

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Fagor America, Inc. (“Fagor”) with Moore and Fagor each individually referred to as a “Party” and collectively as the “Parties.” Moore 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. Fagor 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

Moore alleges that Fagor manufactures, sells, and/or distributes for sale in California, canning tools with vinyl/PVC grips containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moore alleges that Fagor failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the vinyl/PVC grips of its canning tools.

1.3 Product Description

The products that are covered by this Settlement Agreement are canning tools with vinyl/PVC grips containing DEHP that are manufactured, sold or distributed for sale in California by Fagor, including, but not limited to, the *Fagor 7 Piece Home Canning Kit (Jar Wrench)*, *Item #818030420*, *UPC #7 35186 00320 9* (collectively, the “Products”).

1.4 Notice of Violation

On February 27, 2015, Moore served Fagor and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Fagor violated

Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP in its Products. 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

Fagor 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 Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Fagor 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 Fagor of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Fagor. This Section shall not, however, diminish or otherwise affect Fagor'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 October 17, 2015.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on January 1, 2016, and continuing thereafter, Fagor agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched during use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

3. **MONETARY SETTLEMENT TERMS**

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Fagor agrees to pay \$8,250 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code § 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 paid to Moore. Moore’s counsel shall be responsible for delivering OEHHA’s portion of any penalty payment(s) made under this Settlement Agreement to OEHHA.

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, Fagor shall pay an initial civil penalty in the amount of \$2,750. Fagor agrees to provide its payment in a single check made payable to “John Moore, Client Trust Account.”

3.1.2 Final Civil Penalty. On or before December 15, 2015, Fagor shall pay a final civil penalty of \$5,500. The final civil penalty shall be waived in its entirety, however, if, no later than December 1, 2015, an officer of Fagor provides Moore’s counsel with a signed declaration certifying that, as of the date of the certification, all of the Products Fagor is selling or distributing for sale in California are Reformulated Products as defined by Section 2.1, and that it will continue to only offer Reformulated Products in California in the future. The option to provide a written declaration certifying Product reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence.

3.2 Attorneys’ Fees and Costs

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 § 1021.5 for all work performed in this matter. Under these legal principles, within sixty (60) days of the Effective Date, Fagor agrees to pay

\$26,000 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of Fagor’s management, and negotiating a settlement in the public interest.

3.3 Payment Address

All payments 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

4. CLAIMS COVERED AND RELEASED

4.1 Moore’s Release of Fagor

This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and not on behalf of the public, and Fagor, 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 assigns, against Fagor and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Fagor directly or indirectly distributes or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, licensees, and Bed Bath & Beyond, Inc. (“Releasees”), based on the alleged failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by Fagor before the Effective Date.

In further consideration of the promises and agreements herein contained, Moore, as an individual and not on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and assigns, 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, arising under Proposition 65 with respect to exposures to DEHP from Products sold or distributed for sale by Fagor before the Effective Date.

The releases provided by Moore under this Settlement Agreement are provided solely on Moore's behalf and are not releases on behalf of the general public.

4.2 Fagor's Release of Moore

Fagor, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assigns, hereby waives any and all claims against Moore and his attorneys and other representatives, for any and all actions taken or statements made by Moore and his attorneys and other representatives, whether in the course of investigating claims, 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.

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 Fagor may 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 are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice 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 Fagor:

Alexandra Hansil
Fagor America, Inc.
1099 Wall St. Suite 179
Lyndhurst, NJ 07071

With a copy to:

Peg Carew Toledo
Toledo Don, LLP
3001 Douglas Blvd., Suite 340
Roseville, CA 95661

For Moore:

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

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)

Moore 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

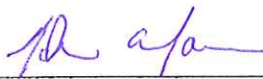
their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

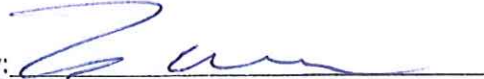
AGREED TO:

AGREED TO:

Date: 10/22/2015

Date: 10/16/2015

By: 
JOHN MOORE

By: 
PATRICIO BARRIGA, PRESIDENT
FAGOR AMERICA, INC.