

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 John Moore and Quo Vadis Editions Inc.**

This Settlement Agreement is entered into by and between John Moore (“Moore”), and Quo Vadis Editions Inc. (“Defendant”). Moore and Defendant are hereinafter referred to collectively as the “Parties.” 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. Defendant 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 Defendant manufactured, distributed, sold, marketed, and/or offered for sale, including through the internet and/or otherwise in the State of California, coverings for books (such as *Quo Vadis Refillable Visoplan 2010 Monthly Planner* (#0 654507 671586)) containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”), without first providing a clear and reasonable warning regarding the risk of birth defects or reproductive toxicity. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm. DEHP is referred to hereinafter as the “Listed Chemical.”

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as coverings for books (including covers for journals, address books, pocket address books and/or planners, such as *Quo Vadis Refillable Visoplan 2010 Monthly Planner* (#0 654507 671586)) containing DEHP, sold, distributed, marketed, and/or manufactured (as that term is commonly defined, which includes, but it not limited to, producing or assembling) by Defendant at any time in California (“Products”).

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

On March 17, 2011, Moore served Defendant and various public enforcement agencies with a document titled "60-Day Notice of Violation" ("Notice") that provided the recipients with notice that Defendant was allegedly in violation of California Health & Safety Code § 25249.6 for failing to warn their customers and consumers in California that the Products expose users to the Listed Chemical. No public enforcer has commenced and diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

Defendant denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products it has sold in California, or offered for sale 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 Defendant of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute, or be construed as, an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Settlement Agreement.

#### **1.6 Effective Date**

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

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

#### **2.1 Reformulated Products**

Commencing on the Effective Date, Defendant shall not manufacture (as that term is commonly defined, including assembling or producing), or offer for sale in California, any Products that are not "DEHP-Free." For purposes of this Settlement Agreement, DEHP-Free shall mean Products containing no more than 1000 parts per million (0.1%) of the Listed Chemical when

analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.

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

Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all of the claims and violations alleged in the Notice and referred to in this Settlement Agreement, Defendant shall pay \$10,000.00 in combined civil penalty payments and credits. As a result of Defendant's commitment to reformulate the Products to comply with the DEHP-Free, 1000 ppm standard established by Section 2.1, above, Moore will provide a penalty credit of \$7,000. Thereafter, Defendant shall pay the remaining sum of \$3,000.00.

Civil penalties shall be apportioned in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the State of California Environmental Protection Agency's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% remitted to Moore. Defendant shall issue two checks for the civil penalty payments to: (a) "The Chanler Group in Trust for Office of Environmental Health Hazard Assessment" in the amount of \$2,250; and (b) "The Chanler Group in Trust for John Moore" in the amount of \$750. Two 1099 forms shall also be provided to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) John Moore, whose address and tax identification number shall be furnished upon request, five days before payment is due. The payments shall be mailed to Moore's counsel, within ten (10) days of the full execution of this agreement, to 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 acknowledge that Moore and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee

issue to be resolved after the material terms of the agreement had been settled. Defendant 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, in fact, reach an accord on the compensation due to Moore and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (“CCP”) § 1021.5, for all work performed through the mutual execution of this agreement. Defendant shall pay the total amount of \$22,000.00, for fees and costs incurred as a result of investigating, bringing this matter to Defendant’s attention, and negotiating a settlement in the public interest. Defendant shall make the check payable to “The Chanler Group” and shall issue a separate 1099 for fees and costs (EIN: 94-3171522). Payments pursuant to this section shall be mailed to Moore’s counsel, within ten (10) days of the full execution of this agreement, to the following address:

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

**5. CLAIMS COVERED AND RELEASED**

**5.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

This Settlement Agreement is a full, final, and binding resolution between Moore, on behalf of himself and the public, and Defendant, of any violation of Proposition 65 that was or could have been asserted by Moore against Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and to whom Defendant directly or indirectly distributes or sells the Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to the Listed Chemical contained in the Products sold by Defendant.

## **5.2 Moore's Public Release of Proposition 65 Claims**

In further consideration of the promises and agreements herein contained, Moore, on behalf of himself, 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, but exclusive of fees and costs on appeal, arising under Proposition 65 with respect to the Listed Chemical contained in the Products sold by Defendant (collectively "Claims").

## **5.3 Moore's Individual Release of Claims**

Moore, also in his individual capacity only and not in his representative capacity, provides a release herein which he represents and warrants shall be effective as a full and final accord and satisfaction, and a complete bar to all claims, liabilities, and demands of any nature, character or kind arising out of alleged or actual exposures to the Listed Chemical contained in the Products. The individual release provided by this Section is limited to those Claims that were brought or could have been brought by Moore against Defendant and Releasees for unwarned exposures to the Listed Chemical contained in the Products sold by Defendant, as such claims are alleged in the Notice.

## **5.4 Defendant's Release of Moore**

Defendant on behalf of itself, 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 or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provision of this Settlement Agreement is deemed 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 Defendant 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 Defendant from any obligation to comply with any pertinent state or federal toxics control law.

**8. NOTICES**

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

For Defendant:

Kenneth E. Chyten, Esq.  
Law Office of Kenneth E. Chyten  
300 East Esplanade Drive, Suite 900  
Oxnard, California 93036

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.

**9. Obtaining Court Approval of This Settlement Agreement.**

If requested in writing by Defendant (within 18 months of the date this agreement is fully executed), Moore shall 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 § 25249.7, or as may be otherwise allowed by law, and Moore shall reasonably cooperate with Defendant, and use best his efforts, and those 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 Civ. Proc. §§ 1021 and 1021.5, Defendant will reimburse Moore and his counsel for their reasonable attorney's fees, in an amount not to exceed \$7,500, and actual out of pocket costs, for filing the complaint and seeking judicial approval of this Settlement Agreement. No fees under this paragraph will be due and owing to Moore or his counsel unless a written request is made by Defendant to have Moore file a complaint and seek a consent judgment. Defendant will remit payment to The Chanler Group, at the address set forth in Section 8, above, within ten days after its receipt of monthly invoices from Moore for work performed under this paragraph.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

**11. MODIFICATION**

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

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

Date: September 1, 2011

  
\_\_\_\_\_  
John Moore

Date: September 6, 2011

Quo Vadis Editions, Inc.

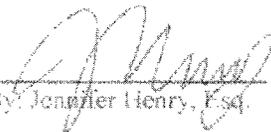
  
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By: Christine Nusse, Vice-President

APPROVED AS TO CONTENT AND FORM:

Date: September 1, 2011

THE CHANLER GROUP

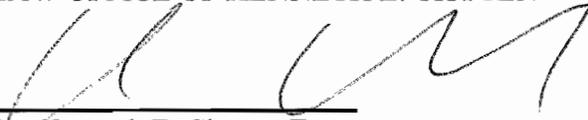
  
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By: Jennifer Henry, Esq.

Attorneys for John Moore

Date: September 6, 2011

LAW OFFICE OF KENNETH E. CHYTEN



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By: Kenneth E. Chyten, Esq.

Attorneys for Quo Vadis Editions, Inc.