

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore, (“Moore”) and Fortune Brands Home & Security, Inc. (Fortune) with Moore and Fortune 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. Fortune 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 Fortune manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, vinyl/PVC self defense device holsters that contain the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and/or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are self defense device holsters made with vinyl/PVC containing DEHP, that are manufactured, sold and/or distributed for sale in California by Fortune, including, but not limited to, *American Defender Red Pepper Spray, #50319, UPC #0 37325 96329 1* (collectively, “Products”).

### 1.4 Notice of Violation

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

Fortune 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**

Fortune denies the material, factual, and legal allegations contained in the Notice and Fortune 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 Fortune 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 Fortune of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Fortune. This Section shall not, however, diminish or otherwise affect Fortune'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 1, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS**

### **2.1 Reformulated Products**

Commencing on October 1, 2015, and continuing thereafter, Fortune agrees to only manufacture, distribute, or purchase for sale in or into California: (a) "Reformulated Products", or (b) Products that are sold with a clear and reasonable health hazard warning, pursuant to Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" shall mean 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.

## **2.2 Clear and Reasonable Warnings**

Fortune agrees that as of the Effective Date, all Products it sells and/or distributes in California which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Fortune further agrees that the warning will be prominently placed with such conspicuousness when 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 of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and containing one of the following statements:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

or

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm).

The phrase "Wash hands after handling" may be added to the warning pursuant to this section, but it is not required.

## **2.3 Grace Period for Existing Inventory of Products**

Fortune represents that it currently has a health hazard warning in place for the Products. Fortune agrees that, until it exhausts its current inventory of such warnings, it may continue to sell and offer for sale in California those Products labeled with the following statement: "This product contains one or more chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. Wash hands after handling."

3. **MONETARY SETTLEMENT TERMS**

**3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Fortune agrees to pay \$10,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (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 remitting Fortune's penalty payment(s) under this settlement to OEHHA.

**3.1.1 Initial Civil Penalty.** Within seven business days of the Effective Date, Fortune shall pay an initial civil penalty of \$2,000. Fortune shall provide its payment in a single check made payable to "John Moore Client Trust Account", to be delivered to the address provided in section 3.3, below.

**3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation.** On April 15, 2016, Fortune shall make a final civil penalty payment of \$8,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Moore agrees that the final civil penalty payment shall be waived in its entirety if, no later than April 1, 2016, an officer or other authorized representative of Fortune provides Moore with an original, signed written certification that all of the Products it ships for sale or distributes for sale in California as of the date of its certification are Reformulated Products, and that Fortune will continue to offer only Reformulated Products in California in the future. The option to certify early reformulation in lieu of making the final civil penalty payment otherwise required by this Section is a material term, and time is of the essence. Fortune shall deliver its certificate, if any, to Moore's counsel at the address provided in Section 3.3, below.

### **3.2 Reimbursement of Moore's 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 section 1021.5 for all work performed in this matter. Under these legal principles, within seven business days of the Effective Date, Fortune agrees to pay \$20,000 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 Fortune's management, and negotiating a settlement in the public interest.

### **3.3 Payment Address**

All payments required by this Consent Judgment shall be delivered to the following address:

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 Fortune**

This Settlement Agreement is a full, final and binding resolution between Moore and Fortune, of any violation of Proposition 65 that was or could have been asserted by Moore on his own behalf, or on behalf of himself, his past and current agents, representatives, attorneys, successors, and assignees, against Fortune, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Fortune directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged failure to warn about exposures to DEHP in Products sold or distributed for sale by Fortune prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Moore on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, 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 the failure to warn about exposures to DEHP from Products sold or distributed for sale by Fortune 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 public.

#### **4.2 Fortune's Release of Moore**

Fortune on its own behalf and on behalf of 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, 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 of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the remaining enforceable 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 Fortune 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 Fortune:

Levi W. Heath  
Barnes & Thornburg LLP  
2029 Century Park East, Suite 300  
Los Angeles, CA 90067

For Moore:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St.  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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.

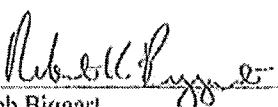
AGREED TO:

Date: 10/2/2015

By:   
John Moore

AGREED TO:

Date: \_\_\_\_\_

By:   
Bob Biggart  
Fortune Brands Home & Security, Inc.