein contained, Moorberg, on his
20 own behalf and on behalf of his past and current attorneys, agents, representatives, successors, and
21 assignees, and *not* in his representative capacity, hereby waives all rights to institute or participate
22 in, directly or indirectly, any form of legal action and releases all claims that he may have against
23 the Releasees, including, without limitation, all actions, causes of action, suits, liabilities, demands,
24 obligations, damages, costs, fines, penalties, losses, or expenses, including, but not limited to,
25 investigation fees, expert fees, and attorneys’ fees (collectively, “Claims”) arising under Proposition
26 65 with respect to any DEHP in the Products manufactured before the Effective Date. The Parties
27 further understand and agree that the releases provided under this Consent Judgment shall not
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1 extend upstream to any entity that manufactures the Products, or any component parts thereof, or
2 any distributor or supplier who sold the Products, or any component parts thereof, to Peter Pauper.

3 **4.3 Peter Pauper's Release of Moorberg**

4 Peter Pauper, on behalf of itself, its past and current agents, representatives, attorneys,
5 successors, and assignees, hereby waives any and all claims against Moorberg and his attorneys and
6 other representatives, for any and all actions taken or statements made (or those that could have
7 been taken or made) by Moorberg and his attorneys and other representatives, whether in the course
8 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter, or
9 with respect to the Products.

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and
12 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
13 after it has been fully executed by all Parties. Moorberg and Peter Pauper agree to support the entry
14 of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
15 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
16 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
17 motion Moorberg shall draft and file and Peter Pauper shall support, appearing at the hearing if so
18 requested. If any third-party objection to the motion is filed, Moorberg and Peter Pauper agree to
19 work together to file a reply and appear at any hearing. This provision is a material component of
20 the Consent Judgment and shall be treated as such in the event of a breach. In the event that the
21 Consent Judgment is not approved and entered by the Court as specified in this Section, Moorberg
22 shall return all settlement payments made by Peter Pauper within fifteen (15) days' written notice
23 by Moorberg.

24 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
4 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Peter
5 Pauper may provide written notice to Moorberg of its 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 Peter
8 Pauper from any obligation to comply with any pertinent state or federal law or regulation.

9 **8. NOTICE**

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

14 To Peter Pauper:

15 Laurence Beilenson, President
16 Peter Pauper Press, Inc.
17 202 Mamaroneck Avenue, Suite 400
18 White Plains, NY 10601

19 With a copy to:

20 Sarah Esmaili, Esq.
21 Arnold & Porter LLP
22 Three Embarcadero Center, 10th Floor
23 San Francisco, CA 94111

24 To Moorberg:

25 Proposition 65 Coordinator
26 The Chanler Group
27 2560 Ninth Street
28 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 SIGNATURES

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

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10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

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

11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or application of any Party and the entry of a modified consent judgment by the Court.

12. AUTHORIZATION


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

AGREED TO:

AGREED TO:

Date: March 23, 2015

Date: _____

By:  _____
Mark Moorberg

By: _____
Laurence Beilenson, President
Peter Pauper Press, Inc.

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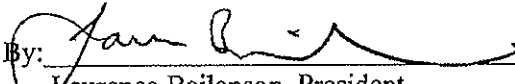
AGREED TO:

AGREED TO:

Date: _____

Date: March 23, 2015

By: _____
Mark Moorberg

By: 
Laurence Beilenson, President
Peter Pauper Press, Inc.