

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 John Moore, JC USA Inc. and Jewett-Cameron Company**

This Settlement Agreement (Settlement Agreement) is entered into by and between John Moore (Moore) and JC USA Inc. and Jewett-Cameron Company (collectively “JC”) with Moore and JC 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. JC employ ten or more persons and are each 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 JC manufacture, import, sell and/or distribute for sale in California, products containing di(2-ethylhexyl)phthalate (DEHP), and that they do 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 greenhouse covers containing DEHP including, but not limited to, the *Weatherguard Early Start Workbench, #IS66412, UPC #6 12634 66412 3* that are manufactured, imported, distributed, sold and/or offered for sale by JC in the State of California, hereinafter the “Products.”

### **1.4 Notice of Violation**

On or about March 21, 2018, Moore served JC, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that JC violated Proposition 65 when they failed to warn their 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**

JC deny the material, factual and legal allegations contained in the Notice and maintain that all products that they have 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 JC 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 JC 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 the date on which the Settlement Agreement is signed on behalf of all parties.

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

**2.1 Reformulation Standards**

"Reformulated Products" are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

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## **2.2 Reformulation Commitment**


As of the Effective Date, JC 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 shall carry appropriate health hazard warnings per section 2.3, below.

## **2.3 Product Warnings**

Commencing on or before the Effective Date, JC 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. 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.** JC 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 can expose you to DEHP [or other chemical]<sup>1</sup>, 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](http://www.P65Warnings.ca.gov).

**(ii) Point-of-Sale Warnings.** Alternatively, JC may provide warning signs in the form below to its customers in California with instructions to post the warnings on a sign, shelf tag, or shelf sign, for the consumer product at each the point of display of the Products. Such instruction sent to JC's customers shall be sent by certified mail, return receipt requested.

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<sup>1</sup> JC may specify another listed chemical present in the Product, and agrees that any such modification will be compliant with Title 27, California Code of Regulations, Article 6, Clear and Reasonable Warnings. This footnote applies to all of Section 2.3 of this Settlement Agreement.

**⚠ WARNING:** This product can expose you to DEHP [or other chemical], 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](http://www.P65Warnings.ca.gov).

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 shall be used:<sup>2</sup>

**⚠ WARNING:** The following products can expose you to DEHP [or other chemical], 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](http://www.P65Warnings.ca.gov).

*[list products for which warning is required]*

(iii) Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

(b) **Mail Order Catalog and Internet Sales.** In the event that JC sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, JC shall also 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 without requiring the purchaser to seek out the warning as further specified in Sections 2.3(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 can expose you to DEHP [or other chemical], 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](http://www.P65Warnings.ca.gov).

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<sup>2</sup> For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar 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.

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, JC 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 ▼ can expose you to DEHP [or other chemical], 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](http://www.P65Warnings.ca.gov).

The designated symbol must appear on the same page and near the display and/or description of the Product. On each page where the designated symbol appears, JC 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, or a clearly marked hyperlink using the word “**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, immediately following the display, description, or price of the Product for which it is given, or by clicking on or hovering over the hyperlink, in the same type size or larger than the Product description text:

 **WARNING:** This product can expose you to DEHP [or other chemical], 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](http://www.P65Warnings.ca.gov).

(c) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

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

#### **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

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, JC agree to pay a total of \$4,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 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. Moore's counsel shall be responsible for delivering OEHHA's portion of the penalties paid under this Settlement Agreement.

**3.1.1 Initial Civil Penalty Payment.** JC shall deliver its initial civil penalty payment in the amount of \$1,600 within five (5) days after the Effective Date in two checks made payable as follows: (a) "OEHHA" in the amount of \$1,200; and (b) "John Moore, Client Trust Account" in the amount of \$400.

**3.1.2 Final Waivable Civil Penalty Payment.** JC shall pay a final civil penalty of \$2,400. However, the final civil penalty shall be waived in its entirety, if, on or before January 15, 2019, an officer of JC certifies that as of January 1, 2019, and continuing thereafter, all Products, manufactured, imported, or purchased for resale to customers in California or to customers with nationwide distribution, are Reformulated Products as defined by Section 2.2. The option to certify to product reformulation in lieu of making the payment required by this Section is a material term, and time is of the essence. Unless waived, on or before January 30, 2019, JC shall provide its initial civil penalty payment in two checks made payable as follows: (a) "OEHHA" in the amount of \$1,800; and (b) "John Moore, Client Trust Account" in the amount of \$600.

#### **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, JC 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 § 1021.5. For all work performed through the mutual execution of this agreement, JC shall reimburse Moore and his counsel \$19,000. JC's payment shall be delivered to the address in Section 3.3, within five (5) days of the Effective Date, 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 JC'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 JC, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom JC 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 JC.

**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 JC 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 JC. Nothing in this Section affects Moore's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve JC's Products.

**4.3 JC's Release of Moore**

JC, on behalf of themselves, their past and current agents, representatives, attorneys, successors, and assignees, hereby waive 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 them 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.

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**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 JC 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 JC 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 JC:

Charles Hopewell, President  
JC USA Inc.  
Jewett-Cameron Company  
32275 NW Hillcrest St.  
North Plains, OR 97133

For Moore:

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

With a Copy to:

Kerry E. Shea, Esq.  
Davis Wright Tremaine LLP  
505 Montgomery Street, Suite 800  
San Francisco, CA 94111

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**

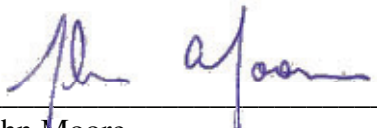
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Dated: October 16, 2018

Dated: October \_\_\_\_, 2018

By:   
John Moore

By: \_\_\_\_\_  
Charles Hopewell, President  
JC USA Inc. and  
Jewett-Cameron Company

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11. **AUTHORIZATION**

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

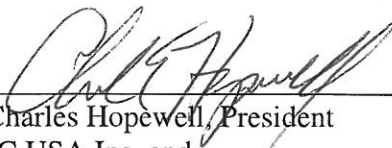
**AGREED TO:**

**AGREED TO:**

Dated: October \_\_\_\_, 2018

Dated: October 16, 2018

By: \_\_\_\_\_  
John Moore

By:  \_\_\_\_\_  
Charles Hopewell, President  
JC USA Inc. and  
Jewett-Cameron Company