

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Oatey Co. (“Oatey ”), with Moore and Oatey 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. Oatey 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 Oatey manufactures, sells, and distributes for sale in California pipewrap tape containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are pipewrap tapes containing DEHP that are sold or distributed for sale in California, by Oatey including, but not limited to, the *Harvey’s 10 Mil Pipewrap, Part No. 014100, UPC #0 78864 14100 9*, (Products”).

### 1.4 Notice of Violation

On December 6, 2016, Moore served Oatey, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Oatey violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

Oatey denies the material, factual, and legal allegations in the Notice, and maintains that all of the products it has sold and distributed for sale 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 Oatey 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 Oatey of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Oatey. This Section shall not, however, diminish or otherwise affect Oatey'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 May 15, 2017.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

### **2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, Oatey agrees that all Products it sells or distributes for sale in California shall be either: (a) Reformulated Products, as defined by Section 2.2, below; or (b) Products bearing one of the clear and reasonable health hazard warnings set forth in Section 2.3.

### **2.2 Reformulated Products Defined**

For purposes of this Settlement Agreement, Reformulated Products are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) 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.

### **2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date and continuing thereafter, for all Products that do not


qualify as Reformulated Products, Oatey agrees that it will only sell or distribute for sale in California Products bearing one of the clear and reasonable warnings set forth in this Section.


### **2.3.1 General Warning Requirements**

For purposes of this Settlement Agreement, a clear and reasonable 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.

### **2.3.2 Product Warnings**

Oatey shall affix a warning to the packaging, labeling or directly on each Product it sells or distributes for sale in or into California containing one of the following statements:

 **WARNING:** This product can expose you to chemicals, including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

 **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

In addition to the above, Oatey shall have the option to use the following warning, until August 30, 2018:

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

Alternately, Oatey may, at any time, use the safe harbor warning language provided at 27 Cal. Code Regs § 25601 *et seq.*, effective as amended August 30, 2016, to warn about the risks of exposure to DEHP from the Products.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b), in settlement of all claims alleged to in the Notice and referred to in this Settlement Agreement, and in compliance with Section 3.3,

below, Oatey agrees to pay \$4,500 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty paid to Moore. Oatey shall issue its payment in either two checks or two separate wire transfers for the following amounts: (a) “OEHHA” in the amount of \$3,375; and (b) “John Moore, Client Trust Account” in the amount of \$1,125. Moore’s counsel shall be responsible for delivering OEHHA’s portion of any penalty payment made 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 this Settlement Agreement were settled. After the Parties reached an agreement as to all other settlement terms, 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 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Under these legal principles, Oatey agrees to pay \$22,500 to Moore and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Oatey’s management, and negotiating a settlement in the public interest. Oatey’s payment shall be delivered in either the form of a check, payable to “The Chanler Group” or by wire transfer, pursuant to the terms in Section 3.3, below.

### **3.3 Payment Method and Timing**

The Parties agree that all payments due under this Settlement Agreement shall be payable via either a check, due within ten days of the Effective Date, or by a wire transfer. Should Oatey elect to remit its payment via a wire transfer, the Parties further agree that such transfer shall be initiated within ten (10) days of the Effective Date or the date upon which Moore’s counsel provides Oatey’s counsel with an email containing wire transfer instructions.

### **3.4 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

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 Oatey**

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

In further consideration of the promises and agreements herein contained, Moore, on his own behalf and not on behalf of the public, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Oatey and Releasees, including, without limitation, all actions and causes of action, 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 the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by Oatey, before the

Effective Date.

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

#### **4.2 Oatey's Release of Moore**

Oatey, 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, 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 provision of this Settlement Agreement is held 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 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Oatey 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 Oatey:

Oatey Co.  
Attn: Legal Department  
20600 Emerald Parkway  
Cleveland, OH 44135

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.

**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 § 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.

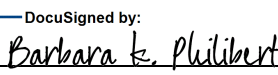
**AGREED TO:**

**AGREED TO:**

Date: April 25, 2017

Date: 4/24/2017

By:   
JOHN MOORE

By:   
Barbara K. Philibert, President  
OATEY CO.