

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and South Bend Sporting Goods, Inc. (“South Bend”), with Moore and South Bend 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. Moore alleges that South Bend 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 South Bend manufactures, sells, and/or distributes for sale in California, vinyl/PVC handheld exercise weights containing 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 South Bend failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from vinyl/PVC handheld exercise weights.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC handheld exercise weights containing DEHP that are manufactured, sold or distributed for sale in California by South Bend including, but not limited to, the *Denise Austin Forever Fit! Toning & Strength Dumbbell 1 LB, RA-DMBL1, UPC No. 0 39364 76231 6*, and the *ZoN Dumbbell* line of products (collectively, the “Products”).

### 1.4 Notice of Violation

On or about February 27, 2015, Moore served South Bend, and certain requisite

public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that South Bend violated Proposition 65 when it failed to warn its customers and consumers in California that its 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**

South Bend 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 South Bend 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 South Bend of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by South Bend. However, this Section shall not diminish or otherwise affect South Bend’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 September 15, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 Reformulation Commitment**

On or before December 1, 2015 and continuing thereafter, South Bend 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 a maximum DEHP concentration of 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. 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 section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, South Bend agrees to pay \$31,500 in civil penalties, according to the following subsections. Each penalty payment will be allocated in accordance with California Health and Safety Code section 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, and delivered to the address in Section 3.3 herein. Moore’s counsel will 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 ten days of the Effective Date, South Bend shall pay an initial civil penalty in the amount of \$6,500. South Bend will provide its payment in a single check made payable to “John Moore, Client Trust Account” in the amount of \$6,500.

**3.1.2 Final Civil Penalty.** On or before October 1, 2015, South Bend shall pay a final civil penalty of \$25,000. Moore agrees, however, that the final civil penalty shall be waived in its entirety if, no later than October 1, 2015, an officer of South Bend provides Moore’s counsel with written certification stating that, as of the date of the certification, all Products shipped, sold or distributed for sale in California by South Bend are Reformulated Products, and that it will continue to provide only Reformulated Products in the future. The option to provide a written certification of expedited reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence. South Bend shall deliver its certificate, if any, to Moore’s counsel at the address provided in Section 3.3, below.

#### **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 section 1021.5 for all work performed in this matter. Under these legal principles, South Bend agrees to pay \$25,000 to Moore and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of South Bend's management, and negotiating a settlement in the public interest. South Bend's payment shall be due within ten days of the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by 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 South Bend**

This Settlement Agreement is a full, final and binding resolution between Moore and South Bend, 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 ("Releasers"), and Releasers hereby release any such claims, against South Bend, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom South Bend directly or indirectly distributes or sells Products, including but not limited to Rite Aid as well as any other downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about alleged or actual exposures to DEHP contained in Products manufactured, distributed, sold or offered for sale by South Bend in California before the Effective Date, as alleged in the Notice.

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 assignees, hereby covenants not to sue and 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 DEHP contained in the Products manufactured, distributed, sold and/or offered for sale by South Bend 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 South Bend's Release of Moore**

South Bend, 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 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.

#### **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 otherwise rendered inapplicable by reason of law generally, as to South Bend

specifically as a result of a statutory exemption, or as to the Products, then South Bend may provide written notice to Moore of any asserted change in the law, or its applicability to South Bend or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, South Bend or 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 South Bend:**

Jory Katlin, President  
South Bend Sporting Goods, Inc.  
1910 Techny Road  
Northbrook, IL 60062

Carol Brophy, Esq.  
Sedgwick LLP  
333 Bush Street, 30th Floor  
San Francisco, CA 94104

**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**

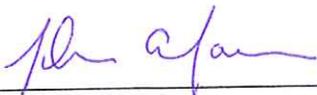
This Settlement Agreement may be modified only by written agreement of the Parties.

**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:**

Date: SEPT. 14, 2015

By:   
JOHN MOORE

**AGREED TO:**

Date: 9/12/15

By:   
Jory Katlin, President  
SOUTH BEND SPORTING GOODS, INC.