

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and defendants Wilton Brands LLC, and Wilton Industries, Inc. (collectively, “Wilton”), with Moore and Wilton 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 Wilton 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 Wilton manufactures, sells, and/or distributes for sale in California, glassware with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moore alleges that Wilton failed to provide the health hazard warning required by Proposition 65 for exposures to lead from the exterior designs of Wilton’s glassware.

1.3 Product Description

The products that are covered by this Settlement Agreement are glassware with exterior designs containing lead including, but not limited to, the *Wilton Best Man & Maid Toasting Glasses, Stock No. 120-608, UPC #0 70896 12608 5* manufactured, sold or distributed for sale in California by Wilton (“Products”).

1.4 Notice of Violation

On or about June 14, 2016, Moore served Wilton, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Wilton violated Proposition 65 when it failed to warn its customers and consumers in California

that its 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

Wilton 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 Wilton 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 Wilton of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Wilton. However, this Section shall not diminish or otherwise affect Wilton'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 April 17, 2017.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

On or before the Effective Date and continuing thereafter, Wilton agrees to only purchase for sale in or into California, "Reformulated Products". For the purposes of this Settlement Agreement, Reformulated Products are defined as Products that (a) contain lead in concentrations of no more than 90 parts per million ("ppm") (0.09%) in any exterior decorations analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and 6010B; (b) yield a result of no more than 1.0 micrograms of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol; and (c) yield a result of "Non-detect" (defined as no more than 25 ppm Lead content) in any decoration(s) located in the upper 20 centimeters of a Product, i.e.,

the “Lip-and-Rim” area of the vessel, or on any decoration(s) located on the interior surface of the Product (i.e., the beverage-containing portion) when analyzed pursuant to EPA testing methodologies 3050B and 6010B. In addition to the testing methodologies provided above, the Parties may use equivalent methodologies utilized by state or federal agencies for the purpose of determining lead content in a solid substance to analyze a Product for the purpose of determining whether it qualifies as a Reformulated Product under this Settlement Agreement.

2.2 Grace Period For Products in the Stream of Commerce

Wilton represents that there are unsold Products in its customers’ inventory, or otherwise in the California marketplace. Moore agrees that all Products in the stream of commerce as of the Effective Date, are subject to the releases provided by Section 4.1, and exempt from the reformulation requirements of Section 2.1.

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, Wilton agrees to pay \$2,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with payment in two checks for the following amounts made payable to: (a) California Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of \$1,500; and (b) “John Moore, Client Trust Account” in the amount of \$500, and delivered within ten business days of the Effective Date to the address in Section 3.3 herein.

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, Wilton agrees to pay \$18,000 to Moore and his counsel for all fees

and costs incurred investigating, bringing this matter to the attention of Wilton's management, and negotiating a settlement that provides a significant public benefit. Wilton's payment shall be due within ten business 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

Within ten business days of the Effective Date, 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 Wilton

This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and not on behalf of the public, and Wilton, of any violation of Proposition 65 that was or could have been asserted by Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Wilton, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Wilton directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on their failure to warn about alleged exposures to lead contained in the Products that were manufactured, distributed, sold and/or offered for sale by Wilton in California before the Effective Date, as alleged in the notice of violation.

In further consideration of the promises and agreements herein contained, Moore as an individual and not on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all

Moore's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Moore may have, including, without limitation, all actions, and causes of action, in law or in equity, 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 lead in the Products, as alleged in the notice of violation, manufactured, distributed, sold and/or offered for sale by Wilton, before the Effective Date (collectively "claims"), against Wilton and Releasees.

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 Wilton's Release of Moore

Wilton, 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 Wilton specifically as a result of a statutory exemption, or as to the Products, then Wilton may provide written notice to Moore of any asserted change in the law, or its applicability to

Wilton or the Products, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Wilton or 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:

Wilton

Sue Buchta, Chief Executive Officer
Wilton Holdings Inc.
2240 West 75th Street
Woodridge, IL 60517

Michael E. Delehunt
Foley & Lardner LLP
555 California Street, Suite 1700
San Francisco, CA 94104-1520

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.

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: April 25, 2017

By: 
JOHN MOORE

AGREED TO:

Date: 4/27/17

By: 
Sue Buchta, Chief Executive Officer
WILTON BRANDS LLC
WILTON INDUSTRIES, INC.