SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 John Moore, Mutual Industries North, Inc. and Harris Mutual, LLC

This Settlement Agreement (Settlement Agreement) is entered into by and between John Moore (Moore), Harris Mutual, LLC (Harris) and Mutual Industries North, Inc. (Mutual) with Moore, Harris and Mutual 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. Harris and Mutual each employ ten or more persons and are 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 Harris and Mutual manufacture, import, sell and/or distribute for sale in California, vinyl flagging tape that contains 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 flagging tape containing DEHP including, but not limited to, the *Harris Industries 1 3/16" X 300' Orange 2 mil Vinyl Flagging Tape, Manufacturer #: VST-04*, manufactured, imported, or purchased for resale by Harris and Mutual and distributed, sold and/or offered for sale in the State of California, hereinafter the "Products." Certain banding tape products that are manufactured, imported, or purchased for resale by Harris and Mutual and distributed, sold and/or offered for sale in the State of California shall be included in the definition of "Products" under this Settlement Agreement.

1.4 Notices of Violation

On August 29, 2018, Moore served Mutual and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Mutual Industries Notice), alleging that Mutual violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. Thereafter, on March 11, 2019, Moore served Harris and the requisite public enforcement agencies with a 60-Day Notice of Violation (Harris Mutual Notice), alleging that Harris violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. The Mutual Industries Notice and Harris Mutual Notice are collectively referred to herein as the "Notices." To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notices.

1.5 No Admission

Harris and Mutual both deny the material, factual and legal allegations contained in the Notices 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 Harris or Mutual 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 Harris or Mutual 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 August 12, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Injunctive Relief

Commencing on the Effective Date and continuing thereafter, both Harris and Mutual shall only either (1) manufacture for sale, import for sale, and purchase for resale in California

Products that are Reformulated Products as defined by Section 2.2 or (2) sell, ship for sale, or distribute for sale to customers or consumers in California, or to customers with nationwide distribution, after the Effective Date, Products that arelabeled with a clear and reasonable warning as set forth in Section 2.3. If, after the Effective Date, Harris or Mutual sell Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, Harris and Mutual shall also provide warnings for such Products by identifying the specific Product to which the warning applies as set forth in Sections 2.4 through 2.6.

2.2 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.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, Harris and Mutual 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.

(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 cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) Short-Form Warning. Harris and Mutual may, but are not required to, use the following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning), and subject to the additional requirements in Sections 2.5 and 2.6, as follows:

> ⚠ **WARNING:** Cancer and 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.

2.4 Product Warnings

Harris and Mutual shall affix a warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located 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 6point 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 2.3(a) or (b), respectively.

2.5 Mail Order Catalog Warnings

In the event that, after the Effective Date, Harris or Mutual print new catalogs and sell Products via mail order through such catalogs to customers located in California, Harris and Mutual shall provide a warning for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the *specific*

Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

2.6 Internet Warnings

If, after the Effective Date, Harris or Mutual sell Products via the internet to customers located in California, Harris and Mutual shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word "**WARNING**" given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; or (c) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display or description of the Product for which it is given in the same type size or larger than the Product description text. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

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 Notices or referred to in this Settlement Agreement, Harris and Mutual shall be jointly and severally liable to pay a total of $2,600 in civil penalties. The penalty payments 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.

Harris and Mutual will deliver their civil penalty 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 Effective Date. Harris and Mutual shall provide two checks made payable to: (a) "OEHHA" in the amount of $1,950; and (b) "John Moore, Client Trust Account" in the amount of $650. Thereafter, Moore's counsel shall send OEHHA's portion of the penalties paid by Harris and Mutual 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, Harris and Mutual expressed a desire to resolve Moore's fees and costs. The Parties then negotiated a resolution of the compensation due to Moore's 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, Harris and Mutual shall be jointly and severally liable to reimburse Moore's counsel $16,400. Harris and Mutual will deliver their 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 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 Harris' and Mutual'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
2550 Ninth Street, Suite 205
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Moore's Release of Harris and Mutual

This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and *not* on behalf of the public, and Harris and Mutual, 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 Harris and Mutual, and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Harris and Mutual directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Harris or Mutual in California before the Effective Date, as alleged in the Notices.

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 Products, as alleged in the Notices,

manufactured, distributed, sold and/or offered for sale by Harris and Mutual, before the Effective Date (collectively, Claims), against Harris and/or Mutual and Releasees.

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

4.2 Harris' and Mutual's Release of Moore

Harris and Mutual, on behalf of themselves, their 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 Harris and/or Mutual 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 Harris and Mutual 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 Harris Mutual, LLC:

Edmund Dunn, CEO
Harris Mutual, LLC
5181 Argosy Avenue
Huntington Beach, CA 92649

For Mutual Industries North, Inc.

Edmund Dunn, CEO
Mutual Industries North, Inc.
707 W Grange Ave Ste 1
Philadelphia, PA 19120

With a Copy to:

Leila C. Bruderer, Esq.
Downey Brand, LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

For Moore:

Proposition 65 Coordinator
The Chanler Group
2550 Ninth Street, Suite 205
Berkeley, CA 94710

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:

Date: 8/8/19

By: _____
John Moore

AGREED TO:

Date: 8/8/19

By: _____
Edmund Dunn, CEO
Harris Mutual, LLC

Date: 8/8/19

By: _____
Edmund Dunn, CEO
Mutual Industries North, Inc.