

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 John Moore and Home Dynamix, LLC

This Settlement Agreement is entered into by and between John Moore (“Moore”), and Home Dynamix, LLC (“Home Dynamix”), with Moore and Home Dynamix collectively referred to as the “Parties” (“Settlement Agreement”). Moore is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Home Dynamix employs ten or more persons and is a person in the course of doing business for purposes of Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Moore alleges that Home Dynamix has manufactured, distributed and/or sold in the State of California, vinyl flooring containing the phthalate chemicals di(2-ethylhexyl)phthalate (“DEHP”), Butyl benzyl phthalate (“BBP”), Di-n-butyl phthalate (“DBP”), Di-isdecyl phthalate (“DIDP”) and Di-n-hexyl phthalate (“DnHP”) (collectively herein “Listed Chemicals”), listed pursuant to Proposition 65 as chemicals known to the State of California to cause cancer, birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as vinyl tiles and flooring containing the Listed Chemicals including, but not limited to, *Tilettes Self Adhesive Vinyl Tiles, E1003 Green Granite* (#7 69924 03458 3), *Park Avenue Vinyl Floor Tile, Pattern #16899* (#7 69924 12743 8), *Living Dynamix Self Adhesive Vinyl Floor Tile, Pattern No. 9049* (#7 69924 10883 3) and *Living Dynamix Self Adhesive Vinyl Floor Tile, Pattern No. 3023* (#7 69924 10870 3), *Dynamix, Madison, Paramount, Shoreline, Eagle Vinyl Tiles, Limestone, Magic*

Vinyl Tiles, Tech Commercial, Premium, San Marino, Stove VU and Touch of Tiles, manufactured, distributed, sold and/or offered for sale in California by Home Dynamix, hereinafter “Products.”

1.4 Notices of Violation

On June 17, 2010, Moore served Home Dynamix and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that alleged that Home Dynamix was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP.

On March 17, 2011, Moore served Home Dynamix and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that provided the recipients with notice that alleged that Home Dynamix was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that its Products exposed users in California to DEHP. The Notice and Supplemental Notice shall collectively be referred to hereafter as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.5 No Admission

Home Dynamix denies the material, factual and legal allegations contained in Moore’s Notices and maintains that all 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 Home Dynamix of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Home Dynamix of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Home Dynamix. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Home Dynamix under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean November 30, 2011.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing the Listed Chemicals in concentrations less than 0.1 percent (1,000 parts per million), each, in each Accessible Component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining phthalate content in a solid substance (“Reformulation Standard”). For the purposes of this Settlement Agreement, the term “Accessible Component” shall mean any component of the Products that could be touched by a person during reasonably foreseeable use.

2.2 Product Warnings

Commencing on the Effective Date, Home Dynamix shall, for all Products it sells or distributes and which are intended for sale in California, or which Home Dynamix has reason to believe will be shipped or sold in California, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b) below. The Parties, however, hereby acknowledge and agree that Home Dynamix has implemented a labeling program that uses the following language:

PROPOSITION 65 WARNING:

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

Therefore, the Parties agree that Home Dynamix need not re-label any existing Products intended for sale in California containing such warning as of the Effective Date. After the Effective Date, Home Dynamix shall begin using the specific warning language provided in Sections 2.2(a) and 2.2(b) below for all Products intended for sale in California that do not

already contain the above warning. In all cases, each warning shall be prominently placed with such conspicuousness as 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) Product Labeling. Home Dynamix shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Home Dynamix or any person selling the Products, that states:

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

(ii) Point-of-Sale Warnings. Alternatively, Home Dynamix may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Home Dynamix's customers shall be sent by certified mail, return receipt requested.

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

¹ For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

WARNING: The following products contain DEHP and other phthalates, chemicals known to the State of California to cause birth defects and other reproductive harm:

[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales. In the event that Home Dynamix directly sells Products via mail order catalog and/or its own internet site, directly to consumers located in California after the Effective Date, that are not Reformulated Products, Home Dynamix shall provide warnings for such Products sold via mail order catalog or the internet to such California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in Home Dynamix's mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

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

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Home Dynamix may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP and other phthalates, chemicals known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Home Dynamix must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) Internet Website Warning. After the Effective Date, a warning shall be given in conjunction with the direct sale of the Products by Home Dynamix to consumers in California via the consumers' purchase of Products on Home Dynamix's own internet site, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol ▼ contain DEHP and other phthalates, chemicals known to the State of California to cause birth defects and other reproductive harm.

2.3 Exceptions To Warning Requirements

The warning requirements set forth in Section 2.2 shall not apply to:

- (i) Any Product distributed by Home Dynamix prior to the Effective Date; or
- (ii) Reformulated Products (as defined in Section 2.1 above).

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Home Dynamix shall pay \$7,500, in civil penalties as follows:

3.1 Initial Civil Penalty

Home Dynamix shall pay an initial civil penalty of \$2,500, to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Moore. Home Dynamix shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("The Chanler Group in Trust for OEHHA") in the amount of \$1,875, representing 75% of the initial civil penalty and (b) one check to "The Chanler Group in Trust for John Moore" in the amount of \$625, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to Moore, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before December 2, 2011, to the following address:

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

3.2 Final Civil Penalty

Home Dynamix shall pay a final civil penalty in the amount of \$5,000 on May 31, 2012. As incentive for Home Dynamix to reformulate the Products, however, this final civil penalty shall be waived in its entirety if an officer of Home Dynamix certifies in writing that it, as of

May 1, 2012, has sold, shipped and offered for sale in California only Reformulated Products and that it will continue to sell, ship and offer for sale in California only Reformulated Products. Such certification must be received by The Chanler Group on or before May 15, 2012.

The final civil penalty payment shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to John Moore. Home Dynamix shall issue two separate checks for the final civil penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount of \$3,750, representing 75% of the total final penalty; and (b) one check to “The Chanler Group in Trust for John Moore” in the amount of \$1,1,250, representing 25% of the total final penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall be provided five calendar days before the payment is due (if different than the information already provided to Home Dynamix under Section 3.1 above).

Payment shall be delivered to Moore’s counsel at the following address:

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

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Moore and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Home Dynamix then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Moore and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement Home Dynamix shall pay the

total amount of \$43,000 for fees and costs incurred as a result of investigating, bringing this matter to Home Dynamix's attention, and negotiating a settlement in the public interest. Home Dynamix shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before December 2, 2011, to the following address:

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

5. RELEASE OF ALL CLAIMS

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations

This Settlement Agreement is a full, final and binding resolution between Moore, on behalf of himself and the public, and Home Dynamix, of any violation of Proposition 65 that was or could have been asserted by Moore against Home Dynamix, its parents including, but not limited to Emerem Trading Co., Inc., subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Home Dynamix directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers including, but not limited to, CSN Stores, Inc., Warranty HDX, RugsUSA.com, Just My Shopping, Inc., Channel Marketing Drop Ship, Global Marketing, Zellers Textile, Co., Meijer.com, Wise Buys Liquidators, Inc., Big Lots Stores, Inc., Big Lots, Inc., Amazon.com, Inc., and Casa Elegante Inc., franchisees, cooperative members, licensors, and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were sold by Home Dynamix.

5.2 Moore's Public Release of Proposition 65 Claims

In further consideration of the promises and agreements herein contained, Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or

participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to DEHP in the Products sold by Home Dynamix, including any Products currently in the stream of commerce (collectively "claims"), against Home Dynamix and Releasees.

5.3 Moore's Individual Release of Claims

Moore also, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or kind, whether known or unknown, suspected or unsuspected, against Home Dynamix and Releasees, limited to and arising out of alleged or actual exposures to the Listed Chemicals in the Products manufactured, distributed or sold by Home Dynamix.

5.4 Home Dynamix's Release of Moore

Home Dynamix on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moore, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Moore and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5.5 Post Execution Activities

The parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Home Dynamix or the Releasees under Proposition 65 as covered under this release. If requested in writing by Home Dynamix

(within twelve months of the Effective Date), Home Dynamix may ask Moore to file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Moore agrees to reasonably cooperate with Home Dynamix and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, Home Dynamix will reimburse Moore and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement in an amount not to exceed \$16,000. No fees under this paragraph will be due and owing to Moore or his counsel unless a written request is made by Home Dynamix to have Moore file a complaint and seek a consent judgment. Home Dynamix will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Home Dynamix within ten days after its receipt of monthly invoices from Moore for work performed under this paragraph. In the event a third party were to appeal the entry of a consent judgment sought pursuant to this Section 5.5, Moore and his counsel shall be entitled to seek their fees and costs associated with all such appealed work pursuant to CCP § 1021.5.

6. SEVERABILITY

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

7. 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 Home Dynamix shall provide written notice to Moore 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. Nothing in this Settlement Agreement shall be interpreted to relieve Home Dynamix from any obligation to comply with any pertinent state or federal toxics control law.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one Party by the other Party at the following addresses:

For Home Dynamix:

Dennis E. Raglin, Esq.
Sedgwick, Detert, Moran & Arnold, LLP
1 Market Plaza, Steuart Tower, 8th FL
San Francisco, CA 94105-1110

For Moore:

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

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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 HEALTH & SAFETY CODE § 25249.7(f)

Moore agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

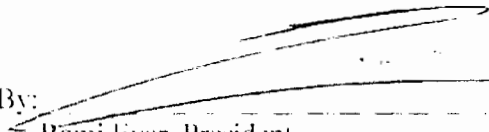
AGREED TO:

Date: November 29, 2011

By: 
John Moore

AGREED TO:

Date: 11/21/11

By: 
Rami Evar, President
Home Dynamix, LLC