

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg, (“Moorberg”) and Lynco Distribution, Inc., (“Lynco”) with Moorberg and Lynco 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. Lynco 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 Lynco manufactures, sells, and/or distributes for sale in California, tools with vinyl/PVC grips that contain the phthalate chemical di(2-ethylhexyl)phthalate (DEHP). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moorberg alleges that Lynco failed to provide individuals in California with the health hazard warning required by Proposition 65 for exposures to DEHP from the vinyl PVC grips of its tools.

#### 1.3 Product Description

“Covered Product[s]” means tools with vinyl/PVC grips containing DEHP including, but not limited to, *Mighty Maxx Slip Joint Pliers, #083-11210, (UPC No. 8 56224 11210 0)*, which are manufactured, imported, sold and/or distributed for sale in California by Lynco. “Additional Product[s]” means tools with vinyl/PVC grips containing, butyl benzyl phthalate (“BBP”) and/or di-n-butyl phthalate (“DBP”), which are manufactured, imported, sold and/or distributed for sale in California by Lynco. Covered Products and Additional Products are referred to collectively as “Products.”

#### **1.4 Notice of Violation**

On April 16, 2014, Moorberg served Lynco and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Lynco violated Proposition 65 when it failed to warn its customers and consumers in California that the Covered 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**

Lynco 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 Lynco 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 Lynco of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Lynco. This Section shall not, however, diminish or otherwise affect Lynco’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 March 2, 2015.

## **2. INJUNCTIVE SETTLEMENT TERMS**

### **2.1 Reformulated Standard**

For the purposes of this Consent Judgment, “Reformulated Products” are defined as Covered Products which contain less than 1,000 parts per million (“ppm”) each of DEHP, when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance; and, Additional Products which contain less than 1,000 parts per million (“ppm”) each of BBP and DBP, when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of

determining BBP and DBP content in a solid substance.

## **2.2 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, Lynco shall only purchase for sale or manufacture for sale in California, Reformulated Products, or Products that are sold with a clear and reasonable warning pursuant to Section 2.3.

## **2.3 Health Hazard Warnings**

Commencing on the Effective Date and continuing thereafter, for all Products that are not Reformulated Products, Lynco 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. Lynco shall affix the warning directly to the Product, or on Product packaging or labeling, if any. Lynco further agrees that the 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. The warning Lynco employs shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of confusion.

Any Covered Products that are not a Reformulated Product shall include one of the following statements:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm.)

or

**WARNING:** This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm.)

or In light of Lynco's representation that it began affixing interim warnings to its Products (after receiving Moorberg's 60-Day Notice) that reads: "**WARNING:** This product contains chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm.", it

may continue to use its current inventory before switching to the warning language required above unless, of course, Lynco has reformulated its products in which no health hazard warning will be required for DEHP.

### **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, Lynco agrees to pay \$12,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (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. Moorberg’s counsel shall be responsible for remitting Lynco’s penalty payment(s) under this settlement to OEHHA.

**3.1.1 Initial Civil Penalty.** Within seven calendar days of the Effective Date, Lynco shall pay an initial civil penalty of \$4,000. Lynco will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,000; and (b) “Mark Moorberg Client Trust Account” in the amount of \$1,000.

**3.1.2 Final Civil Penalty.** On August 1, 2015, Lynco shall pay a final civil penalty of \$8,000. The final civil penalty shall be waived in its entirety if, no later than July 15, 2015, an officer of Lynco provides Moorberg’s counsel with written certification that, as of the date of its certification, all of the Products it ships or distributes for sale in California are Reformulated Products as defined by Section 2, and that it will continue to only offer Reformulated Products in the future. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment otherwise required by this Settlement Agreement is a material term, and time is of the essence.

#### **3.2 Reimbursement of Moorberg’s 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, within 7 calendar days of the Effective Date, Lynco agrees to pay \$23,000 to Moorberg and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Lynco's management, and negotiating a settlement in the public interest.

**3.3 Payment Address.** Payments shall be delivered as follows:

All payments required for Moorberg, OEHHA and Moorberg' 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

**4. CLAIMS COVERED AND RELEASED**

**4.1 Moorberg's Release of Lynco**

This Settlement Agreement is a full, final and binding resolution between Moorberg and Lynco, of any violation of Proposition 65 that was or could have been asserted by Moorberg on his own behalf, or on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Lynco, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Lynco 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 the alleged failure to warn about exposures to DEHP, BBP and/or DBP in Products sold or distributed for sale by Lynco prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Moorberg on his own behalf and on behalf of 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, arising under Proposition 65 with respect to the failure to warn about exposures to DEHP, BBP and/or DBP from Products sold or distributed for sale by Lynco before the Effective Date. The releases provided by Moorberg under this Settlement Agreement are provided solely on Moorberg's behalf and are not releases on behalf of the public.

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

Lynco on its own behalf and on behalf of 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. ENFORCEMENT OF SETTLEMENT AGREEMENT**

A Party alleging violation of the terms of this Settlement Agreement must provide notice of the violation to the Party allegedly failing to comply and attempt to resolve the alleged violation in an open and good faith manner for a period of no less than 30 days before taking any further legal action, including bringing a legal action to enforce this Settlement Agreement or serving a new 60-Day Notice of Violation. Moorberg and his counsel agree that for a claimed breach by Lynco after the Effective Date relating to the chemical content of the Products, or the provision of warnings under this Settlement Agreement by Lynco, that they will proceed under this Section to allow Lynco an opportunity to correct the alleged violations to Moorberg's satisfaction and in accordance with the terms of this Settlement Agreement.

#### **6. 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 remaining enforceable provisions 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. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable, by reason of law generally, or as to the Products, then Lynco 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. If there is a future revision of Title 27, California Code of Regulations, Article 6, § 25601, *et seq.* relating to the content of any warning required for exposures to DEHP, BBP or DBP from the Products, then Lynco may use the statutory warning language required by the regulations to warn of the risks of birth defects and reproductive harm caused by the exposures to DEHP, BBP and DBP.

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 Lynco:

Edward Lampo, President  
Lynco Distributions, Inc.  
1410 11<sup>th</sup> Street, W  
Milan, IL 61264

with a copy to:

Merrit M. Jones, Esq.  
Bryan Cave LLP  
560 Mission Street, 25<sup>th</sup> Floor  
San Francisco, CA 94105

For Moorberg:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St.  
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).

**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: March 1, 2015

By:   
Mark Moorberg

**AGREED TO:**

Date: 3/5/2015

By:   
Edward Lampo, President  
Lynco Distribution, Inc.