

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore ("Moore"), and Arista Enterprises Inc. ("Arista"), with Moore and Arista 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. Arista 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 Arista manufactures, distributes, and/or sells in the State of California keyboard benches with vinyl seats containing di(2-ethylhexyl)phthalate ("DEHP") without first providing the clear and reasonable exposure warning required by 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.

#### 1.3 Product Description

The products covered by this Settlement Agreement are keyboard benches with vinyl seats containing DEHP that are manufactured, imported, distributed, and/or sold in California by Arista, including, but not limited to, the *ARBENCH (#0 79767 34391 0)* (hereinafter "Covered Products").

#### 1.4 Notice of Violation

On or about September 19, 2011, Moore served Arista and various public enforcement agencies with a "60-Day Notice of Violation" ("Notice"), a document that informed the recipients that Arista was alleged to be in violation of Proposition 65 for failing to warn its customers and consumers in California that the Covered 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**

Arista denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Arista 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 Arista of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Arista. This section shall not, however, diminish or otherwise affect Arista'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 1, 2012.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Standard**

For purposes of this Settlement Agreement "Reformulation Standard" shall mean a maximum DEHP content of 1,000 parts per million in any Covered Product analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methods utilized by state or federal agencies to determine DEHP content in a solid substance.

**2.2 Vendor Notification**

Within thirty days of the date this Settlement Agreement is fully executed by the Parties, Arista shall, to the extent it has not already done so, provide the Reformulation Standard to each of its then-current manufacturers, suppliers or upstream vendors ("vendor") of Covered Products that will be sold or offered for sale to California consumers, and shall instruct each vendor to use reasonable efforts to manufacture only Covered Products that comply with the Reformulation Standard expeditiously. In addressing the obligation set forth in the preceding sentence, Arista shall not employ statements that will encourage a vendor to delay compliance with the Reformulation Standard.

### 2.3 Compliance Deadline

Commencing on the Effective Date and continuing thereafter, Arista shall only manufacture, import, sell, or distribute for sale in California Covered Products that comply with the Reformulation Standard established by this section.

### 2.4 Covered Products Sold Prior to Compliance Deadline

Provided that Arista has complied with the vendor notification and reformulation obligations established by this section, sales of Covered Products that were purchased, imported, manufactured, or supplied to unaffiliated third parties prior to the deadline for implementation of the Reformulation Standard set forth in subsection 2.3 above shall not be separately actionable in another case brought pursuant to Section 25249.7(d) of the Health and Safety Code alleging unwarned exposures to DEHP under Proposition 65.

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

Pursuant to Health & Safety Code § 25249.7(b) Arista shall pay \$6,000 in civil penalties. This amount reflects a penalty credit of \$6,000 agreed to by Moore in response to Arista's commitment to Proposition 65 compliance, including reformulating the Covered Products to comply with the Reformulation Standard established by Section 2.

Civil penalties shall be allocated according to California Health & Safety Code § 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty payment earmarked for the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent (25%) of the penalty payment earmarked for Moore.

Arista shall issue two checks for the following amounts made payable to: (a) "The Chanler Group in Trust for OEHHA" in the amount of \$4,500; and (b) "The Chanler Group in Trust for John Moore" in the amount of \$1,500.

Two 1099 forms shall also be issued for the penalty payments to: (a) the "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, three days before 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 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, Arista shall pay \$23,000 for all fees and costs incurred as a result of investigating, bringing this matter to Arista’s attention, and negotiating a settlement in the public interest. Arista shall provide payment in the form of a check payable to “The Chanler Group,” shall issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment 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

**5. CLAIMS COVERED AND RELEASED**

**5.1 Moore’s Release of Arista**

This Settlement Agreement is a full, final, and binding resolution between Moore and Arista 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 Arista, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Arista directly or indirectly distributes or sells Covered Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on their alleged failure to warn about exposures to DEHP contained in the Covered Products manufactured, distributed, sold or offered for sale by Arista 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 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, if any) arising under Proposition 65 (collectively "Claims") against Arista and Releasees regarding exposures to DEHP contained in the Covered Products manufactured, distributed, sold and/or offered for sale by Arista before the Effective Date Arista.

#### **5.2 Arista's Release of Moore**

Arista 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

#### **6. POST-EXECUTION CONVERSION TO A CONSENT JUDGMENT**

Within twelve months of the Effective Date, Arista may request in writing that Moore draft and file a complaint and seek judicial approval of this Settlement Agreement in the form of a court-approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code § 25249.7(d), or as may be otherwise allowed by law.

If requested, Moore agrees to reasonably cooperate with Arista to use his 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 & 1021.5, Arista 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 \$15,000.

No fees under this section will be owed unless a written request is made by Arista to have Moore file a complaint and seek judicial approval and entry of this Settlement Agreement in the form of a consent judgment. Thereafter, Arista will remit payment to the address set forth in Section 4 within ten days after its receipt of monthly invoices from Moore's counsel for work performed under this section. In the event a third party were to appeal the entry of a consent judgment sought pursuant to this section, Moore and his counsel shall be entitled to seek their fees and costs associated with all such appellate work pursuant to CCP § 1021.5.

7. **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.

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 Covered Products, then Arista 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 Covered Products are so affected.

9. **NOTICES**

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

For Arista:

Bradley Brighton, Esq.  
Arista Enterprises, Inc.  
125 Commerce Drive  
Hauppauge, NY 11788

with a copy to:

Richard B. Brosnick, Esq.  
Butzel Long, a professional corporation  
380 Madison Avenue  
New York, New York 10017

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.

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.

11. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter set forth in this Settlement Agreement, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are deemed merged. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by either party. No other agreements not specifically contained or referenced in this Settlement Agreement, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

12. **POST-EXECUTION ACTIVITIES**

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

13. **MODIFICATION**

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



14. 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: MARCH 26. 2012

Date: 3-23-12

By:   
John Moore

By:   
Richard Leifer, President  
Arista Enterprises, Inc.