

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Raymond Geddes & Company, Inc. (“Raymond Geddes”), with Moore and Raymond Geddes collectively referred to 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. Raymond Geddes 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 Raymond Geddes manufactures, distributes, and/or sells in the state of California pencil cases/pouches, keychains, and rulers containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warning. 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 that are covered by this Settlement Agreement, and to which this Settlement Agreement is specifically limited, are defined as follows:

- (a) *Pencil Pouch (#6 03250 67600 3)*, a pencil case/pouch containing DEHP that was sold or distributed for sale in California by Raymond Geddes;
- (b) *Scent-Sibles! Ball Point Stick Pens, Item #66763 (#6 03250 67763 5)*, a pen set packaged in a pencil case/pouch containing DEHP that was sold or distributed for sale in California by Raymond Geddes;
- (c) *Cat in the Hat Key Chain, Item #67390 (#6 03250 67390 3)*, a key chain containing DEHP that was sold or distributed for sale in California by Raymond Geddes; and

(d) *Rubber Ruler, Item #66335 (#6 03250 66335 5)*, a ruler containing DEHP that was sold or distributed for sale in California by Raymond Geddes.

The above items shall be referred to collectively herein as “Products.”

#### **1.4 Notices of Violation**

On or about September 1, 2011, Moore served Raymond Geddes and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Moore’s allegation that Raymond Geddes was in violation of Proposition 65 for failing to warn its customers and consumers in California that its pencil cases/pouches expose users to DEHP.

On or about January 19, 2012, Moore served Raymond Geddes and various public enforcement agencies with a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”), a document that, in addition to the violations alleged in the Notice, contained further allegations that Raymond Geddes was in violation of Proposition 65 for unwarned exposures to DEHP contained in the keychain and ruler.

The Notice and the Supplemental Notice shall be collectively referred to as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

#### **1.5 No Admission**

Raymond Geddes denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products it has sold or distributed 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 Raymond Geddes 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 Raymond Geddes of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Raymond Geddes. This section shall not, however, diminish or otherwise affect Raymond Geddes’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 June 22, 2012.

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

### **2.1 Reformulated Products**

Beginning on the Effective Date and continuing thereafter, Raymond Geddes shall only sell, or distribute for sale in California, Products (as defined in section 1.3 above) that comply with the “DEHP Standard” established by this section, or that are sold with a clear and reasonable warning pursuant to section 2.2. For purposes of this Settlement Agreement, Products that contain a maximum of 1,000 parts per million (0.1%) DEHP content in any accessible component (i.e. any component that may be touched by a user during a reasonably foreseeable use) when analyzed pursuant to any method authorized under Proposition 65, or equivalent methodologies utilized by state or federal agencies to determine DEHP content in a solid substance, comply with the DEHP Standard.

### **2.2 Product Warnings**

Commencing on the Effective Date and continuing until February 28, 2013, Raymond Geddes shall, for all Products that do not comply with the DEHP Standard established by section 2.1, provide clear and reasonable warnings in compliance with this section and Title 27, California Code of Regulations section 25601 et seq. 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.

Raymond Geddes shall affix the warning to the Product packaging, labeling, or, if no packaging or labeling exists, directly on each Product sold in California that states:

**WARNING:** This product contains DEHP, a phthalate chemical that is known to the State of California to cause birth defects or other reproductive harm.

### **3. MONETARY PAYMENTS**

#### **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

##### **3.1.1 Initial Civil Penalty**

Pursuant to Health & Safety Code § 25249.7(b), Raymond Geddes shall pay a \$3,000 civil penalty. The civil penalty payment shall be allocated according to California Health & Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty amount earmarked for California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) earmarked for Moore.

Within five days of the Effective Date, Raymond Geddes 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 the payments 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, after this Settlement Agreement has been fully executed by the Parties.

##### **3.1.2 Final Civil Penalty; Waiver on Certification**

On March 1, 2013, pursuant to Health & Safety Code § 25249.7(b), Raymond Geddes shall pay a second and final civil penalty of \$5,000. As an incentive to reformulate one-hundred percent of the Products sold in California prior to that time, however, Moore agrees that the final civil penalty shall be waived in its entirety if, on or before February 15, 2013, an officer of Raymond Geddes certifies in writing to Moore’s counsel, that, as of February 28, 2013, it will

only offer Products (as defined in Section 1.3) that comply with the DEHP Standard established by section 2.1 in California.

Unless waived, the final civil penalty shall be allocated according to Health & Safety Code § 25249.12(c)(1) and (d) with seventy-five percent of the penalty amount paid to OEHHA and the remaining twenty-five percent (25%) retained by Moore. Raymond Geddes shall deliver payment to the address provided in section 3.3 and shall provide Moore's counsel with a 1099 form for each of its payments to Moore and OEHHA.

### **3.2 Attorney Fees and Costs**

The Parties reached an accord on the compensation due 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 in this matter. Under these legal principles, Raymond Geddes shall pay \$21,000 for all fees and costs incurred investigating, bringing this matter to the attention of Raymond Geddes, and negotiating a settlement in the public interest. Raymond Geddes shall provide payment in the form of three checks payable to "The Chanler Group" as follows: (a) on or before July 15, 2012, Raymond Geddes shall deliver a check for \$7,000; (b) on or before August 15, 2012, Raymond Geddes shall issue a second check for \$7,000; and (c) on or before September 15, 2012, Raymond Geddes shall issue a third check for \$7,000.

Raymond Geddes shall also provide Moore's counsel with a single 1099 form for the fee and cost payments made to The Chanler Group (EIN: 94-3171522).

### **3.3 Payment Address**

All payments and tax documentation 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

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Moore's Release of Raymond Geddes**

This Settlement Agreement is a full, final, and binding resolution between Moore and Raymond Geddes 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 Raymond Geddes, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Raymond Geddes directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the alleged failure to warn about exposures to DEHP contained in Products imported, manufactured, sold or distributed for sale in California by Raymond Geddes 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 against Raymond Geddes and Releasees, including, without limitation, all actions, 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, if any) arising under Proposition 65 for unwarned exposures to DEHP contained in Products imported, manufactured, sold, or distributed for sale in California by Raymond Geddes before the Effective Date.

##### **4.2 Raymond Geddes's Release of Moore**

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

**5. POST-EXECUTION CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement Raymond Geddes may send Moore a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and seek court approval of the settlement pursuant to Health and Safety Code § 25249.7(f), or as may be otherwise allowed by law. If requested, Moore agrees to reasonably cooperate with Raymond Geddes, and to use his best efforts and that of his counsel to obtain approval of the Parties' settlement by a superior court in California, and an entry of judgment in accordance with the terms set forth herein.

Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, Raymond Geddes will reimburse Moore and his counsel for the reasonable fees and costs incurred filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$15,000 exclusive of fees and cost that may be incurred on appeal. Within ten days after its receipt of a monthly invoice from Moore's counsel for work performed under this section, Raymond Geddes will remit payment to The Chanler Group, at the address set forth in section 3.3.

**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 remaining provisions 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 and/or DEHP, then Raymond Geddes 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.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier to any Party by the other Party at the following addresses:

For Raymond Geddes:

William Geddes, President  
Raymond Geddes & Company, Inc.  
7110 Belair Road, Suite 200  
Baltimore, MD 21206

with a copy to:

Quin D. Dodd, Esq.  
Law Offices of Quin D. Dodd  
6251 Abbottsbury Row  
Alexandria VA 22315

For 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 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.



**10. POST-EXECUTION ACTIVITIES**

Moore agrees to comply with the reporting form 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**

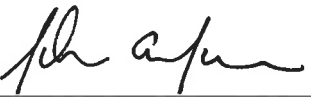
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: JUNE 24, 2012

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

By:   
John Moore

By: \_\_\_\_\_  
William Geddes, President  
Raymond Geddes & Company, Inc.

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**AGREED TO:**

**AGREED TO:**

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

Date: 6/12/12

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

By: Martin Getz  
Martin Getz, CEO  
Raymond Geddes & Company, Inc.