

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Dorman Products, Inc. (“Dorman”), with Moore and Dorman 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 Dorman 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 Dorman manufactures, sells, and/or distributes for sale in California hardware accessories and hand tools, containing lead and di(2-ethylhexyl) phthalate (“DEHP”). Lead and DEHP are listed pursuant to Proposition 65 as chemicals known to cause birth defects or other reproductive harm. Moore alleges that Dorman failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to lead and DEHP from the products set forth above.

1.3 Product Description

The products that are covered by this Settlement Agreement are hardware accessories (including without limitation fasteners, wire products, and hooks and hangers) containing lead and/or DEHP including, but not limited to, the *Symmetry 4” Surface Bolt Brass Plated*, #91865, UPC #0 50267 91865 5, *Symmetry Premium Stay Level Picture Hanger*, #2449, UPC #0 50267 42449 1, and *Dorman 40 lb StayLevel Hanger*, #1175, UPC #0 50267 41175 0 (“Hardware Accessory Products”), and hand tools containing lead and/or DEHP including, but not limited to, *Dorman Lug Wrench*,

#711-900, UPC #0 19495 29000 1 (“Hand Tool Products”), manufactured, sold or distributed for sale in California by Dorman (collectively the “Covered Products”).

1.4 Notices of Violation

On or about February 27, 2015 and August 10, 2015 Moore served Dorman, and certain requisite public enforcement agencies with 60-Day Notices of Violation (“Notices”), alleging that Dorman violated Proposition 65 when it failed to warn its customers and consumers in California that the Covered Products expose users to lead and/or DEHP from the respective Covered Products, as applicable. 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

Dorman 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 Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Dorman 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 Dorman of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Dorman. However, this Section shall not diminish or otherwise affect Dorman’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 21, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

On or before the Effective Date and continuing thereafter, Dorman agrees to only manufacture for sale or purchase for sale in or into California Covered Products that are

“Reformulated Products,” or that otherwise shall be accompanied by a Proposition 65 warning as set forth in Section 2.2 below. For purposes of this Settlement Agreement, “Reformulated Products” are Covered Products that: (1) with respect to lead, (a) contain no more than to 90 parts per million (“ppm”) lead in any accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance, and (b) yield no more than 1.0 microgram (“ug”) of lead when a wipe is applied to any accessible surface according to NIOSH Test Method No. 9100; and (2) with respect to DEHP, contain no more than 0.1 percent (1,000 parts per million) in any accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.2 Product Warnings

Any warning required hereunder 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* Covered Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) Product Labeling. Dorman shall affix a warning to the packaging, labeling, or directly on each Covered Product that Dorman offers for sale or sells in retail outlets in California that states:

WARNING: *This product contains [lead/DEHP], a [phthalate]¹ chemical, known to the State of California to cause birth defects or other reproductive harm.*

(ii) **Point-of-Sale Warnings.** Alternatively, Dorman may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Covered Products. Such instruction sent to Dorman's customers shall be sent by certified mail, return receipt requested.

WARNING: *This product contains [lead/DEHP], a [phthalate] chemical known to the State of California to cause birth defects or other reproductive harm.*

Where more than one Covered Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.1), the following statement must be used:²

WARNING: *The following products contain [lead/DEHP] a [phthalate] chemical known to the State of California to cause birth defects or other reproductive harm:*

[list products for which warning is required]

(b) **Mail Order Catalog and Internet Sales.** In the event that Dorman sells Covered Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Dorman shall provide warnings for such Covered Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Covered Product to which the warning applies as

¹ The warning language set forth in this Section 2.3 for a particular Covered Product shall only refer to lead and/or DEHP as applicable to that product.

² For purposes of this Settlement Agreement, "sold in proximity" shall mean that the Covered Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

further specified in Sections 2.3(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall be in the same type size or larger than the Covered Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Covered Product:

***WARNING:** This product contains [lead/DEHP], a [phthalate] chemical known to the State of California to cause birth defects or other reproductive harm.*

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Covered Product, Dorman may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Covered Product(s):

***WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain [lead/DEHP], a [phthalate] chemical known to the State of California to cause birth defects or other reproductive harm.*

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Covered Product. On each page where the designated symbol appears, Dorman must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) Internet Website Warning. A warning shall be given in conjunction with the sale of the Covered Products via the internet, which warning shall appear either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger

than the Covered Product description text:

WARNING: *This product contains [lead/DEHP], a [phthalate] chemical known to the State of California to cause birth defects or other reproductive harm.*

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Covered Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: *Products identified on this page with the following symbol ▼ contain [lead/DEHP], a [phthalate] chemical known to the State of California to cause birth defects or other reproductive harm.*

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, Dorman agrees to pay \$16,000 in civil penalties. The 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 Moore, and delivered to the address in Section 3.3 herein.

3.1.1 Initial Civil Penalty

On or before ten (10) calendar days after the Effective Date, Dorman will provide its payment of \$8,000 in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$6,000; and (b) “John Moore, Client Trust Account” in the amount of \$2,000.

3.1.2 Final Civil Penalty/Waiver for Accelerated Reformulation.

No later than February 28, 2016, Dorman shall make a final civil penalty payment of \$8,000, provided, however, that pursuant to title 11 California Code of

Regulations, section 3203(c), Moore agrees that (1) 50% of the final civil penalty payment shall be waived in its entirety if, no later than February 15, 2016, an officer of Dorman provides Moore with a signed declaration certifying that all of the Hardware Accessory Products it ships for sale or distributes for sale in California as of the date of its declaration are Reformulated Hardware Accessory Products, and that Dorman will continue to offer only Reformulated Hardware Accessory Products in California in the future, and (2) 50% of the final civil penalty payment shall be waived in its entirety if, no later than February 15, 2016, an officer of Dorman provides Moore with a signed declaration certifying that all of the Hand Tool Products it ships for sale or distributes for sale in California as of the date of its declaration are Reformulated Hand Tool Products, and that Dorman will continue to offer only Reformulated Hand Tool 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. To obtain a waiver of the final civil penalty, Dorman must deliver its declaration certifying reformulation to Moore's counsel at the address provided in Section 3.3, below.

3.2 Attorneys' Fees and Costs

Moore and his counsel offered to resolve the non-monetary terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to resolved, through arbitration or otherwise, after the other material terms of the agreement had been settled. After the other settlement terms had been finalized, subject to resolution of fees and costs, the Parties then reached an accord on the compensation due to 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, Dorman agrees to pay \$26,800 to Moore and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Dorman's management, and negotiating a settlement in the

public interest. Dorman's payment shall be due within ten (10) calendar days after the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

3.3 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 Dorman

This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and *not* on behalf of the public, and Dorman, 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 Dorman, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Dorman directly or indirectly distributes or sells Covered 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 lead and DEHP contained in Covered Products manufactured, distributed, sold or offered for sale by Dorman in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Moore, on his own behalf and *not* on behalf of the public, 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 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 lead and DEHP contained in the Covered Products manufactured, distributed, sold and/or offered for sale by Dorman before the Effective Date.

4.2 Dorman's Release of Moore

Dorman, 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 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 Covered Products.

4.3 Deemed Compliance with Proposition 65

Compliance by Dorman with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to lead from the Covered Products.

4.4 Public Benefit

The Parties enter into this Settlement Agreement with the understanding that the commitments made herein, and actions to be taken by Dorman under this Settlement Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is Dorman's intent by entering into this Settlement Agreement, that by entering into this Agreement, to the extent any other private party initiates an action against Dorman alleging a violation of Proposition 65 with respect to failure to provide a warning concerning exposure to lead and/or DEHP with respect to the Covered Products manufactured, distributed, sold or offered for sale by Dorman in California, and subject to Dorman's substantial compliance with this Settlement Agreement, such action by

another private party would not confer a significant benefit on the general public as to those Covered Products addressed under this Agreement.

5. REPRESENTATION REGARDING SALES

Dorman represents that the sales information it provided to Moore is truthful to its knowledge and is a material factor upon which Moore relied to determine the amount of civil penalties assessed under this Settlement Agreement in accordance with California Health & Safety Code section 25249.7(b).

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 enforceable provisions remaining shall not be adversely affected to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Consent Judgment being contrary to, the intent of the Parties in entering into this Consent Judgment.

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

8. 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 Dorman:

Thomas Knoblauch
Vice President and General Counsel
Dorman Products, Inc.
3400 East Walnut Street
Colmar, PA 18915

with a copy to:
Joshua A. Bloom, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 12th Street, Suite 1500
Oakland, CA 94607

For Moore:

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

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.

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. 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).

11. MODIFICATION

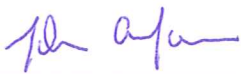
This Settlement Agreement may be modified only by written agreement of the Parties.

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: August 17, 2015

By: 
JOHN MOORE

AGREED TO:

Date: 8/14/2015

By: 
Thomas Knoblauch
Vice President and General Counsel
DORMAN PRODUCTS, INC.

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