

1 Clifford 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 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 GLOBAL CONCEPTS LIMITED, INC.; *et al.*,

20 Defendants.
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Case No. 15CV288859

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 Global Concepts Limited Inc. d/b/a Global TV Concepts (“Global Concepts”),
5 with Moorberg and Global Concepts each individually referred to as a “Party” and collectively as the
6 “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 Defendant**

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

15 **1.4 General Allegations**

16 Moorberg alleges that Global Concepts manufactures, imports, sells, or distributes for sale in
17 California, vinyl/PVC sound amplifier cords that contain di(2-ethylhexyl)phthalate (“DEHP”),
18 without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to
19 Proposition 65 as a chemical known to the State of California to cause birth defects or other
20 reproductive harm.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are vinyl/PVC sound amplifier cords
23 containing DEHP that are manufactured, imported, sold, or distributed for sale in California by
24 Global Concepts including, but not limited to, *As Seen on TV MSA 30X Sound Amplifier, #11-00167,*
25 *UPC #6 79373 03032 9*, hereinafter the “Products.”

26 **1.6 Notices of Violation**

27 On or about July 31, 2015, Moorberg served Global Concepts, and the requisite public
28 enforcement agencies with a 60-Day Notice of Violation, alleging that Global Concepts violated

1 Proposition 65 by failing to warn its customers and consumers in California that the Products expose
2 users to DEHP. Moorberg served a Supplemental Notice asserting the same allegations on or about
3 January 29, 2016. Together, the July 31, 2015 and January 29, 2016 are referred to herein as “the
4 Notice.” To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
5 prosecuting an action to enforce the alleged violations that are the subject of the Notice. The intent of
6 this Consent Judgment is to address and resolve all claims relating to the Notice and Moorberg
7 warrants and represents he has the ability to consent to the judgment as set forth herein.

8 **1.7 Complaint**

9 On December 10, 2015, Moorberg filed the instant action (“Complaint”) naming Global
10 Concepts in the Superior Court for the County of Santa Clara as a defendant. Moorberg alleges
11 Global Concepts failed to provide a “clear and reasonable warning” of DHEP exposure on the
12 Products in violation of Health and Safety Code section 25249.6.

13 **1.8 No Admission**

14 Global Concepts denies the material, factual, and legal allegations contained in the Notice and
15 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
16 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
17 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
18 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
19 admission of any fact, finding, conclusion of law, issue of law, or violation of law. In order to avoid
20 further litigation costs and attorneys’ fees, Global Concepts chose to resolve this matter through
21 settlement with Moorberg as set forth herein. This Section shall not, however, diminish or otherwise
22 affect Global Concepts’ obligations, responsibilities, and duties under this Consent Judgment.

23 **1.9 Jurisdiction**

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

1 **1.10 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 AND WARNINGS**

5 **2.1 Commitment to Reformulate or Warn**

6 Commencing on the Effective Date and continuing thereafter, Global Concepts agrees to only
7 manufacture or distribute for sale in California: (a) “Safe Harbor Products,” or (b) Products that bear
8 a clear and reasonable health hazard warning pursuant to Section 2.2, below. For purposes of this
9 Consent Judgment, “Safe Harbor Products” are defined as Products with a maximum concentration of
10 0.1 percent (1,000 parts per million) DEHP content when analyzed pursuant to U.S. Environmental
11 Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by
12 state or federal agencies for the purpose of determining DEHP content in a solid substance.

13 **2.2 Clear and Reasonable Warnings**

14 Global Concepts agrees that commencing on the Effective Date and continuing thereafter, all
15 Products that Global Concepts sells and/or distributes for sale in California which do not qualify as
16 Safe Harbor Products, will bear a clear and reasonable warning pursuant to this Section. Global
17 Concepts further agrees that the warning will be prominently placed with such conspicuousness when
18 compared with other words, statements, designs, or devices as to render it likely to be read and
19 understood by an ordinary individual under customary conditions before purchase or use. For
20 purposes of this Consent Judgment, a clear and reasonable warning for the Products shall consist of a
21 warning affixed to the packaging, or, if no packaging exists, directly on, each non-Safe Harbor
22 Product sold in California, and shall contain one of the following statements:

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

26 or

1 **WARNING:** This product contains chemicals, including
2 DEHP, that are known to the State of
3 California to cause cancer and birth defects
 and other reproductive harm.¹

4 **2.3 Grace Period for Existing Inventory of Products**

5 Global Concepts represents that after receiving the Notice, it began providing a health hazard
6 warning for the Products. Liability for Products manufactured and distributed for retail sale prior to
7 the Effective Date shall be subject to the releases provided by Section 4 of this Settlement Agreement
8 regardless of the wording of any health hazard warning in place for that inventory of Products.

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Civil Penalty Payments**

11 Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all the claims referred to
12 in this Consent Judgment, Global Concepts shall pay \$7,500 in civil penalties. The civil penalty
13 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with
14 seventy-five percent (75%) of the funds remitted to the California Office of Environmental Health
15 Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Moorberg.
16 Moorberg’s counsel shall be responsible for remitting Global Concepts’ civil penalty payment under
17 this Consent Judgment to OEEHA. Global Concepts shall provide its payment in a single check made
18 payable to “Mark Moorberg Client Trust Account.” Moorberg shall provide his tax identification
19 number to counsel for Global Concepts at least five (5) calendar days before payment is due.

20 **3.2 Reimbursement of Attorney’s Fees and Costs**

21 The parties acknowledge that Moorberg and his counsel offered to resolve this dispute
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
23 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
24 the other settlement terms had been finalized, Global Concepts expressed a desire to resolve
25 Moorberg’s fees and costs. The Parties then attempted to (and did) reach an accord on the

26 _____
27 ¹ This warning, which includes the phrases “chemicals, including DEHP” shall only be used
28 where Global Concepts has a reasonable belief that the Product in question contains, in addition to
 DEHP, another Proposition 65-listed chemical.

1 compensation due to Moorberg and his counsel under general contract principles and the private
2 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work
3 performed through the approval of this Consent Judgment. Global Concepts shall pay \$25,500 for
4 the fees and costs incurred by Moorberg investigating, bringing this matter to Global Concepts'
5 attention, litigating, and negotiating a settlement in the public interest. These fees and costs are
6 exclusive of fees and costs that may be incurred in the event of an appeal. Global Concepts shall
7 issue a separate 1099 form for fees and costs paid to The Chanler Group.

8 **3.3 Payment Schedule; Payments Held in Trust**

9 All payments under this Consent Judgment shall be tendered when due and, for any payment
10 due prior to the Effective Date, held in trust by Moorberg's counsel until such time as the Court
11 grants the motion for approval of the Parties' settlement. Global Concepts shall deliver the civil
12 penalty payment required by Section 3.1 to Moorberg's counsel within fifteen (15) days of the date
13 that this Consent Judgment is fully executed by the Parties. The negotiated fee and cost
14 reimbursement required by Section 3.2 shall be tendered in three installments, each in the form of a
15 check payable to "The Chanler Group" according to the following schedule: (a) the first payment in
16 the amount of \$10,000 shall be due within five (5) days of the Effective Date or on July 15, 2016
17 whichever is later; (b) a second payment in the amount of \$10,000 shall be due within five (5) days
18 of the Effective Date or on August 15, 2016, whichever is later; and (c) a final payment in the
19 amount of \$5,500 shall be due within five (5) days of the Effective Date or on September 15, 2016,
20 whichever is later.

21 **3.4 Payment Address**

22 All payments required by this Consent Judgment shall be delivered to:

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

28 **4. CLAIMS COVERED AND RELEASED**

4.1 Moorberg's Public Release of Proposition 65 Claims

In further consideration of the promises and agreements herein contained, Moorberg, acting

1 on his own behalf and on behalf of himself, his past and current agents, representatives, attorneys,
2 successors, and/or assigns, and in the public interest, hereby releases and waives any actions and
3 causes of action in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
4 penalties losses, or expenses (including, but not limited, to investigation fees, expert fees, and
5 attorneys' fees) fixed or contingent (collectively "Claims") against Global Concepts and its parents,
6 subsidiaries, affiliated entities under common ownership, directors, officers, employees, affiliates,
7 predecessors, successors, agents, and attorneys, past and present, ("Releasees") and each entity to
8 whom it currently or previously directly or indirectly distributes, exports, or sells the Products
9 including, but not limited to, any downstream distributors, wholesalers, customers, retailers,
10 franchisers, cooperative members, licensors and licensees, (including, without limitation, CVS
11 Pharmacy, Inc. and As Seen on TV, Inc.) and their respective officers, directors, attorneys,
12 representatives, affiliates, shareholders, parents, agents, and employees, (including, without
13 limitation, CVS Health) ("Downstream Releasees") for any Claims arising under Proposition 65
14 from Products sold by Global Concepts prior to the Effective Date, as alleged in the Notice. The
15 Parties agree and understand that the releases provided by Moorberg on his own behalf and in the
16 public interest under this Consent Judgment shall not extend upstream to any entity who
17 manufactured the Products, or any component parts thereof, or any entity who supplied the Products
18 or any component parts thereof to Global Concepts, except to the extent that such Products are/were
19 actually sold by Global Concepts.

20 Compliance with the terms of this Consent Judgment constitutes compliance with
21 Proposition 65 with respect to the failure to warn about the risks of exposures to DEHP from
22 Products sold by Global Concepts after the Effective Date.

23 **4.2 Moorberg's Individual Release of Claims**

24 Moorberg, in his individual capacity only and *not* in his representative capacity, also provides
25 a release to Global Concepts, Releasees, and Downstream Releasees, which shall be effective as a
26 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
27 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moorberg of any nature,
28 character or kind, whether known or unknown, suspected or unsuspected, arising out of Products sold

1 or distributed for sale by Global Concepts before the Effective Date.

2 **4.3 Global Concepts' Release of Moorberg**

3 Global Concepts hereby waives any and all claims against Moorberg and his attorneys and
4 other representatives, for any and all actions taken or statements made by Moorberg and his
5 attorneys and other representatives, whether in the course of investigating claims, otherwise seeking
6 to enforce Proposition 65 against it in this matter, or with respect to the Products.

7 **4.4 Mutual Waiver of California Civil Code Section 1542**

8 The Parties each acknowledge he/it is familiar with Section 1542 of the Civil Code, which
9 provides as follows:

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

13 The Parties, each on his/its own behalf (and Moorberg in his individual capacity only and not in any
14 representative capacity), and on behalf of his/its past and current agents, representatives, counsel,
15 successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which
16 they may have under, or which may be conferred upon them by the provisions of Civil Code section
17 1542 as well as under any other state or federal statute or common law principle of similar effect, to
18 the fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters,
19 as defined by Sections 4.2 and 4.3, above.

20 **5. COURT APPROVAL**

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

25 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
4 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Global
5 Concepts may provide written notice to Moorberg of any asserted change in the law, and shall have
6 no further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent
7 that, the Products are so affected.

8 **8. NOTICE**

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

12 For Global Concepts:

13 Laurie Braden, President
14 Global Concepts Limited, Inc.
15 676 South Military Trail
16 Deerfield Beach, FL 33442

17 with a copy to:

18 Jeffrey Rosenfeld, Esq.
19 DLA Piper LLP
20 2000 Avenue of the Stars Suite 400
21 North Tower
22 Los Angeles, California 90067-4704

23 For Moorberg:

24 Proposition 65 Coordinator
25 The Chanler Group
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 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.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment 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

1 taken together, shall constitute one and the same document.

2 **10. POST EXECUTION ACTIVITIES**

3 Moorberg agrees to comply with the reporting form requirements referenced in Health and
4 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
5 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
6 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
7 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
8 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
9 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
10 supporting the motion, and appearing at the hearing before the Court.

11 **11. DISMISSAL OF CVS PHARMACY, INC.**

12 Upon the execution of this Consent Judgment by the Parties, Moorberg agrees to file a request
13 for dismissal without prejudice as to defendant CVS Pharmacy, Inc.

14 **12. MODIFICATION**

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

18 **13. AUTHORIZATION**

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

22 **AGREED TO:**

AGREED TO:

24 Date: 6/22/16

Date: 6/20/16

26 By: 
MARK MOORBERG

26 By: 
Laurie Braden, President
GLOBAL CONCEPTS LIMITED, INC.