

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 John Moore and Mode Imports Inc.**

This Settlement Agreement (Settlement Agreement) is entered into by and between John Moore (Moore) and Mode Imports Inc. (Mode) with Moore and Mode 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. Mode supplied the water carriers with vinyl/PVC handles at issue in Moore’s 60-Day Notice of Violation to Winco Holdings, Inc. and Winco Food, LLC (collectively referred to herein as “Winco”). Mode has agreed to indemnify and hold Winco Holdings, Inc. and Winco Food, LLC harmless against any claims with respect to the Product as defined in Section 1.3 below.

### **1.2 General Allegations**

Moore alleges that Mode imports, sells and/or distributes for sale in California, water carriers with vinyl/PVC handles that contain di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard warning that Moore alleges is required by the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (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 “Product” that is covered by this Settlement Agreement is defined as, and limited to, the *Water Carrier, Water Jug, ITEM NO: 29289, UPC #8 10789 02356 1* that is imported, distributed, sold and/or offered for sale by Mode in the State of California.

### **1.4 Notice of Violation**

On or about April 9, 2018, Moore served Winco Holdings, Inc., Winco Food, LLC, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice),

alleging that Winco violated Proposition 65 when they failed to warn their customers and consumers in California that the Product exposed 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**

Mode denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold and distributed in California, including the Product, 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 Mode 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 September 14, 2018.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Standards**

"Reformulated Products" are defined as a Product 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.

## **2.2 Injunctive Relief**

As of the Effective Date, Mode shall not import, distribute, sell or offer the Product for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1.

## **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, Mode agrees to pay a total of \$1,200 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.

Mode will deliver its payment on or before the Effective Date, in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$900; and (b) "John Moore, Client Trust Account" in the amount of \$300. Moore's counsel shall be responsible for delivering OEHHA's portion of the penalties paid under this Settlement Agreement.

### **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, Mode 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, Mode shall reimburse Moore and his counsel \$18,500. Mode's payment shall be delivered to the address in Section 3.3, on or before 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 Mode'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 Mode**

This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and *not* on behalf of the public in California, and Mode, of any violation of Proposition 65 that was or could have been asserted by Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Mode, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Mode directly or indirectly distributes or sells the Product, including, but not limited, to downstream distributors, wholesalers, customers (including, without limitation, Winco Holdings, Inc. and Winco Food, LLC), retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on their alleged or actual failure to warn about exposures to DEHP contained in the Product that was sold or distributed by Mode for sale in California before the Effective Date, as alleged in the Notice. Moore agrees that compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in the Product sold after the Effective Date.

In further consideration of the promises and agreements herein contained, Moore as an individual and *not* on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of Moore's rights to

institute or participate in, directly or indirectly, any form of legal action and releases all claims that Moore may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in the Product, sold and/or offered for sale by Mode, before the Effective Date, against Mode and Releasees.

The releases in this Settlement Agreement are specifically limited to the Product sold by Mode Imports to Winco Holdings, Inc. and Winco Food, LLC, and specifically exclude any other products not falling within the definition of "Product" set forth in Section 1.3. Nothing in this Section affects Moore's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Mode's Product.

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

Mode, 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 Product.

#### **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 Product, then Mode 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 Product is so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Mode 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 Mode:

Greg Woodbridge, President  
Mode Imports, Inc.  
4713 127th Ave E  
Edgewood, WA 98372

With a Copy to:

Robert Falk, Esq.  
Morrison & Foerster  
425 Market Street  
San Francisco, CA 94105

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**

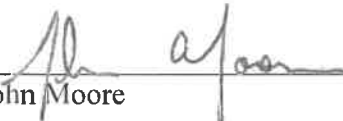
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: 8/28/2018

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Greg Woodbridge, President  
Mode Imports Inc.

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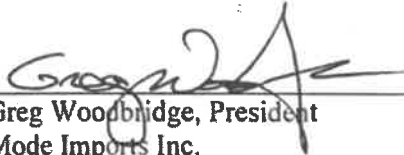
**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 8/28/18

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

By:   
Greg Woodbridge, President  
Mode Imports Inc.