

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties. This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) on the one hand, and Hearing Lab Technology, LLC and Good Sportsman Marketing, LLC (collectively, “GSM”) on the other, with Moorberg and GSM each individually referred to as a “Party” and collectively as the “Parties.” Moorberg is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances contained in consumer products. GSM 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations. Moorberg alleges that GSM manufactured, imported, sold, or distributed for sale in the State of California, hearing protection with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are hearing protection with vinyl/PVC components containing DEHP including, but not limited to, Walker’s Hearing Protection and Enhancement Electronic Muffs, Model GWP-AMCARBC, Itm/Art. 581998, UPC #8 13628 10915 0 (collectively “Products”).

1.4 Notice of Violation. On May 21, 2014, Moorberg served GSM and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that GSM 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. GSM denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for

sale 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 GSM of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by GSM of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by GSM. This Section shall not, however, diminish or otherwise affect GSM's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" means November 15, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

Commencing on the Effective Date and continuing thereafter, GSM shall comply in all respects with either 2.1 or 2.2 below with respect to all of its Products that are manufactured, distributed, imported or purchased for sale in California.

2.1 Reformulated Products. Commencing on the Effective Date and continuing thereafter, GSM shall whenever reasonably possible only manufacture, distribute, import, and purchase for sale in California Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain a maximum DEHP concentration of 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state and federal agencies to measure DEHP content in a solid substance.

2.2 Labeled Products. Commencing on the Effective Date and continuing thereafter, GSM shall, as to all Products manufactured, distributed, imported and purchased for sale in California that are not Reformulated Products, include the following clear and reasonable warning placed on the packaging for the Product (hereafter "Labeled Products"):

WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer, 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), GSM shall pay \$8,000 in civil penalties. Each penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Moorberg.

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, GSM shall make an initial civil penalty payment of \$4,000. GSM shall provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,000; and (b) “Mark Moorberg Trust Account” in the amount of \$1,000.

3.1.2 Final Civil Penalty. On or before December 15, 2014, GSM will make a final civil penalty payment of \$4,000. Pursuant to California Code of Regulations title 11 section 3203(c), the final civil penalty payment will be waived in its entirety if, no later than December 1, 2014, an officer of GSM certifies in writing to Moorberg’s counsel that, as of the date of its certification, one-hundred percent (100%) of the Products GSM ships after such date for sale or distributes for sale in California are Reformulated Products as defined by Section 2.1 or Labeled Products as defined in 2.2, and that GSM will continue to only offer Reformulated Products in California in the future. The option to certify timely reformulation, proper labeling or continued withdraw of the Products from market in lieu of making the final civil penalty payment constitutes a material term of this Settlement Agreement, and with regard to such term, time is of the essence.

3.2 Attorney 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, GSM shall reimburse Moorberg and his counsel \$23,500 for the fees and costs incurred investigating, bringing this matter to the attention of GSM’s management, and negotiating a settlement in the public interest.

3.3 Payment Procedures. With the exception of the final civil penalty payment or certification in lieu of payment due on December 1, 2014, all payments owed under this Settlement Agreement are due within five (5) business days of the Effective Date. Payments are to be delivered according to the following subsections.

3.3.1 Payment Address for Moorberg. All payments to Moorberg and his counsel under this Settlement Agreement are to be delivered to the following address:

Moscone Emblidge Sater & Otis LLP
Attn: Proposition 65 Coordinator
220 Montgomery Street, Suite 220
San Francisco, CA 94104

3.3.2 Payment Addresses for OEHHA. All payments to OEHHA under this Settlement Agreement will be delivered directly to OEHHA (Memo line “Prop. 65 Penalties”) at one of the following addresses, as appropriate:

For United States Postal Delivery:

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

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

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.3 Copy of Payments to OEHHA. GSM agrees to provide Moorberg’s counsel with a **copy** of each check payable to OEHHA, simultaneous with its penalty payments to Moorberg, to be delivered to the address provided in Section 3.3.1.

3.3.4 Tax Documentation. GSM agrees to provide a completed IRS 1099 form for its payments to each of the following payees under this Settlement Agreement:

- (a) “Mark Moorberg” whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;
- (b) “Moscone Emblidge Sater & Otis LLP” at the address provided in section 3.3.1; and
- (c) “Office of Environmental Health Hazard Assessment” (EIN: 68-0284486), 1001 I Street, Sacramento, CA 95814.

4. CLAIMS COVERED AND RELEASED

4.1 Moorberg’s Release of GSM. This Settlement Agreement is a full, final, and binding resolution between Moorberg and GSM of any violation of Proposition 65 that was or could have been asserted by Moorberg, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against GSM, its successors, assignees, parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom GSM directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on unwarned exposures to DEHP from Products manufactured, sold or distributed for sale in California by GSM prior to the Effective Date.

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 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against GSM and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP from Products manufactured, sold, or distributed for sale in California by GSM prior to the Effective Date.

4.2 GSM’s Release of Moorberg. GSM, on its own behalf and on behalf of its past

and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have 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 provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. 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 GSM may provide written notice to Moorberg of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

8. 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 GSM:

Edward Castro, President
Good Sportsman Marketing, LLC
3385 Roy Orr Blvd., Suite B
Grand Prairie, TX 75050

With a copy to:

James R. Spievak, Esq.
3921 Oceanic Drive, Suite 803
Oceanside, CA 92056

For Moorberg:

Moscone Emblidge Sater & Otis LLP
Attn: Proposition 65 Coordinator
220 Montgomery Street, Suite 2100
San Francisco, CA 94104

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

9. 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.

10. POST-EXECUTION ACTIVITIES

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

11. MODIFICATION

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

12. 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: October 30, 2014

By:  _____
MARK MOORBERG

AGREED TO:

Date: _____

By: _____
JEFF RUTAN, CFO
Hearing Lab Technology, LLC, formerly
known as GSM-Walker Products, LLC

AGREED TO:

Date: _____

By: _____
EDWARD CASTRO, President
Good Sportsman Marketing, LLC


AGREED TO:

Date: _____

By: _____
MARK MOORBERG


AGREED TO:

Date: 10/31/14

By: 
JEFF RUTAN, CFO
Hearing Lab Technology, LLC, formerly
known as GSM-Walker Products, LLC

AGREED TO:

Date: 10-31-14

By: 
EDWARD CASTRO, President
Good Sportsman Marketing, LLC