

1 Clifford A. Chanler, State Bar No. 135534  
2 Brian Johnson, State Bar No. 235965  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
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 SANTA CLARA  
UNLIMITED CIVIL JURISDICTION

MARK MOORBERG,

Plaintiff,

v.

TURTLE BEACH CORPORATION;  
VOYETRA TURTLE BEACH, INC.; and  
DOES 1 – 150, inclusive,

Defendants.

Case No. 115CV288441

**[PROPOSED] CONSENT JUDGMENT**

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Mark Moorberg  
4 (“Moorberg”), and defendants Turtle Beach Corporation (“Turtle Beach”), and Voyetra Turtle Beach,  
5 Inc. (“Voyetra” or collectively with Turtle Beach “Defendants”) with Moorberg and Defendants each  
6 individually referred to as a “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

8 Moorberg is an individual residing in California who seeks to promote awareness of  
9 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous  
10 substances contained in consumer products.

11 **1.3 Turtle Beach**

12 Moorberg alleges that Turtle Beach employs ten or more individuals and is a “person in the  
13 course of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of  
14 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 Voyetra**

16 Moorberg alleges that Voyetra employs ten or more individuals and is a “person in the course  
17 of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
18 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

19 **1.5 General Allegations**

20 Moorberg alleges that Defendants manufacture, import, sell, distribute, and/or offer for sale or  
21 use in California, headsets with vinyl/PVC components that contain di(2-ethylhexyl)phthalate  
22 (“DEHP”) without first providing the exposure warning required by Proposition 65. DEHP is listed  
23 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or  
24 other reproductive harm.

25 **1.6 Product Description**

26 The products covered by this Consent Judgment are headsets with vinyl/PVC components  
27 containing DEHP that are manufactured, imported, sold, distributed, and/or offered for sale or use in  
28 California by Defendants including, but not limited to, *Turtle Beach Ear Force XLC Stereo Game*

1 *Headset – XBOX LIVE Chat, UPC #7 31855 02049 2* (hereinafter the “Products”).

2 **1.7 Notice of Violation**

3 On or about July 13, 2015, Moorberg served Turtle Beach, Voyetra, and certain requisite  
4 public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that  
5 Defendants violated Proposition 65 by failing to provide a “clear and reasonable warning” to  
6 consumers in California that the Products expose users to DEHP. To the best of the Parties’  
7 knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth  
8 in the Notice.

9 **1.8 Complaint**

10 On November 24, 2015, Moorberg filed a complaint in the Superior Court of Santa Clara  
11 County against Defendants and Does 1-150, *Moorberg v. Turtle Beach Corporation, et al.*, Case No.  
12 115CV288441 (“Complaint”), alleging violations of California Health and Safety Code section  
13 25249.6.

14 **1.9 No Admission**

15 Defendants deny the material, factual, and legal allegations contained in the Notice and  
16 Complaint, and maintain that all of the products that they have manufactured, imported, distributed,  
17 sold, and/or offered for sale or use in California, including the Products, have been, and are, in  
18 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission of  
19 any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this  
20 Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law,  
21 issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect  
22 Defendants’ obligations, responsibilities, and duties under this Consent Judgment.

23 **1.10 Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper in  
26 the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of  
27 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.  
28

1           **1.11 Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
3 the Motion for Approval of the Consent Judgment is granted by the Court.

4           **2. INJUNCTIVE RELIEF: REFORMULATION**

5           **2.1 Reformulated Products**

6           Commencing on the Effective Date, and continuing thereafter, any Products sold,  
7 manufactured for sale, and/or distributed for sale in California by Defendants shall be “Reformulated  
8 Products.” For purposes of this Consent Judgment, Reformulated Products are Products containing  
9 DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to  
10 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other  
11 methodology utilized by federal or state government agencies for the purpose of determining DEHP  
12 content in a solid substance, including, without limitation, Consumer Product Safety Commission test  
13 method: CPSC-CH-C1001-09.3, Determination of Phthalates (April, 1<sup>st</sup>, 2010), as amended from  
14 time to time.

15           **3. MONETARY SETTLEMENT TERMS**

16           **3.1 Civil Penalty Payment**

17           Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in  
18 this Consent Judgment, Defendants shall pay \$2,500 in civil penalties. The civil penalty payment  
19 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-  
20 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard  
21 Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Moorberg. .  
22 Defendants shall provide their payment in a single checks made payable to: “Mark Moorberg, Client  
23 Trust Account.” Moorberg’s counsel shall be responsible for delivering any penalty payment made  
24 under this Consent Judgment to OEHHA.

25           **3.2 Reimbursement of Attorney’s Fees and Costs**

26           The parties acknowledge that Moorberg and his counsel offered to resolve this dispute  
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the  
28 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after

1 the other settlement terms had been finalized, Defendants expressed a desire to resolve Moorberg's  
2 fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due to  
3 Moorberg and his counsel under general contract principles and the private attorney general doctrine  
4 codified at California Code of Civil Procedure section 1021.5 for all work performed through the  
5 mutual execution of this Consent Judgment. As provided for in Section 3.3. below, Defendants shall  
6 pay \$26,000 for all of the fees and costs incurred by Moorberg through the Effective Date in  
7 investigating, bringing this matter to Defendants' attention, litigating and obtaining a settlement in  
8 the public interest.

### 9 **3.3 Payments Held in Trust**

10 All payments due under this Consent Judgment shall be held in trust until such time as the  
11 Court approves this Consent Judgment. All payments due under this agreement shall be delivered  
12 within ten (10) business days of the date that this Consent Judgment is fully executed by the Parties,  
13 and held in trust by Defendants' counsel until the Court grants the motion for approval of this  
14 Consent Judgment contemplated by Section 5. Within three (3) business days following receipt by  
15 Defendants' counsel of written notice of the Court's approval of this Consent Judgment,  
16 Defendants' counsel shall tender the civil penalty payments and attorneys' fee and costs  
17 reimbursements required by Sections 3.1 and 3.2. If the Court does not approve the Consent  
18 Judgment, Defendants' counsel will return to Defendants all payments made pursuant to Sections  
19 3.1 and 3.2.

### 20 **3.4 Payment Address**

21 All payments owed by Defendants under this Consent Judgment shall be delivered to:

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

## 25 **4. CLAIMS COVERED AND RELEASED**

### 26 **4.1 Moorberg's Public Release of Proposition 65 Claims**

27 Moorberg, acting on his own behalf and in the public interest, releases Defendants and each  
28 of their respective parents, subsidiaries, affiliated entities under common ownership, directors,

1 officers, employees, shareholders and attorneys (“Releasees”) and each entity to whom they directly  
2 or indirectly distribute or sell the Products including, but not limited to, each of their downstream  
3 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and  
4 licensees (collectively “Downstream Releasees”) for any violations arising under Proposition 65  
5 based on any alleged exposure to DEHP from Products manufactured, imported, sold, distributed  
6 and/or offered for sale or use by Defendants prior to the Effective Date. Compliance with the terms  
7 of this Consent Judgment constitutes compliance with Proposition 65 with respect to the alleged or  
8 actual failure to warn about exposures to DEHP from Products manufactured, imported, sold,  
9 distributed and/or offered for sale or use by Defendants.

#### 10 **4.2 Moorberg’s Individual Release of Claims**

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

#### 18 **4.3 Defendants’ Release of Moorberg**

19 Defendants, on their own behalf, and on behalf of their past and current agents,  
20 representatives, attorneys, successors, and assignees, hereby waive any and all claims against  
21 Moorberg and his attorneys and other representatives, for any and all actions taken or statements  
22 made by Moorberg and his attorneys and other representatives, whether in the course of  
23 investigating claims or otherwise seeking to enforce Proposition 65 against them in this matter with  
24 respect to the Products, through the Effective Date.

#### 25 **4.4 Mutual Waiver of California Civil Code Section 1542**

26 The Parties each acknowledge that he/they is/are familiar with Section 1542 of the Civil  
27 Code, which provides as follows:

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

1 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
2 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
OR HER SETTLEMENT WITH THE DEBTOR.

3 The Parties, each on his/their own behalf (and Moorberg in his individual capacity only and *not* in  
4 any representative capacity), and on behalf of his/their past and current agents, representatives,  
5 counsel, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits  
6 which they may have under, or which may be conferred upon them by the provisions of Civil Code  
7 section 1542 as well as under any other state or federal statute or common law principle of similar  
8 effect, to the fullest extent he/they may lawfully waive such rights or benefits pertaining to the  
9 released matters, as defined by Sections 4.2 and 4.3, above.

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
12 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
13 has been fully executed by the Parties, or within such additional time as the Parties may agree to in  
14 writing.

15 **6. SEVERABILITY**

16 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any  
17 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be  
18 adversely affected, so long as the deletion of provisions deemed unenforceable does not materially  
19 affect, or otherwise result in the effect of the Consent Judgment being contrary to the intent of the  
20 Parties.

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the state of California  
23 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is  
24 otherwise rendered inapplicable by reason of law generally, or if any provision of this Consent  
25 Judgment is rendered inapplicable or no longer required as a result of any such repeal or preemption,  
26 or rendered inapplicable by reason of law generally as to the Products, then Defendants may provide  
27 written notice to Moorberg of any asserted change in the law, and shall have no further injunctive  
28 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are

1 so affected.

2 **8. NOTICE**

3 Unless specified herein, all correspondence and notice required by this Consent Judgment  
4 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
5 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

6 For Turtle Beach:

7 Megan Wynne  
8 Vice President, Legal & Licensing  
9 Turtle Beach Corporation  
10 12220 Scripps Summit Drive  
11 Suite 100  
12 San Diego, CA 92131

11 With a courtesy copy to:

12 Stuart Block  
13 Stice & Block LLP  
14 2335 Broadway, Suite 201  
15 Oakland, CA 94612

14 For Voyetra:

15 Megan Wynne  
16 Vice President, Legal & Licensing  
17 Voyetra Turtle Beach, Inc.  
18 12220 Scripps Summit Drive  
19 Suite 100  
20 San Diego, CA 92131

19 For Moorberg:

20 Proposition 65 Coordinator  
21 The Chanler Group  
22 2560 Ninth Street  
23 Parker Plaza, Suite 214  
24 Berkeley, CA 94710-2565

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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



1 **10. POST EXECUTION ACTIVITIES**

2 Moorberg agrees to comply with the reporting form requirements referenced in Health and  
3 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety  
4 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent  
5 Judgment, which Moorberg shall take the lead to draft and file and Defendants shall support,  
6 including appearing at the hearing if so required.

7 **11. MODIFICATION**

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

11 **11.1. Notice, Meet and Confer**

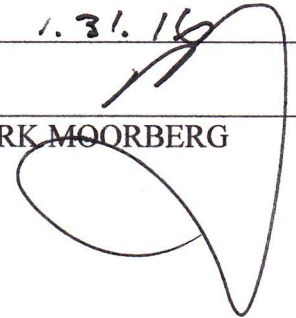
12 Any party seeking to modify this Consent Judgment or allege a violation thereof shall first  
13 attempt in good faith to meet and confer with the other party prior to filing a motion to modify the  
14 Consent Judgment.

15 **12. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
17 and agree to all of the terms and conditions contained herein

18 **AGREED TO:**

19  
20 Date: 1.31.16

21 By:   
22 MARK MOORBERG

**AGREED TO:**

TURTLE BEACH CORPORATION

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

VOYETRA TURTLE BEACH, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

1 **10. POST EXECUTION ACTIVITIES**

2 Moorberg agrees to comply with the reporting form requirements referenced in Health and  
3 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety  
4 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent  
5 Judgment, which Moorberg shall take the lead to draft and file and Defendants shall support,  
6 including appearing at the hearing if so required.

7 **11. MODIFICATION**

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

11 **11.1. Notice, Meet and Confer**

12 Any party seeking to modify this Consent Judgment or allege a violation thereof shall first  
13 attempt in good faith to meet and confer with the other party prior to filing a motion to modify the  
14 Consent Judgment.

15 **12. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
17 and agree to all of the terms and conditions contained herein

18 **AGREED TO:**

19  
20 Date: \_\_\_\_\_  
21 By: \_\_\_\_\_  
22 MARK MOORBERG

**AGREED TO:**

TURTLE BEACH CORPORATION  
Date: 1/25/2016  
By: [Signature]  
Its: Chief Technology officer

VOYETRA TURTLE BEACH, INC.  
Date: 1/25/2016  
By: [Signature]  
Its: Chief Technology officer

28