

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and Gator Cases Incorporated (“Gator”), with Moorberg and Gator each individually referred to as a “Party” and collectively as the “Parties.” Moorberg is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Gator 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

Moorberg alleges that Gator manufactures, sells, and/or distributes for sale in California, keyboard benches with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moorberg alleges that Gator failed to provide individuals in California with the health hazard warning required by Proposition 65 for exposures to DEHP from the vinyl /PCV upholstery of its keyboard benches.

1.3 Product Description

The products covered by this Settlement Agreement are keyboard benches with vinyl/PVC upholstery containing DEHP, that are manufactured, sold and/or distributed for sale in California by Gator including, but not limited to, the *Gator Frameworks Deluxe Keyboard Bench, GFW-KEY-BNCH-2 (UPC No. 7 16408 53294 3)* and the *Gator Frameworks Standard Black Keyboard Bench, GFW-KEY-BNCH- 1 (UPC No. 7 16408 53293 6* (collectively, “Products”).

1.4 Notice of Violation

On April 16, 2014, Moorberg served Gator and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Gator violated Proposition 65 when it failed 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

Gator 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 Gator 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 Gator of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Gator. This Section shall not, however, diminish or otherwise affect Gator’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 December 1, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Reformulated Products

Commencing no later than thirty days from the Effective Date and continuing thereafter, Gator shall only sell, ship for sale or distribute for sale in California, “Reformulated Products,” or Products that are sold with a clear and reasonable health

hazard warning in compliance with the warning requirements of Section 2.2. For purposes of this Settlement Agreement, "Reformulated Products" are Products (as defined herein) that incorporate vinyl/PVC upholstery in any accessible component (i.e. any component that may be touched or handled during a reasonably foreseeable use) containing no more than 1,000 ppm (0.1%) DEHP content when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining DEHP content in a solid substance.

2.2 Clear and Reasonable Warnings

Commencing on a date no later than thirty days from the Effective Date, for all Products that are not Reformulated Products, Gator agrees to provide a clear and reasonable consumer warning in accordance with this Section. Gator further agrees that any warning utilized will 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. For purposes of this Settlement Agreement, a clear and reasonable warning for DEHP in Products shall consist of a warning affixed to the packaging, label, tag or directly to a Product sold in California containing one of the following statements:

WARNING: This product contains DEHP, a chemical known to the state of California to cause birth defects or other reproductive harm.

Or for Products that Gator knows to contain, in addition to DEHP, a Proposition 65-listed carcinogen. Gator may use the following warning statement:

WARNING: This product contains chemicals, including DEHP, that are known to the state of California to cause cancer and birth defects or other reproductive harm.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this settlement Gator agrees to pay \$11,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Moorberg.

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, Gator shall pay an initial civil penalty of \$2,000. Gator will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,500 and (b) “Mark Moorberg, Client Trust Account” in the amount of \$500.

3.1.2 Final Civil Penalty. On June 15, 2015, Gator shall pay a final civil penalty of \$9,000. The final civil penalty shall be waived in its entirety if, no later than June 1, 2015, an officer of Gator provides Moorberg’s counsel with written certification that, as of the date of its certification, all of the Products it ships or distributes for sale in California are Reformulated Products as defined by Section 2.1, and that it will continue to only offer Reformulated Products in the future. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment otherwise required by this Settlement Agreement is a material term, and time is of the essence.

3.2 Reimbursement of Moorberg’s Attorneys’ Fees and Costs

The Parties reached an accord on the compensation due to Moorberg and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Gator agrees to pay \$21,000 to Moorberg and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of

Gator's management, and negotiating a settlement in the public interest. All payments of Moorberg's attorney's fees and costs shall be made according to the Payment Schedule set forth in section 3.3.3.

3.3 Payment Procedures

3.3.1 Payment Addresses. Payments shall be delivered as follows:

(a) All payments required for Moorberg and his counsel under this Settlement Agreement shall be delivered to:

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

(b) All payments required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses as appropriate:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Courier or Other Non-U.S. Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

3.3.2 Proof of Payment to OEHHA. Gator agrees to provide Moorberg with a copy of each penalty check sent to OEHHA, enclosed with Gator's penalty payment(s) to Moorberg.

3.3.3 Payment Schedule for Moorberg's Attorney' Fees and Costs

Gator's Reimbursement of Moorberg's fees and costs under this Settlement Agreement shall be paid in four installments of \$5,250 each, made payable

to “The Chanler Group” to be delivered on the 15th of each month from December 2014 through March 2015.

3.3.4 Acceleration of Payments

In the event that Gator Cases fails to make any payment under this Settlement within 10 days of the date that the obligation is due and owing, all sums payable under this Settlement, including any civil penalty and/or attorneys’ fee and cost reimbursement amounts, shall become immediately due.

4. CLAIMS COVERED AND RELEASED

4.1 Moorberg’s Release of Gator

This Settlement Agreement is a full, final and binding resolution between Moorberg and Gator, of any violation of Proposition 65 that was or could have been asserted by Moorberg on his own behalf, or on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Gator, parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Gator directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers (including, without limitation, B&H Foto & Electronics Corp.), retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP in Products that Gator sold or distributed for sale prior to the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Moorberg on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or

expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal, if any, arising under Proposition 65 with respect to the failure to warn about exposures to DEHP from Products sold or distributed for sale by Gator before the Effective Date. The releases and covenants not to participate, provided by Moorberg under this Settlement Agreement are provided solely on Moorberg's behalf and are not releases on behalf of the public.

4.2 Gator's Release of Moorberg

Gator, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moorberg 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 Moorberg and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. 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 remaining enforceable provisions shall not be adversely affected.

6. 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, or DEHP, then Gator may provide written notice to Moorberg 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.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided

pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Gator:

Crystal Morris, President
Gator Cases Incorporated
18922 Dale Mabry Highway
Lutz, FL 33548
with a copy to Gator's counsel:

Stacy Matulis, Esq.
Business and Registered Patent Attorney
9806 Gretna Green Dr.
Tampa, FL 33626

For Moorberg:

The Chanler Group
Attn: Prop 65 Coordinator
2560 Ninth St., Suite 214
Berkeley, CA 94710-2565

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

8. 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.

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

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

10. MODIFICATION

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

11. 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:

Date: 12.5.14

By: 
MARK MOORBERG

AGREED TO:

Date: 12/2/2014

By: 
Crystal Morris, President
GATOR CASES INCORPORATED