

1 Cliff Chanler, State Bar No. 135534
2 Chris 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
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 MARK MOORBERG

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

12 MARK MOORBERG,
13
14 Plaintiff,
15
16 v.
17
18 HOBBICO, INC.;
19
20
21
22
23
24
25
26
27
28 Defendant.

Case No. RG15786812

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Mark Moorberg
4 (“Moorberg”) and defendant Hobbico, Inc. (“Hobbico”), with Moorberg and Hobbico each referred
5 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 Hobbico 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 Hobbico 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 that are manufactured, sold and/or distributed for sale in California by Hobbico including,
21 but not limited to, the *Hobbico Builder’s Cutting Mat*, Stock #No. HCAR0453, UPC #7 08066
22 70453 4, as well as Stock Nos. HCAR0443, HCAR0454, HCAR0455, HCAR0456 and Revell-
23 Monogram Stock Nos. RMXR6990 and RMXR 6992 (collectively, “Products”).

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.6 Notice of Violation

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

1.7 Complaint

On September 22, 2015, Moorberg commenced the instant action, naming Hobbico as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 No Admission

Hobbico 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 Hobbico 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 Hobbico of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Hobbico’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 Hobbico as to the allegations contained in the Complaint, that venue is proper in the County of Alameda, 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.

///
///

1 **2. INJUNCTIVE SETTLEMENT TERMS**

2 **2.1 Commitment Reformulate Products or Provide Warnings**

3 Hobbico agrees that as of the Effective Date, all Products it sells and/or distributes for sale
4 in California will either (a) meet the definition of Reformulated Products established by this
5 Section; or (b) bear a clear and reasonable warning pursuant to Section 2.2, below. For purposes of
6 this Consent Judgment, "Reformulated Products" are defined as Products with a maximum DEHP
7 concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
8 Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized
9 by state or federal agencies for the purpose of determining DEHP content in a solid substance.

10 **2.2 Clear and Reasonable Warnings**

11 Commencing on the Effective Date and continuing thereafter, for any Products sold or
12 distributed for sale in California by Hobbico that are not Reformulated Products, Hobbico will only
13 offer such Products for sale with a clear and reasonable warning in accordance with this Section.
14 Hobbico further agrees that any warning used will be prominently placed in relation to the Product
15 with such conspicuousness when compared with other words, statements, designs, or devices as to
16 render it likely to be read and understood by an ordinary individual under customary conditions of
17 use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products
18 satisfying these criteria shall consist of a warning label sticker affixed directly to Products or their
19 accompanying labeling or packaging sold in California containing one of the following statements:

20 **WARNING:** This product contains DEHP, a chemical known to the
21 State of California to cause birth defects and other
22 reproductive harm. Exposure through skin contact and
23 ingestion may occur.

23 or

24 **WARNING:** This product contains a chemical known to the State of
25 California to cause cancer and birth defects (or other
26 reproductive harm). Exposure through skin contact and
27 ingestion may occur.

27 In the event that Hobbico sells Products via its internet website to customers located in California,
28 the warning requirements of this section shall be satisfied if one of the foregoing warnings appears

1 either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same
2 page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to
3 purchase during the checkout process. Alternatively, a symbol may appear adjacent to or
4 immediately following the display, description, price, or checkout listing of the Product, provided
5 that the warning statement also appears elsewhere on the same web page.

6 **2.3 Grace Period for Existing Inventory of Products/Warnings**

7 Hobbico represents that, after receiving the Notice, it implemented a Proposition 65 warning
8 for the Products. Moorberg agrees that, until Hobbico exhausts its current inventory of Products
9 and/or Product packaging and labeling, it may continue to sell and offer for sale in California those
10 Products labeled with the following statement: "WARNING: This product contains a chemical
11 known to the State of California to cause cancer, birth defects, or other reproductive harm.
12 Exposure through skin contact and ingestion may occur."

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

15 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
16 claims referred to in this Consent Judgment, Hobbico shall pay a civil penalty of \$8,000. The
17 penalty payment will be allocated in accordance with California Health & Safety Code
18 § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental
19 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to
20 Moorberg. Moorberg's counsel shall be responsible for remitting Hobbico's portion of the penalty
21 payment under this Consent Judgment to OEHHA. Hobbico shall provide its payment in a single
22 check made payable to "Mark Moorberg, Client Trust Account" to be delivered to the address
23 provided in Section 3.4, below.

24 **3.2 Reimbursement of Attorneys' Fees and Costs**

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

1 fees and costs. The Parties then negotiated a resolution of the compensation due to Moorberg and
2 his counsel under general contract principles and the private attorney general doctrine codified at
3 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
4 execution of this agreement and the Court's approval of the same, but exclusive of fees and costs
5 on appeal, if any, Hobbico shall reimburse Moorberg and his counsel \$22,500. Hobbico's
6 payment shall be delivered to the address in Section 3.4 in the form of a check payable to "The
7 Chanler Group." The reimbursement shall cover all fees and costs incurred by Moorberg
8 investigating, bringing this matter to Hobbico's attention, litigating, and negotiating a settlement of
9 the matter in the public interest.

10 **3.3 Payment Timing; Payments Held In Trust**

11 Hobbico shall deliver all payments required by this Consent Judgment to its counsel within
12 one week of the date that this agreement is fully executed by the Parties. Hobbico's counsel shall
13 confirm receipt of settlement funds in writing to Moorberg's counsel and, thereafter, hold the
14 amounts paid in trust until such time as the Court grants the motion for approval of the Parties'
15 settlement contemplated by Section 5. Within two days of the Effective Date, Hobbico's counsel
16 shall deliver all settlement payments it has held in trust to Moorberg's counsel at the address
17 provided in Section 3.4. In the event the final civil penalty payment required by Section 3.1.2
18 becomes due prior to the Effective Date, then Hobbico shall deliver the final civil penalty payment
19 to its attorney to be held in trust until, and disbursed within two days after, the Effective Date.

20 **3.4 Payment Address**

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

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

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 Hobbico and its
4 parents, subsidiaries, affiliated entities under common ownership (including Revell and
5 Monogram), directors, officers, employees, suppliers and attorneys ("Releasees") and each entity to
6 whom they directly or indirectly distribute or sell the Products including, but not limited to, their
7 downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,
8 licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65
9 for unwarned exposures to DEHP from the Products manufactured, imported, distributed or sold by
10 Hobbico prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this
11 Consent Judgment constitutes compliance with Proposition 65 by Hobbico with respect to the
12 alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or
13 distributed for sale by Hobbico after the Effective Date.

14 **4.2 Moorberg's Individual Release of Claims**

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

22 **4.3 Hobbico's Release of Moorberg**

23 Hobbico, on its own behalf and on behalf of its past and current agents, representatives,
24 attorneys, successors and/or assignees, hereby waives any and all claims against Moorberg and his
25 attorneys and other representatives, for any and all actions taken or statements made (or those that
26 could have been taken or made) by Moorberg and his attorneys and other representatives in the
27 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
28 respect to the Products.

1 **5. COURT APPROVAL**

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

12 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

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

24 ///

25 ///

26 ///

27 ///

28 ///

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 Hobbico:

7 Wayne Hemming, President
8 Hobbico, Inc.
9 1608 Interstate Drive
10 Champaign, IL 61822

To Moorberg:

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

10 With a copy to:

11 Adam J. Thurston, Esq.
12 Drinker Biddle & Reath LLP
13 1800 Century Park East, Ste. 1500
14 Los Angeles, CA 90067

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

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

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

21 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

24 **11. MODIFICATION**

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

28 ///

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.

5

6 **AGREED TO:**

7 
8 _____
9 MARK MOORBERG

9 Dated: 3/22/16

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

AGREED TO:



By: WAYNE J. Hemming
(Print Name)

Its: President & CEO
(Title)

Dated: April 5, 2016