

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 John Moore and Dyno LLC**

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Dyno LLC (“Dyno”), with Moore and Dyno collectively referred to as the “parties.” Moore is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Moore alleges that Dyno 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 Dyno has manufactured, imported, distributed, sold, and/or offered for sale in the State of California, vinyl/PVC rain free ponchos containing di (2-ethylhexyl) phthalate (“DEHP”), without the requisite Proposition 65 health hazard warnings. DEHP is known to the State of California to cause birth defects and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as vinyl/PVC rain free ponchos, specifically the *Rain Free Classic Poncho, U50002, (#0 86535 50002 4)*, hereinafter “Products.”

### **1.4 Notice of Violation**

On October 26, 2012, Moore served Dyno 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 California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in

California 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**

Dyno denies the material, factual and legal allegations contained in Moore's Notice and maintains that all products that it has sold, manufactured, imported, distributed, and/or offered 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 Dyno 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 Dyno of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Dyno'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 OR WARNING**

### **2.1 Reformulated Products**

Commencing March 1, 2013 and continuing thereafter, Dyno agrees that the Products it manufactures for import, distribution, sale or for offering for sale in California will be "Reformulated Products." For purposes of this Settlement, Reformulated Products shall mean Products containing DEHP in concentration less than 1,000 parts per million ("ppm") DEHP by weight in any Accessible Component (i.e. any component that may be touched or handled during a reasonably foreseeable use) 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.

## **2.2 Warnings**

Commencing on March 1, 2013, Dyno agrees that any Products that Dyno had manufactured prior to March 1, 2013 and which Dyno directly distributes to, imports to, ships to, sells in, or offers for sale in California that are not Reformulated Products as defined in Section 2.1 will include a warning affixed to the packaging, labeling, or directly on each Product that states:

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

## **3. PAYMENT OF PENALTIES**

### **3.1 Initial Civil Penalty**

In settlement of all the claims referred to in this Settlement Agreement, Dyno shall pay an initial civil penalty in the amount of \$1,000.00. The civil penalty shall 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 John Moore. Dyno shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of \$750.00 representing 75% of the total initial penalty; and (b) one check to "The Chanler Group in Trust for John Moore" in the amount of \$250.00, representing 25% of the total initial 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.

Payment shall be delivered to Moore's counsel on or before February 8, 2013, at 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**

Pursuant to Health & Safety Code § 25249.7(b), on March 15, 2013, Dyno shall pay a final civil penalty in the amount of \$6,000.00. The final civil penalty shall be waived in its entirety, if, on or before March 1, 2013, an officer of Dyno certifies to Moore's counsel, in writing, that all Products manufactured by Dyno after March 1, 2013, for distribution to, import to, shipping to, sale in, or for offering for sale in California will be Reformulated Products.

Unless waived, the final civil penalty shall be allocated according to Health & Safety Code § 25249.7(c)(1) and (d), with seventy-five percent of the penalty payment earmarked for OEHHA, and the remaining twenty-five percent of the penalty earmarked for Moore. Dyno shall issue two separate checks for the final penalty payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of \$4,500.00 representing 75% of the total final penalty; and (b) one check to "The Chanler Group in Trust for John Moore" in the amount of \$1,500.00, 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. Payment shall be delivered to Moore's counsel at the address listed in section 3.1 above.

### **4. REIMBURSEMENT OF ATTORNEY'S 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") § 1021.5, for all work performed through the mutual execution of this agreement. DYN0 shall reimburse Moore and his counsel \$23,000.00 for fees and costs incurred as a result of investigating, bringing this matter to

its attention, and negotiating a settlement. Dyno 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 February 8, 2013, to the following 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 Dyno**

This Settlement Agreement is a full, final and binding resolution between Moore, and Dyno, 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 Dyno, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Dyno directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, shipped, sold and/or offered for sale or shipment by Dyno in California prior to March 1, 2013.

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 DEHP in the Products manufactured, distributed, shipped, sold and/or offered for sale or shipment by Dyno in California prior to March 1, 2013 (collectively “claims”), against Dyno and Releasees.

## **5.2 Dyno’s Release of Moore**

Dyno 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, Dyno may ask Moore, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a consent judgment, and seek the court’s 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 agrees to reasonably cooperate with Dyno, and the Parties and their respective counsel agree to mutually employ their best efforts 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, Dyno 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 \$15,000.00, exclusive of fees and costs that may be incurred on appeal. Dyno will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Dyno within ten days after its receipt of monthly invoices from Moore for work performed under this paragraph.

**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, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Dyno 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 Dyno from an obligation to comply with any pertinent state or federal toxic control laws.

**9. ENTIRE AGREEMENT**

This Settlement 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.

**10. 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: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

To Dyno:

Jim Moynihan  
Dyno LLC  
1571 W. Copans Rd., Suite 105  
Pompano Beach, FL 33064

To Moore:

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

With a copy to:

Andrea Sumits, Esq.  
Holland & Knight  
50 California Street, Ste. 2800  
San Francisco, CA 94111

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.

**11. 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. A facsimile or pdf signature shall be as valid as the original.

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

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

**13. MODIFICATION**

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



14. 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.

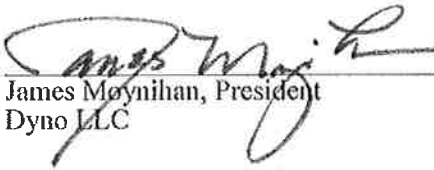
AGREED TO:

AGREED TO:

Date: JANUARY 10, 2013

Date: 1-9-13

By:   
John Moore

By:   
James Moynihan, President  
Dyno LLC