

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and Yasutomo Inc. (“Yasutomo”), with Moorberg and Yasutomo 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. Yasutomo 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

Moorberg alleges that Yasutomo manufactures, sells, and distributes for sale in California, pouches with vinyl/PVC components (“pouches”) containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moorberg alleges that Yasutomo failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the pouches.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are pouches containing DEHP that are manufactured, sold or distributed for sale in California by Yasutomo, including, but not limited to, the pouches offered in connection with the *Niji Roll Multi-Purpose Pouch*, WCP24, UPC #0 31248 99498 1 (“Products”).

#### **1.4 Notice of Violation**

On July 13, 2015, Moorberg served Yasutomo and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that

Yasutomo violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its pouches. 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**

Yasutomo 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 Yasutomo 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 Yasutomo of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Yasutomo. This Section shall not, however, diminish or otherwise affect Yasutomo'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 November 20, 2015.

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

Commencing on January 5, 2016 and continuing thereafter, Yasutomo agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products (as defined in Section 1.3 of this Settlement Agreement) containing less than or equal to 1,000 parts per million (0.1%) DEHP in each component 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.

### **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, Yasutomo agrees to pay \$8,000 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 Moorberg. Moorberg’s counsel shall be responsible for delivering OEHHA’s portion of any civil penalty payment(s) made under this Settlement Agreement to OEHHA.

##### **3.1.1 Initial Civil Penalty Payment**

On or before November 25, 2015, Yasutomo shall make an initial civil penalty payment of \$2,000.00. It shall deliver its payment in a single check made payable to “Mark Moorberg, Client Trust Account.”

##### **3.1.2 Final Civil Penalty Payment; Waiver for Early Reformulation**

On November 30, 2015, Yasutomo shall make a final civil penalty payment in the amount of \$6,000.00. Pursuant to Title 11 California Code of Regulations section 3203(c), Moorberg agrees that the final civil penalty will be waived in its entirety if, no later than November 20, 2015, Yasutomo provides Moorberg’s counsel with a signed declaration certifying that all of the Products it manufactures (or causes to manufacture) on or after the Effective Date for sale or distribution for sale in California are Reformulated Products as defined by Section 2, and that Yasutomo will continue to only offer Reformulated Products in California in the future. The option to provide a declaration certifying early completion of reformulation in lieu of making the final civil penalty payment is a material term of this Settlement Agreement, and time is of the essence.

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

The Parties acknowledge that Moorberg and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Yasutomo expressed a desire to resolve Moorberg's 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 section 1021.5 for all work performed in this matter. Under these legal principles, on or before November 25, 2015, Yasutomo agrees to pay \$18,000.00 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 Yasutomo's management, and negotiating a settlement in the public interest.

### **3.3 Payment Address**

All payments under this Settlement Agreement 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 Moorberg's Release of Yasutomo**

This Settlement Agreement is a full, final and binding resolution between Moorberg and Yasutomo, of any violation of Proposition 65 that was or could have been asserted by Moorberg on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Yasutomo, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,

attorneys, and each entity to whom Yasutomo directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by Yasutomo in California before the Effective Date.

In further consideration of the promises and agreements herein, Moorberg, 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 exposures to DEHP from Products manufactured, distributed, sold and/or offered for sale by Yasutomo before the Effective Date. The releases provided by Moorberg under this Settlement Agreement are provided solely on Moorberg’s own behalf and not on behalf of the public in California.

#### **4.2 Yasutomo’s Release of Moorberg**

Yasutomo, 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 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, 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 deemed 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 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Yasutomo 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 Yasutomo:

Daniel Egusa, President  
Yasutomo Inc.  
1805 Rollins Rd.  
Burlingame, CA 94010

For Moorberg:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

With a copy to:

Christopher C. Jensen  
Hansen Bridget LLP  
425 Market Street  
Twenty-Fifth Floor  
San Francisco, CA 94105

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 section 25249.7(f).

10. **MODIFICATION**

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

11. **AUTHORIZATION**

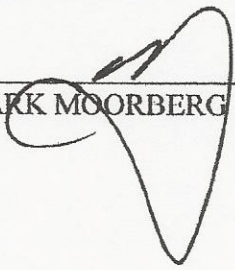
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

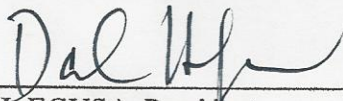
**AGREED TO:**

**AGREED TO:**

Date: 11.17.15

Date: 11-17-2015

By:   
MARK MOORBERG

By:   
DANIEL EGUSA, President  
Yasutomo Inc.