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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA
15 UNLIMITED CIVIL JURISDICTION
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17

18 MARK MOORBERG

19 Plaintiff,

20 v.

21 DIRECT SOURCE INTERNATIONAL
22 INC.; *et al.*,

23 Defendants.
24
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Case No. 114CV269540

**STIPULATED SETTLEMENT
AGREEMENT PURSUANT TO C.C.P. §
664.6**

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Settlement Agreement pursuant to C.C.P. section 664.6 (the "Settlement Agreement")
4 is entered into by and between plaintiff Mark Moorberg ("Moorberg") and defendant Direct Source
5 International Inc. ("Direct Source"), with Moorberg and Direct Source each referred to individually
6 as a "Party" and collectively as the "Parties." Moorberg is an individual residing in the State of
7 California who seeks to promote awareness of exposures to toxic chemicals, and to improve human
8 health by reducing or eliminating harmful substances contained in consumer products. Moorberg
9 alleges, and Direct Source disputes that it employs ten or more persons and is a person in the course
10 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
11 California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65").

12 **1.2 General Allegations**

13 Moorberg alleges that Direct Source manufactures, imports, sells and/or distributes for sale
14 in California, vinyl/PVC flip-flop straps containing di-n-butyl phthalate ("DBP"), and that it has
15 done so without providing the health hazard warning that Moorberg alleges is required by
16 Proposition 65.

17 **1.3 Product Description**

18 The products covered by this Settlement Agreement are vinyl/PVC flip-flop straps
19 containing DBP that are sold and distributed for sale in California by Direct Source, including but
20 not limited to the *Flip Flop, #61539283A (UPC# 0 43748 12097 5)* (the "Products").

21 **1.4 Notice of Violation**

22 On April 16, 2014, Moorberg served Direct Source and the requisite public enforcement
23 agencies with a 60-Day Notice of Violation ("Notice"), alleging that Direct Source violated
24 Proposition 65 when it failed to warn its customers and consumers in California that the Products
25 expose users to DBP.

26 **1.5 Complaint**

27 On August 15, 2014, Moorberg commenced the instant action ("Complaint"), naming Direct
28 Source as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1 On December 3, 2014, Moorberg filed a First Amended Complaint adding Save Mart Supermarkets
2 as a defendant.

3 **1.6 No Admission**

4 Direct Source denies the material, factual, and legal allegations contained in the Notices and
5 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
6 including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement
7 Agreement shall be construed as an admission by Direct Source of any fact, finding, conclusion of
8 law, issue of law, or violation of law, nor shall compliance with this Settlement Agreement
9 constitute or be construed as an admission by Direct Source of any fact, finding, conclusion of law,
10 issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect
11 Direct Source's obligations, responsibilities, and duties under this Settlement Agreement.

12 **1.7 Jurisdiction**

13 For purposes of this Settlement Agreement only, the Parties stipulate that this Court has
14 jurisdiction over Direct Source as to the allegations contained in the Complaint, that venue is proper
15 in the County of Santa Clara, and that the Court has jurisdiction to enforce the provisions of this
16 Settlement Agreement pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

17 **1.8 Effective Date**

18 For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date
19 that the Court grants the motion for approval of this Settlement Agreement contemplated by Section
20 5.

21 **2. INJUNCTIVE SETTLEMENT TERMS**

22 Commencing on December 31, 2015, and continuing thereafter, Direct Source shall only
23 distribute for sale, or purchase for sale in California, Reformulated Products. For purposes of this
24 Settlement Agreement, "Reformulated Products" are defined as Products with a maximum DBP
25 concentration 0.1 percent (1,000 parts per million) in any accessible component (i.e., any
26 component that may be touched or handled during use) when analyzed pursuant to U.S.
27 Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies

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1 utilized by state or federal agencies for the purpose of determining DBP content in a solid
2 substance.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

5 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
6 claims referred to in this Settlement Agreement, Direct Source shall pay \$2,500 in civil penalties.
7 The penalty payment will be allocated in accordance with California Health & Safety Code §
8 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental
9 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to
10 Moorberg. Moorberg’s counsel shall be responsible for remitting Direct Source’s penalty payment
11 under this Settlement Agreement to OEHHA. Direct Source shall provide its payment in a single
12 check made payable to “Mark Moorberg, Client Trust Account” to be delivered to the address
13 provided in Section 3.4, below.

14 **3.2 Reimbursement of Attorneys’ Fees and Costs**

15 As a final and independent settlement term, the Parties negotiated Direct Source’s
16 reimbursement of the compensation due to Moorberg under general contract principles and the
17 private attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For all
18 work performed through the mutual execution of this agreement and the Court’s approval of the
19 same, Direct Source will reimburse Moorberg and his counsel \$27,500. Direct Source’s payment
20 shall be delivered to the address in Section 3.4 in a check payable to “The Chanler Group.” The
21 payment shall cover all fees and costs incurred by Moorberg investigating, bringing this matter to
22 Direct Source’s attention, litigating, and negotiating a settlement in the public interest.

23 **3.3 Payment Timing; Payments Held In Trust**

24 Direct Source shall deliver all payments required by this Settlement Agreement as follows:

25 December 31, 2015 - \$2,500 in civil penalties in a single check payable to “Mark
26 Moorberg, Client Trust Account” to be delivered to the address provided in Section 3.4, below.

27 December 31, 2015 - \$7,500 in a single check “The Chanler Group” to be delivered to the
28 address provided in Section 3.4, below.

1 On or before February 29, 2016 - \$5,000 in a single check "The Chanler Group" to be
2 delivered to the address provided in Section 3.4, below.

3 On or before April 30, 2016 - \$5,000 in a single check "The Chanler Group" to be
4 delivered to the address provided in Section 3.4, below.

5 On or before June 30, 2016 - \$5,000 in a single check "The Chanler Group" to be delivered
6 to the address provided in Section 3.4, below.

7 On or before August 31, 2016 - \$5,000 in a single check "The Chanler Group" to be
8 delivered to the address provided in Section 3.4, below.

9 With regard to the December 31, 2015 and February 29, 2016 payments, Direct Source's
10 counsel shall confirm receipt of settlement funds in writing to Moorberg's counsel and, thereafter,
11 hold the amounts paid in trust until such time as the Court grants the motion for approval of the
12 Parties' settlement contemplated by Section 5. Within five days of the Effective Date, Direct
13 Source' counsel shall deliver all settlement payments it has held in trust to Moorberg's counsel.

14 **3.4 Payment Address**

15 All payments required by this Settlement Agreement shall be delivered to the following
16 address:

17 The Chanler Group
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 Moorberg's Release of Proposition 65 Claims**

24 Moorberg, acting on his own behalf and in the public interest, releases Direct Source and its
25 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
26 and attorneys ("Releasees") and each entity to whom Direct Source directly or indirectly distributes
27 or sells the Products including, but not limited to, its downstream distributors, wholesalers,
28 customers, retailers (inclusive of Save Mart Supermarkets), franchisers, cooperative members,
licensors and licensees, and each of their respective directors, officers, employees, and attorneys

1 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures
2 to DBP from the Products manufactured, imported, distributed or sold by Direct Source prior to the
3 Effective Date, as set forth in the Notices. Compliance with the terms of this Settlement Agreement
4 constitutes compliance with Proposition 65 by Direct Source with respect to the alleged or actual
5 failure to warn about exposures to DBP from Products manufactured, sold or distributed for sale by
6 Direct Source after the Effective Date.

7 **4.2 Moorberg’s Individual Release of Claims**

8 Moorberg, in his individual capacity only and *not* in his representative capacity, also
9 provides a release to Defendants, Releasees, and Downstream Releasees which shall be effective as
10 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
11 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Moorberg of any
12 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
13 alleged or actual exposures to DBP in Products manufactured, imported, distributed or sold by
14 Direct Source before the Effective Date.

15 **4.3 Direct Source’s Release of Moorberg**

16 Direct Source, on its own behalf and on behalf of its past and current agents, representatives,
17 attorneys, successors and assignees, hereby waives any and all claims against Moorberg and his
18 attorneys and other representatives, for any and all actions taken or statements made by Moorberg
19 and his attorneys and other representatives in the course of investigating claims, seeking to enforce
20 Proposition 65 against it in this matter, or with respect to the Products.

21 **5. COURT APPROVAL**

22 This Settlement Agreement is not effective until it is approved by the Court and shall be null
23 and void if, for any reason, it is not approved within one year after it has been fully executed by the
24 Parties. Moorberg and Direct Source agree to support the Court’s approval of this agreement, and
25 to obtain such approval in a timely manner. The Parties acknowledge that, pursuant to California
26 Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this
27 Settlement Agreement, which motion Moorberg shall draft and file and Direct Source shall support,
28 appearing at the hearing if so requested. If any third-party objection to the motion is filed,

1 Moorberg and Direct Source agree to work together to file a reply and appear at any hearing. This
2 provision is a material component of the Settlement Agreement and shall be treated as such in the
3 event of a breach.

4 **6. SEVERABILITY**

5 If, subsequent to the Court's approval of this Settlement Agreement, any provision of this
6 Settlement Agreement is held by a court to be unenforceable, the validity of the remaining
7 provisions shall not be adversely affected.

8 **7. GOVERNING LAW**

9 The terms of this Settlement Agreement shall be governed by the laws of the State of
10 California and apply within the State of California. In the event that Proposition 65 is repealed,
11 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
12 then Direct Source may provide Moorberg with written notice of any asserted change in the law,
13 and shall have no further obligations pursuant to this Settlement Agreement, with respect to, and to
14 the extent that, the Products are so affected.

15 **8. NOTICE**

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

20 To Direct Source:	To Moorberg:
21 James Buck, President	Attn: Proposition 65 Coordinator
22 Direct Source International, Inc.	The Chanler Group
23 3737 Round Bottom Road	2560 Ninth Street
Cincinnati, OH 45244	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

24 with a copy to:
25 Edward E. Hartley, Esq.
26 Hassard Bonnington LLP
27 275 Battery Street, Suite 1600
28 San Francisco, CA 94111

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

3 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

7 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

8 Moorberg and his counsel agree to comply with the reporting form requirements referenced
9 in California Health and Safety Code section 25249.7(f).

10 **11. MODIFICATION**

11 This Settlement Agreement may be modified only by: (i) a written agreement of the Parties
12 and the approval of a modified Settlement Agreement by the Court thereon; or (ii) upon a
13 successful motion of any party and the approval of a modified Settlement Agreement by the Court
14 thereon.

15 **12. AUTHORIZATION**

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

19
20 **AGREED TO:**

21 
22 _____
23 MARK MOORBERG

24 Dated: 2/24/2016

AGREED TO:


DIRECT SOURCE INTERNATIONAL, INC.

By: JAMES H BUCK
(Print Name)

Its: CEO/ CFO
(Title)

Dated: 2/24/2016

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