

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 John Moore and Power Products LLC**

This Settlement Agreement (“Settlement Agreement”) is entered into by and between John Moore (“Moore”) and Power Products LLC (“Power”) with Moore and Power collectively referred to as the “Parties.” Moore is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Power 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 §§ 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Moore alleges that Power manufactures, imports, sells and/or distributes for sale in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning that Moore alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects, and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are vinyl/PVC electrical tape containing DEHP including, but not limited to, *GB Gardner Bender 3/4“ x 60’ x 7 mil PVC Electrical Tape – Black, GTP-607, UPC #0 32076 89522 8*, manufactured, imported, distributed, sold and/or offered for sale by Power in the State of California, hereinafter the “Products.”

### **1.4 Notice of Violation**

On or about May 26, 2016, Moore served Power, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Power 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**

Power denies the material, factual and legal allegations contained in the Notice and maintains that all 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 Power of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Power of any fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish or otherwise affect the 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 7, 2016.

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

### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

### **2.2 Reformulation Commitment**

As of the Effective Date, Power shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above, or Products containing appropriate health hazard warnings as described in Section 2.3 below.

### **2.3 Product Warnings**

Power asserts that it has instituted a warning program for the Products, and that the warnings it provides for its current stock meet the current Proposition 65 warning requirements. However, commencing on or before the effective date, Power shall provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b) if they do not qualify as Reformulated Products. The warning language in subsections 2.3(a) and (b) shall not apply to Products that are in stock prior to the Effective Date, and that contain Power's current warning language. Products that are in stock prior to the Effective Date shall continue to possess the warning used in Power's already existing warning program. Each 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 the warning applies, so as to minimize the risk of consumer confusion.

#### **(a) Retail Store Sales.**

**(i) Product Labeling.** Power shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Power or any person selling the Products, that states:

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

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause birth defects and other reproductive harm:

**WARNING:** This product contains chemicals known to the State of California to cause birth defects and other reproductive harm, including DEHP.

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause cancer, birth defects and other reproductive harm:

**WARNING:** This product contains chemicals known to the State of California to cause cancer, and birth defects and other reproductive harm, including DEHP.

(ii) **Point-of-Sale Warnings.** Alternatively, Power may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Power's customers shall be sent by certified mail, return receipt requested.

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

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause birth defects and other reproductive harm:

**WARNING:** This product contains chemicals known to the State of California to cause birth defects and other reproductive harm, including DEHP.

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause cancer, birth defects and other reproductive harm:

**WARNING:** This product contains chemicals known to the State of California to cause cancer, and birth defects and other reproductive harm, including DEHP.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement must be used:<sup>1</sup>

**WARNING:** The following products contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm:

*[list products for which warning is required]*

---

<sup>1</sup>For purposes of this Settlement Agreement, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause birth defects and other reproductive harm:

**WARNING:** This following products contains chemicals known to the State of California to cause birth defects and other reproductive harm, including DEHP.

*[list products for which warning is required]*

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause cancer, birth defects and other reproductive harm:

**WARNING:** This following products contains chemicals known to the State of California to cause cancer, and birth defects, and other reproductive harm, including DEHP.

*[list products for which warning is required]*

**(b) Mail Order Catalog and Internet Sales.** In the event that Power sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Power shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

**(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

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

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause birth defects and other reproductive harm:

**WARNING:** This product contains chemicals known to the State of California to cause birth defects and other reproductive harm, including DEHP.

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause cancer, birth defects and other reproductive harm:

**WARNING:** This product contains chemicals known to the State of California to cause cancer, and birth defects, and other reproductive harm, including DEHP.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Power may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

**WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause birth defects and other reproductive harm:

**WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause birth defects and other reproductive harm, including DEHP.

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause cancer, birth defects and other reproductive harm:

**WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause cancer, and birth defects, and other reproductive harm, including DEHP.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Power must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

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

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause birth defects and other reproductive harm:

**WARNING:** This product contains chemicals known to the State of California to cause birth defects and other reproductive harm, including DEHP.

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause cancer, birth defects and other reproductive harm:

**WARNING:** This product contains chemicals known to the State of California to cause cancer, and birth defects, and other reproductive harm, including DEHP.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

**WARNING:** Products identified on this page with the following symbol ▼ contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause birth defects and other reproductive harm:

**WARNING:** Products identified on this page with the following symbol ▼ contain chemicals known to the State of California to cause birth defects and other reproductive harm, including DEHP.

Or, in the event that Power has evidence that the Product contains a Proposition 65-listed chemical, in addition to DEHP, that is known to cause cancer, birth defects and other reproductive harm:

**WARNING:** Products identified on this page with the following symbol ▼ contain chemicals known to the State of California to cause cancer, and birth defects, and other reproductive harm, including DEHP.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code section 25249.7(b), Power shall pay civil penalties in the amount of \$7,500. The penalty payment shall be allocated according to Health and Safety Code sections 25249.12(c)(1) and (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 paid to Moore. Within two (2) business days of the Effective Date, Power shall issue a check payable to “John Moore, Client Trust Account” in the amount of \$1,875, and a check made payable to “OEHHA” in the amount of \$5,625, delivered to the address in Section 3.3



below. Moore's counsel shall be responsible for remitting Power's penalty payment under this Settlement Agreement to OEHHA.

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

The Parties acknowledge that Moore 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 finalized, Power expressed a desire to resolve Moore's fees and costs. The Parties then negotiated a resolution of the compensation due to Moore and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5. For all work performed through the mutual execution of this agreement, within two (2) business days of the Effective Date, Power shall reimburse Moore and his counsel \$26,000. Power's payment shall be delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Moore investigating, bringing this matter to Power's attention and negotiating a settlement of the matter.

### **3.3 Payment Address**

All payments required by 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 Moore's Release of Proposition 65 Claims**

Moore acting on his own behalf, and *not* on behalf of the public, releases Power, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Power directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all

claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Power.

#### **4.2 Moore's Individual Releases of Claims**

Moore, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Moore of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Power prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Power. Nothing in this Section affects Moore's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Power's Products.

#### **4.3 Power's Release of Moore**

Power, on behalf of itself, its past and current agents, representatives, attorneys, successors, and 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 or otherwise seeking to enforce Proposition 65 against it in this matter 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 enforceable provisions remaining 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Power shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve Power from any obligation to comply with any pertinent state or federal toxics control law.

**7. NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Power:

Steven Soule  
Kirkland & Ellis LLP  
333 South Hope Street  
Los Angeles, CA 90071

Re: matter # 17350-8

For Moore:

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

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or 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 agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

**10. MODIFICATION**

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

**11. AUTHORIZATION**

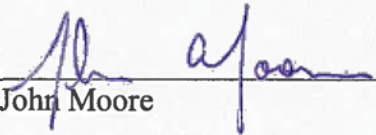
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agreed to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: 12/8/2016

Date: 12/1/16

By:   
John Moore

By:   
Adam McMahon, CFO & Secretary  
Power Products LLC