

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and MSA Safety, Inc. (“MSA”), with Moorberg and MSA 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. Moorberg alleges that MSA 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 MSA manufactures, sells, and/or distributes for sale in California, vinyl/PVC ear plug cords and safety vests containing 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 MSA failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from its vinyl/PVC ear plug cords and safety vests.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as the *MSA Safety Works Ear Plugs #10005601*, *UPC #6 41817 00159 2*, and *MSA Safety Vest #00617890*, *UPC #6 41817 00020 5* (“Safety Vest”) containing DEHP, sold or distributed for sale in California by MSA (“Products”).

1.4 Notices of Violation

On or about August 28, 2014, Moorberg served MSA and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“First Notice”), alleging that MSA violated Proposition 65 when it failed to warn its customers and consumers in California that its vinyl/PVC ear plug cords expose users to DEHP. On or about August 10, 2015, Moorberg served MSA and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Second Notice”), alleging that MSA violated Proposition 65 when it failed to warn its customers and consumers in California that its safety vests expose users to DEHP. The First Notice and Second Notice are collectively referred to as “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

MSA denies the material, factual, and legal allegations contained in the Notices 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 MSA 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 MSA of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by MSA. However, this Section shall not diminish or otherwise affect MSA’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 October 15, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

On or before the Effective Date and continuing thereafter, MSA agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products" or Products that contain a warning in accordance with Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" are Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.2 Clear and Reasonable Warnings

On or before the Effective Date, MSA shall, for all Products it ships, sells, or offers to ship or sell in California that are not Reformulated Products, provide clear and reasonable warnings as set forth below. 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. Each warning shall be provided in a manner such that the consumer or user understands to which specific Products the warning applies, so as to minimize the risk of consumer confusion. The warning shall be affixed to the packaging or labeling or directly to the non-Reformulated Product.

MSA represents that it has already implemented a labeling program for the Noticed Product that uses the following language on its non-Reformulated Products:

CALIFORNIA PROP. 65 WARNING: *This product contains a chemical 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.*

Therefore, the parties agree that MSA may continue to distribute and/or sell any Products that are currently in MSA's inventory that contain the above warning label until its inventory is exhausted at which time all new orders that are not Reformulated shall contain the following language:

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

3. MONETARY SETTLEMENT TERMS

3.1 Initial Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims related to the Products and alleged in the Notices, MSA agrees to pay a civil penalty of \$16,000, which shall 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. Moorberg's counsel shall be responsible for remitting MSA's penalty payment(s) under this Settlement Agreement to OEHHA. Within two days of the Effective Date, MSA shall make an initial payment of \$4,000. MSA shall provide its payment in a single check made payable to "Mark Moorberg, Client Trust Account" to be delivered to the address provided in Section 3.4, below.

3.2 Final Civil Penalty Payment

On March 1, 2016, MSA shall make a final civil penalty payment of \$12,000. Pursuant to title 11 California Code of Regulations, section 3202(c), Moorberg agrees that the final civil penalty shall be waived in its entirety if, no later than February 10, 2016, an officer of MSA provides Moorberg with an original, signed written certification that all of the Products (UPC #6 41817 00159 2, and UPC #6 41817 00020 5) it ships for

sale or distributes for sale in California as of the date of its certification are Reformulated Products in accordance with the standards set forth in Section 2.1, and that MSA will continue to offer only Reformulated Products in California in the future. The option to certify early reformulation in lieu of making the final civil penalty payment otherwise required by this Section is a material term, and time is of the essence. MSA shall deliver its certificate, if any, to Moorberg's counsel at the address provided in Section 3.4 below.

3.3 Attorneys' Fees and Costs

The Parties acknowledge that Moorberg 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 this fee issue to be resolved after the material terms of the agreement had been settled. MSA then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Moorberg 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. Under these legal principles, MSA agrees to pay \$39,000 to Moorberg and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of MSA's management, and negotiating a settlement in the public interest. MSA's payment shall be made within two days of the Effective Date, and delivered to the address in Section 3.4 in the form of a check payable to "The Chanler Group."

3.4 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 Moorberg's Release of MSA

This Settlement Agreement is a full, final and binding resolution between Moorberg, as an individual and not on behalf of the public, and MSA, of any violation of Proposition 65 that was or could have been asserted by Moorberg, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any such claims, against MSA, its parents, subsidiaries, joint ventures, including Safety Works LLC, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom MSA 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 failure to warn about alleged exposures to DEHP contained in Products manufactured, distributed, sold or offered for sale by MSA in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Moorberg, on his own behalf and not in his representative capacity, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that she 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 Products manufactured, distributed, sold and/or offered for sale by MSA before the date that this Settlement Agreement is fully executed by the Parties.

4.2 MSA's Release of Moorberg

MSA, 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, 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 otherwise rendered inapplicable by reason of law generally, as to MSA specifically as a result of a statutory exemption, or as to the Products, then MSA may provide written notice to Moorberg of any asserted change in the law, or its applicability to MSA or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, MSA or 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 MSA:

Stephanie L. Sciuolo, Associate General Counsel
MSA Safety, Inc.
1000 Cranberry Woods Drive
Cranberry Township, PA 16066

For Moorberg:

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

with copy to MSA's counsel:

Carol Brophy, Esq.
Sedgwick LLP
333 Bush Street, 30th Floor
San Francisco, CA 94104-2834

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:

AGREED TO:

Date: 8.17.15

Date: _____

By: _____

Mark Moorberg

By: _____

Stephanie L. Sciullo
Associate General Counsel
MSA SAFETY, INC.[®]

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: _____

By: _____

Mark Moorberg

AGREED TO:

Date: 8/18/15

By: 

Stephanie L. Sciullo
Associate General Counsel
MSA SAFETY, INC.