

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 John Moore and Pro Sports, Inc.

This Settlement Agreement is entered into by and between John Moore (“Moore”), and Pro Sports, Inc. d/b/a/ Champion Sports (“Pro Sports”), with Moore and Pro Sports collectively referred to as the “parties.”

### 1.2 General Allegations

Moore is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Pro Sports employs ten or more persons and is a person in the course of doing business for purposes of Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

Moore alleges that Pro Sports has manufactured, imported, distributed and/or offered for sale physical education equipment and other products that contain phthalates, including di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP and other phthalates such as butyl benzyl phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”) are listed under Proposition 65 as chemicals known to cause birth defects and other reproductive harm. DEHP, BBP and DBP are referred to collectively herein as the “Listed Chemicals.”

### 1.3 Product Description

In the process of negotiating the settlement in *John Moore v. Bell Sports et al.*, State of California Superior Court, Marin County Case No. CIV-10002842 (“Bell Sports Settlement”), the parties agreed to negotiate a settlement for additional physical education equipment. The products that are covered by this Settlement Agreement are defined as follows: physical education equipment including, but not limited to, storage carts and containers for sports equipment; baseball and softball bats; baseball catcher’s and umpire’s gear; soccer shin guards; lacrosse

equipment; bases for baseball field and associated installation devices; batting tees; flag football sets; relay batons; foam cones; horseshoe sets; bowling pins; croquet equipment; shuffleboard equipment; tennis equipment; volleyball equipment; badminton equipment; track and field equipment; hockey equipment and hockey pucks; jump ropes; scooters; foam discs; foam dice; hula hoops; beanbags; parachutes; and spot markers. All such products manufactured, imported, distributed and/or offered for sale in California by Pro Sports shall be referred to collectively hereinafter as the "Products".

#### **1.4 No Admission**

Pro Sports denies the material, factual and legal allegations contained in Moore's Notice and maintains that all 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 Pro Sports of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Pro Sports of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Pro Sports under this Settlement Agreement.

#### **1.5 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 30, 2011.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

### **2.1. Reformulation Commitment:**

Commencing on the Effective Date, Pro Sports shall only manufacture, or accept from a manufacturer or other supplier, Products to be offered for sale in California, that are "Phthalate Free" or carry a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below. For purposes of this Settlement Agreement, "Phthalate Free" shall mean products containing less than

or equal to 1,000 parts per million (“ppm”) each of DEHP, BBP, and DBP in poly vinyl chloride or other plastic components that are reasonably likely to be handled, touched or mouthed during ordinary use or handling, when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodology utilized by federal or state agencies for the purpose of determining the Listed Chemical’s content in a solid substance.

**2.2 Warnings:**

To the extent Pro Sports does not address its obligations through reformulation, Pro Sports shall affix a warning on the packaging of each product, or if no packaging exists, on each product sold in California that states:

**WARNING:** This product contains one or more phthalate chemicals known to the State of California to cause birth defects and other reproductive harm.

Any warning issued for Products pursuant to this Settlement Agreement 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 before use.

For Products sold by catalog or via the internet or by telephone to consumers in California, the preceding warning statement must be supplemented with written information advising the consumer, in a conspicuous matter, that he or she may return the Product for a full refund (including shipping costs for both the receipt and the return of the product) within fifteen (15) days of his or her receipt of the Product.

**3. RELEASE OF ALL CLAIMS**

**3.1 Release of Pro Sports**

Moore on behalf of himself and his past and current agents, representatives, attorneys, successors, and/or assignees and *not* in his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims for

failure to warn under Proposition 65 as to Listed Chemicals in the Products. The parties understand and agree that this release does not extend to a release on behalf of the general public. Nevertheless, compliance with the terms of Section 2.1 and Section 2.2 of this Settlement Agreement by Pro Sports shall be deemed to achieve compliance with Proposition 65 with respect to Listed Chemicals in the Products.

In consideration of the promises and agreements herein contained, Moore also, on behalf of himself and his agents, attorneys, representatives, successors and assigns, in his individual capacity only and *not* in his representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of this dispute. Moore acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Moore, in his individual capacity only and *not* in his representative capacity, on behalf of himself and his agents, attorneys, representatives, successors and assigns, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

Notwithstanding the foregoing, this general release shall not affect, in any way, the obligations and commitments under the Bell Sports Settlement.

**3.2 Pro Sports' Release of Moore**

Pro Sports waives any and all claims against Moore, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

**4. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**5. 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 Pro Sports shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve Pro Sports from any obligation to comply with any pertinent state or federal toxics control law.

**6. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Pro Sports:

Michael J. Van Zandt, Esq.  
Sophia Belloli, Esq.  
Hanson Bridget LLP  
425 Market Street, 26<sup>th</sup> Floor  
San Francisco, CA 94105

For Moore:

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

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**7. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Moore agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f).

**8. MODIFICATION**

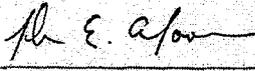
This Settlement Agreement may be modified only by a written agreement of the parties.

**9. 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.

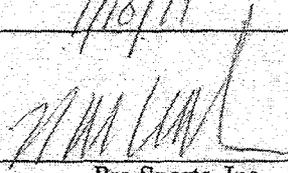
**AGREED TO:**

Date: JANUARY 18, 2011

By:   
John Moore

**AGREED TO:**

Date: 1/10/11

By:   
Pro Sports, Inc