

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore, (“Moore”) and Origin Point Brands, LLC (Origin) with Moore and Origin 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. Origin 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 Origin manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, vinyl/PVC hardware cloth that contain the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and/or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are hardware cloth made with vinyl/PVC containing DEHP, that are manufactured, sold and/or distributed for sale in California by Origin, including, but not limited to, *Garden Zone Green Vinyl Hardware Cloth, Model 272405, UPC #651082272450 and Model 273605, UPC #651082273655* (collectively, “Products”).

#### **1.4 Notice of Violation**

On February 27, 2015, Moore served Origin and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Origin violated Proposition 65 when it failed to warn its customers and consumers in California that the Products 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**

Origin 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 Origin 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 Origin of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Origin. This Section shall not, however, diminish or otherwise affect Origin’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 December 16, 2015.

### **2. INJUNCTIVE RELIEF**

#### **2.1 Reformulated Products**

Commencing on December 16, 2015 and continuing hereafter, Origin shall only purchase for sale or manufacture for sale in California, “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” are Products that contain no more than 1,000 ppm (0.1%) DEHP content in any component analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies

used by state or federal agencies for purposes of determining DEHP content in a solid substance.

## **2.2 Clear and Reasonable Warnings**

### **2.2.1 Retail Store Sales**

#### **2.2.1.1 Product Labeling**

Origin agrees that as of Effective Date, all Products it sells and/or distributes in California which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Origin further agrees that the warning will 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 or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and containing the following statement:

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

**2.2.1.2 Point-of-Sale Warnings.** Alternatively, Origin may provide warning signs in the form below to retail outlets in California with instructions to post the signs in immediate proximity to the point of display of any and all such Products for the benefit of its customers.

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

**2.3** Provided that Origin has complied with Sections 2.1 or 2.2 above, sales of Products that were supplied to unaffiliated third parties prior to the Effective Date are subject to the releases provided in Section 4.1 and shall not be separately actionable against Origin or unaffiliated third parties in another case brought pursuant to Section

25249.7(d) of the Health and Safety Code alleging a failure to warn for DEHP under Proposition 65.

**3. MONETARY SETTLEMENT TERMS**

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

Pursuant to Health & Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Origin agrees to pay \$5,000.00 in civil penalties. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) and (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. Moore’s counsel shall be responsible for remitting Origin’s penalty payment(s) under this settlement to OEHHA. Within five business days of the Effective Date, Origin shall provide its payment in a single check made payable to “John Moore Client Trust Account,” to be delivered to the address provided in section 3.3, below.

**3.2 Reimbursement of Moore’s 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, within five business days of the Effective Date, Origin agrees to pay \$21,000.00 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 Origin’s management, and negotiating a settlement in the public interest.

### **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 Origin**

This Settlement Agreement is a full, final and binding resolution between Moore and Origin, of any violation of Proposition 65 that was or could have been asserted by Moore on his own behalf, or on behalf of himself, his past and current agents, representatives, attorneys, successors, and assignees, against Origin, its successors, assignees, parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, shareholders, attorneys, and each entity to whom Origin 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 alleged failure to warn about exposures to DEHP in Products sold or distributed for sale by Origin prior to the Effective Date.

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 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 the failure to warn about exposures to DEHP from Products sold or distributed for sale by Origin 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 Origin's Release of Moore**

Origin 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, 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 remaining enforceable 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 Origin may provide written notice to Moore of any asserted change in the law, and shall have no further 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 Origin:

Kathryn H. Edwards  
Orrick, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, CA 94105

For Moore:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St.  
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 & 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.

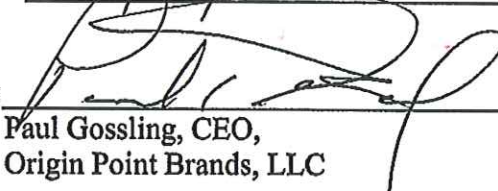
**AGREED TO:**

Date: 12/16/2015

By:   
John Moore

**AGREED TO:**

Date: 12/15/15

By:   
Paul Gossling, CEO,  
Origin Point Brands, LLC