

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 John Moore and Title Boxing, LLC**

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Title Boxing, LLC (“Title Boxing”), with Moore and Title Boxing collectively referred to as the “Parties.” Moore is an individual residing in the State of California who asserts that he seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Title Boxing 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 Title Boxing has manufactured, distributed, sold and/or offered for sale in the State of California training suits and sauna fitness suits containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as training suits and sauna fitness suits containing DEHP including, but not limited to, *Body Sculpture Sauna Suit, VSS REG (#7 15280 23001 5)*, manufactured, distributed, sold and/or offered for sale in the State of California by Title Boxing, hereinafter the “Products.”

### **1.4 Notice of Violation**

On or about July 20, 2011, Moore served Title Boxing and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) alleging violations of Proposition 65 by Title Boxing for failing to warn its customers and

and consumers in California that the Products it sold exposed 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**

Title Boxing denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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 Title Boxing 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 Title Boxing of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Title Boxing. However, this section shall not diminish or otherwise affect Title Boxing'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 January 31, 2012.

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

**2.1 Reformulation Commitment**

As of the Effective Date, Title Boxing shall only manufacture, distribute, sell and/or offer for sale in California Products that are "Reformulated Products," or which contain the appropriate Proposition 65 warnings pursuant to Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) of DEHP when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C.

**2.2 Warnings Commitment**

Commencing on the Effective Date, Title Boxing shall, for all Products other than Reformulated Products, provide clear and reasonable warnings as set forth below. Each

warning 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 use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For Products containing DEHP, Title Boxing shall use the following warning language:

**WARNING:** This product contains DEHP, a chemical known to the state of California to cause birth defects and other reproductive harm.

For Products containing DEHP and another Proposition 65 listed chemical, Title Boxing may use the following warning language:

**WARNING:** This product contains chemicals, including DEHP, known to the state of California to cause cancer and birth defects or other reproductive harm.

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

#### **3.1 Initial Civil Penalty**

Title Boxing shall pay an initial civil penalty of \$5,000, to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Moore. Title Boxing shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of California’s Office of Environmental Health Hazard Assessment (“The Chanler Group in Trust for OEHHA”) in the amount of \$3,750 representing 75% of the initial civil penalty and (b) one check to “The Chanler Group in Trust for John Moore” in the amount of \$1,250, representing 25% of the initial civil penalty. Title Boxing shall provide two separate 1099s for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA

95814 (EIN: 68-0284486). The second 1099 shall be issued to Moore, whose address and tax identification number shall be furnished by The Chanler Group, at least five calendar days before payment is due. The payments shall be delivered on or before the Effective Date, to the following address:

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

### **3.2 Final Civil Penalty**

Title Boxing shall pay a final civil penalty in the amount of \$14,000 on January 31, 2013. As incentive for Title Boxing to reformulate the Products, however, this final civil penalty shall be waived in its entirety if an officer of Title Boxing certifies in writing that it, as of January 15, 2013, has stopped selling, shipping and offering for sale in California Products other than Reformulated Products and that it will continue to sell, ship and offer for sale in California only Reformulated Products or alternatively, that Title Boxing, as of January 15, 2013, has stopped selling, shipping, or offering for sale in California the Products and that it will not do so in the future. Such certification must be received by The Chanler Group on or before January 31, 2013. The final civil penalty payment shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to John Moore. Title Boxing shall issue two separate checks for the final civil penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount of \$10,500, representing 75% of the total final penalty; and (b) one check to “The Chanler Group in Trust for John Moore” in the amount of \$4,500 representing 25% of the total final penalty. Title Boxing shall provide two separate 1099s for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose information shall be provided five

calendar days before the payment is due (if different than the information already provided to Title Boxing under Section 3.1 above).

Payment 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

**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. Title Boxing desired to resolve the fee and cost issue along with the rest of the settlement. 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 and principles of contract law. Under these legal principles, Title Boxing shall reimburse Moore's counsel a total of \$29,000, for fees and costs incurred as a result of investigating, bringing this matter to Title Boxing's attention, and negotiating a settlement in the public interest. These fees and costs include those that will be reasonably incurred in the future for Moore and his counsel to comply with Health & Safety Code § 25249.7 and regulations promulgated pursuant thereto. 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 to the following address:

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

Title Boxing shall issue a separate 1099 form for attorneys' fees and costs paid to The Chanler Group (EIN: 94-3171522).

## **5. CLAIMS COVERED AND RELEASED**

### **5.1 Release**

This Settlement Agreement is a full, final and binding resolution between Moore and Title Boxing, of any violation of Proposition 65 that was or could have been asserted by Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Title Boxing, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Title Boxing directly or indirectly distributes or sells 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 DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Title Boxing in California before the Effective Date.

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 hereby waives all his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, 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 -- limited to and arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Title Boxing before the Effective Date (collectively “claims”), against Title Boxing and Releasees.

### **5.2 Moore’s Individual Release of Claims**

Moore also, in his individual capacity only and *not* in his representative capacity, provides a 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 plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Title Boxing.

### **5.3 Title Boxing's Release of Moore**

Title Boxing on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby 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 to enforce Proposition 65 against it in this matter with respect to the Products.

## **6. POST EXECUTION ACTIVITIES**

If requested in writing by Title Boxing (within twelve months of the Effective Date), Title Boxing 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 § 25249.7, or as may be otherwise allowed by law. If requested, Moore agrees to reasonably cooperate with Title Boxing 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 CCP §§ 1021 and 1021.5, Title Boxing 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 \$12,000, exclusive of fees and costs that may be incurred on appeal. No fees under this paragraph will be due and owing to Moore or his counsel unless a written request is made by Title Boxing to have Moore file a complaint

and seek a consent judgment. Title Boxing will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Title Boxing within ten days after its receipt of monthly invoices with detailed billing records reflecting the task performed, the amount of time to perform the task, and the personnel performing the task from Moore for work performed under this paragraph.

**7. SEVERABILITY**

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

**8. 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 Title Boxing 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.

**9. NOTICES**

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

To Title Boxing:

Tony Carbajo, President  
Title Boxing, LLC  
14711 West 112<sup>th</sup> Street  
Lenexa, KS 66215



With copy to:

Michael Ford  
Polsinelli Shughart PC  
One East Washington, Suite 1200  
Phoenix, AZ 85004

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.

**10. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (“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.

**11. 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).

**12. MODIFICATION**

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

13. **AUTHORIZATION**

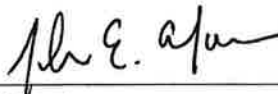
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: January 30, 2012

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

By:   
John Moore

By: \_\_\_\_\_  
Tony Carbajo, President  
Title Boxing, LLC

13. 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.

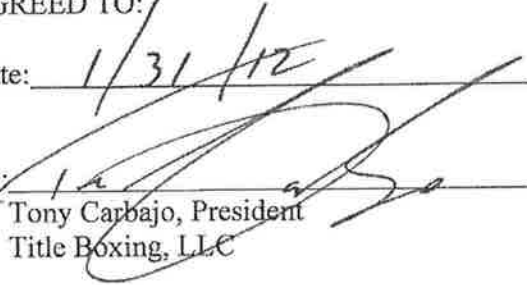
AGREED TO:

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

By: \_\_\_\_\_  
John Moore

AGREED TO:

Date: 1/31/12

By:   
Tony Carbajo, President  
Title Boxing, LLC