

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and FNA Group, Inc. (“FNA”), with Moorberg and FNA each individually referred to as a “Party” and collectively as the “Parties.” Moorberg 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 used in consumer products. FNA 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 § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moorberg alleges that FNA manufactures, sells, and/or distributes for sale in California, hoses with metal fittings containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moorberg alleges that FNA failed to provide the health hazard warning required by Proposition 65 for exposures to lead from its hoses.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are hoses with metal fittings containing lead including, but not limited to, the *PreciseFit Non-Marking Replacement/Extension Hose, #0379408, #40183, UPC #6 36893 40307 1* manufactured, sold or distributed for sale in California by FNA (“Products”).

### 1.4 Notice of Violation

On or about April 16, 2014, Moorberg served FNA and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that FNA violated Proposition 65 when it failed to warn its customers and consumers in California that its hoses expose users to lead. 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**

FNA denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has 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 FNA of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by FNA of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by FNA. However, this Section shall not diminish or otherwise affect FNA'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 June 20, 2014. This agreement is only effective should the Effective Date pass with no public enforcer having elected to enforce the Notice.

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

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, FNA agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products" or Products that are sold with a clear and reasonable warning pursuant to Section 2.2. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 90 parts per million lead content by weight in any component analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state or federal agencies for purposes of determining lead content in a solid substance.

## **2.2 Clear and Reasonable Warnings for Non-Reformulated Products**

Commencing on the Effective Date and continuing thereafter, for all Products other than Reformulated Products, FNA agrees that it will only sell or distribute such Products for sale in California with a clear and reasonable warning in accordance with this Section. FNA further agrees to affix the warning directly to the Product, or on Product packaging or labeling, if any. The warning shall be prominently placed with such conspicuousness when compared to 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. The warning shall further be provided in such a manner that the consumer or user understands to which *specific* Product the warning applies, so as to limit the risk of any consumer confusion.

A warning provided under this Settlement Agreement shall contain the following statement:

**WARNING:** This product contains one or more chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

Both Reformulated Products and Products bearing the warning above will be in full compliance with this Settlement Agreement. Nothing set forth herein shall preclude FNA from supplying additional Proposition 65 warning language on its Products.

## **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, FNA agrees to pay \$9,000 in civil penalties. Each 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 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Moorberg.

**3.1.1 Initial Civil Penalty.** Within five days of the Effective Date, FNA shall pay an initial civil penalty in the amount of \$3,000. FNA will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$2,250; and (b) “The Chanler Group in Trust for Mark Moorberg” in the amount of \$750.

**3.1.2 Final Civil Penalty.** On or before November 1, 2014, FNA shall pay a final civil penalty of \$6,000. The final civil penalty shall be waived in its entirety, however, if, no later than October 15, 2014, an officer of FNA provides Moorberg’s counsel with written certification that, as of the date of its certification, all Products shipped, sold or distributed for sale in California are Reformulated Products as defined by Section 2.1 or bear the warning described in Section 2.2, and that it will continue to only offer Reformulated Products or Products bearing the warning described in Section 2.2 in California in the future. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence.

### **3.2 Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Moorberg 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, FNA agrees to pay \$22,750 to Moorberg and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of FNA’s management, and negotiating a settlement in the public interest.

### **3.3 Payment Procedures**

**3.3.1 Payment Addresses.** Payments shall be delivered as follows:

(a) All payments and tax documentation required for Moorberg and his counsel under this Settlement Agreement shall be delivered to:

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

(b) All payments and tax forms required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one of the following addresses as appropriate:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Courier or Other Non-U.S. Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

**3.3.2 Proof of Payment to OEHHA.** FNA agrees to provide Moorberg with a copy of each penalty check sent to OEHHA, enclosed with FNA’s penalty payment(s) to Moorberg, and delivered to the address provided in Section 3.3.1(a).

**4. CLAIMS COVERED AND RELEASED**

**4.1 Moorberg’s Release of FNA**

This Settlement Agreement is a full, final and binding resolution between Moorberg and FNA, of any violation of Proposition 65 that was or could have been asserted by Moorberg on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against FNA, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom FNA directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to

warn about alleged exposures to lead contained in the Products manufactured, distributed, sold or offered for sale by FNA in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Moorberg on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal, if any, arising under Proposition 65 with respect to exposures to lead from Products manufactured, distributed, sold and/or offered for sale by FNA before the Effective Date.

#### **4.2 FNA's Release of Moorberg**

FNA on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moorberg 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 Moorberg 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 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 as to the

Products, then FNA may provide written notice to Moorberg of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to 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 FNA:

Gus Alexander, President  
FNA Group, Inc.  
1825 Greenleaf Avenue  
Elk Grove Village, IL 60067

with copy to:

Shelley Hurwitz, Esq.  
Holland & Knight  
400 South Hope Street, 8<sup>th</sup> Floor  
Los Angeles, CA 90071

For Moorberg:

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 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)**

Moorberg 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, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: June 24, 2014

By: \_\_\_\_\_

Mark Moorberg

**AGREED TO:**

Date: June 19, 2014

By: \_\_\_\_\_

Gus Alexander, President  
FNA Group, Inc.