

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 John Moore and CSS Industries, Inc**

This Settlement Agreement is entered into by and between John Moore (“Moore”) and CSS Industries, Inc. (“CSS”), with Moore and CSS collectively referred to as the “Parties”.

Moore is an individual residing in the State of 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. CSS 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 Section 25249.6, *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Moore alleges that CSS has manufactured, distributed and/or sold gift bags with handles that contain phthalates, including Di(2-ethylhexyl)phthalate (the “Listed Chemical”), without the requisite Proposition 65 warnings. The Listed Chemical is on the Proposition 65 list as a chemical known to the State of California to cause birth defects and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as follows: gift bags with handles containing the Listed Chemical including, but not limited to, *Gift Bag, Cheers, #14084268 (#026521 86218 7)*. All such gift bags with handles containing the Listed Chemical are hereinafter referred to as the “Products”.

### **1.4 Notices of Violation**

On or about June 3, 2010, Moore served CSS and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided CSS and public enforcers with notice of CSS’ alleged violations of California Health & Safety Code Section 25249.6 for failing to warn consumers that the Products that CSS sold exposed users in California

to the Listed Chemical. To the best of the parties' knowledge, no public enforcer has diligently prosecuted any action involving the allegations set forth in the Notice.

**1.5 No Admission**

CSS 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 have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by CSS 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 CSS of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by CSS. However, this Section shall not diminish or otherwise affect CSS' 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 25, 2011.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Standards**

As used in this Settlement Agreement, "Reformulated Products" are defined as those Products containing less than or equal to 1000 parts per million ("ppm" or "mg/kg") of the Listed Chemical in any component that can be touched or mouthed.

**2.2 Reformulation Commitment**

CSS hereby commits that one hundred percent (100%) of the Products that it manufactures, sells or ships after the Effective Date for sale or distribution in California, shall qualify as Reformulated Products.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

Pursuant to Health & Safety Code Section 25249.7(b), and in settlement of all the claims referred to in this Consent Judgment, CSS shall pay a total of \$32,000 in civil fines in two installments. The first payment of the penalty shall be \$6,000, to be apportioned in

accordance with California Health & Safety Code Section 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% remitted to Moore as provided by California Health & Safety Code Section 25249.12(d).

CSS shall issue two separate checks for each of the payments : (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$4,500, representing 75% of the total; and (b) one check to The Chanler Group in Trust for Moore in the amount of \$1,500, representing 25% of the total. Two separate Form 1099s shall be issued for the above payments: The first Form 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$4,500. The second Form 1099 shall be issued in the amount of \$1,500 to Moore, whose address and tax identification number shall be furnished upon execution of this Agreement. The payment shall be made payable to The Chanler Group and shall be delivered within ten (10) days of the Effective Date, at the following address:

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

The second payment of \$26,000 in civil fines is due on March 30, 2011; however this amount shall be waived in its entirety if CSS certifies (in writing to Moore by March 15, 2011) that it (i) has met the Reformulation Commitment as of the Effective Date, or (ii) no longer manufactures, distributes and/or sells the Product with the Listed Chemical in the State of California as of the Effective Date. If the certification is not received, then the additional civil fines shall be apportioned in the same manner outlined above in this Paragraph.

**4. REIMBURSEMENT OF FEES AND COSTS**

The parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without reaching terms on the amount of attorneys' fees and costs to be reimbursed to them, thereby leaving the fee issue to be resolved after the material terms of the agreement had been settled. CSS then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Moore and his counsel under the private attorney general doctrine (California Code of Civil Procedure §1021.5) and principles of contract law. Under these legal principles, CSS shall reimburse Moore's counsel for fees and costs incurred as a result of investigating, bringing this matter to CSS' attention, and negotiating a settlement in the public interest. CSS shall pay Moore and his counsel \$36,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "The Chanler Group" and shall be delivered on or before February 25, 2011, at the following address:

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

CSS shall issue a separate Form 1099 for attorney's fees and costs paid in the amount of \$36,000 to The Chanler Group, 2560 Ninth Street, Suite 214, Berkeley, CA 94710-2565 (EIN: 94-3171522).

**5. RELEASE OF ALL CLAIMS**

**5.1 Moore's Release of CSS**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Moore, on behalf of himself and in his representative capacity, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including,

without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against CSS and each of its licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective customers, officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") that arise under Proposition 65, as such claims relate to CSS' alleged failure to warn about exposures to the Listed Chemical contained in the Products.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against CSS or the Releasees under Proposition 65 as covered under this release. If requested in writing by CSS (within twelve months of the Effective Date), CSS may ask Moore to file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law. If requested, Moore agrees to reasonably cooperate with CSS and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to Code of Civil Procedure Sections 1021 and 1021.5, CSS will reimburse Moore and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an amount not to exceed \$15,000. No fees under this paragraph will be due and owing to Moore or his counsel unless a written request is made by CSS to have Moore file a complaint and seek a consent judgment. CSS will remit payment to The Chanler Group, at the address set forth in Section 8 below. Such additional fees shall be paid by CSS within ten days after its receipt of monthly invoices from Moore for work performed under this paragraph.

## **5.2 CSS' Release of Moore**

CSS, on behalf of itself and its Releasees, waives any and all claims against Moore, his attorneys, and other representatives for any and all actions taken by Moore and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65, against them in this matter, and/or with respect to the Products.

**6. 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.

**7. 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 CSS 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.

**8. 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:

To CSS:

Laura H. McKaskle, Esq.  
Morgan, Lewis & Bockius LLP  
300 South Grand Ave, 22<sup>nd</sup> Floor  
Los Angeles, CA 90071-3132

To 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. The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against CSS and the Releasees under Proposition 65 as covered under the Release in Section 5 of this Settlement Agreement.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

**10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 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).

**11. MODIFICATION**

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

**12. 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: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

John Moore

By:  \_\_\_\_\_

CSS Industries, Inc.

Vice President & General Counsel

Berkeley, CA 94710-2565

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**11. MODIFICATION**

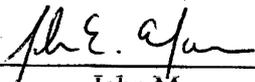
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The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

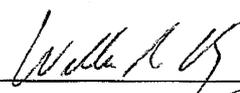
Date: FEBRUARY 24, 2011

By: 

John Moore

AGREED TO:

Date: \_\_\_\_\_

By: 

CSS Industries, Inc.

Vice President & General Counsel