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MARK MOORBERG

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
12

13 MARK MOORBERG,

14 Plaintiff,

15 v.

16 WILLIAM PRYM, INC., *et al.*,

17 Defendants.
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Case No. CGC-16-549929

[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 Prym Consumer USA, Inc. (“Prym”), with Moorberg and Prym each
5 referred 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 Prym 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 Prym 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, including, but not limited to, the *Dritz Cutting Mat-6”x 8,” #1047, UPC #0 72879 25014 5*
21 (collectively, “Products”).

22 **1.6 Notice of Violation**

23 On June 26, 2015, Moorberg served Prym and the requisite public enforcement agencies
24 with a 60-Day Notice of Violation (“Notice”), alleging that Prym violated Proposition 65 when it
25 failed to warn its customers and consumers in California that the Products expose users to DEHP.
26 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
27 prosecuting an action to enforce the allegations set forth in the Notice.
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1 **1.7 Complaint**

2 On January 15, 2016, Moorberg commenced the instant action, naming Prym, among others,
3 as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

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

13 **1.9 Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over Prym as to the allegations contained in the Complaint, that venue is proper in the
16 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
17 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
20 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

21 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS**

22 **2.1 Commitment to Reformulate or Warn**

23 Prym agrees that as of the Effective Date, all products it sells and/or distributes for
24 sale in California will either: (a) meet the definition of “Reformulated Products” established by this
25 Section; or (b) bear a clear and reasonable warning pursuant to Section 2.2, below.

26 For purposes of this Settlement Agreement, “Reformulated Products” shall mean Products
27 containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e.,
28 any component that may be touched during use) when analyzed pursuant to U. S. Environmental

1 Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized
2 by federal or state agencies for the purpose of determining DEHP content in a solid substance.

3 **2.2 Clear and Reasonable Warnings**

4 Prym agrees that as of the Effective Date, all Products it sells and/or distributes in
5 California which do not qualify as Reformulated Products, will bear a clear and reasonable warning
6 pursuant to this Section. Prym further agrees that the warnings will be prominently placed with
7 such conspicuousness when compared with other words, statements, designs or devices as to render
8 it likely to be read and understood by an ordinary individual under customary conditions of use.
9 For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall
10 consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California
11 and containing one of the following statements:

12 **WARNING:** This product contains DEHP, a chemical
13 known to the State of California to cause
14 birth defects or other reproductive harm.
or

15 **WARNING:** This mat contains phthalates, substances known to the
16 State of California to cause
17 birth defects and other reproductive harm.

18 **3. MONETARY SETTLEMENT TERMS**

19 **3.1 Civil Penalty Payment Pursuant to Health and Safety Code § 25249.7(b)(2)**

20 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
21 this Consent Judgment, Prym shall pay \$5,000 in civil penalties. The civil penalty payment will be
22 allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with
23 75% of the penalty amount remitted to the California Office of Environmental Health Hazard
24 Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Plaintiff. Prym will
25 provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the
amount of \$3,750; and (b) “Mark Moorberg, Client Trust Account” in the amount of \$1,250.

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3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Moorberg and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. The Parties then negotiated a resolution of the compensation due to Moorberg and his counsel 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, but exclusive of fees and costs on appeal, if any, Prym shall reimburse Moorberg and his counsel \$12,000. Prym's payment shall be delivered to the address in Section 3.4 in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Moorberg investigating, bringing this matter to Prym's attention, litigating, and negotiating a settlement of the matter in the public interest.

3.3 Payment Timing; Payments Held in Trust

Prym shall deliver all payments required by this Consent Judgment to its counsel within two weeks of the date that this agreement is fully executed by the Parties. Prym's counsel shall confirm receipt of settlement funds in writing to Moorberg's counsel and, thereafter, hold the amounts paid in trust until such time as the Court grants the motion for approval of the Parties' settlement contemplated by Section 5. Within one week of the Effective Date, Prym's counsel shall deliver all settlement payments it has held in trust to Moorberg's counsel at the address provided in Section 3.4.

3.4 Payment Address

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

The Chanler Group
Attn: Proposition 65 Controller
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 Moorberg, acting on his own behalf and in the public interest, releases Defendants (defined
4 as Prym Consumer USA and all predecessor companies, including but not limited to William Prym,
5 Inc.) and its parents, subsidiaries, affiliated entities under common ownership, directors, officers,
6 employees, and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes
7 or sells the Products including, but not limited to, its downstream distributors, wholesalers,
8 customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream
9 Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP from
10 the Products manufactured, imported, distributed or sold by Prym prior to the Effective Date.
11 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by
12 Prym with respect to the alleged or actual failure to warn about exposures to DEHP from Products
13 manufactured, sold or distributed for sale by Prym after the Effective Date. The Parties agree and
14 understand that the releases provided under this Consent Judgment shall not extend upstream to any
15 entity who manufactures the Products, or who supplied the Products to Prym, except to the extent
16 such Products are/were actually sold by Prym.

17 **4.2 Moorberg's Individual Release of Claims**

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

25 **4.3 Prym Consumer USA's Release of Moorberg**

26 Prym, on its own behalf and on behalf of its past and current agents, representatives,
27 attorneys, successors and/or assignees, hereby waives any and all claims against Moorberg and his
28 attorneys and other representatives, for any and all actions taken or statements made (or those that

1 could have been taken or made) by Moorberg and his attorneys and other representatives in the
2 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
3 respect to the Products.

4 **5. COURT APPROVAL**

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

15 **6. SEVERABILITY**

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

19 **7. GOVERNING LAW**

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

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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 Prym:

7
8 Steve Mills, President
9 Prym Consumer USA, Inc.
10 950 Brisack Road
11 Spartanburg, SC 29303

To Moorberg:

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

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

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

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

18 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

21 **11. MODIFICATION**

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

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1 **12. AUTHORIZATION**

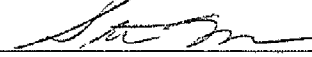
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5
6 **AGREED TO:**

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8 _____
9 MARK MOORBERG

10 Dated: August 15, 2016

11 **AGREED TO:**

12 
13 _____
14 PRYM CONSUMER USA INC.

15 By: Steve Mills
16 (Print Name)

17 Its: CEO
18 (Title)

19 Dated: August 12, 2016

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