

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between John Moore, (“Moore”) and Klein Tools, Inc. (“Klein”) with Moore and Klein collectively referred to as the “Parties.”

#### 1.2 Moore

Moore is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

#### 1.3 Klein

Klein employs 10 or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

#### 1.4 General Allegations

Moore alleges that Klein manufactured, distributed and/or sold, in the State of California, Klein Tools Connector Crimping Long-Nose Pliers, #VDV026-049, that exposed users to DEHP without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical” or “DEHP”

#### 1.5 Notice of Violation

On January 31, 2012, Moore served Klein and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public enforcers and Klein with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn

consumers of the presence of DEHP, a toxic chemical found in their pliers sold in California. Klein received the 60-Day Notice of Violation. Klein represents that, as of the date it executes this Agreement, that it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP in its products, as identified in the 60-Day Notice.

#### **1.6 No Admission**

This Agreement resolves claims that are denied and disputed by Klein. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Klein denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the Covered Products and otherwise contends that, to Klein's actual knowledge, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Klein of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by the Klein of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Klein. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Klein's obligations, responsibilities, and duties under this Agreement.

#### **1.7 Consent to Jurisdiction**

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Klein as to the allegations in the 60-Day Notice received from Moore, and this Agreement, that venue is proper in County of Marin, and that the Marin County Superior Court has jurisdiction to enforce the provisions of this Agreement. As an

express part of this Agreement, pursuant to C.C.P. §664.6 the Marin County Superior Court has jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

## 2. DEFINITIONS

2.1 The term "Covered Products" means any Klein Tools Connector Crimping Long-Nose Pliers, #VDV026-049.

2.2 The term "DEHP Free" Covered Products shall mean Covered Products containing materials or other components that may be handled, touched or mouthed by a consumer, and which components contain less than or equal to 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance. The term "DEHP Free Standard" shall mean the above-referenced standard that will cause a Covered Product to qualify as DEHP Free

2.3 "Effective Date" shall mean August 15, 2012.

2.4 "Manufacture", "manufactured" and "manufactures" have the meaning defined in Section 3(a)(10) of the Consumer Product Safety Act ("CPSA") [15 U.S.C. § 2052(a)(10)], as amended from time to time.

## 3. INJUNCTIVE-TYPE RELIEF

### 3.1 Formulation Commitment

3.1.1 No later than the Effective Date, Klein shall provide the DEHP Free Standards, to its then-current supplier(s) of Covered Products that will be sold or offered for sale to California consumers and shall instruct each supplier to use reasonable efforts to provide Covered Products that comply with such DEHP Free Standard. In addressing the obligation set forth in the

preceding sentence, Klein shall not employ statements that will encourage the supplier(s) of Covered Products to delay compliance with the DEHP Free Standard. Upon request, Klein shall provide Moore with copies of such supplier notification and Moore shall regard such copies as confidential business information.

**3.1.2** After December 31, 2012, Klein shall not manufacture, cause to be manufactured, purchase or otherwise obtain for sale in California, or for distribution to or sale to any retailer that Klein reasonably understand maintains retail outlets in California, any Covered Product that is not DEHP Free.

**3.2 Previously Obtained or Distributed Covered Products.**

**3.2.1 Product Warnings**

Commencing on the Effective Date, Klein shall not sell or ship any Covered Products that will be offered for sale in California unless such Covered Products are DEHP Free under Sections 2.3 or are sold or shipped with one of the clear and reasonable warnings set forth hereafter.

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* Covered Product the warning applies, so as to minimize the risk of consumer confusion.

(a) **Retail Store Sales.**

(i) **Product Labeling.** Klein may affix a warning to the packaging, labeling, or directly on any Covered Products sold at a retail outlet of Klein in California that states:

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

(ii) **Point-of-Sale Warnings.** Alternatively, Klein may provide warning signs in the form below to retail outlets in California, which stores it is reasonably aware of having sold the Covered Products or having inventory or orders of the Covered Products, with instructions to post the signs *in immediate proximity* to the point of display of any and all such Covered Products for the benefit of its customers.

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

(b) **Mail Order Catalog and Internet Sales.** In the event that Klein sells any Covered Products via mail order catalog or the Internet to customers located in California any such catalog or Internet site offering any Covered Product for sale shall include a warning in the catalog or within the website, identifying the specific Covered Product to which the warning applies, as specified in Sections 3.2.2(b)(i) and (ii) below.

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than the Covered 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 Covered Product:

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or 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 Covered Product, Klein 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 or back cover of the catalog or on the same page as any order form for the Covered Product(s):

**WARNING:** Certain products identified with this symbol ▼ contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

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

If Klein elects to provide warnings in any mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Covered Products printed after the Effective Date.

(ii) **Internet Website Warning.** A warning must be given in conjunction with the sale of any Covered Products by Klein via the Internet, provided it appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered 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 Covered Product for which it is given in the same type size or larger than the Covered Product description text:

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Covered 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 chemicals known to the State of California to cause cancer and birth defects or other reproductive harm..

**3.2.2** After December 31, 2012, Klein shall discontinue all sales of any Covered Products that are not DEHP Free in California, regardless of compliance with Section 3.2.1.

#### **4. MONETARY PAYMENTS**

##### **4.1 Civil Penalty Payment Pursuant To Health & Safety Code § 25249.7(B)**

Klein shall make a payment of \$10,000.00 to be apportioned in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of these penalty monies earmarked for Moore. The civil penalty Klein is required to pay under this Section is substantially reduced credited in light of Klein's commitment to reformulate its Covered Products to essentially remove the presence of DEHP from those products. *The initial assessment contemplated civil penalties in the amount of \$50,000. An amount of \$40,000 was automatically credited in light of settling Defendant's commitment to reformulate its product lines to essentially remove the presence of the listed chemicals.*

##### **4.2 Augmentation Of Penalty Payments**

For purposes of the penalty assessment under this Agreement, Moore is relying entirely upon Klein and its counsel for accurate, good faith reporting to Moore of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Moore discovers and presents to Klein evidence that the Covered Products have been distributed by Klein in sales volumes materially different than those identified by Klein prior to execution of this Agreement, then Klein shall be liable for an additional penalty amount of \$10,000.00. Klein

shall also be liable for any reasonable, additional attorney fees expended by Moore in discovering such additional retailers or sales. Moore agrees to provide Klein with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Klein shall have thirty (30) days to agree to the amount of fees and penalties owing by Klein and submit such payment to Moore in accordance with the method of payment of penalties and fees identified in Sections 4.5. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Moore shall be entitled to file a formal legal claim for damages for breach of this contract and shall be entitled to all reasonable attorney fees and costs relating to such claim.

#### **4.3 Reimbursement Of Moore's 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. Klein 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 section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, Klein shall pay the amount of \$25,000.00 for fees and costs incurred investigating, litigating and enforcing this matter.

#### **4.4 Payment Procedures**

All payments required by Sections 4.1 and 4.3 shall delivered on or before August 22, 2012, to The Chanler Group as follows:

- (a) One check made payable to "The Chanler Group in Trust for OEHHA" in



the amount of \$7,500.00;

(b) One check made payable to "The Chanler Group in Trust for Moore" in the amount of \$2,500.00; and

(c) One check made payable to "The Chanler Group in Trust" in the amount of \$25,000.00.

Any failure by Klein to deliver the above-referenced payments to The Chanler Group within five business days of the date of the Effective Date shall result in imposition of a 10% simple interest assessment on the undelivered payment(s) until delivery.

#### 4.5 Issuance Of 1099 Forms

After this Agreement has been executed and the settlement funds have been transmitted to Moore's counsel, Klein shall issue three separate 1099 forms, as follows:

(a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$7,500.00;

(b) The second 1099 shall be issued to Moore in the amount of \$2,500.00, whose address and tax identification number shall be furnished upon request; and

(c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of \$25,000.00.

**4.6 Payment Address:** All payments to the Chanler Group shall be delivered to the following payment address:

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

## 5. RELEASES

### 5.1 MOORE'S RELEASE OF KLEIN

5.1.1 This Settlement Agreement is a full, final and binding resolution between Moore, and Klein, of any violation of Proposition 65 that was or could have been asserted by Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Klein, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Klein directly or indirectly distributes or sells Covered Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by Klein in California before the Effective Date.

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, hereby waives all Moore's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Moore may have, 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 the DEHP in the Covered Products manufactured, distributed, sold and/or offered for sale by Klein before the Effective Date

(collectively "claims"), against Klein and Releasees.

5.1.3 Moore also, in his individual capacity only and *not* in his representative capacity, provides a general 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, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by Klein Releasees. Moore acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Moore, in his individual capacity only and *not* in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.1.4 This Section 5.1 release is expressly limited to those claims that arise under Proposition 65, as such claims relate to Klein's alleged failure to warn about exposures to or identification of the DEHP contained in the Covered Products and as such claims are identified

in the Proposition 65 60-Day Notice to Klein.

5.1.5 This Section 5.1 release is expressly limited to any alleged violations that occur prior to thirty (30) days after the Effective Date and does not release any entity or individual besides Releasees from any liability for any violation of Proposition 65 regarding the Covered Products that occurs more than thirty (30) days after the Effective Date.

5.1.6 Nothing in this Section affects Moore's right to commence or prosecute an action under Proposition 65 against any person other than Releasees. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Klein, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Klein.

#### **5.2 Klein's Release of Moore**

The Release by Moore is mutual. Klein, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moore and 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

### **6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement Klein may ask Moore, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant

to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Moore agrees to reasonably cooperate with Klein and to use his best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Klein will reimburse Moore and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$10,000.00, exclusive of fees and cost that may be incurred on appeal. Klein will remit payment to The Chanler Group, at the address set forth in Section 9 below. Such additional fees shall be paid by Klein within ten days after its receipt of monthly invoices from Moore for work performed under this paragraph. Any failure by Klein to timely pay Moore invoices under this Section shall result in the assessment of ten percent (10%) interest on any outstanding balance.

**7. SEVERABILITY**

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

**8. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California.

**9. NOTICES**

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by certified mail and electronic mail to the following:

For Klein, to:

Thomas Klein, President

Klein Tools, Inc.  
450 Bond Street  
Lincolnshire, IL 60069

With copy to their counsel at  
Leila Nourani, Esq.  
Foley Lardner LLP  
550 South Flower Street, Suite 3500  
Los Angeles, CA 90071

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

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

**11. MODIFICATION**

This Agreement may be modified only by written agreement of the Parties or court order.

**12. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. 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. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

### **13. ATTORNEY'S FEES**

13.1 Should Moore prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Moore shall be entitled to his reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5. Should Klein prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Klein shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application upon a finding that Moore's prosecution of the motion or application lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

13.2 Except as specifically provided in the above paragraph and in Section 4.3, each Party shall bear its own costs and attorney's fees in connection with the Notice.

13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

### **14. NEUTRAL CONSTRUCTION**

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final

form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.


**15. COUNTERPARTS, FACSIMILE SIGNATURES**

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

**16. AUTHORIZATION**

The undersigned parties and their counsel are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

**IT IS SO AGREED**

Dated: August <u>20</u> , 2012   _____ John Moore	Dated: August __, 2012  _____ Thomas Klein, President Klein Tools, Inc.
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The undersigned parties and their counsel are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

**IT IS SO AGREED**

<p>Dated: August __, 2012</p> <p>_____</p> <p>John Moore</p>	<p>Dated: August <u>17</u>, 2012</p> <p></p> <p>Thomas Klein, President Klein Tools, Inc.</p>
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