

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and defendant LEM Products Holding LLC, including the related entities LEM Products Distribution, LEM Products Sales, and LEM Products Direct (collectively “LEM Products”), with Moore and LEM Products 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. LEM Products 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 LEM Products manufactured, imported, distributed, and/or sold in the State of California vinyl/PVC tool grips 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 LEM Products failed to provide consumers and other individuals exposed to DEHP from the vinyl/PVC tool grips 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 the term “Products” is defined as vinyl/PVC tool grips containing DEHP that are manufactured, sold, or distributed for sale in California by LEM Products including, but not limited to, the *LEM Hog Ring Pliers*, *UPC #7 34494 00024 5*.

1.4 Notice of Violation

On September 12, 2017, Moore served LEM Products, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”), alleging that LEM Products violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

LEM Products 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 LEM Products 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 LEM Products of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by LEM Products. This Section shall not, however, diminish or otherwise affect LEM Products’ obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean March 23, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate

Commencing no later than thirty (30) days after the Effective Date and continuing thereafter, LEM Products shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are Reformulated Products as defined by Section 2.2.

2.2 Reformulation Standard

For the purposes of this Settlement Agreement, “Reformulated Products” are defined as Products that contain DEHP in concentrations less than 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 Interim Product Warnings

Commencing on or before the Effective Date, LEM Products shall provide clear and reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) for all products that do not qualify as Reformulated Products and that were manufacture, purchased, or imported for sale in California before the Effective Date. 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) Product Labeling. LEM Products shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

(b) Mail Order Catalog and Internet Sales. In the event that LEM sells the Products via mail order catalog published after the Effective Date¹ and/or the internet, to customers located in California, that are not Reformulated Products, LEM Products shall provide warnings for such Products sold via mail order catalog or the internet to California residents.

¹ For Products sold via catalog published before the Effective Date, said Products shall bear a warning pursuant to Section 2.3(a) Product Labeling.


(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. Either of the following warnings shall be provided, as appropriate, on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

(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. Either of the following warning statements shall be used, as appropriate, 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 a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

Alternatively, 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, LEM Products may utilize a designated symbol to cross reference the applicable warning with a “designated symbol” which 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:** Certain products identified with this symbol ▼ can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to 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, LEM Products agrees to pay a total of \$3,500 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.

LEM Products will deliver its payment on or before March 30, 2018 in two checks for the following amounts made payable to: (a) Office of Environmental Health Hazard Assessment “OEHHA” in the amount of \$2,625; and (b) “John Moore, Client Trust Account” in the amount of \$875. 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. LEM Products agrees to pay \$19,000 to Moore and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of LEM Products’ management, and negotiating a settlement that provides a significant public benefit. LEM Products’ payment shall be delivered in the form of a check payable to “The Chanler Group” at the address in Section 3.3, on or before March 30, 2018. The reimbursement shall cover all fees and costs incurred by Moore investigating, bringing this matter to LEM Products’ attention and negotiating a settlement of the matter.

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 LEM Products

This Settlement Agreement is a full, final, and binding resolution between Moore, in his individual capacity and not on behalf of the public and LEM Products, 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, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs, against LEM Products, 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 LEM Products 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, agents, principals, insurers, accountants, 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 LEM Products, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Moore, in his individual capacity and not on behalf of the public, 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 LEM Products 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 arising under Proposition 65 related to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date by LEM Products.

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 LEM Products' Release of Moore

LEM Products, 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 LEM Products 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 held 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 LEM Products 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:

LEM Products:

Ashley Kohlen
LEM Products Distribution LLC
4440 Muhlhauser Rd., Suite 300
West Chester, OH 45011

With a Copy to:

Shannon M. Nessier
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
(415) 995-5812

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. ENFORCEMENT OF SETTLEMENT AGREEMENT

Any party may file suit in California Superior Court to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

No action to enforce this Settlement Agreement may be commenced or maintained unless the party seeking enforcement notifies the other party of the specific acts alleged to breach this Settlement Agreement and, thereafter, meets and confers with the other Party for a period of not less than 30 days in an effort to resolve the alleged breach informally before serving or filing any action to enforce the terms and conditions contained in this Settlement Agreement.

12. AUTHORIZATION

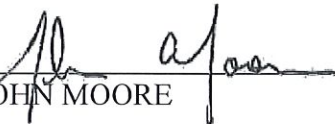
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 3/16/2018

Date: 3/19/2018

By: 
JOHN MOORE

By: 
ASHLEY KOHNEN
LEM PRODUCTS DISTRIBUTION LLC