

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and W.J. Deutsch & Sons Ltd. (“WJD”), with Moorberg and WJD each individually referred to 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 hazardous substances used in consumer products. WJD 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 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Moorberg alleges that WJD manufactures, sells, and distributes for sale in California, vinyl/PVC cases containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moorberg alleges that WJD failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the vinyl/PVC cases.

1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC cases containing DEHP that are manufactured, sold or distributed for sale in California by WJD, including, but not limited to, the *Luksusowa Polish Vodka Set with Shot Glass Carrying Case, UPC #6 30328 00046 0* (“Products”).

1.4 Notice of Violation

On June 26, 2015, Moorberg served WJD and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that WJD violated

Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its vinyl/PVC cases. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

WJD denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed 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 WJD of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by WJD of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by WJD. This Section shall not, however, diminish or otherwise affect WJD's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 30, 2015.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on March 30, 2016 and continuing thereafter, WJD agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, WJD agrees to pay \$13,500 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Moorberg. Moorberg’s counsel shall be responsible for delivering OEHHA’s portion of any civil penalty payment(s) made under this Settlement Agreement to OEHHA.

3.1.1 Initial Civil Penalty Payment

Within five days of the Effective Date, WJD shall make an initial civil penalty payment of \$3,500. It shall deliver its payment in a single check made payable to “Mark Moorberg, Client Trust Account.”

3.1.2 Final Civil Penalty Payment; Waiver for Early Reformulation

On January 1, 2016, WJD shall make a final civil penalty payment in the amount of \$10,000. Pursuant to Title 11 California Code of Regulations section 3203(c), Moorberg agrees that the final civil penalty will be waived in its entirety if, no later than December 15, 2015, WJD provides Moorberg’s counsel with a signed declaration certifying that all of the Products it is shipping for sale or distributing for sale in California are Reformulated Products as defined by Section 2.1, and that WJD will continue to only offer Reformulated Products in California in the future. The option to provide a declaration certifying early completion of reformulation in lieu of making the final civil penalty payment is a material term of this Settlement Agreement, and time is of the essence.

3.2 Attorneys' Fees and Costs

The Parties reached an accord on the compensation due to Moorberg and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, WJD agrees to pay \$22,500 in the form of a check made payable to "The Chanler Group" for all fees and costs incurred investigating, bringing this matter to the attention of WJD's management, and negotiating a settlement in the public interest.

3.3 Payment Address

All payments under 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 WJD

This Settlement Agreement is a full, final and binding resolution between Moorberg and WJD, of any violation of Proposition 65 that was or could have been asserted by Moorberg on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against WJD, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom WJD directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by WJD in California before the Effective Date. This release

provided by Moorberg under this Settlement Agreement is provided solely on Moorberg's own behalf and *not* on behalf of the public in California.

In further consideration of the promises and agreements herein, Moorberg, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to exposures to DEHP from Products manufactured, distributed, sold and/or offered for sale by WJD before the Effective Date. The releases provided by Moorberg under this Settlement Agreement are provided solely on Moorberg's own behalf and *not* on behalf of the public in California.

4.2 WJD's Release of Moorberg

WJD, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or 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, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. 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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then WJD may provide written notice to Moorberg 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.

7. NOTICE

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

For WJD:

Steven N. Masket, Secretary and G.C.
W.J. Deutsch & Sons Ltd.
709 Westchester Avenue, Suite 300
White Plains, NY 10604

For Moorberg:

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 a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE 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.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

10. INTEGRATION

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter set forth in this

Consent Judgment, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are deemed merged. There are no warranties, representations, or other agreements between the Parties except as expressly set forth in this Consent Judgment. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party. No other agreements not specifically contained or referenced in this Settlement Agreement, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless in accordance with Section 11 of this Settlement Agreement.

11. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

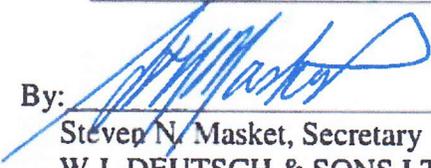
AGREED TO:

Date: 10.23.15

By: 
MARK MOORBERG

AGREED TO:

Date: OCTOBER 23, 2015

By: 
Steven N. Masket, Secretary
W.J. DEUTSCH & SONS LTD.