

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Fairway Import-Export, Inc. (“Fairway”), with Moore and Fairway 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 contained in consumer products. Fairway 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 section 25249.5 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moore alleges that Fairway manufactured, imported, distributed, and/or sold in the State of California, gloves with vinyl/PVC components that contain di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Moore alleges that Fairway failed to provide consumers and other individuals exposed to DEHP from the gloves with vinyl/PVC components it sold in California with a clear and reasonable health hazard warning regarding the reproductive toxicity of DEHP, as required by Proposition 65.

### 1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as gloves with vinyl/PVC components containing DEHP that are manufactured, sold, or distributed for sale in California by Fairway including, but not limited to, the *Lift Pro Series Gloves*, GTW-15KL, UPC # 8 79501 00685 5.



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

On September 12, 2017, Moore served Fairway, the California Attorney General, and all other requisite public enforcers with a document titled, "60-Day Notice of Violation" ("Notice"), alleging that Fairway violated Proposition 65 by failing to provide DEHP exposure warnings for the Products to its customers and consumers in California. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

#### **1.5 No Admission**

Fairway denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, imported, stored, distributed, shipped, sold and/or offered 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 Fairway of any allegation, 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 Fairway of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Fairway. This Section shall not, however, diminish or otherwise affect Fairway'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 May 15, 2018.

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

#### **2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, Fairway shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are either: (a) Reformulated Products as defined by Section 2.2, below; or (b) Products that are offered by Fairway with a clear and reasonable warning pursuant to Section 2.3.




## **2.2 Reformulation Standard**

For the purposes of this Settlement Agreement, "Reformulated Products" are defined as Products that contain 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 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 Warning**

Commencing on the Effective Date and continuing thereafter, for any Products offered for sale in California by Fairway that are not Reformulated Products, Fairway agrees to only offer such Products for sale with a clear and reasonable warning in accordance with this Section or Title 27 California Code of Regulations section 25602 and 25603. Fairway 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 chemicals including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

## **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, Fairway agrees to pay a total of \$2,500 in civil penalties. The penalty payment will be allocated in

accordance with California Health and Safety Code section 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 Moore. Fairway will deliver its payment on or before May 15, 2018 in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) John Moore, Client Trust Account" in the amount of \$625. Moore's counsel shall be responsible for delivering OEHHA's portion of the penalties paid under this Settlement Agreement.

### **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. For all work performed through the mutual execution of this agreement, Fairway shall reimburse Moore and his counsel \$16,900 to be delivered in two (2) installments according to the following schedule: (1) \$8,450 due on May 15, 2018; and (2) \$8,450 due on July 17, 2018. Each payment shall be 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 Fairway's attention, and negotiating a settlement of the matter in the public interest.

### **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 Moore's Release of Fairway**

This Settlement Agreement is a full, final, and binding resolution between Moore and Fairway, 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, principals, employees, representatives, attorneys, predecessors, successors, assignees and heirs, against Fairway, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and each entity to whom Fairway directly or indirectly distributes, ships or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, representatives, attorneys, predecessors, successors, and assignees (collectively, "Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date in California by Fairway, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Moore, on his own behalf, and on behalf of his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs 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 Fairway and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees for any and all claims of a violation of Proposition 65 that was or could have been asserted based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date by Fairway. 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 in California.

#### **4.2 Fairway's Release of Moore**

Fairway, 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 Moore, Moore's attorneys, and other representatives, for any and all actions taken or statements made, whether in the course of investigating claims, seeking to enforce Proposition 65 against Fairway 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 Moore 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 applied to the Products, then Fairway may provide written notice to Moore of the asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to the Products, to the extent that the Products are so affected.

#### **7. NOTICE**

Unless specified herein, all correspondence and notice required by 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 Fairway:

Whitney Jones Roy, Esq.  
Sheppard, Mullin,  
Richter & Hampton LLP  
333 South Hope Street





Forty-Third Floor  
Los Angeles, CA 90071

For Moore:

The Chanler Group  
Attn: Prop 65 Coordinator  
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**

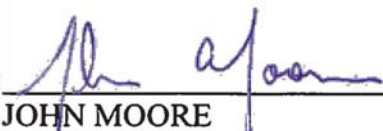
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agree to all of the terms and conditions of this Settlement Agreement.

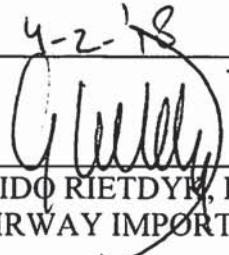
**AGREED TO:**

**AGREED TO:**

Date: 4/5/2018

Date: 4-2-18

By:   
JOHN MOORE

By:   
GUIDO RIETDYK, PRESIDENT  
FAIRWAY IMPORT-EXPORT, INC.

