

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 John Moore and Team Beans, LLC

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Team Beans, LLC (“Team Beans”) with Moore and Team Beans 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 to improve human health by reducing or eliminating hazardous substances contained in consumer products. Team Beans 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 Team Beans has manufactured, distributed, and/or offered for sale in California keychains containing excessive amounts of the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”) without providing a clear and reasonable warning in violation of Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm, and is referred to hereinafter as the “Listed Chemical.”

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: keychains containing the Listed Chemical sold by Team Beans including, but not limited to, the *Forever Collectible Baseball Keychain, San Francisco Giants (#8 84966 05336 8)*. All such

keychains sold by Team Beans and containing the Listed Chemical are referred to hereinafter as the “Products.”

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

On or about November 12, 2010, Moore served Team Beans and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Team Beans and public enforcers with notice that Team Beans was alleged to be in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and other individuals in California that the Products it sold exposed users to the Listed Chemical. 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**

Team Beans denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products 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 Team Beans 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 Team Beans of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Team Beans. However, this section shall not diminish or otherwise affect Team Beans’ obligations, responsibilities, and duties under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean March 15, 2011.

**2. REFORMULATION**

As of the Effective Date, Team Beans shall only distribute, ship, sell, or offer to ship for sale or use in California, Products that are “DEHP Free.” For purposes of this Settlement Agreement, “DEHP Free” shall mean Products containing no more than 1,000 parts per million of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C.

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

Pursuant to California Health & Safety Code section 25249.7(b) and in settlement of all claims alleged in the Notice and referred to in this Settlement Agreement, Team Beans shall pay \$4,000 in civil penalties to be allocated according to California Health & Safety Code §§ 25249.12(c)(1) & (d) with seventy-five percent of the penalty funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent of the penalty amount paid to Moore. Team Beans shall issue two checks for the penalty payment: (a) one check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$3,000; and (b) one check to “The Chanler Group in Trust for John Moore” in the amount of \$1,000. Two separate 1099 forms shall be issued for the above payments to: (a) California Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall be provided five (5) days before the payment is due.

Payment shall be delivered to Moore's counsel on or before the Effective Date at the following address:

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

**4. REIMBURSEMENT OF FEES AND COSTS**

The parties reached an accord on the compensation due to Moore and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Team Beans shall reimburse Moore's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Team Beans' attention, and negotiating a settlement in the public interest. Team Beans shall pay \$24,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third check made payable to "The Chanler Group" and shall be delivered on or before the Effective Date, at the following address:

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

Team Beans shall issue a third 1099 form for attorney's fees and costs paid to The Chanler Group (EIN: 94-3171522).

**5. RELEASE OF ALL CLAIMS**

**5.1 Moore's Release of Team Beans**

In further consideration of the promises and agreements contained herein, 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 attorney's fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims") against Team Beans and each of its wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively "Releasees"), that arise under Proposition 65, as such Claims relate to Team Beans' alleged failure to warn about exposures to the Listed Chemical contained in the Products.

The Parties further understand and agree that this release shall not extend upstream to any third parties that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Team Beans.

**5.2 Team Bean's Release of Moore**

Team Beans, 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, his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce 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 Team Beans 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 notice required to be provided pursuant to this settlement agreement shall be in writing and: (i) personally delivered; or (ii) sent by first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

To Team Beans:

S. Wayne Rosenbaum, Esq.  
Elizabeth A. Cason, Esq.  
Foley & Lardner, LLP  
402 West Broadway  
Suite 2100  
San Diego, CA 91201-3542

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.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

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. A facsimile or optically scanned image of a party's signature shall be valid, as if original.

**10. 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 § 25249.7(f).

**11. MODIFICATION**

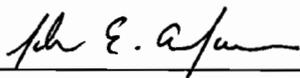
This Settlement Agreement may be modified only by written agreement of the parties.

12. **AUTHORIZATION**

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

AGREED TO:

Date: MARCH 16, 2011

By:   
John Moore

AGREED TO:

Date: 3-17-2011

By:   
Michael Lewis, President  
Team Beans, LLC