

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1. Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Beno J. Gundlach Company (“Beno”), with Moore and Beno collectively referred to as the “Parties.” Moore is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Beno employs ten or more persons 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 & Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2. General Allegations

Moore alleges that Beno has manufactured, distributed, and/or sold in the State of California hand tool grips containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warning. 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 the *Gundlach Plastic Laminate Cutting Shears, No. 11-LS (#6 11348 02006 5)* which contains DEHP and which has been manufactured, imported, distributed, and/or sold in California by Beno (hereinafter “Product”).

1.4. Notice of Violation

On or about April 5, 2012, Moore served Beno and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), alleging that Beno was in violation of Proposition 65 for failing to warn its customers and consumers in California that hand tool grips containing DEHP that Beno manufactured, imported, distributed, and/or sold in California 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

Beno denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Beno of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Beno of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Beno. This section shall not, however, diminish or otherwise affect Beno'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 August 15, 2012.

2. INJUNCTIVE RELIEF

2.1. Reformulation

Commencing on the Effective Date and continuing thereafter, Beno shall only manufacture, distribute, ship, sell, or offer to ship for sale in California Product that contains no more than 1,000 parts per million of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.2. Prohibition Against Over-Warning

Commencing on the Effective Date, Beno shall not provide, nor require or request that any other party provide, a warning pursuant to Proposition 65 for the Product unless it knows, or should know, it contains at least one chemical listed pursuant to Proposition 65.

3. MONETARY PAYMENTS

3.1. Payments Pursuant to Health & Safety Code Section 25249.7(b)

Pursuant to Health & Safety Code section 25249.7, subdivision (b) Beno shall pay \$2,000 in civil penalties on or before three days after the execution of this agreement. This payment amount includes a credit of \$1,000, based on Beno's prompt agreement to reformulate the Product. Civil penalties shall be allocated according to California Health & Safety Code section 25249.12, subdivisions (c)(1) & (d), with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment and the remaining twenty-five percent (25%) remitted to Moore.

Beno shall issue two checks made payable as follows: (a) to "The Chanler Group in Trust for OEHHA" in the amount of \$1,500; and (b) to "The Chanler Group in Trust for John Moore" in the amount of \$500. Two 1099 forms shall also be provided for the payments to: (a) the "Office of Environmental Health Hazard Assessment," P.O. Box 4010, Sacramento, CA 95812 (EIN: 68-0284486); and (b) "John Moore," whose address and tax identification number shall be furnished upon request after this Settlement Agreement is fully executed by the Parties. Payment shall be delivered to Moore's counsel upon execution and delivery of this Agreement at the Payment address provided in Section 3.3.

3.2. Reimbursement of Fees and Costs

The Parties reached an accord on the compensation due 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, on or before three days after the execution of this agreement, Beno shall pay \$15,875 for all fees and costs incurred investigating, bringing this matter to the attention of Beno, and negotiating a settlement in the public interest. Beno shall provide its payment in the form of a check payable to "The Chanler Group," issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment upon execution and delivery of this Agreement at the Payment Address provided in Section 3.3.

3.3. Payment Address

All payments and tax documentation required by this Section 3 shall be delivered to Moore's counsel at the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. RELEASES

4.1. Moore's Release of Beno

This Settlement Agreement is a full, final, and binding resolution between Moore and Beno 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 Beno, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, Beno's direct and sole upstream supplier of the Product, and each entity to whom Beno directly or indirectly distributes or sells the Product, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the specific units of the Product that were manufactured, distributed, sold, and/or offered for sale by Beno in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all 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 limited to, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal--limited to and arising under Proposition 65 with respect to DEHP in the Product manufactured,

distributed, sold, and/or offered for sale by Beno before the Effective Date (collectively “claims”), against Beno and Releasees.

4.2. Beno’s Release of Moore

Beno on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

5. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Beno may send Moore a written request to draft and file a complaint, incorporating the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, in furtherance of obtaining approval of the consent judgment, Moore and Beno and their respective counsel agree to mutually employ their best efforts to support the entry of the proposed consent judgment and obtain approval of the consent judgment by the Court in a timely manner. For purposes of this section, best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Beno will reimburse Moore and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting the Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the consent judgment, in an amount not to exceed \$ 15,000, exclusive of fees and costs incurred on appeal, if any. Beno will remit payment to The Chanler Group, at the Payment Address provided in Section 3.3. Such additional fees shall be paid by Beno within ten

days after its receipt of monthly invoices from Moore's counsel for work performed under this Section.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

7. 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.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

For Beno:

Gregory Gundlach, President
Beno J. Gundlach Company
211 North 21st Street
Belleville, IL 62226

For Moore:

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

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. 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.

10. POST-EXECUTION ACTIVITIES

Moore agrees to comply with the reporting form requirements referenced in Health & Safety Code section 25249.7, subdivision (f).

11. MODIFICATION

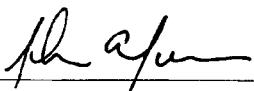
This Settlement Agreement may be modified only by a written agreement of the Parties.

12. AUTHORIZATION

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

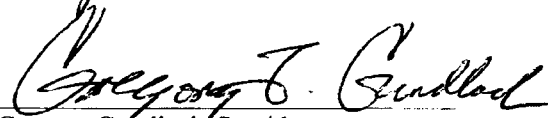
AGREED TO:

Date: September 12, 2012

By: 
John Moore

AGREED TO:

Date: September 4, 2012

By: 
Gregory Gundlach, President
Beno J. Gundlach Company