

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 John Moore and Ball Bounce & Sport, Inc.

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Ball Bounce & Sport, Inc. (“BB&S”), with Moore and BB&S collectively referred to as the “Parties.” Moore 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. BB&S 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 §§ 25249.5 *et seq.* (“Proposition 65”).

1.1 General Allegations

Moore alleges that BB&S has manufactured, imported, sold and/or distributed for sale in California, vinyl/PVC sporting good-related game cases containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

1.2 Product Description

The products that are covered by this Settlement Agreement are defined as sporting good game cases with vinyl/PVC components including, but not limited to, *Halex Premier Horseshoes*, UPC #029807207276 that are manufactured, imported, sold and/or distributed for sale in California by BB&S (hereinafter the “Products”). BB&S has in the past manufactured, imported, acquired, sold and/or distributed for sale in California a variety of additional sporting good products which may have contained DEHP or other phthalates listed under Proposition 65, including (a) items contained in various indoor and outdoor sporting good game cases or sets and (b) various balls and associated equipment (“Additional Products”).

1.3 Notice of Violation

On September 30, 2014, Moore served BB&S and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on BB&S’s alleged failure to warn its customers, consumers, workers and other individuals that the Products exposed users in California to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.4 No Admission

BB&S denies the material factual and legal allegations contained in Moore’s Notice and maintains that all products that it has manufactured, imported, acquired, distributed, and/or sold in California, including the Products and Additional Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by BB&S 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 BB&S of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect BB&S’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 December 15, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

Reformulated Products are defined as Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, all Products and Additional Products manufactured, imported, or acquired for sale in the State of California by BB&S shall be Products that qualify as Reformulated Products as defined in Section 2.1 above. Although it may continue to distribute them to customers located outside of the State of California, BB&S shall attempt to label all previously acquired Products and Additional Products remaining in its inventory for which it does not have good faith reason to believe are Reformulated Products as not available for authorized sale in California.

2.3 Representations and Warranties

Based on its receipt of Moore's Notice, BB&S represents and warrants that it has implemented a broad reformulation program to limit DEHP, butyl benzyl phthalate ("BBP"), di-n-butyl phthalate ("DBP"), di-isodecyl phthalate ("DIDP"), diisononyl phthalate ("DINP") and di-n-hexyl phthalate ("DnHP") in components of the Products and Additional Products that may be handled, touched, or mouthed to concentrations of less than 0.1 percent (1,000 parts per million) each when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the phthalate content in a solid substance.¹

3. MONETARY PAYMENTS

3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(B)

In settlement of all the claims referred to in this Settlement Agreement, BB&S has been assessed a total of \$6000 in civil penalties in light of the representations and warranties BB&S has provided in Section 2.3 above. In accordance with California Health & Safety Code §

¹ DEHP, BBP, DBP, DIDP, DINP, and DnHP are collectively referred to herein as the "Listed Chemicals."

25249.12(c)(1) and (d), on or before the December 30, 2014, BB&S shall provide its payment in two checks to: (a) "OEHHA" in the amount of \$4,500; and (b) "John Moore, Client Trust Account" in the amount of \$1,500. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Reimbursement of Fees and Costs

The parties acknowledge that Moore and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, BB&S expressed a desire to resolve the fee and cost issue. The parties then attempted to (and did) reach an accord on the compensation due to Moore and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this agreement. BB&S shall pay \$28,000 for fees and costs incurred as a result of investigating, bringing this matter to BB&S's attention, and negotiating a settlement in the public interest. Moore's counsel has agreed to reduce the amount due under this paragraph based, in part, on BB&S's Reformulation Commitment as set forth in Section 2.2 above and the representations and warranties BB&S has given in Section 2.3 above. BB&S shall make the check payable to "The Chanler Group" and shall deliver payment on or before December 30, 2014, to the address listed in Section 3.3.1(a) below.

3.3 Payment Procedures

3.3.1 Issuance of Payments

(a) The payment owed to Moore and his counsel, pursuant to Sections 3.1 and 3.2 shall be delivered to the following payment address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

(b) The payment owed to OEHHA, pursuant to Section 3.1, 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 Non-United States 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. A copy of the check payable to OEHHA shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section 3.3.1(a) above, as proof of payment to OEHHA.

4. CLAIMS COVERED AND RELEASED

4.1 Moore’s Release of BB&S

This Settlement Agreement is a full, final and binding resolution between Moore and BB&S of any violation of Proposition 65 that was or could have been asserted by Moore on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, against BB&S, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom BB&S 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 failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by BB&S in California before the Effective Date. This release is provided in Moore’s individual capacity and is not a release on behalf of the public.

In further consideration of and reliance on the Reformulation Commitment set forth in Section 2.2 above and the representations and warranties provided by BB&S in Section 2.3 above, Moore on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all of his rights 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 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses -- including, but not limited to, investigation fees, expert fees and attorneys' fees -- limited to and arising under Proposition 65 with respect to Listed Chemicals in the Products and Additional Products manufactured, imported or acquired by BB&S before the Effective Date. This release is also provided in Moore's individual capacity and is not a release on behalf of the public.

4.2 BB&S's Release of Moore

BB&S, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Moore 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 Moore 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 or Additional Products.

5. SEVERABILITY

If any of the provisions of this Settlement Agreement are held 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. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or are no longer required as a result of any such repeal or preemption,

or rendered inapplicable by reason of law generally as to the Products, then BB&S shall provide written notice to Moore 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 and Additional Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve BB&S from any obligation to comply with any pertinent state or federal laws.

7. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the other party at the following addresses:

To Defendant BB&S:

Michael Kelly - CFO
Ball, Bounce and Sport, Inc./ Hedstrom
Plastics/Hedstrom Fitness
1 Hedstrom Drive
Ashland, OH 44805

with a copy to:

Robert Falk
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

To Plaintiff John Moore:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Moore and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code section 25249.7(f).

10. MODIFICATION

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

11. AUTHORIZATION

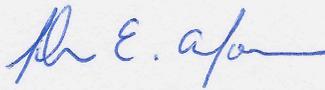
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

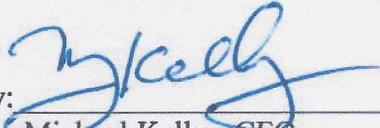
AGREED TO:

AGREED TO:

Date: DECEMBER 18, 2014

Date: December 17, 2014

By: 
John Moore

By: 
Michael Kelly - CFO
Ball, Bounce and Sport, Inc.