

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and North States Industries, Inc. (“North States”), with Moorberg and North States 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. North States 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 North States manufactures, imports, sells, and/or distributes for sale in California, gates with vinyl/PVC wire mesh that contain 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 North States failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the vinyl/PVC wire mesh components of its gates sold in California.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC wire mesh gates that are manufactured, imported, sold and/or distributed for sale in the State of California by North States including, but not limited to, the *North States Supergate Extra-Wide Wire Mesh Gate, #4618, Model #4615/18, UPC #0 26107 04618 5* (collectively referred to herein as, the “Products”).

1.4 Notice of Violation

On April 16, 2014, Moorberg served North States and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that North States 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

North States 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 North States 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 North States of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by North States. This Section shall not, however, diminish or otherwise affect North States' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date the Settlement Agreement is signed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on the Effective Date and continuing thereafter, North States shall only purchase for sale or manufacture for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 1,000 parts per million ("ppm") (0.1%) DEHP, di-n-butyl ("DBP") and butyl benzyl phthalate ("BBP") 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, DBP and BBP content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims

alleged in the Notice or referred to in this Settlement Agreement, North States agrees to pay \$22,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) & (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 remitted to Moorberg.

3.1.1 Initial Civil Penalty. Within five business days of the Effective Date, North States shall pay an initial civil penalty of \$7,000. North States agrees to provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$5,250; and (b) “Mark Moorberg, Client Trust Account” in the amount of \$1,750.

3.1.2 Final Civil Penalty. On December 15, 2014, North States shall pay a final civil penalty of \$15,000. The final civil penalty shall be waived in its entirety if, within five business days of the Effective Date, an officer of North States provides Moorberg’s counsel with written certification that, as of the Effective Date, all of the Products North States ships or distributes for sale in California, directly or through nationwide retailers, are Reformulated Products, and that it will continue to offer only Reformulated Products for sale or distribution, directly or through nationwide retailers, in the State of California 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 § 1021.5 for all work performed in this matter. Under these legal principles, within five business days of the Effective Date, North States agrees to pay \$24,000 to Moorberg and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of North States’ management, and negotiating a settlement in the public interest.

3.3 Payment Procedures

3.3.1 Payment Addresses. Payments shall be delivered as follows:

(a) All payments and tax documentation 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 and tax forms 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. North States agrees to provide Moorberg with a copy of each penalty check sent to OEHHA, enclosed with North States’ penalty payment(s) to Moorberg, and delivered to the address provided in Section 3.3.1(a).

4. CLAIMS COVERED AND RELEASED

4.1 Moorberg’s Release of North States

This Settlement Agreement is a full, final and binding resolution between Moorberg and North States of any violation of Proposition 65 that was or could have been asserted by Moorberg on behalf of himself, his past and current agents, representatives, attorneys,

successors, affiliates and/or assignees, against North States, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom North States directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on their alleged failure to warn about alleged exposures to DEHP in the Products distributed, sold and/or offered for sale by North States in the State of California before the Effective Date as set forth in the Notice.

In further consideration of the promises and agreements herein contained, Moorberg on behalf of himself, 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 against North States and Releasees, 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, arising under Proposition 65 with respect to DEHP, DBP or BBP in the Products distributed, sold or offered for sale by North States before the Effective Date. The releases provided by Moorberg under this Settlement Agreement are provided solely on Moorberg’s behalf and are not releases on behalf of the California public.

4.2 North States’ Release of Moorberg

North States on behalf of itself, 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, otherwise 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 enforceable provisions remaining 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, then North States 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 notices 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 North States:

Dean Weisbeck, President
North States Industries, Inc.
1507 92nd Lane NE
Minneapolis, MN 55449

with a copy to:

Anders Folk, Esq.
Stinson Leonard Street LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

For Moorberg:

The Chanler Group
Attn: Prop 65 Coordinator
2560 Ninth St.
Parker Plaza, 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 § 25249.7(f).

10. MODIFICATION

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

11. AUTHORIZATION

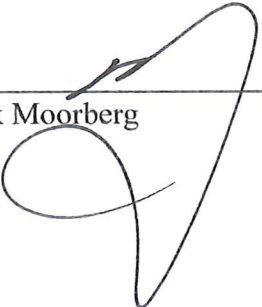
The undersigned are authorized to execute this Settlement Agreement on behalf of themselves and/or their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

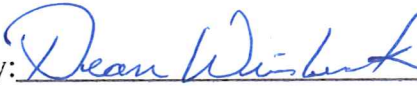
AGREED TO:

AGREED TO:

Date: 11.24.14

Date: 12/1/2014

By: 
Mark Moorberg

By: 
Dean Weisbeck, President
North States Industries, Inc.