

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 John Moore and Dramm Corporation

This Settlement Agreement (“Settlement Agreement”) is entered into by and between John Moore (“Moore”) and Dramm Corporation (“Dramm”) with Moore and Dramm collectively referred to as the “Parties.” Moore is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Moore alleges that Dramm employs ten or more persons and is a “person in the course of doing business,” as that phrase is used in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Moore alleges that Dramm manufactures, imports, sells and/or distributes for sale in California, aprons with vinyl/PVC trim or pockets that contain di(2-ethylhexyl)phthalate (“DEHP”). Moore alleges, and Dramm disputes, that Dramm has sold such aprons in California without providing a Proposition 65 health hazard warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as aprons manufactured, imported, distributed, sold and/or offered for sale in the State of California by Dramm or an “Authorized Retailer” of Dramm with vinyl/PVC mesh pockets or vinyl/PVC trim containing DEHP including, but not limited to, the vinyl/PVC trim surrounding the mesh pockets affixed to the *Dramm Color Wear Garden Apron, Yellow Apron 19023, UPC #0 36434 19023 9* identified in Moore’s Notice. For purposes of this Settlement Agreement an “Authorized Retailer” of Dramm is a (a) retail customer of Dramm that is physically located in California, or has physical retail locations within California, or (b) any direct customer of Dramm not

physically located in California that Dramm knows or should reasonably know or believe sells or offers the Products for sale in or into California.

1.4 Notice of Violation

On May 31, 2018, Moore served Dramm, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Dramm violated Proposition 65 when it failed to provide a Proposition 65 warning for its Products sold or distributed for sale in California. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Dramm denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold and distributed in California, including the Products, comply with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as, nor shall compliance with this Settlement Agreement constitute or be construed as, an admission by Dramm of any fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish or otherwise affect the 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 22, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

“Reformulated Products” are Products containing DEHP in concentrations that do not exceed 0.1 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency

(EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.


2.2 Reformulation Commitment

As of the Effective Date, Dramm shall only manufacture for sale, import for sale, and purchase for sale in the State of California Products that are either (a) Reformulated Products as defined by Section 2.1 above, or (b) Products bearing appropriate health hazard warnings pursuant to section 2.3, below or Title 27, California Code of Regulations section 25601, et seq.

2.3 Product Warnings

Commencing on the Effective Date, for all Products other than Reformulated Products, Dramm shall provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b) or warnings that meet the requirements of Title 27, California Code of Regulations section 25601, et seq. Where a warning is required, Dramm shall affix the warning to the packaging, labeling, or directly on Products sold in California. The warning shall consist of either the Warning or Alternative Short-Form Warning described in subsection 2.3(a) or (b), respectively. Each warning shall be prominently placed with such conspicuousness when 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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies to minimize the risk of consumer confusion.

(a) **Warning.** The Warning shall consist of the following statement:

 **WARNING:** This product can expose you to DEHP, which is 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.

(b) **Alternative Short-Form Warning.** Dramm may, but is not required to, use the alternative short-form warning as set forth in this subsection 2.3(b) (“Alternative Short-Form Warning”), as follows:

⚠ WARNING: Reproductive Harm - www.P65Warnings.ca.gov.

The Alternative Short-Form Warning must be in a type size no smaller than the largest type size used for consumer information (as defined in section 25600.1(c)) on the Product or Product label, and in no case smaller than 6-point type.

2.4 A warning provided pursuant to section 2.3(a) or (b) must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a bold black outline, except that if the packaging does not use the color yellow, then the symbol may be in black and white.

2.5 Foreign Language Requirement. Where a consumer product label used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

2.6 Compliance with Warning Regulations. Dramm shall be deemed to be in compliance with this Settlement Agreement by adhering to sections 2.2 through 2.5 of this Settlement Agreement. If, after the Effective Date, Dramm sells Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, Dramm shall provide warnings for such Products by identifying the specific Product to which the warning applies as further specified in Section 2.6(a).

(a) Internet Website Warning. In the event that Dramm sells Products in or into California via its own internet website that are not Reformulated Products, in addition to the On-Product warnings pursuant to Section 2.3, Dramm shall provide consumer warnings for such Products to California residents. Warnings given posted on Dramm’s internet website shall identify the *specific* Product to which the warning applies without requiring the purchaser to seek out the warning. The Warning in Section 2.3(1) shall appear 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 Product description text as follows: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same

page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process.

Alternatively, 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 Product, Dramm may utilize a clearly marked hyperlink using the word “**WARNING**” which may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the hyperlink takes the consumer to the warning statement herein this subsection above. The Internet Website warning may use the Alternative Short-Form Warning described in Section 2.3(b) if the warning provided on the On-Product warning also uses the Alternative Short-Form Warning.

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

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, Dramm agrees to pay a total of \$1,250 in civil penalties. The 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 paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Moore.

Dramm will deliver its payment on or before the Effective Date, in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$937.50; and (b) “John Moore, Client Trust Account” in the amount of \$312.50. Moore’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Settlement Agreement.

3.2 Reimbursement of 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, the Parties, as a final and

independent settlement term, negotiated a resolution of 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, Dramm shall reimburse Moore and his counsel \$14,975. Dramm's payment shall be delivered to the address in Section 3.3, on or before the Effective Date, in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Moore investigating, bringing this matter to Dramm's attention and negotiating a settlement of the matter.

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 Proposition 65 Claims

Moore acting on his own behalf, and *not* on behalf of the public, releases Dramm, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Dramm directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice.

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4.2 Moore's Individual Releases of Claims

Moore, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Moore of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Dramm prior to the Effective Date. Nothing in this Section affects Moore's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Dramm's Products.

4.3 Dramm's Release of Moore

Dramm, on behalf of itself, its past and current agents, representatives, attorneys, successors, and 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 or otherwise seeking to enforce Proposition 65 against it in this matter 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 Dramm shall 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.

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7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Dramm:

Hans Dramm, CEO
Dramm Corporation
P.O. Box 1960
Manitowoc, WI 54221

For Moore:

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

With a Copy to:

James E. Sell, Esq.
Tyson & Mendes
523 Fourth Street, Suite 100
San Rafael, CA 94901

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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 agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. MODIFICATION

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

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11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 10/19/18

Date: _____

By:  _____
JOHN MOORE

By: _____
Hans Dramm, CEO
DRAMM CORPORATION

11. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: _____

Date: OCTOBER 19, 2018

By: _____

JOHN MOORE

By:  _____

Hans Dramm, CEO
DRAMM CORPORATION