

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 John Moore and Target Corporation

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Target Corporation (“Target”), with Moore and Target 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. Target 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 Target has manufactured, distributed, sold and/or offered for sale in California footwear containing di(2-ethylhexyl)phthalate (“DEHP”) and/or di-n-butyl phthalate (“DBP”) without the requisite Proposition 65 health hazard warnings. DEHP and DBP (“Listed Chemicals”) are listed pursuant to Proposition 65 as chemicals known to cause birth defects and other reproductive harm.

### 1.3 Notice of Violation

On December 13, 2011, Moore served Target and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by Target for failing to warn consumers that the footwear, including, but not limited to, *Flip Flops-Blue Flag Large, F16881753-01/11 (#8 72197 62049 7)*, that Target manufactured, distributed, sold and/or offered for sale exposed users in California to the Listed Chemicals.

### 1.4 No Admission

Target denies the material, factual, and legal allegations contained in the Notice. Nothing in this Settlement Agreement shall be construed as an admission by Target 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 Target of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Target. However, this section shall not diminish or otherwise affect Target's obligations, responsibilities, and duties under this Settlement Agreement.

## **2. DEFINITIONS**

**2.1** "Covered Products" shall mean flip flops supplied to Target by IQ Accessories, Inc. and offered for sale by Target in California, including, but not limited to, *Flip Flops-Blue Flag Large, F16881753-01/11 (#8 72197 62049 7)*.

**2.2** "Effective Date" shall mean the date on which this Agreement is fully executed and all counterpart signatures have been exchanged.

## **3. INJUNCTIVE RELIEF**

### **3.1 Reformulation Commitment**

As of the Effective Date, Target shall not sell, ship, or offer for sale in California any Covered Product containing DBP or DEHP in concentrations exceeding 0.1 percent (1,000 parts per million ("ppm")) when analyzed pursuant to any methodology utilized by federal or state agencies for the purpose of determining DBP or DEHP content in a solid substance.

## **4. MONETARY PAYMENTS**

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

Pursuant to Health & Safety Code § 25249.7(b), Target shall pay \$23,500 in civil penalties. Target shall pay an initial civil penalty of \$7,500 and a final civil penalty of \$16,000. However, the final civil penalty shall be waived in its entirety if an officer of Target provides Moore with a written certification that, as of October 1, 2012, and continuing on into the future, Target has sold and will continue to sell and/or offer for sale in California only Covered Products that meet the Reformulation Commitment set out in Section 3.1 above. Moore must receive any such certification no later than March

15, 2013, and time is of the essence.

The initial civil penalty payment shall be due within five days of the Effective Date and shall be allocated according to Health & Safety Code §§ 25249.12 (c)(1) & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five (25%) of the penalty amount earmarked for Moore. Target shall issue two separate checks for the payment: (a) one check made payable to “The Chanler Group in trust for the Office of Environmental Health Hazard Assessment” in the amount of \$5,625, representing 75% of the total payment; and (b) one check to “The Chanler Group in trust for John Moore” in the amount of \$1,875, representing 25% of the total payment. Two separate 1099s shall be issued 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 two calendar days before the payment is due.

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 94710-2565

The final civil penalty payment, if not waived, shall be due on or before March 29, 2013, and shall be allocated according to Health & Safety Code §§ 25249.12 (c)(1) & (d), with seventy-five percent (75%) of the penalty amount earmarked for OEHHA and the remaining twenty-five (25%) of the penalty amount earmarked for Moore. Target shall issue two separate checks for the payment: (a) one check made payable to “The Chanler Group in trust for the Office of Environmental Health Hazard Assessment” in the amount of \$12,000, representing 75% of the total payment; and (b) one check to “The Chanler Group in trust for John Moore” in the amount of \$4,000, representing 25% of the total payment. Two separate 1099s shall be issued 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.

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  
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#### **4.2 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. Target 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) 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 (C.C.P.) § 1021.5, for all work performed through the mutual execution of this agreement. Target, on behalf of itself and those in its chain of distribution, shall reimburse Moore and his counsel a total of \$30,000 for fees and costs incurred as a result of investigating, bringing this matter to Target's attention, and litigating and negotiating a settlement in the public interest. Target shall issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall make the check payable to "The Chanler Group" to be delivered within two business days of the Effective Date, 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 Release**

This Settlement Agreement is a full, final and binding resolution between Moore, and Target, 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 Target, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Target directly or indirectly distributes or sells Covered 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 Chemicals contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by Target 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, whether known or unknown, suspected or unsuspected, 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 -- limited to and arising under Proposition 65 with respect to the Listed Chemicals in the Covered Products manufactured, distributed, sold and/or offered for sale by Target before the Effective Date (collectively “claims”), against Target and Releasees.

### **5.2 Target’s Release of Moore**

Target 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 Covered Products.

**6. POST EXECUTION ACTIVITIES**

Within twelve months of the execution of this Settlement Agreement, Target may ask Moore, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment and seek the court's approval of the consent judgment pursuant to California Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Moore agrees to reasonably cooperate with Target 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, Target will reimburse Moore and his counsel for their reasonable fees and costs incurred in 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 \$10,000, exclusive of fees and cost that may be incurred on appeal. Target will remit payment to The Chanler Group, at the address set forth in Section 9 below. Such additional fees shall be paid by Target within ten days after its receipt of monthly invoices from Moore for work performed under this paragraph. If there is any dispute regarding the amount of fees due to Moore pursuant to this Section 6, the parties shall meet and confer in good faith for a period of not less than 30 days before bringing any action in connection with such claim.

**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 unless the Court finds that any unenforceable provision is not severable from the remainder of the

Settlement Agreement.

**8. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California, and shall apply only to Covered Products offered for sale in 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 Target 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 Covered Products are so affected.

The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

**9. NOTICES**

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

To Target:

Jeffrey B. Margulies  
Fulbright & Jaworski LLP  
555 South Flower Street  
41<sup>st</sup> Floor  
Los Angeles, California 90071

To Moore:

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

With copy to:

Tim Baer  
General Counsel  
Target Corporation  
TPS-3255  
1000 Nicollet Mall  
Minneapolis, MN 55403

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:

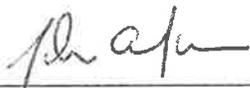
Date:

9/25/12

AGREED TO:

Date:

By:



John Moore

By:

Target Corporation

**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: \_\_\_\_\_

Date: 10/5/12

By: \_\_\_\_\_

By: Adam MORRIS

John Moore

SR. CORP. COUNSEL  
Target Corporation