

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Q.E.P. Co., Inc. (“QEP”), with Moore and QEP 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. QEP employs ten or more employees 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 QEP manufactured, imported, distributed, and/or sold in the State of California, knee pads 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 QEP failed to provide consumers and other individuals in California with a clear and reasonable health hazard warning regarding DEHP in knee pads sold by QEP in California, as required by Proposition 65.

### 1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as knee pads with vinyl/PVC components containing DEHP that are manufactured, imported, sold, or distributed for sale in California by QEP including, but not limited to, the *Brutus Cushion Grip Knee Pads, 85630BR, UPC #0 10306 85630 0*.

### 1.4 Notice of Violation

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

QEP denies the material, factual, and legal allegations in the Notice, and maintains that it did not knowingly or intentionally expose any individuals to a chemical listed under Proposition 65, including DEHP, and 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 QEP of any allegation, fact, finding, conclusion, issue of law, or violation of law, all of which is specifically denied by QEP. This Section shall not, however, diminish or otherwise affect QEP'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 the date this Settlement Agreement is fully executed.

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

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

Commencing on the Effective Date and continuing thereafter, QEP shall only manufacture for sale, purchase for sale, import for sale, or distribute for sale in California, Products that are either: (a) Reformulated Products as defined by Section 2.2, below; or (b) Products that are accompanied by 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 do not contain DEHP, butyl benzyl phthalate ("BBP"), di-n-butyl

phthalate (“DBP”), Di-isodecyl phthalate (“DIDP”), Di-n-hexyl Phthalate (“DnHP), and Diisononyl phthalate (“DINP”) each in concentrations greater than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.


### **2.3 Clear and Reasonable Warning**

Commencing on the Effective Date and continuing thereafter, for any Products manufactured, purchased, imported, or distributed for sale in California by QEP that are not Reformulated Products, QEP agrees to provide a clear and reasonable warning in accordance with this Section. QEP 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 warning affixed directly to a Product or its accompanying Labeling or packaging sold in California containing the following statements shall be deemed to comply with the requirements of this Section 2.3:

For Products manufactured, purchased for sale, imported or distributed by QEP before August 30, 2018:

 **WARNING:** This product can expose you to chemicals including phthalates, which are 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)

For Products manufactured, purchased for sale, imported or distributed by QEP on and after August 30, 2018:

 **WARNING:** This product can expose you to chemicals including [DEHP and/or name of other phthalate chemical(s)], 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)

For the purpose of this agreement, “Labeling” means a display of written, printed

or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. Where a consumer product Labeling 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 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, QEP agrees to pay a civil penalty of \$12,500. 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 to OEHHA its portion of the penalties paid under this Settlement Agreement.

**3.1.1 Initial Civil Penalty.** QEP will deliver its initial civil penalty payment of \$3,500, within five business days of the Effective Date, in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$2,625; and (b) John Moore, Client Trust Account” in the amount of \$875.

**3.1.2 Final Waivable Civil Penalty.** QEP shall pay a final civil penalty of \$9,000 on or before May 30, 2019. The final civil penalty shall be waived in its entirety, however, if, no later than May 15, 2019, an officer of QEP provides Moore with written certification that, as of May 1, 2019, QEP has met the reformulation standard specified in Section 2.2, such that all Products it sells, offers for sale, or distributes for sale in California are Reformulated Products and that QEP will continue to sell, offer for sale, or distribute for sale in California only Reformulated Products. The certification in

lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. In the event that QEP has not timely delivered the above certification in lieu of the final civil penalty, QEP shall deliver two checks for payment of the final civil penalty to the address specified in Section 3.4 made payable as follows: (1) to “OEHHA” in the amount of \$6,750; and (2) to “John Moore, Client Trust Account” in the amount of \$2,250. Moore’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Consent Judgment.

### **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 business days of the Effective Date, QEP agrees to pay \$21,500 to Moore’s counsel for all fees and costs incurred investigating, bringing this matter to the attention of QEP’s management, and negotiating a settlement that provides a significant public benefit. QEP’s payment shall be delivered in the form of a check payable to “The Chanler Group.”

### **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 QEP**

This Settlement Agreement is a full, final, and binding resolution between Moore and QEP 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 QEP, 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 QEP 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, purchased for sale, imported for sale, sold, or distributed for sale before the Effective Date in California by QEP, 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 QEP 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, DnHP, and DINP in Products manufactured, purchased for sale, imported for sale, sold, or distributed for sale before the Effective Date by QEP. 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.

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

QEP, 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 QEP in this matter, or with respect to the Products.

## **4.3 Mutual Release of Known and Unknown Claims**

Moore and QEP acknowledge that they are familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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, and QEP each expressly waive and relinquish any and all rights and benefits that may have existed prior to and including the Effective Date, which they may have under, or which may be conferred by the provisions of Civil Code § 1542 or any other state or federal statute or common law principle of similar effect, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the released matters except as provided in Section 4.2 hereinabove.

## **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.

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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 otherwise rendered inapplicable by reason of law generally, or as applied to the Products, then QEP 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 QEP:

Patricia O'Toole, Esq.  
The O'Toole Law Firm  
P O Box 352348  
Los Angeles, CA 90035-0260

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).

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**10. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**11. AUTHORIZATION**

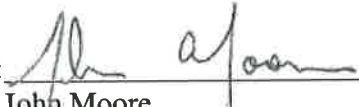
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agree to all of the terms and conditions of this Settlement Agreement.

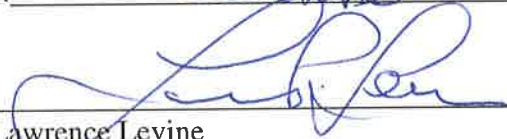
**AGREED TO:**

**AGREED TO:**

Date: 12/13/2018

Date: 21 December 2018

By:   
John Moore

By:   
Lawrence Levine  
Sr. Vice President and General Counsel  
Q.E.P. CO., INC.