

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore, (“Moore”) and Environmental Technology, Inc. (“Environmental Technology”) with Moore and Environmental Technology 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. Environmental Technology 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 Environmental Technology manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, brass knob bases containing Lead. Lead 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 brass knob bases containing Lead, that are manufactured, sold and/or distributed for sale in California by Environmental Technology, including, but not limited to, *Castin’ Craft Designer Knob Bases*, UPC #0 33331 33510 7 (collectively, “Products”).

### 1.4 Notice of Violation

On May 21, 2015, Moore served Environmental Technology and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Environmental Technology violated Proposition 65 when it failed to warn its

customers and consumers in California that the Products expose users to Lead. 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**

Environmental Technology denies the material, factual, and legal allegations contained in the Notice and Environmental Technology 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 Environmental Technology 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 Environmental Technology of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Environmental Technology. This Section shall not, however, diminish or otherwise affect Environmental Technology'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 RELIEF: REFORMULATED PRODUCTS**

Commencing on the Effective Date and continuing hereafter, Environmental Technology shall only purchase for sale or manufacture for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products containing a maximum of 90 parts per million of Lead by weight in any accessible component (i.e., any component that can be touched or handled during reasonably a foreseeable use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that yield a result of less than 1.0 micrograms of Lead when analyzed pursuant to the NIOSH 9100 testing protocol.

**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, Environmental Technology agrees to pay \$12,500 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 Environmental Technology’s penalty payment(s) under this settlement to OEHHA.

**3.1.1 Initial Civil Penalty.** Within two days of the Effective Date, Environmental Technology shall pay an initial civil penalty of \$3,500. Environmental Technology 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 January 29, 2016, Environmental Technology shall make a final civil penalty payment of \$9,000. 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 January 15, 2016, an officer of Environmental Technology 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 Environmental Technology 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. Environmental Technology 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, Environmental Technology agrees to pay \$22,000 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 Environmental Technology'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 Environmental Technology**

This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and not on behalf of the public, and Environmental Technology, 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 Environmental Technology, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Environmental Technology directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers (including Beverly Fabrics, Inc.), franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged failure to warn about exposures to Lead

in Products sold or distributed for sale by Environmental Technology prior to 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 Lead from Products sold or distributed for sale by Environmental Technology 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 Environmental Technology's Release of Moore**

Environmental Technology 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 Environmental Technology may provide written notice to Moore of any asserted change in the law, and shall have no further injunctive 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 Environmental Technology:

David Fonsen, President  
Environmental Technology, Inc.  
300 South Bay Depot Road  
Fields Landing, CA 95537

For Moore:

Attn: Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
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: 11/24/2015

By:   
JOHN MOORE

**AGREED TO:**

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

By: \_\_\_\_\_  
David Fonsen, President  
ENVIRONMENTAL TECHNOLOGY, INC.

9. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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**AGREED TO:**

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

By: \_\_\_\_\_  
JOHN MOORE

**AGREED TO:**

Date: 10-12-15 \_\_\_\_\_

By:  \_\_\_\_\_  
David Fonsen, President  
ENVIRONMENTAL TECHNOLOGY, INC.