

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and Zircon Corporation (“Zircon”), with Moorberg and Zircon 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. Zircon 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 Zircon manufactures, sells, and/or distributes for sale in California, Vinyl/PVC tubing, including without limitation for the *Zircon Water Level 25 Electronic Water Level, UPC #0 42186 33430 2* that contains 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 Zircon failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from vinyl/PVC tubing for its water levels sold in California.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC tubing containing DEHP that are manufactured, sold and/or distributed for sale in California by Zircon including, but not limited to, the *Zircon Water Level 25 Electronic Water Level, UPC #0 42186 33430 2* (“Covered Products”).

1.4 Notice of Violation

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

Zircon 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 Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Zircon 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 Zircon of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Zircon. This Section shall not, however, diminish or otherwise affect Zircon'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 September 15, 2014.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on the Effective Date and continuing thereafter, Zircon 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 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.

2.1 Grace Period for Products Manufactured Prior to the Effective Date

Liability for Covered Products that were manufactured and distributed for retail sale prior to the Effective Date shall be subject to the releases provided by Section 4 of this Settlement Agreement.

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 Agreement, Zircon agrees to pay \$9,500.00 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 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. On or before the Effective Date, Zircon shall pay an initial civil penalty of \$1,500.00. Zircon agrees to provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,125.00; and (b) “Mark Moorberg, Client Trust Account” in the amount of \$375.00.

3.1.2 Final Civil Penalty. On October 1, 2014, Zircon shall pay a final civil penalty of \$8,000.00. The final civil penalty shall be waived in its entirety if, no later than October 15, 2014, an officer of Zircon provides Moorberg’s counsel with written certification that, as of the date of the certification, all of the Products Zircon ships or distributes for sale in California are Reformulated Products, and that it will continue to only offer Reformulated Products in the future in California. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment otherwise required by this 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, on or before the Effective Date, Zircon agrees to pay \$15,000.00 to Moorberg and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Zircon’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 required of Zircon to be paid to 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 to OEHHA by Zircon (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 Tax Forms and Proof of Payment to OEHHA. Moorberg agrees to provide Zircon with all tax forms necessary for Zircon to process payments under this Settlement Agreement not later than the Effective Date, and Zircon agrees to provide Moorberg with a copy of each penalty check sent to OEHHA, enclosed with Zircon's penalty payment(s) to Moorberg.

4. CLAIMS COVERED AND RELEASED

4.1 Moorberg's Release of Zircon

This Settlement Agreement is a full, final and binding resolution between Moorberg and Zircon, 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, and/or

assignees, against Zircon, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Zircon directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, including but not limited to Home Depot, Inc. franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP in Products that Zircon sold or were distributed for sale by Zircon prior to the Effective Date.

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, 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 Zircon 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 public.

4.2 Compliance with the terms of this Settlement Agreement by Zircon and its Releasees shall constitute compliance with Proposition 65 by Zircon and its Releasees with respect to any alleged failure to warn about DEHP in Covered Products manufactured, distributed, or sold by Zircon and its Releasees after the Effective Date.

4.3 Zircon’s Release of Moorberg

Zircon 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 Covered 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 Zircon 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 Zircon:

Amy Gee
Corporate Counsel
Zircon Corporation
1580 Dell Avenue
Campbell, CA 95008

For Moorberg:

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

with a copy to:

Renee D. Wasserman, Esq.
Rogers Joseph O'Donnell
311 California Street, 10th Floor
San Francisco, CA 94104

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.

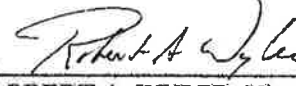
AGREED TO:

Date: 8.18.14

By: 
MARK MOORBERG

AGREED TO:

Date: 8-18-2014

By: 
ROBERT A. WYLER, Vice President
Zircon Corporation