

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and Polyconcept North America, Inc., including Leedsworld, Inc. and its service brand Leed’s (collectively “Polyconcept”), with Moorberg and Polyconcept 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. Polyconcept 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 Polyconcept manufactures, sells, and/or distributes for sale in California, mugs with vinyl/PVC sleeves 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 Polyconcept failed to provide individuals in California with the health hazard warning required by Proposition 65 for exposures to DEHP from its mugs with vinyl/PVC sleeves.

1.3 Product Description

The products covered by this Settlement Agreement are mugs with vinyl/PVC sleeves containing DEHP, that are manufactured, sold and/or distributed for sale in California by Polyconcept including, but not limited to, the *Mug*, “*Fight Like A Girl*,” *Item 9992-65WH* (collectively, “Products”).

1.4 Notice of Violation

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

Polyconcept 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, including, but not limited to, Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Polyconcept 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 Polyconcept of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Polyconcept. This Section shall not, however, diminish or otherwise affect Polyconcept’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 6, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulated Products

Commencing no later than thirty days from the Effective Date and continuing thereafter, Polyconcept 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 interim warning requirements of Section 2.2.

For purposes of this Settlement Agreement, “Reformulated Products” are Products (as defined herein) that incorporate vinyl/PVC sleeves as any accessible component (i.e. any component that may be touched or handled during a reasonably foreseeable use) which contain no more than 1,000 ppm (0.1%) DEHP content when analyzed pursuant to Environmental Protection Agency 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

For all Products that are not Reformulated Products, Polyconcept agrees to provide a clear and reasonable consumer warning in accordance with this Section. Polyconcept 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 the following language:

WARNING: This product contains DEHP, a chemical known to the state of California to cause 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, Polyconcept agrees to pay \$14,000 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 business days of the Effective Date, Polyconcept shall pay an initial civil penalty of \$4,500. Polyconcept will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,375; and (b) “Mark Moorberg, Client Trust Account” in the amount of \$1,125.

3.1.2 Final Civil Penalty. On March 15, 2015, Polyconcept shall pay a final civil penalty of \$9,500. The final civil penalty shall be waived in its entirety if, no later than March 1, 2015, an officer of Polyconcept 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, within five business days of the Effective Date, Polyconcept agrees to pay \$24,500 to Moorberg and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Polyconcept’s 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. Polyconcept agrees to provide Moorberg with a copy of each penalty check sent to OEHHA, enclosed with Polyconcept’s penalty payment(s) to Moorberg.

4. CLAIMS COVERED AND RELEASED

4.1 Moorberg’s Release of Polyconcept

This Settlement Agreement is a full, final and binding resolution between Moorberg and Polyconcept, 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 Polyconcept, its parents, subsidiaries, affiliated entities that are under common

ownership, directors, officers, employees, attorneys, and each entity to whom Polyconcept directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP in Products that Polyconcept 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 release 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 Polyconcept before the Effective Date. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP from the Products as alleged in the Notice. 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 Polyconcept’s Release of Moorberg

Polyconcept, 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.

4.3 Mutual California Civil Code section 1542 Waiver

Moorberg in his individual capacity only and not in any representative capacity, and Polyconcept, each on his/its own behalf, and on behalf of his/its agents, attorneys, representatives, successors and assigns, also provides a general release which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moorberg or Polyconcept of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of any alleged violations of Proposition 65 with respect to Products sold by Polyconcept, as set forth in the Notice, or as to Moorberg or Moorberg's counsel in connection with investigating the claims and Products that are the subject of this Settlement Agreement. Moorberg and Polyconcept each acknowledge and represent that he/it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Moorberg and Polyconcept each expressly acknowledge and hereby waive the provisions of Section 1542 of the California Civil Code.

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 levels higher than as set forth herein are deemed compliant for Proposition 65 by virtue of legislation, case law, or settlements for similar products, then Polyconcept may provide written notice to Moorberg of any asserted change in the law or acceptable levels, 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 Polyconcept:

David Nicholson, President
Polyconcept North America, Inc.
400 Hunt Valley Road
New Kensington, PA 15068

with a copy to:

Debra Albin-Riley, Esq.
Arent Fox
555 West Fifth Street, 48th Floor
Los Angeles, California 90013

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.

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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.

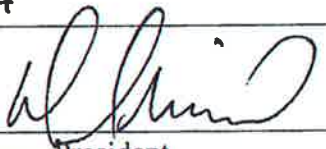
AGREED TO:

Date: 10.3.14

By: 
MARK MOORBERG

AGREED TO:

Date: 10/1/14

By: 
David Nicholson, President
POLYCONCEPT NORTH AMERICA, INC.