

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered by and between John Moore (“Moore”) and Primex, Inc. (“Primex”), with Moore and Primex 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. Primex employs ten or more individuals 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 25249.5 et seq. (“Proposition 65”).

1.2 General Allegations

Moore alleges that Primex sells glass rain gauges with exterior designs containing lead, and that it does so without first providing the warning required by Health and Safety Code 25249.6, et seq. (“Proposition 65”). Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.3 Product Description

For purposes of this Settlement Agreement, “Products” are defined as glass rain gauges with exterior designs containing lead that are sold or distributed for sale in California by Primex including, but not limited to, the *GroundWork Rain Gauge, 1043702, UPC #7 49394 03939 4* identified in Moore’s Notice.

1.4 Notice of Violation

On February 14, 2018, Moore served Primex, the California Attorney General, and all other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice alleges that Primex violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to lead from the Products. No public enforcement has commenced and is diligently prosecuting an action to enforce the allegations made in the Notice.

1.5 No Admission

Primex denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products that it has sold and distributed for sale in California, including the Products, comply with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Primex 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 Primex of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Primex. This Section shall not, however, diminish, or otherwise affect Primex'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 August 24, 2018.


2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for any Products sold or offered for sale in California by Primex, Primex agrees to only offer such Products with a clear and reasonable warning in accordance with this Section 2.1 or Title 27 California Code of Regulations section 25601, et seq. Primex further agrees that any warning used will be prominently placed in relation to the Products 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 of purchase or use. For purposes of this Settlement Agreement, a warning satisfying the above criteria that contains one of the following statements shall be deemed clear and reasonable:

⚠️ WARNING: This product can expose you to chemicals including lead, which is known to the State of California to cause Cancer and Reproductive harm.
For more information go to www.P65Warnings.ca.gov.

The following short-form warning statement may be used when affixed directly to the Product(s):

 **WARNING:** Cancer and Reproductive Harm –
www.P65Warnings.ca.gov.

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, Primex agrees to pay \$1,600 in civil penalties within five (5) days of the Effective Date. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty retained by Moore. On or before the Effective Date, Primex shall issue its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,200; and (b) “John Moore, Client Trust Account” in the amount of \$400. Moore’s counsel shall be responsible for delivering OEHHA’s portion of the civil penalty payment.

3.2 Attorneys’ Fees and Costs

The Parties negotiated Primex’s reimbursement of Moore’s fees and costs under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in and related to this matter. Under these legal principles, Primex agrees to pay \$22,900 on or before the Effective Date in a check payable to “The Chanler Group.” Primex’s payment under this Section shall cover all amounts incurred investigating, bringing this matter to the attention of Primex’s management, and negotiating a settlement that provides a significant public benefit.

3.3 Payment Terms

All payments due under this Settlement Agreement shall 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 Primex

This Settlement Agreement is a full, final, and binding resolution between Moore and Primex 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 Primex or its parents, subsidiaries, affiliated entities under common ownership (including, without limitation, Combex, Inc.), directors, officers, employees, and attorneys (collectively, the "Releasees"), and each downstream entity to whom Primex directly or indirectly distributes, ships, or sells the Products. Such downstream entities include, without limitation, Primex's distributors, wholesalers, customers (including, without limitation, Tractor Supply Company), retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, representatives, and assignees (collectively, "Downstream Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to lead in Products manufactured, sold, or distributed for sale by Primex before the Effective Date, as alleged in the Notice. Moore agrees that compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead in Products sold after 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 assignees, hereby waives any and all rights he may have 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 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 with respect to lead in Products sold or distributed for sale by Primex before the Effective Date, as alleged in the Notice.

The releases by Moore under this Settlement Agreement are provided in Moore's individual capacity only, and are not releases by or on behalf of the public in California.

4.2 Primex's Release of Moore

Primex, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against Moore and his attorneys and other representatives, for any action taken or statement made, whether while 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 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. If Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Primex 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 Primex:

Jon Balicki, President
Primex, Inc.
965 S. Wells St
Lake Geneva, WI 53147

with a copy to:

Seth A. Mailhot, Esq.
Michael Best & Friedrich LLP
601 Pennsylvania Avenue NW
Suite 700 South
Washington, DC 20005

For Moore:

The Chanler Group
Attn: Proposition 65 Coordinator
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.

7. **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.

8. **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).

9. **MODIFICATION**

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

10. **AUTHORIZATION**

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


AGREED TO:

AGREED TO:

Date: 8/15/2018

Date: 8/16/18

By: 
JOHN MOORE

By: 
Jon Balicki, President
PRIMEX, INC.