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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA
14 UNLIMITED CIVIL JURISDICTION
15

16 MARK MOORBERG,

17 Plaintiff,

18 v.

19 INTERNATIONAL SOURCING
20 COMPANY, INC.; *et al.*,

21 Defendants.
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23
24
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Case No. 115CV288887

[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 International Sourcing Company, Inc. (“International”), with
5 Moorberg and International each referred to individually as a “Party” and collectively as the
6 “Parties.”

7 **1.2 Plaintiff**

8 Moorberg is a resident of the State of California who seeks to promote awareness of
9 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
10 substances contained in consumer and commercial products.

11 **1.3 Defendant**

12 International employs ten or more persons and is a person in the course of doing business
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
14 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Moorberg alleges that International manufactures, imports, sells and/or distributes for sale in
17 California, vinyl/PVC gloves containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so
18 without providing the health hazard warning that Moorberg alleges is required by Proposition 65.
19 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
20 birth defects and other reproductive harm.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are vinyl/PVC gloves containing DEHP,
23 including, but not limited to, the *Cordova Work Gloves Black PVC Smooth Interlock Knit Wrist*,
24 *#5000, UPC #7 96326 50001 9* (collectively, “Products”).

25 **1.6 Notice of Violation**

26 On July 13, 2015, Moorberg served International and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation (“Notice”), alleging that International violated
28 Proposition 65 when it failed to warn its customers and consumers in California that the Products

1 expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced
2 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On December 10, 2015, Moorberg commenced the instant action, naming International,
5 among others, as a defendant for the alleged violations of Proposition 65 that are the subject of the
6 Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over International as to the allegations contained in the Complaint, that venue is proper
19 in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions
20 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

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

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

25 **2.1 Commitment to Reformulate or Provide Warnings**

26 Commencing the Effective Date, and continuing thereafter, International agrees to only
27 manufacture, distribute, or purchase for sale in or into California: (a) "Reformulated Products", or
28

(b) Products that are sold with a clear and reasonable health hazard warning, pursuant to Section 2.2 below.

2.2 Reformulated Products Defined

For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched during use) 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.

2.3 Clear and Reasonable Warnings Defined

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

WARNING: This product contains DEHP, a chemical
known to the State of California to cause
birth defects and other reproductive harm.

Or,

WARNING: This product contains a chemical
known to the State of California to cause cancer
and birth defects and other reproductive harm.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to
4 in this Consent Judgment, International shall pay \$3,100 in civil penalties. The civil penalty
5 payment will be allocated in accordance with California Health and Safety Code section
6 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of
7 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
8 amount paid to Plaintiff. International shall make a civil penalty payment of \$3,100, in two checks
9 for the following amounts made payable to (a) “OEHHA” in the amount of \$2,325; and (b) “Mark
10 Moorberg, Client Trust Account” in the amount of \$775.”

11 **3.2 Reimbursement of Attorneys’ Fees and Costs**

12 The Parties acknowledge that Moorberg and his counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
14 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
15 the other settlement terms had been finalized, International expressed a desire to resolve
16 Moorberg’s fees and costs. The Parties then negotiated a resolution of the compensation due to
17 Moorberg and his counsel under general contract principles and the private attorney general
18 doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed through
19 the mutual execution of this agreement and the Court’s approval of the same, but exclusive of fees
20 and costs on appeal, if any, International shall reimburse Moorberg and his counsel \$27,000.
21 International’s payment shall be delivered to the address in Section 3.4 in the form of a check
22 payable to “The Chanler Group.” The reimbursement shall cover all fees and costs incurred by
23 Moorberg investigating, bringing this matter to International’s attention, litigating, and negotiating
24 a settlement of the matter in the public interest.

1 **3.3 Payment Timing; Payments Held in Trust**

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

9 **3.4 Payment Address**

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

12 The Chanler Group
13 Attn: Proposition 65 Controller
14 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

15 **4. CLAIMS COVERED AND RELEASED**

16 **4.1 Moorberg's Release of Proposition 65 Claims**

17 Moorberg, acting on his own behalf and in the public interest, releases International and its
18 predecessors, successors, parents, subsidiaries, affiliated entities, directors, officers, employees,
19 representatives, agents and attorneys ("Releasees") and each entity to whom International directly
20 or indirectly distributes or sells the Products including, but not limited to, their downstream
21 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors and
22 licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned
23 exposures to DEHP from the Products manufactured, imported, distributed or sold by International
24 prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent
25 Judgment constitutes compliance with Proposition 65 by International with respect to the alleged or
26 actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for
27 sale by International after the Effective Date.
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1 **4.2 Moorberg's Individual Release of Claims**

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

9 **4.3 International's Release of Moorberg**

10 International, on its own behalf and on behalf of its past and current agents, representatives,
11 attorneys, successors and/or assignees, hereby waives any and all claims against Moorberg and his
12 attorneys and other representatives, for any and all actions taken or statements made (or those that
13 could have been taken or made) by Moorberg and his attorneys and other representatives in the
14 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
15 respect to the Products.

16 **4.4 Mutual Waiver of California Civil Code Section 1542**

17 The Parties each acknowledge she/it is familiar with Section 1542 of the Civil Code, which
18 provides as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
20 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
21 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
22 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

23 The Parties, each on his/its own behalf, and on behalf of his/its past and current agents,
24 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all
25 rights and benefits which they may have under, or which may be conferred upon them by the
26 provisions of Civil Code section 1542 as well as under any other state or federal statute or common
27 law principle of similar effect, to the fullest extent he/it may lawfully waive such rights or benefits
28 pertaining to the released matters, as specifically defined by Sections 4.1 through 4.3, above.

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 International agree to support the
5 entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a
6 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code
7 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
8 which motion Moorberg shall draft and file and International shall support, including by appearing
9 at the hearing if so requested. If any third-party objection to the motion is filed, Moorberg and
10 International agree to work together to file a reply and appear at any hearing. This provision is a
11 material 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
20 International may provide Moorberg with written notice of any asserted change in the law, and shall
21 have no further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the
22 extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to
23 relieve International from its obligation to comply with any pertinent state or federal law or
24 regulation.

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 International:

7 Himanshu Varma, President
8 International Sourcing Company, Inc.
9 4025 Viscount Ave.
10 Memphis, TN 38118

To Moorberg:

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

11 To International's Counsel:

12 Gary Wexler, Esq.
13 Thompson Coburn LLP
14 2029 Century Park East, Suite 1900
Los Angeles, CA 90067

15 Any Party may, from time to time, specify in writing to the other Party a change of address
16 to 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.
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12. **ENTIRE AGREEMENT**

This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all discussions, negotiations, commitments and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

13. **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:


MARK MOORBERG

Dated: 10/18/2016

AGREED TO:


INTERNATIONAL SOURCING,
COMPANY, INC.

By: Daniel Lett
(Print Name)

Its: Secretary
(Title)

Dated: 09/30/16