

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties. This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and Pendleton Woolen Mills, Inc. (“Pendleton”), collectively referred to herein as “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. Pendleton is a Corporation, incorporated under the laws of Oregon.

1.2 General Allegations. Moorberg alleges that that Pendleton is a person in the course of doing business within the meaning of Health and Safety Code section 25249.11, and that Pendleton manufactures, distributes and/or sells nylon zippered cases with Vinyl/PVC components containing Di(2-ethylhexyl)phthalate (“DEHP”) and lead identified as the Nylon Zippered Carry Case, Item #70508, Art#010709-2 (collectively “Products”), which are covered by this Settlement Agreement. Moorberg also alleges that Pendleton violated the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.6, et seq. (“Proposition 65”), by knowingly and intentionally exposing California consumers to DEHP and lead, which Moorberg alleges escapes from Products, leading to human exposures.

1.3 Notice of Violation. On or about May 21, 2014, Moorberg served Pendleton and the requisite public enforcement agencies with a document entitled “60-Day Notice of Violation,” dated May 21, 2014, (“Notice”) that provided the recipients with notice of the alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers and users in the State of California that Products expose users to DEHP and lead. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.¹

1.4 No Admission. Pendleton denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold in the State of California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an

¹ Pursuant to Proposition 65, DEHP is listed as a chemical known to cause birth defects and other reproductive harm, and lead is listed as a chemical that is known to the state of California to cause birth defects and other reproductive harm. DEHP and lead are subject to the “clear and reasonable warning” requirements of Proposition 65. Cal. Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8, 25249.10(b).

admission by Pendleton 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 Pendleton of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Pendleton. This paragraph shall not, however, diminish or otherwise affect Pendleton's obligations, responsibilities, and duties under this Settlement Agreement.

1.5 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 1, 2014.

2. INJUNCTIVE RELIEF

2.1 Reformulation Commitment. Commencing on the Effective Date, Pendleton shall import, ship, sell, and distribute for sale in California only products that are "Reformulated Products," as defined herein, or Products in its Current Inventory, pursuant to Section 2.2, that comply with the warning requirements in Section 2.3. For purposes of this Settlement Agreement, "Reformulated Products" shall mean nylon zippered cases with Vinyl/PVC components that contain no greater than 1000 ppm of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580 and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining the presence, and measure the quantity of DEHP, and a maximum of 100 parts per million (ppm) lead content in any accessible component (i.e., any component that may be touched or handled during a reasonably foreseeable use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that yields a result of no more than 1.0 micrograms of lead when analyzed pursuant to the NIOSH 9100 testing protocol.

2.2 Current Inventory. Any Products in, or manufactured and en route to, Pendleton's inventory as of the Effective Date, that do not qualify as Reformulated Products, or that Pendleton has reason to believe may be sold or distributed for sale in California, shall contain a clear and reasonable warning.

2.3 Product Warnings/Labeling. The following warning, as appropriate, shall be affixed to the packaging, labeling, or directly on each Product, and shall be in 10 point font, and on a label measuring approximately 1" x 3", and shall constitute a clear and reasonable warning, in compliance with paragraph 2.2 of this Settlement Agreement:

WARNING: This carrying case contains DEHP, a phthalate chemical known to the

State of California to cause birth defects and other reproductive harm, and lead, a chemical known to the state of California to cause birth defects and other reproductive harm.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Pursuant to Health and Safety Code section 25249.7(b), Pendleton shall pay the civil penalties described herein, and 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, as follows:

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, Pendleton shall make an initial civil penalty payment of \$5,000.00. Pendleton shall provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,750.00; and (b) “Mark Moorberg, Client Trust Account” in the amount of \$1,250.

3.1.2 Final Civil Penalty. On or before December 15, 2014, Pendleton will make a final civil penalty payment of \$4,000.00. Pursuant to California Code of Regulations, title 11, section 3203(c), \$2,000.00 of the final civil penalty payment will be waived if, no later than December 1, 2014, an officer of Pendleton certifies in writing to Moorberg’s counsel that, as of the date of the certification, and into the future, it shall only import for distribution or sale in California or cause to be imported for distribution or sale in California, Products that qualify as Reformulated Products. An additional \$2,000.00 of the final civil penalty payment will be waived if, no later than December 1, 2014, an officer of Pendleton certifies in writing to Moorberg’s counsel that, as of the date of the certification Pendleton has complied with the warning requirements of paragraphs 2.1, 2.2 and 2.3 of this Agreement. The option to make the certifications in compliance with this paragraph 3.1.2 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, Pendleton shall reimburse Moorberg and his counsel \$25,000 for the fees and costs incurred in investigating, bringing this matter to the attention of

Pendleton's management, and negotiating a settlement in the public interest. Within five days of the Effective Date, Pendleton shall provide payment in the form of a check made payable to "Moscone Emblidge Sater & Otis LLP in Trust."

3.3 Payment Procedures. Payments are to be delivered according to the following paragraphs.

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 Controller
220 Montgomery Street, Suite 2100
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. Pendleton 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 paragraph 3.3.1.

4. CLAIMS COVERED AND RELEASED

4.1 Moorberg's Release of Pendleton. This Settlement Agreement is a full, final, and binding resolution between Moorberg and Pendleton of any violation of Proposition 65 that was or could have been asserted by Moorberg in the Notice, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against

Pendleton, its successors, assignees, parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Pendleton directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), based on unwarned exposures to DEHP and lead in Products manufactured, sold or distributed for sale in California by Pendleton and/or Releasees 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 Pendleton 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, of any nature whatsoever, whether known or unknown, fixed or contingent that were brought or could have been brought against Pendleton or Releasees arising under Proposition 65 for unwarned exposures to DEHP and lead from Products manufactured, sold, or distributed for sale in California by Pendleton and/or Releasees prior to the Effective Date. In furtherance of the foregoing, Moorberg on its own behalf hereby waives any and all rights and benefits which it now has, or in the future may have respecting the Products, conferred upon it with respect to claims involving the Products by virtue of the provisions of 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."

By executing this Settlement Agreement, Moorberg understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if Moorberg suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Products, including but not limited to any exposure to, or

failure to warn with respect to exposure to chemicals from, the Products, Moorberg will not be able to make any claim for those damages against Pendleton or the Releasees, and the successors and assigns of any of them, who may manufacture, use, maintain, distribute, retail or sell the Products. Furthermore, Moorberg acknowledges that it intends these consequences for any such claims and any other claims which may exist as of the date of this release pertaining to the Products listed in the Notice but which Moorberg does not know exist, and which, if known, would materially affect its decision to enter into this Settlement Agreement, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Compliance with the terms of this Settlement Agreement by Pendleton resolves any issue, now and in the future, raised by the parties to this Settlement Agreement concerning compliance by Pendleton or the Releasees with the requirements of Proposition 65 in any Products that are shipped or sold by Pendleton or the Releasees following the Effective Date.

4.2 Pendleton's Release of Moorberg. Pendleton, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, assignees and Releasees, 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 and the Releasees 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.

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

Pendleton 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. Nothing in this Settlement Agreement shall be interpreted to relieve Pendleton or any Releasees from any obligation to comply with any pertinent state or federal law.

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 Pendleton:

Merton Howard, Esq.
Sophia B. Belloli, Esq.
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

For Moorberg:

Moscone Emblidge Sater & Otis LLP
Attn: Proposition 65 Controller
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.

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. POST-EXECUTION ACTIVITIES

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

10. ENFORCEMENT

This Settlement Agreement is enforceable pursuant to Code of Civil Procedure section

664.6.

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties

12. MODIFICATION

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

13. 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:

AGREED TO:

Date: 10.30.14

Date: 10/29/14

By: 
Mark Moorberg

By: C M Bishop III
Name: C M Bishop III
Title: President

Pendleton Woolen Mills, Inc.