

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and California Flexrake Corporation (“CALIFORNIA FLEXRAKE”), with Moore and CALIFORNIA FLEXRAKE each individually referred to as a “Party” and collectively as the “Parties.” Moore 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. Moore alleges that CALIFORNIA FLEXRAKE 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

Moore alleges that CALIFORNIA FLEXRAKE manufactures, sells, and/or distributes for sale in California, tools with vinyl/PVC grips 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. Moore alleges that CALIFORNIA FLEXRAKE failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from its tools with vinyl/PVC grips.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as the *Classic by Flexrake Bypass Pruning Shear, CLA317, UPC #0 17849 31772 3*, containing DEHP, sold or distributed for sale in California by CALIFORNIA FLEXRAKE (“Products”).

1.4 Notices of Violation

On or about September 30, 2014, Moore served CALIFORNIA FLEXRAKE and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that CALIFORNIA FLEXRAKE violated Proposition 65 when it failed to warn its customers and consumers in California that its tools with vinyl/PVC grips 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

CALIFORNIA FLEXRAKE 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 CALIFORNIA FLEXRAKE 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 CALIFORNIA FLEXRAKE of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by CALIFORNIA FLEXRAKE. However, this Section shall not diminish or otherwise affect CALIFORNIA FLEXRAKE’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 April 15, 2016.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

On or before the Effective Date and continuing thereafter, CALIFORNIA FLEXRAKE 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, CALIFORNIA FLEXRAKE 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. The warning shall provide:

WARNING: This product contains DEHP, a chemical known to the State of California to cause 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 Notice, CALIFORNIA FLEXRAKE agrees to pay a civil penalty of \$4,000, 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 Moore. Moore’s

counsel shall be responsible for remitting CALIFORNIA FLEXRAKE's penalty payment(s) under this Settlement Agreement to OEHHA. Within two days of the Effective Date, CALIFORNIA FLEXRAKE shall make an initial payment of \$2,000. CALIFORNIA FLEXRAKE shall provide its payment in a single check made payable to "John Moore, Client Trust Account" to be delivered to the address provided in Section 3.4, below.

3.2 Final Civil Penalty Payment

On August 1, 2016, CALIFORNIA FLEXRAKE shall make a final civil penalty payment of \$2,000. Pursuant to title 11 California Code of Regulations, section 3202(c), Moore agrees that the final civil penalty shall be waived in its entirety if, no later than July 15, 2016, an officer of CALIFORNIA FLEXRAKE provides Moore with an original, signed written certification that all of the Products (*UPC #0 17849 31772 3*) 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 CALIFORNIA FLEXRAKE 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. CALIFORNIA FLEXRAKE shall deliver its certificate, if any, to Moore's counsel at the address provided in Section 3.4 below.

3.3 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 this fee issue to be resolved after the material terms of the agreement had been settled. CALIFORNIA FLEXRAKE 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 Moore 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, CALIFORNIA FLEXRAKE agrees to pay \$23,000 to Moore and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of CALIFORNIA FLEXRAKE's management, and negotiating this settlement. CALIFORNIA FLEXRAKE'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 Moore's Release of CALIFORNIA FLEXRAKE

This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and not on behalf of the public, and CALIFORNIA FLEXRAKE, of any violation of Proposition 65 that was or could have been asserted by Moore, 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 CALIFORNIA FLEXRAKE, its parents, subsidiaries, joint ventures, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom CALIFORNIA FLEXRAKE 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 CALIFORNIA FLEXRAKE in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Moore, as an individual and not on behalf of the public, 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 CALIFORNIA FLEXRAKE before the date that this Settlement Agreement is fully executed by the Parties.

4.2 CALIFORNIA FLEXRAKE's Release of Moore

CALIFORNIA FLEXRAKE, 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 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 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then CALIFORNIA FLEXRAKE may 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.

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 CALIFORNIA FLEXRAKE:

John McGuire, President,
California Flexrake Corporation
9620 Gidley Street
Temple City, CA 91780

For Moore:

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

with copy to CALIFORNIA FLEXRAKE's counsel:

Bruce Nye, Esq.
Adams Nye Becht LLP
222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521

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)

Moore 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

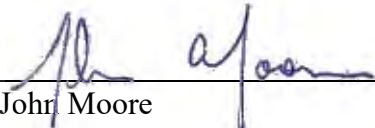
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 4/13/16

Date: _____

By:  _____
John Moore

By: _____

John McGuire, President
CALIFORNIA FLEXRAKE CORPORATION

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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.

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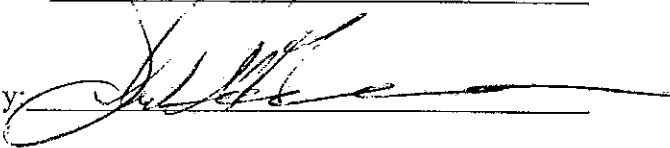
Date: _____

By: _____

John Moore

AGREED TO:

Date: 9-14-16

By: 

John McGuire, President
CALIFORNIA FLEXRAKE CORPORATION