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MARK MOORBERG

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
11

12 MARK MOORBERG

13 Plaintiff,

14 v.

15 WATTS WATER TECHNOLOGIES, INC,
16 *et al.*

17 Defendants.
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Case No. 114CV269849

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 Watts Regulator Co. (“Watts”), with Moorberg and Watts 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 Defendants**

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

14 **1.4 General Allegations**

15 Moorberg alleges that Watts manufactures, imports, sells and/or distributes for sale in
16 California, vinyl/PVC tubing products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it
17 does so without providing the health hazard warning that Moorberg alleges is required by
18 Proposition 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are Watts vinyl/PVC tubing products or
21 Watts products of which vinyl/PVC tubing is a component, that contain DEHP, including, but not
22 limited to, the *Watts Clear Vinyl Tubing SVEB10, #42143210, (UPC No. 0 48643 02548 6)*
23 (collectively, “Products”).

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1 **1.6 Notice of Violation**

2 On September 30, 2014, Moorberg served Watts and the requisite public enforcement
3 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Watts violated Proposition 65
4 when it failed to warn its customers and consumers in California that the Products expose users to
5 DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
6 prosecuting an action to enforce the allegations set forth in the Notice.

7 **1.7 Complaint**

8 On August 22, 2014, Moorberg commenced the instant action in the Santa Clara Superior
9 Court entitled *Moorberg v. Watts Water Technologies, et al.*, Case No. 114CV269849 seeking
10 penalties and injunctive relief . Thereafter, on November 7, 2014, Moorberg filed a First Amended
11 Complaint, the operative pleading in this action (“Complaint”), naming Watts as a defendant for the
12 alleged violations of Proposition 65 that are the subject of the Notice.

13 **1.8 No Admission**

14 Watts denies the material, factual, and legal allegations contained in the Notice and
15 Complaint, and maintains that all of the products that it has sold or 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 by Watts of any fact, finding, conclusion of law, issue
18 of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
19 construed as an admission by Watts of any fact, finding, conclusion of law, issue of law, or
20 violation of law. This Section shall not, however, diminish or otherwise affect Watts’ obligations,
21 responsibilities, and duties under this Consent Judgment.

22 **1.9 Jurisdiction**

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

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
3 the Court grants the motion for approval of this Consent Judgment contemplated by Section 6.

4 **2. INJUNCTIVE SETTLEMENT TERMS**

5 **2.1 Commitment to Reformulate or Warn**

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

15 **2.2 Clear and Reasonable Warnings**

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

25 **WARNING:** This product contains DEHP, a chemical
26 known to the State of California to cause birth
27 defects or other reproductive harm.
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1 Where Watts has evidence that the Product may contain DIDP, DINP, or other Proposition 65-listed
2 chemicals in addition to DEHP it may use the following statement:

3
4 **WARNING:** This product contains chemicals known to the
5 State of California to cause cancer and birth
6 defects (or other reproductive harm).¹

7 In the event that Watts conducts any sales of Products in or into California online via the internet,
8 the warning shall be made visible to the purchaser(s) of the Products prior to the time at which
9 the purchase is completed and shall meet the requirements specified above with regard to the
10 prominence, size and visibility of the warning message.

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Civil Penalty Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

13 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
14 claims referred to in this Consent Judgment, Watts shall pay \$6,000 in civil penalties. The penalty
15 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) &
16 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
17 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Moorberg. Moorberg’s
18 counsel shall be responsible for remitting OEHHA’s portion of Watts’ penalty payment under this
19 Consent Judgment to OEHHA. Within two days of the Effective Date, Watts shall deliver its
20 payment in a single check made payable to “Mark Moorberg, Client Trust Account” to the address
21 provided in Section 3.4, below.

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26 ¹ The regulatory safe harbor warnings language specified in 27 CCR § 25603.2 may also
27 be used if Watts employed it for Products prior to the Effective Date. If Watts seeks to use
28 alternative warnings language, other than the language specified above or the safe harbor warnings
language specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning,
it must obtain the Court’s approval of any proposed alternative and provide all Parties and the
Office of the Attorney General with timely notice and the opportunity to comment or object before
the Court acts on its request.

1 **3.2 Reimbursement of Attorneys' Fees and Costs**

2 The Parties acknowledge that Moorberg and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
5 the other settlement terms had been finalized, Watts expressed a desire to resolve Moorberg's fees
6 and costs. The Parties then negotiated a resolution of the compensation due to Moorberg and his
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
9 execution of this agreement and the Court's approval of the same, but exclusive of fees and costs
10 on appeal, if any, Watts shall reimburse Moorberg and his counsel \$39,000.00. Watts' payment
11 shall be due within two days of the Effective Date, and delivered to the address in Section 3.4 in
12 the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and
13 costs incurred by Moorberg investigating, bringing this matter to Watts' attention, litigating, and
14 negotiating a settlement of the matter in the public interest.

15 **3.3 Payments Held In Trust**

16 Watts shall deliver all payments required by this Consent Judgment to its counsel within
17 one week of the date that this agreement is fully executed by the Parties. Watts' counsel shall
18 confirm receipt of settlement funds in writing to Moorberg's counsel and, thereafter, hold the
19 amounts paid in trust until such time as the Court grants the motion for approval of the Parties'
20 settlement contemplated by Section 6. Within two days of the Effective Date, Watts' counsel shall
21 deliver all settlement payments it has held in trust to Moorberg's counsel at the address provided in
22 Section 3.4.

23 **3.4 Payment Address**

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

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Moorberg’s Public Release of Proposition 65 Claims**

3 Moorberg, acting on his own behalf and in the public interest, releases Watts and its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
5 attorneys (“Releasees”) and each entity to whom, or through whom, Watts directly or indirectly
6 distributes or sells the Products including, but not limited to, its downstream distributors,
7 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
8 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures
9 to DEHP from the Products manufactured, imported, distributed or sold by Watts prior to the
10 Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
11 constitutes compliance with Proposition 65 by Watts with respect to the alleged or actual failure to
12 warn about exposures to DEHP from Products manufactured, sold or distributed for sale by Watts
13 after the Effective Date.

14 **4.2 Moorberg’s Individual Release of Claims**

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

22 **4.3 Watts’ Release of Moorberg**

23 Watts, on its own behalf and on behalf of its past and current agents, representatives,
24 attorneys, successors and/or assignees, hereby waives any and all claims against Moorberg and his
25 attorneys and other representatives, for any and all actions taken or statements made by Moorberg
26 and his attorneys and other representatives in the course of investigating claims, seeking to enforce
27 Proposition 65 against it in this matter, or with respect to the Products.

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1 **5. SEVERABILITY**

2 If, subsequent to the Court's approval and entry of this Consent Judgment, any provision
3 contained herein is held by a court to be unenforceable, the validity of the remaining provisions
4 shall not be adversely affected.

5 **6. COURT APPROVAL**

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

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 Watts may
20 provide Moorberg with written notice of any asserted change in the law, and shall have no further
21 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
22 Products are so affected.

23 **8. NOTICE**

24 Unless specified herein, all correspondence and notice required by this Consent Judgment
25 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
26 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
27 following addresses:
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To Watts:
Roger Cerda, Esq.
Alston & Bird
333 South Hope Street, 16th Floor
Los Angeles, CA 90071

To Moorberg:
Attn: 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 Party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS, FACSIMILE AND PDF 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 taken together, shall constitute one and the same document.

10. COMPLIANCE WITH REPORTING REQUIREMENTS

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

11. MODIFICATION

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

12. 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: 1/11/2016

AGREED TO:



WATTS REGULATOR CO.

By: Robert Tameron
(Print Name)
Its: Assistant General Counsel
(Title)

Dated: 1/10/16