

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Northwest River Supplies, Inc. (“NRS”), with Moore and NRS 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. Moore alleges that NRS 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 section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

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

1.3 Product Description

The products covered by this Settlement Agreement are limited to the *NRS Tuff Sack Dry Bag* manufactured, sold or distributed for sale in California by NRS (“Products”).

1.4 Notice of Violation

On or about June 14, 2016, Moore served NRS, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that NRS violated Proposition 65 when it failed to warn its customers and consumers in California that its vinyl/PVC dry bags 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. However, this Section shall not diminish or otherwise affect the commitments, obligations, responsibilities, and duties of Moore and Moore's attorneys or agents under this Settlement Agreement.

1.5 No Admission

NRS 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 NRS 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 NRS of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by NRS. However, this Section shall not diminish or otherwise affect NRS' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this agreement is executed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate or Provide Warnings

On or before the Effective Date and continuing thereafter, NRS agrees only to manufacture for sale or purchase for sale in or into California: (a) "Reformulated Products" as defined by subsection 2.2 below, or (b) Products that are sold with a clear and reasonable warning in accordance with subsection 2.3 below.

2.2 Reformulated Products

For purposes of this Settlement Agreement, "Reformulated Products" are Products containing DEHP in concentrations of 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 other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by NRS that are not Reformulated Products, NRS agrees to only offer such Products for sale with a clear and reasonable warning in accordance with this Section. NRS further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when 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 of purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying labeling or packaging sold in California containing the following statement:

WARNING: This product can expose you to Di(2-ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm.

The warning may include to the left of the word "WARNING" a symbol consisting of an exclamation point within a triangle.

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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, NRS agrees to pay \$12,000 in civil penalties. Each civil penalty set forth in Sections 3.1.1 and 3.1.2, below, will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (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, and delivered to the address in Section 3.3 herein.

3.1.1 Initial Civil Penalty Within 5 days of the Effective Date, NRS shall provide an initial civil penalty payment of \$4,000 as follows: (1) a check in the amount of \$3,000 payable to “OEHHA;” and (2) a check in the amount of \$1,000 payable to “John Moore Client Trust Account.”

3.1.2 Final Civil Penalty

On or before August 1, 2018, NRS shall make a final civil penalty payment of \$8,000. 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 15, 2018, an officer of NRS provides Moore with written certification that all of the Products distributed, shipped, sold and offered for sale in California, as of the date of the certification, are Reformulated Products as defined by Section 2.1, and that NRS will continue to offer only Reformulated Products in California in the future. The option to certify to reformulation in lieu of making the final civil penalty payment required by this Section is a material term and time is of the essence. Unless waived, NRS shall provide the final civil penalty payment as follows: (1) a check in the amount of \$6,000 payable to “OEHHA;” and (2) a check in the amount of \$2,000 payable to “John Moore Client Trust Account.”

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3.2 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, NRS agrees to pay \$23,000 to Moore and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of NRS' management, and negotiating a settlement that provides a significant public benefit. NRS' payment shall be due within 5 days of the Effective Date, and delivered to the address in Section 3.3 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 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 NRS

This Settlement Agreement is a full, final, and binding resolution between Moore and NRS 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 NRS, its parents subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom NRS directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (collectively "Releasees"), based on the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by NRS in California before the Effective Date.

In further consideration of the promises and agreements herein, Moore, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Releasees, 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 NRS before the Effective Date. The releases provided by Moore under this Settlement Agreement are provided solely on Moore's own behalf and not on behalf of the public in California.

4.2 NRS' Release of Moore

NRS, 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 by Moore 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 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 otherwise rendered inapplicable by reason of law generally, as to NRS specifically as a result of a statutory exemption, or as to the Products, then NRS may

provide written notice to Moore of any asserted change in the law, or its applicability to NRS or the Products, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, NRS or the Products are so affected.

By entering this Settlement Agreement, NRS does not waive its right to challenge jurisdiction or venue in California.

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:

NRS

Bryan Dingel, President
Northwest River Supplies, Inc.
2009 South Main Street
Moscow, ID 83843

Duncan Palmatier
Law Office of Duncan Palmatier
124 North Howard
Moscow, Idaho 83843

Moore

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.

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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**

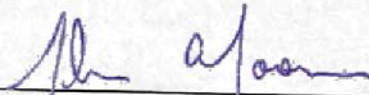
This Settlement Agreement may be modified only by written agreement of the Parties.

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: 12/22/2016

By: 
JOHN MOORE

AGREED TO:

Date: 12-22-16

By: 
Bryan Dingel, ~~President~~ CEO
NORTHWEST RIVER SUPPLIES, INC.