

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore, (“Moore”) and Bon Tool Company (“Bon Tool”) with Moore and Bon Tool 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. Bon Tool employs 10 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 Bon Tool manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, vinyl/PVC tool grips 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 vinyl/PVC tool grips containing DEHP, that are manufactured, sold and/or distributed for sale in California by Bon Tool, including, but not limited to, *Bon Punch Lock Crimper, #15-515, UPC #7 43153 15515 8* (collectively, “Products”).

1.4 Notice of Violation

On May 21, 2015, Moore served Bon Tool and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Bon Tool 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

Bon Tool 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 federal, state and local laws. Nothing in this Settlement Agreement shall be construed as an admission by Bon Tool 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 Bon Tool of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Bon Tool. This Section shall not, however, diminish or otherwise affect Bon Tool'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 December 1, 2015.

2. INJUNCTIVE SETTLEMENT TERMS

2.1 Reformulated Products

Commencing on the Effective Date and continuing hereafter, Bon Tool shall only purchase for sale or manufacture for sale in California: (a) "Reformulated Products"; or (b) Products that are sold with a clear and reasonable warning in accordance with subsection 2.2, below. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 1,000 ppm (0.1%) DEHP content in any component analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining DEHP content in a solid substance.

2.2 Clear and Reasonable Warnings

For purposes of this Consent Judgment, a clear and reasonable warning shall be prominently placed with such conspicuousness when compared to other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use, and contain the following statement:

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 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, Bon Tool agrees to pay \$9,000 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 Bon Tool’s penalty payment(s) under this settlement to OEHHA.

3.1.1 Initial Civil Penalty. Within two days of the Effective Date, Bon Tool shall pay an initial civil penalty of \$2,000. Bon Tool 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. On July 15, 2016, Bon Tool shall make a final civil penalty payment of \$7,000. 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 July 1, 2016, an officer of Bon Tool 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 Bon Tool will continue to offer only Reformulated Products in California in the future. The option to certify 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. Bon Tool 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 five days of the Effective Date, Bon Tool agrees to pay \$21,500 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 Bon Tool'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 Bon Tool

This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and not on behalf of the public, and Bon Tool, of any violation of Proposition 65 that was or could have been asserted by Moore on his own behalf, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees,

against Bon Tool, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Bon Tool 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 Bon Tool prior to the Effective Date. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 with respect to any DEHP in Products sold or distributed for sale by Bon Tool after 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 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 Bon Tool 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 Bon Tool’s Release of Moore

Bon Tool 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.

4.3 Mutual Waiver of California Civil Code Section 1542

The Parties each acknowledge he/it is familiar with Section 1542 of the Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties, each on his/its own behalf, and on behalf of his/its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.1 and 4.2, above.

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 Bon Tool 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 Bon Tool:

Carl Bongiovanni, President
Bon Tool Company
4430 Gibsonia Road
Gibsonia, PA 15044

For Moore:

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

With a copy to:

Mark I. Baseman, Esq.
Cohen & Grigsby, P.C.
625 Liberty Avenue
Pittsburgh, PA 15222-3152

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: OCTOBER 28, 2015

By: 
John Moore

AGREED TO:

Date: 10-29-2015

By: 
Bon Tool Company