

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Honey-Can-Do International, LLC (“Honey”), with Moore and Honey 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 Honey 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 Honey manufactures, sells, and/or distributes for sale in California, vinyl/PVC cables 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 Honey failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from vinyl/PVC cables.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC cables containing DEHP including, but not limited to, the *Honey Can Do 40 ft Retractable Indoor/Outdoor Clothesline, DRY-01113, UPC #8 11434 01113 1*, manufactured, sold or distributed for sale in California by Honey (“Products”).

1.4 Notice of Violation

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

California that its vinyl/PVC cables 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

Honey 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 Honey 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 Honey of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Honey. However, this Section shall not diminish or otherwise affect Honey'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 31, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

On or before December 31, 2015 and continuing thereafter, Honey agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products". 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.

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, Honey agrees to pay \$ 7,500 in civil penalties. Each 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 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 the Effective Date, Honey shall pay an initial civil penalty in the amount of \$2,500. Honey will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$625; and (b) “John Moore, Client Trust Account” in the amount of \$1,875.

3.1.2 Final Civil Penalty. On or before October 15, 2015, Honey shall pay a final civil penalty of \$5,000 in accordance with the formula set forth in Paragraph 3.1 above. The final civil penalty shall be waived in its entirety, however, if, no later than October 1, 2015, an officer of Honey provides Moore’s counsel with written certification that, as of the date of the certification, all Products shipped, sold or distributed for sale in California are Reformulated Products, and that they will continue to provide only Reformulated Products in the future. The option to provide a written certification of expedited reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence. Honey shall deliver its certificate, if any, to Moore’s counsel at the address provided in Section 3.3, below. In the event that Honey does not timely certify its compliance or make the final civil penalty payment required by this Section, Moore may seek relief under any available legal remedy. If successful, the Parties further agree that Moore shall be entitled to his reasonable attorneys’ fees and costs pursuant to general contract principles

and Code of Civil Procedure section 1021.5.

3.2 Attorneys' Fees and Costs

The Parties 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, Honey agrees to pay \$22,500 to Moore and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Honey's management, and negotiating a settlement in the public interest. Honey's payment shall be due on 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 Honey

This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and not on behalf of the public, and Honey, 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 ("Releasors"), and Releasors hereby release any such claims, against Honey, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Honey 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 Honey in California before the date that this Settlement Agreement is fully executed by the Parties.

In further consideration of the promises and agreements herein contained, Moore, on his own behalf, 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 DEHP contained in the Products manufactured, distributed, sold and/or offered for sale by Honey before the date that this Settlement Agreement is fully executed by the Parties.

4.2 Honey's Release of Moore

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

Honey

Steve Greenspon, Chief Executive Officer
Honey-Can-Do International
5300 St. Charles Road
Berkeley, IL. 60163 USA

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

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.

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: MARCH 25, 2015

Date: _____

By: 
JOHN MOORE

By: _____
Steve Greenspon, Chief Executive Officer
HONEY-CAN-DO INTERNATIONAL, LLC

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).

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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.


AGREED TO:

Date: _____

By: _____
JOHN MOORE

AGREED TO:

Date: 3/24/2005

By:  / (ce)
Steve Greenspon, Chief Executive Officer
HONEY-CAN-DO INTERNATIONAL, LLC