

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Hard Rock Cafe International (USA), Inc. (“HRC”) with Moore and HRC 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. HRC 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 HRC has shipped, sold, or offered to ship for sale in California Identification (I.D.) cases containing excessive amounts of di(2-ethylhexyl) phthalate (“DEHP”) without providing a clear and reasonable warning in violation of Health & Safety Code § 25249.6. DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are defined as ID cases containing DEHP sold in California by, or on behalf of, HRC including, but not limited to, the *Hard Rock Cafe HRC Backstage Pass Lanyard Retail 09 (#8 89382 96074 0)* (hereinafter “Products”).

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

On or about May 11, 2011, Moore served HRC and various public enforcement agencies with a "60-Day Notice of Violation" ("Notice"), a document that provided the recipients with notice that HRC was alleged to be in violation of California Health & Safety Code § 25249.6 for failing to warn its customers and consumers in California that the Products expose users to DEHP. 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**

HRC denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has sold 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 HRC of any fact, finding, conclusion of law, liability, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by HRC of any fact, finding, conclusion of law, unlawful conduct, issue of law, or violation of law, the same being specifically denied by HRC. This section shall not, however, diminish or otherwise affect HRC'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 December 10, 2011.

**2. INJUNCTIVE RELIEF: REFORMULATION**

Commencing on the Effective Date and continuing thereafter, HRC shall only ship, sell, or offer to ship for sale in California, Products that are "DEHP Free." For purposes of this Settlement Agreement, "DEHP Free" shall mean Products containing a maximum of 1,000 ppm (0.1%) DEHP content when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies used by state or federal agencies to determine DEHP content in a solid substance.

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

Pursuant to California Health & Safety Code § 25249.7(b) and in settlement of all claims alleged in the Notice and referred to in this Settlement Agreement, HRC shall pay \$3,000 in civil penalties. The penalty amount reflects a credit of \$3,000 agreed to by Moore in response to HRC's commitment to Proposition 65 compliance, including, offering only DEHP Free Products for sale in California pursuant to section 2.

Penalty payments shall be allocated according to California Health & Safety Code § 25249.12(c)(1) & (d) with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent of the penalty remitted to Moore. HRC shall issue two checks for the following amounts made payable to: (a) "The Chanler Group in Trust for OEHHA" 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 for payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose tax identification number shall be provided upon request after the date this

Settlement Agreement is fully executed by the parties. Payment shall be delivered to Moore's counsel on or before the 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, HRC shall reimburse Moore's counsel for fees and costs incurred as a result of investigating, bringing this matter to HRC's attention, and negotiating a settlement in the public interest. HRC shall pay \$22,000 for all attorneys' fees, expert and investigation fees, and related costs. HRC's payment shall delivered as follows: (a) on or before the Effective Date, HRC shall deliver a check made payable to "The Chanler Group" in the amount of \$11,000; and (b) on or before December 30, 2011, HRC shall deliver a second check made payable to "The Chanler Group" in the amount of \$11,000. Payments required by this section shall be delivered to Moore's counsel at the following address:

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

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

**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 behalf of the general public in California, and HRC, of any violation of Proposition 65 that was or could have been asserted by Moore against HRC, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom HRC directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (collectively "Releasees"), for claims related under Proposition 65 for unwarned exposures to DEHP contained in the Products sold or distributed for sale by HRC.

**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, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 (collectively "Claims"), against HRC and Releasees for unwarned exposures to DEHP contained in the Products sold or distributed for sale by HRC.

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

Moore, in his individual capacity only and *not* in his representative capacity, also provides a release to HRC and the Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all Claims, liabilities, and demands of any nature, character, or kind arising out of unwarned exposures to DEHP contained in the Products sold or distributed for sale by HRC.

**5.4 HRC's Release of Moore**

HRC 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 in the Notice, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision is 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 HRC 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; (ii) sent by first-class, registered or certified mail, return receipt requested; or (iii) sent by a regognized overnight courier to the following addresses:

To HRC:

Jay Wolszczak, General Counsel  
Hard Rock Cafe International (USA), Inc.  
6100 Old Park Lane  
Orlando, FL 32835

and

Phil Allen, Esq.  
McHale & Allen  
527 S. Lake Ave., Suite 102  
Pasadena, CA 91101

To Moore:

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

Any party may, from time to time, 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)(4).

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.

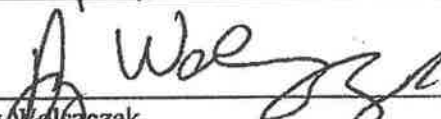
AGREED TO:

Date: JANUARY 6, 2012

By:   
John Moore

AGREED TO:

Date: 12/12/2011

By:   
Jay Wolszczak  
Hard Rock Cafe International (USA), Inc.