

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 John Moore and Rhode Island Textile Company

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Rhode Island Textile Company (“RI Textile”), with Moore and RI Textile 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. RI Textile 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 RI Textile has manufactured, distributed, sold and/or offered for sale in the State of California shoe horns containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. Moore also alleges that RI Textile has manufactured, distributed, sold and/or offered for sale in the State of California tie-out cables containing DEHP and leather laces containing lead. DEHP and lead are listed pursuant to Proposition 65 as chemicals 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 shoe horns containing DEHP including, but not limited to, the *Shoe Gear Shoe Horn, Item #794-17 (#0 70049 79417 8)*, manufactured, distributed, sold and/or offered for sale in California by RI Textile, hereinafter the “Noticed Products.” This Settlement Agreement also covers: (a) tie-out cables containing DEHP including, but not limited to, the *12’ Ruffin’ It Tie-Out Cable, Item #29712 (#0 76158 29712 8)*, manufactured, distributed, sold and/or offered for sale in California by RI Textile, hereinafter the “Additional DEHP

Products;” and (b) leather laces containing lead including, but not limited to, the *Shoe Gear Leather Lace, Item #7200-72 (#0 70049 20725 8)*, manufactured, distributed, sold and/or offered for sale in California by RI Textile, hereinafter the “Additional Lead Products.” The Additional DEHP Products and the Additional Lead Products are hereinafter referred to collectively as the “Additional Products.” The Noticed Products and the Additional Products are referred to collectively as the “Products.”

1.4 Notice of Violation

On or about January 19, 2012, Moore served RI Textile 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 RI Textile for failing to warn its customers and consumers in California that the Noticed 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

RI Textile 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 RI Textile 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 RI Textile of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by RI Textile. However, this section shall not diminish or otherwise affect RI Textile’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 20, 2012.

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

2.1 **Reformulation Standards**

“Reformulated Products” shall mean Products containing Accessible Components that yield: (1) less than or equal to 1,000 parts per million (0.1%) of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C; (2) less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100; and (3) less than 100 parts per million lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B. For purposes of this Settlement Agreement, “Accessible Component” shall mean any component of a Product that may be handled, touched or mouthed by a consumer during a reasonably foreseeable use of the Product.

2.2 **Product Warnings**

Commencing on the Effective Date, RI Textile shall, for all Products other than Reformulated Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). 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. Each warning for Additional Lead Products shall specify that the product contains lead, where as each warning for Noticed Products and/or Additional DEHP Products shall specify that the product contains DEHP by including the specific chemical that applies from each bracketed term in Sections 2.2(a) and (b) below.

(a) **Retail Store Sales.**

(i) **Product Labeling.** RI Textile shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by RI Textile or any person selling the Products, that states:

WARNING: This product contains chemicals, including [DEHP or Lead], known to the State of California to cause cancer, birth defects, and /or other reproductive harm.

(ii) **Point-of-Sale Warnings.** Alternatively, RI Textile may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to RI Textile’s customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains chemicals, including [DEHP or Lead], known to the State of California to cause cancer, birth defects, and /or other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: The following products contain chemicals, including [DEHP or lead], known to the State of California to cause cancer, birth defects, and /or other reproductive harm:

[list products for which warning is required]

(b) **Mail Order Catalog and Internet Sales.** In the event that RI Textile sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, RI Textile shall provide warnings for such Products. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

¹ For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains chemicals, including [DEHP or Lead], known to the State of California to cause cancer, birth defects, and /or other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, RI Textile may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals, including [DEHP or Lead], known to the State of California to cause cancer, birth defects, and/or other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, RI Textile must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

WARNING: This product contains chemicals, including [DEHP or Lead], known to the State of California to cause cancer, birth defects, and /or other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol ▼ contain chemicals, including [DEHP or Lead], known to the State of California to cause cancer, birth defects, and/or other reproductive harm.

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

3.1 Initial Civil Penalty

RI Textile shall pay an initial civil penalty of \$4,000, 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. RI Textile shall issue two separate checks for the penalty payment: (a) one check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$3,000; and (b) one check to “The Chanler Group in Trust for John Moore” in the amount of \$1,000. Two separate 1099s shall be issued for the above payments: (a) the first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) the second 1099 shall be issued to Moore, whose address and tax identification number shall be furnished, upon request, 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

RI Textile shall pay a final civil penalty in the amount of \$7,000 on February 28, 2013. As incentive for RI Textile to reformulate the Noticed Products, however, this final civil penalty shall be waived in its entirety if an officer of RI Textile certifies in writing that it, as of December 31, 2012, will sell, ship, and offer for sale in California only Noticed Products that comply with the Reformulation Standards found in Section 2.1 above. Such certification must be received by The Chanler Group on or before February 28, 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. RI Textile 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 \$5,250; and (b) one check to “The Chanler Group in Trust for John Moore” in the amount of \$1,750. 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 (if different than the information already provided to RI Textile 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. RI Textile 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 the private attorney general doctrine and principles of contract law. Under these legal principles, RI Textile shall reimburse Moore's counsel for fees and costs incurred as a result of investigating, bringing this matter to RI Textile's attention, and negotiating a settlement in the public interest. RI Textile shall pay Moore's counsel \$33,000 for all attorneys' fees, expert and investigation fees, and related costs. 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

RI Textile shall issue a separate 1099 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 RI Textile, 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 RI Textile, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom RI Textile 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 Noticed Products that were

manufactured, distributed, sold and/or offered for sale by RI Textile 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: (a) DEHP in the Noticed Products; (b) DEHP in the Additional DEHP Products; and (c) lead in the Additional Lead Products, that were manufactured, distributed, sold and/or offered for sale by RI Textile before the Effective Date (collectively "claims"), against RI Textile and Releasees.

5.2 RI Textile's Release of Moore

RI Textile 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

Within twelve months of the execution of this Settlement Agreement, RI Textile 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 RI Textile 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, RI Textile 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. RI Textile will remit payment to The Chanler Group, at the address set forth in Section 9 below. Such additional fees shall be paid by RI Textile within ten days after its receipt of monthly invoices 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 RI Textile 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 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 RI Textile:

Glendon Elliot, President
Rhode Island Textile Company
211 Columbus Avenue
Pawtucket, RI 02861

To Moore:

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

With copy to:

Robert Cross, Esq.
Constance Yu, Esq.
Sideman & Bancroft LLP
One Embarcadero Center, Eight Floor
San Francisco, CA 94111

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”), 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: OCTOBER 31, 2012

Date: _____

By: 
John Moore

By: _____
Glendon Elliot, President
Rhode Island Textile Company

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: 12/11/2012

By: Glendon Elliott
Glendon Elliott, President
Rhode Island Textile Company