

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 John Moore and Keson Industries, Inc.

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Keson Industries, Inc. (“Keson”), with Moore and Keson collectively referred to as the “Parties.” Moore is an individual residing in the State of California who asserts that he seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Keson employs ten 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”).

1.2 General Allegations

Moore alleges that Keson has manufactured, distributed, sold and/or offered for sale in the State of California measuring wheels containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as measuring wheels containing DEHP including, but not limited to, *Keson Compact Measuring Wheel, Model RR112 (#0 52837 02005 8)*, manufactured, distributed, sold and/or offered for sale in California by Keson, hereinafter the “Products.”

1.4 Notice of Violation

On or about April 25, 2012, Moore served Keson and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by Keson for failing to warn its customers and consumers in California that the Products it sold exposed users to

DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

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

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 25, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Keson shall only manufacture, distribute, sell and/or offer for sale in California Products that are "DEHP Free." For purposes of this Settlement Agreement, "DEHP Free" Products shall mean Products containing less than or equal to 1,000 parts per million (0.1%) of DEHP when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C.

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

Pursuant to Health & Safety Code § 25249.7(b), Keson shall pay \$6,000 in civil penalties. Keson shall pay an initial civil penalty of \$2,000 and a final civil penalty of \$4,000. However, the final civil penalty shall be waived in its entirety if an officer of Keson provides Moore with a written certification that, as of December 15, 2012, and

continuing on into the future, Keson has sold and will continue to sell and/or offer for sale in California only DEHP Free Products as set out in Section 2.1 above. Moore must receive any such certification no later than February 15, 2013, and time is of the essence.

The initial civil penalty payment shall be due on or before the Effective Date and shall be allocated according to Health & Safety Code §§ 25249.12 (c)(1) & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) of the penalty amount earmarked for Moore. Keson shall issue two separate checks for the payment: (a) one check made payable to “The Chanler Group in trust for OEHHA” in the amount of \$1,500; and (b) one check to “The Chanler Group in trust for John Moore” in the amount of \$500. 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 two calendar days before the payment is due.

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 94710-2565

The final civil penalty payment, if not waived, shall be due on or before February 15, 2013, and shall be allocated according to Health & Safety Code §§ 25249.12 (c)(1) & (d), with seventy-five percent (75%) of the penalty amount earmarked for OEHHA and the remaining twenty-five percent (25%) of the penalty amount earmarked for Moore. Keson shall issue two separate checks for the payment: (a) one check made payable to “The Chanler Group in trust for OEHHA” in the amount of \$3,000; and (b) one check to “The Chanler Group in trust for John Moore” in the amount of \$1,000. 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.

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 94710-2565

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 the fee issue to be resolved after the material terms of the agreement had been settled. Keson 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 the private attorney general doctrine and principles of contract law. Under these legal principles, Keson shall reimburse Moore's counsel for fees and costs incurred as a result of investigating, bringing this matter to Keson's attention, and negotiating a settlement in the public interest. Keson shall pay Moore's counsel \$10,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third check made payable to "The Chanler Group" and shall be delivered on or before the Effective Date to the following address:

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

Keson shall issue a separate 1099 for attorneys' fees and costs paid to The Chanler Group (EIN: 94-3171522).

5. CLAIMS COVERED AND RELEASED

5.1 Release

This Settlement Agreement is a full, final and binding resolution between Moore and Keson, 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 Keson, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Keson directly or indirectly distributes or sells Products, including, but not limited to, Sears Holdings Management Corporation and its affiliates. and other downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Keson 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 his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he 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 DEHP in the Products manufactured, distributed, sold and/or offered for sale by Keson before the Effective Date (collectively “claims”), against Keson and Releasees.

5.2 Keson’s Release of Moore

Keson 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.

6. POST EXECUTION ACTIVITIES

Within twelve months of the execution of this Settlement Agreement, Keson may send Moore a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment that provides a release in the public interest for the released Products, and to seek court approval of the consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Moore and Keson agree to reasonably cooperate, and to use their best efforts and that of their counsel to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

If so requested by Keson in writing, pursuant to Code of Civil Procedure §§ 1021 and 1021.5, then Keson will reimburse Moore and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$16,000, exclusive fees and costs incurred on appeal, if any. Keson shall remit payment to The Chanler Group at the payment address provided in Section 3 within five business days of receiving a monthly invoice from Moore's counsel for work performed under this section.

7. 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.

8. 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 Keson may 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.

9. NOTICES

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

To Keson:

Aaron Nosek, President
Keson Industries, Inc.
810 Commerce Street
Aurora, IL 60504

With copy to:

Laura P. Worsinger
Dykema Gossett LLP
333 S. Grand Ave. Suite 2100
Los Angeles, CA 90071

To 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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement 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. A facsimile or .pdf signature shall be as valid as the original.

11. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Moore and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

12. **MODIFICATION**

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

13. **AUTHORIZATION**

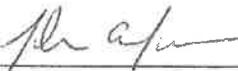
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: JANUARY 18, 2013

Date: _____

By: 
John Moore

By: _____
Aaron Nosek, President
Keson Industries, Inc.

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

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

AGREED TO:

AGREED TO:

Date: _____

Date: 1/16/13

By: _____
John Moore

By: Aaron Nosek
Aaron Nosek, President
Keson Industries, Inc.