

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) on the one hand, and Galison Publishing LLC (“Galison”) on the other hand, with Moore and Galison 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. Galison 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 Galison manufactured, imported, distributed, and/or sold in the State of California, vinyl/PVC game bags 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 Galison failed to provide consumers and other individuals exposed to DEHP from the vinyl/PVC game bags 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 vinyl/PVC game bags containing DEHP that are manufactured, sold, or distributed for sale in California by Galison including, but not limited to, the *Mudpuppy Games To Go Dominoes, Geometric Animals, ISBN: 978-0-7353-4919-3*.

1.4 Notice of Violation

On March 21, 2018, Moore served Galison, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”), alleging that Galison 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

Galison 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, nor shall compliance with this Settlement Agreement constitute or be construed as, an admission by Galison of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Galison. This Section shall not, however, diminish or otherwise affect Galison’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 December 4, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate

Commencing on the Effective Date and continuing thereafter, Galison shall only manufacture, import, sell, distribute or offer for sale in California, Products that are Reformulated Products. For the purposes of this Settlement Agreement, “Reformulated Products” are defined as Products that contain DEHP, butyl benzyl phthalate (“BBP”), di-n-butyl (“DBP”), di-isodecyl phthalate (“DIDP”), diisononyl phthalate (“DINP”), and di-

n-hexyl phthalate (“DnHP”) each 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 phthalate content in a solid substance.

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, Galison agrees to pay a total of \$1,000 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. Galison shall deliver its civil penalty payment within five (5) business days after the Effective Date in two checks made payable as follows: (a) “OEHHA” in the amount of \$750; and (b) “John Moore, Client Trust Account” in the amount of \$250. 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. Under these legal principles, within five (5) business days of the Effective Date, Galison agrees to pay \$21,000 to Moore and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Galison’s management, and negotiating a settlement that provides a significant public benefit. Galison’s payment shall be delivered in the form of a check payable to “The Chanler Group.”

3.3 Payment Address

Within five (5) business days of the Effective Date, 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 Galison

This Settlement Agreement is a full, final, and binding resolution between Moore and Galison, 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 Galison, its parents, subsidiaries, affiliated entities under common ownership, managing members, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and each entity to whom Galison 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 Galison, as alleged in the Notice, as well as exposures to BBP, DBP, DIDP, DINP, and DnHP.

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 Galison 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, BBP, DBP, DIDP, DINP, and DnHP in Products manufactured, sold, or distributed for sale before the Effective Date by Galison. 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 Galison's Release of Moore

Galison, 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 Galison 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 Galison 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 Galison:

Kathleen H. Goodhart, Esq.
Cooley LLP
101 California Street, 5th Floor
San Francisco, CA 94111-5800

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: 12/4/2018

Date: 12/16/18

By: 
John Moore

By: 
Bill Miller, President
Galison Publishing LLC