

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and Cortland Line Manufacturing LLC and Cortland Line Sales LLC (collectively “Cortland”), with Moorberg and Cortland each individually referred to as a “Party” and collectively as the “Parties.” Moorberg 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. Cortland employs ten or more individuals 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 and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moorberg alleges that Cortland manufactures, sells, and distributes for sale in California (a) vinyl/PVC nets (“Nets”) containing di(2-ethylhexyl)phthalate (“DEHP”) and (b) vinyl/PVC pouches (“Pouches”) containing DEHP, and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are: (a) Nets containing DEHP that are sold or distributed for sale in California by Cortland including, but not limited to, the *Cortland Bamboo Catch & Release Net with vinyl/PVC nets, STK # 663817, UPC #0 43372 66381 7*; (b) Pouches containing DEHP that are manufactured, sold or distributed for sale in California by Cortland, including but not limited to, the

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Pouches offered in connection with the *Cortland Line Company Hat/Visor Clip-On Magnifier (Pouch)*, Item No. 645721, UPC #0 43372 64572 1 (collectively hereinafter the “Products”).

#### **1.4 Notices of Violation**

On June 26, 2015, Moorberg served Cortland, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Cortland violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from its Nets.

On April 27, 2016, Moorberg served Cortland and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supplemental Notice”), alleging that Cortland violated Proposition 65 when it failed to warn customers and consumers in California of the health hazards associated with exposures to DEHP from its Pouches, in addition to the Nets. The Notice and the Supplemental Notice shall collectively be referred to hereinafter as the “Notices”. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting an action to enforce the violations alleged in the Notices.

#### **1.5 No Admission**

Cortland denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has sold and distributed for sale 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 Cortland 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 Cortland of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Cortland. This Section shall not, however, diminish or otherwise affect Cortland’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 July 15, 2016.

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

### **2.1 Commitment to Reformulate or Provide Warnings**

Commencing on the Effective Date and continuing thereafter, Cortland agrees to only manufacture for sale or purchase for sale in California, Products that are either (1) "Reformulated Products", as defined in Section 2.2., or (2) Products that are sold or shipped with one of the clear and reasonable warnings set forth in subsection 2.3.

### **2.2 Reformulated Products**

For purposes of this Settlement Agreement, Reformulated Products are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) when analyzed pursuant to Consumer Product Safety Commission's CPSC-CH-C1001-09.3 method or other equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance, such as U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.

### **2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date, for all Products other than Reformulated Products, Cortland agrees that it will only sell or distribute for sale Products bearing a clear and reasonable warning in compliance with this Section. For purposes of this Agreement, a clear and reasonable warning shall be prominently placed with such conspicuousness as 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product(s) the warning applies, so as to minimize the risk of consumer confusion. Cortland shall affix a warning to the

packaging, labeling or directly on any Products that are not Reformulated Products sold in California that states one of the following:

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

Or

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

### **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, Cortland agrees to pay \$\$6,000.00 in civil penalties. Within five days of the Effective Date, Cortland shall make the civil penalty payment of \$6,000 in a single check made payable to "Mark Moorberg, Client Trust Account." 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 paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by Moorberg. Moorberg's counsel shall be responsible for delivering OEHHA's portion of any penalty payment(s) made under this Settlement Agreement.

#### **3.2 Attorneys' Fees and Costs**

The Parties reached an accord on the compensation due to Moorberg 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 five days of the Effective Date, Cortland agrees to pay \$18,250.00 to Moorberg and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Cortland's management, and negotiating a settlement. Cortland's payment shall be delivered 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 Moorberg's Release of Cortland**

This Settlement Agreement is a full, final, and binding resolution between Moorberg and Cortland, of any violation of Proposition 65 that was or could have been asserted by Moorberg on his own behalf and not on behalf of the general public, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Cortland, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Cortland directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Wal-Mart Stores, Inc. ("Releasees"), based on the failure to warn about exposures to DEHP in Products manufactured, sold or distributed for sale in California by Cortland before the Effective Date, as alleged in the Notice. The definition of Products includes items in both notices, after the requisite 60-day period has expired in regards to the April 27<sup>th</sup>, 2016 Supplemental Notice, and provided that no public enforcer has commenced or is diligently prosecuting an action to enforce the violations alleged in the Notices.

In further consideration of the promises and agreements herein contained, Moorberg on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all

claims against Cortland and Releasees including, without limitation, all actions and causes of action, 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 alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by Cortland, before the Effective Date.

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

#### **4.2 Cortland's Release of Moorberg**

Cortland, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Moorberg and his attorneys and other representatives, for any and all actions taken or statements made by Moorberg 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, or as to the Products, then Cortland may provide written notice to Moorberg 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 Cortland:

John Wilson  
President  
Cortland Line Manufacturing, LLC and  
Cortland Line Sales, LLC  
3736 Kellogg Road  
Cortland, NY  
13045

with a copy to:

Elizabeth V. McNulty, Esq.  
Taylor | Anderson LLP  
19100 Von Karman Ave., Ste. 820  
Irvine, Ca. 92612

For Moorberg:

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)**

Moorberg and his attorneys agree to comply with the reporting form requirements

referenced in California Health and Safety Code § 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.

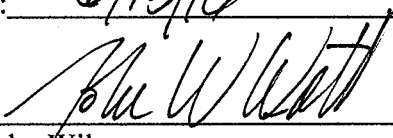
**AGREED TO:**

Date: 6/13/2016

By:   
MARK MOORBERG

**AGREED TO:**

Date: 6/13/16

By:   
John Wilson  
President  
Cortland Line Manufacturing, LLC and  
Cortland Line Sales, LLC