

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Medical Depot, Incorporated (“Medical Depot”), with Moore and Medical Depot 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. Medical Depot 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Moore alleges that Medical Depot sells and distributes for sale in California, Cushions with Vinyl/PVC Upholstery (“Back Cushions”) containing the phthalate chemical 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 Medical Depot failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Back Cushions.

1.3 Product Description

The products covered by this Settlement Agreement are Back Cushions containing DEHP that are manufactured, sold, or distributed for sale in California by Medical Depot, including, but not limited to, the Back Cushions offered in connection with the *Drive General Use Back Cushion, Model # 14889* (“Products”).

1.4 Notice of Violation

On June 14, 2016, Moore served Medical Depot and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that

Medical Depot violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. 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

Medical Depot 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 Medical Depot 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 Medical Depot of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Medical Depot. This Section shall not, however, diminish or otherwise affect Medical Depot'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 February 7, 2017.


2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Standard

For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

2.2 Warnings Required

Medical Depot represents that, as a result of receiving the Notice, it has been following a health-hazard warning program for the Products, however, the parties disagree as to the clarity of the warning. Therefore, commencing ninety (90) days after the Effective Date, Medical Depot shall provide revised clear and reasonable warnings as set forth in this Section for all Products sold in California that do not qualify as Reformulated Products. 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* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Settlement Agreement, a clear and reasonable warning satisfying these criteria shall consist of a warning affixed directly to the packaging, labeling, or directly on each Product provided for sale in California that states:

 **WARNING:** This product can expose you to chemicals, including 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.

OR

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

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

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, Medical Depot agrees to pay \$7,000.00 in civil penalties within ten (10) days of the Effective Date. 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 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. Medical Depot will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$5,250.00 and (b) “John Moore, Client Trust Account” in the amount of \$1,750.00. Moore’s counsel will deliver OEHHA’s portion of the penalty paid under this Settlement Agreement.

3.2 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 reached, Medical Depot expressed a desire to resolve Moore’s 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, within ten (10) days of the Effective Date, Medical Depot agrees to pay \$25,500.00 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of Medical Depot’s management, and negotiating a settlement in the public interest.

3.3 Payment Address

All payments under 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 Medical Depot

This Settlement Agreement is a full, final, and binding resolution between Moore in his individual capacity, not on behalf of the public in California and Medical Depot, of any violation of Proposition 65 that was or could have been asserted by Moore, on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Medical Depot, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Medical Depot directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasces"), based on the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by Medical Depot in California before the Effective Date.

In further consideration of the promises and agreements herein, Moore on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, not on behalf of the public in California hereby 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, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to exposures to DEHP from Products manufactured, distributed, sold, and/or offered for sale by Medical Depot before the Effective Date.

The releases provided by Moore under this Settlement Agreement are provided solely on Moore's own behalf and not on behalf of the public in California.

4.2 Medical Depot's Release of Moore

Medical Depot, on its own behalf, and on behalf of 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, 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 provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions 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 Medical Depot 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 Medical Depot:

Stephanie Sheridan
Sedgwick LLP
333 Bush St, 30th Floor
San Francisco, CA 94104

For Moore:

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

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

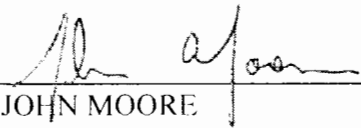
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 12/23/2016

Date: _____

By:  _____
JOHN MOORE

By: _____
MEDICAL DEPOT, INC.

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.

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

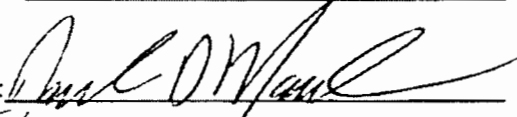
AGREED TO:

AGREED TO:

Date: _____

Date: 01-18-2017

By: _____

By: 

JOHN MOORE

Name: JORDAN D. WARSH

Title: Sr. Director of Quality Operations
MEDICAL DEPOT, INC.