

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1. Parties. This Settlement Agreement is entered into by and between John Moore (“Moore”) and Tingley Rubber Corporation (“Tingley”), collectively referred to herein as “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. Tingley is a Corporation, incorporated under the laws of New Jersey.

1.2. General Allegations. Moore alleges that Tingley is a person in the course of doing business within the meaning of Health and Safety Code section 25249.11, and that Tingley manufactures, distributes and/or sells Vinyl/PVC Ponchos containing Di(2-ethylhexyl)phthalate (“DEHP”) including, but not limited to Clear Poncho, P68800, UPC #0 81138 00001 8, (“Products”).

1.3. Notice of Violation. Moore served Tingley and the requisite public prosecutors with a document titled “60-Day Notice of Violation,” dated September 20, 2014, (“Notice”) that provided the recipients with notice of the alleged violations of the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, et seq. (“Proposition 65”) based on the alleged failure to warn customers, consumers and users in the State of California that the Products expose users to DEHP.¹ 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. Tingley 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 admission by Tingley 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

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

by Tingley of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Tingley. This paragraph shall not, however, diminish or otherwise affect Tingley'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 the date the Settlement Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF

2.1. Reformulation Standards. As of the Effective Date, Tingley shall only manufacture, import, distribute, sell and/or offer for sale in California Products that are: (i) "Reformulated Products" pursuant to Section 2.2 below or (ii) Products that contain the proper health hazard warnings pursuant to Section 2.3 below.

2.2. "Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million ("ppm") when analyzed pursuant to U.S. Environmental Protection Agency 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.

2.3. All Products manufactured, imported, distributed, sold and/or offered for sale in California after the Effective Date, that are not Reformulated Products, shall contain the clear and reasonable warning appearing below. Each warning shall be printed and prominently placed in or on the packaging 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 ("Conspicuousness Requirements"). For purposes of this Settlement Agreement, a warning printed in a font size no smaller than 8 point and that otherwise complies with the requirements referenced above in this paragraph, shall be deemed to meet the Conspicuousness Requirements.

CALIFORNIA PROPOSITION 65 WARNING: This product contains a chemical known to the State of California to cause cancer and 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), Tingley 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 Moore, as follows: Within five days of the Effective Date, Tingley shall provide its civil penalty payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “John Moore” in the amount of \$500.

3.2. Attorney 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 issue to be resolved after the material terms of the agreement had been settled. Tingley then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. 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 § 1021.5, for all work performed through the mutual execution of this agreement. The Parties reached an accord on the compensation due to Moore 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, Tingley shall reimburse Moore and his counsel \$17,000 for the fees and costs incurred in investigating, bringing this matter to the attention of Tingley’s management, and negotiating a settlement in the public interest.

Within five days of the Effective Date, Tingley shall provide payment in the form of a check for \$17,000 made payable to “Moscone Emblidge & Otis LLP in Trust.”

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

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

Moscone Emblidge & 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. Tingley agrees to provide Moore’s counsel with a copy of each check payable to OEHHA, simultaneous with its penalty payments to Moore, to be delivered to the address provided in paragraph 3.3.1.

4. CLAIMS COVERED AND RELEASED

4.1. Moore’s Release of Tingley. This Settlement Agreement is a full, final, and binding resolution between Moore, in his individual capacity and not on behalf of the public, and Tingley of any violation of Proposition 65 that was or could have been asserted by Moore, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Tingley, its successors, assignees, parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Tingley 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 in Products manufactured, sold or distributed for sale in California Releasees prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Moore, in his individual capacity and not on behalf of the public, 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 Tingley, 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 Tingley prior to the Effective Date.

4.2. Tingley's Release of Moore. Tingley, 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 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 and the Releasees in this matter, or with respect to the Products.

4.3. No Upstream Release. The Parties understand and agree that this release shall not extend upstream to any entities that manufactured the Products for Tingley or any component parts thereof or to any distributors or suppliers who sold the Products or any component parts thereof to Tingley.

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 Tingley may provide written notice to Moore 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 Tingley 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 Tingley:

Michael Zedalis
President
Tingley Rubber Corporation
1551 South Washington Avenue, Suite 403
Piscataway, NJ 08854

with a copy to:

Anthony J. Reitano, Esq.
Herold Law, P.A.
25 Independence Boulevard
Warren, NJ 07059

For Moore:

Moscone Emblidge & 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

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

10. 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 among the Parties or to bind any Party to any other Party.

11. MODIFICATION

This Settlement Agreement may be modified only by written agreement 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:

AGREED TO:

Date: _____

Date: 22 January 2016

By: _____
John Moore

By: Michael A. Zedalis
Michael Zedalis
President
Tingley Rubber Corporation

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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 among the Parties or to bind any Party to any other Party.

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

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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: 01/22/2016

Date: _____

By: 
John Moore

By: _____
Michael Zedalis
President
Tingley Rubber Corporation