

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 John Moore and Streamline Importing Inc.

This Settlement Agreement (Settlement Agreement) is entered into by and between John Moore (Moore) and Streamline Importing Inc. (Streamline) with Moore and Streamline 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. Streamline is 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). The Parties disagree on whether, at various times, Streamline has had ten or more full-time and part-time employees during one or more of the relevant periods.

1.2 General Allegations

Moore alleges that Streamline manufactures, imports, sells and/or distributes for sale in California, vinyl/PVC tool pouches that contain di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the Proposition 65 warning for alleged exposure 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 tool pouches containing DEHP including, but not limited to, the *Streamline Imagined 10 In 1 Survival Tool, Item No.: BUT200, UPC #6 59549 22513 1*, manufactured, imported, or purchased for resale by Streamline and distributed, sold and/or offered for sale in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about April 9, 2018, Moore served Streamline and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Streamline violated Proposition 65 when it failed to warn its 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

Streamline denies and disputes the material, factual and legal allegations (collectively, "Released Claims") contained in the Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties, as per the releases contained in Section 4 below, and for Streamline, for the purpose of avoiding prolonged litigation. Streamline denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the Products and otherwise contends that, all Products each has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Settlement Agreement shall be construed as an admission by Streamline 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 Streamline 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 December 24, 2018.


2. **INJUNCTIVE RELIEF: WARNINGS**

2.1 **Clear and Reasonable Warnings**

Commencing on or before the Effective Date, Streamline shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, *et seq.* 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 and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

Streamline represents that it does not and will not sell the Products via mail order catalog or the internet. Streamline shall provide Moore with three-months advance notice before commencing catalog or internet sales to allow time for the Parties to agree on appropriate injunctive relief.

(a) **Warning.** The warning shall consist of the following statement (Warning):

 **WARNING:** This product can expose you to 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.

(b) **Short-Form Warning.** Streamline may, but is not required to, use the following short-form warning as set forth in this subsection 2.1(b) (Short-Form Warning):

 **WARNING:** Reproductive Harm – 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.

2.2 **Product Warnings**

Streamline shall affix a warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California. For the purpose of this agreement, “Product label” 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. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.1(a) or (b), respectively.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Streamline agrees to pay a total of \$500 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) and (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.

Streamline will deliver its civil penalty payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by plaintiff's counsel on or before December 28, 2018. Streamline shall provide two checks made payable to: (a) "OEHHA" in the amount of \$375; and (b) "John Moore, Client Trust Account" in the amount of \$125. Thereafter, Moore's counsel shall send OEHHA's portion of the penalties paid by Streamline to OEHHA.

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, Streamline 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, Streamline shall reimburse Moore and his

counsel \$12,000. Streamline agrees to make two equal installment payments of \$6,000, with the first installment due on December 28, 2018, the second installment due on January 28, 2019, for a total of \$12,000. Streamline will deliver its payments to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by plaintiff's counsel on or before the due 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 Streamline'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 Streamline

This Settlement Agreement is a full, final and binding resolution between Moore and Streamline of any violation of Proposition 65 that was or could have been asserted by Moore acting on his own behalf, and not on behalf of the public, and on behalf of his past and current agents, representatives, attorneys, successors and/or assignees, against Streamline, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Streamline directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, vendors, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), releases from all Released Claims and any other 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.

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 any chemical listed under Proposition 65 in products manufactured, imported, distributed, or sold by Streamline prior to the Effective Date. Nothing in this Section affects Moore's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Streamline's Products.

4.3 Streamline's Release of Moore

Streamline, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives 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 it 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.

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 Streamline 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 Streamline 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: (a) personally delivered; (b) sent by first-class (registered or certified mail) return receipt requested; or (c) sent by overnight courier, to one party by the other party at the following addresses:

For Streamline:

Eli Senderovich, President
Streamline Importing Inc.
229 N Route 303 Ste 107
Congers, NY 10920

For Moore:

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

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:

Date: _____

Date: 12/27/2018

By: 
John Moore

By: 
Eli Senderovich, President
Streamline Importing Inc.