

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Aminco International (USA), Inc. (“Aminco”), with Moore and Aminco collectively referred to as the “Parties.” 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. Aminco 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 section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moore alleges that Aminco manufactures, distributes, and/or sells in the state of California zipper pulls containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable consumer warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are zipper pulls containing DEHP that are manufactured, imported, sold, or distributed for sale in California by Aminco, including, but not limited to, the *NFL ID-Zipper Pull, NFL-ZP-135-26 (#7 63264 14941 9)* (collectively “Products”).

### 1.4 Notice of Violation

On or about May 10, 2012, Moore served Aminco and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients that Aminco was alleged to be in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose 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**

Aminco denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, sold, or distributed for sale 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 Aminco of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Aminco of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Aminco. This Section shall not, however, diminish or otherwise affect Aminco'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 October 15, 2012.

## **2. INJUNCTIVE RELIEF**

Commencing on January 1, 2013, and continuing thereafter, Aminco shall not manufacture for sale in California or purchase from an unaffiliated third party for sale in California Products that contain more than 1,000 parts per million (0.1%) of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance. The Parties agree and understand that Products purchased for sale or shipped to an unaffiliated third party for sale in California prior to the Effective Date are released under Section 4.1 and 4.2 of this Settlement Agreement.

## **3. MONETARY PAYMENTS**

### **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

Pursuant to Health & Safety Code section 25249.7(b), within five days of the Effective Date, Aminco shall pay a civil penalty of \$3,000. This amount reflects a credit of \$9,000 agreed

to by Moore in response to Aminco's commitment to Proposition 65 compliance, including complying with the DEHP content limits established by Section 2. The civil penalty payment shall be allocated according to Health & Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment and the remaining twenty-five percent (25%) of the penalty amount remitted to Moore.

Aminco shall issue two checks for the following amounts made payable to: (a) "The Chanler Group in Trust for OEHHA" in the amount of \$2,250; and (b) "The Chanler Group in Trust for John Moore" in the amount of \$750.

Aminco shall also provide Moore's counsel with a separate 1099 form for each of its payments to: (a) "Office of Environmental Health Hazard Assessment," P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) "John Moore," whose address and tax identification number shall be furnished, upon request, after this Settlement Agreement is fully executed by the Parties.

### **3.2 Attorney Fees and Costs**

The Parties reached 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") section 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, Aminco shall pay \$17,000 for all fees and costs incurred investigating, bringing this matter to the attention of Aminco's management, and negotiating a settlement in the public interest. Aminco shall provide its payment in the form of a third check payable to "The Chanler Group" and issue a separate 1099 for its payment to The Chanler Group (EIN: 94-3171522).

### **3.3 Payment Address**

All payments and tax forms required by this Settlement Agreement shall be delivered to the following address:

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

**4. CLAIMS COVERED AND RELEASED**

**4.1 Moore's Release of Aminco**

This Settlement Agreement is a full, final, and binding resolution between Moore and Aminco of any violation of Proposition 65 that was or could have been asserted by Moore, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Aminco, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Aminco directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the alleged failure to warn about exposures to DEHP contained in Products that manufactured, sold, or distributed for sale by Aminco in California prior to 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 of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Aminco and Releasees, 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, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP in Products manufactured, imported, sold, or distributed for sale in California by Aminco prior to the Effective Date.

**4.2 Aminco's Release of Moore**

Aminco, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have 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.

**5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

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

Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, Aminco will reimburse Moore and his counsel for the reasonable fees and costs incurred drafting and filing the complaint, converting the Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement and an entry of judgment, in an amount not to exceed \$15,000, exclusive of fees and cost incurred on appeal, if any. Within ten days of receiving a monthly invoice from Moore's counsel for work performed under this Section, Aminco shall remit payment to the address provided in Section 3.3.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the remaining provisions 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 Aminco may provide written notice to Moore of any asserted change in the law, and have no

further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

**8. NOTICES**

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

For Aminco:

William Wu, President  
Aminco International (USA), Inc.  
20571 Crescent Bay Drive  
Lake Forest, CA 92630

with a copy to:

Peter M. Callahan, Esq.  
Callahan Thompson Sherman & Caudill LLP  
2601 Main Street, Suite 800  
Irvine, CA 92614

For Moore:

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 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.

**10. POST-EXECUTION ACTIVITIES**

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

**11. MODIFICATION**

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

**12. AUTHORIZATION**

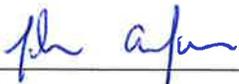
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: October 31, 2012

Date: \_\_\_\_\_

By:   
John Moore

By: \_\_\_\_\_  
William Wu, President  
Aminco International (USA), Inc.

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**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 10/24/12

By: \_\_\_\_\_  
John Moore

By:   
Edward Wu, President  
Aminco International (USA), Inc.