

# MODIFIED SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 John Moore, Mark Moorberg and Rhode Island Textile Company

This Modified Settlement Agreement is entered into by and between John Moore (“Moore”), Mark Moorberg (“Moorberg”) and Rhode Island Textile Company (“RI Textile”), with Moore, Moorberg, and RI Textile collectively referred to as the “Parties.” Moore and Moorberg are individuals residing in the State of California who seek 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 without the requisite Proposition 65 warnings. Moorberg alleges that Walgreen Co. has manufactured, distributed, sold and/or offered for sale in the State of California vinyl/PVC pet tie-out cables containing DEHP without the requisite Proposition 65 warnings. 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 Modified Settlement Agreement are defined as: (a) shoe horns containing DEHP including, but not limited to, the *Shoe Gear Shoe*

*Horn, Item #794-17 (#0 70049 79417 8)* (“Noticed Products”); (b) tie-out cables containing DEHP including, but not limited to, the *12’ Ruffin’ It Tie-Out Cable, Item #29712 (#0 76158 29712 8)* (“Additional DEHP Products”); and (c) leather laces containing lead including, but not limited to, the *Shoe Gear Leather Lace, Item #7200-72 (#0 70049 20725 8)* (“Additional Lead Products”), that are manufactured, distributed, sold and/or offered for sale in California by RI Textile. 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 Notices 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” (“RI Textile 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. On May 21, 2014, Moorberg served Walgreen Co. and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Walgreen Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by Walgreen Co. for failing to warn its customers and consumers in California that vinyl/PVC pet tie-out cables Walgreen Co. sold exposed users to DEHP. After conferring with Walgreen Co. and RI Textile, Moore and Moorberg were informed by RI Textile that the exemplar product subject to the Walgreen Notice was distributed for sale to Walgreen Co. by RI Textile. The RI Textile Notice and the Walgreen Notice are hereinafter referred to collectively 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**

RI Textile denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products that they have sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Modified 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 Modified 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 Modified Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Modified Settlement Agreement, the term "Effective Date" shall mean November 1, 2014.

### **1.7 Prior Settlement Agreement**

On December 17, 2012, Moore and RI Textile entered into a Settlement Agreement resolving Moore's allegations found in the RI Textile Notice. The Parties hereby amend the previously executed Settlement Agreement and enter into this Modified Settlement Agreement as the sole and entire agreement and understanding of the Parties with respect to the entire subject matter set forth in this Settlement Agreement. Any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

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

### **2.1 Reformulation Standards**

Commencing on the Effective Date, RI Textile shall only manufacture, import, distribute, sell and/or offer for sale in the State of California Products that are Reformulated Products or Products that comply with the warning requirements found in

Section 2.3 below. “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 Modified 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 Products No Longer in RI Textile’s Control**

On or before the Effective Date, RI Textile shall send a letter, electronic or otherwise (“Notification Letter”), to any California retailer and/or distributor of the Products that RI Textile reasonably understand or believes has any inventory of the Products for resale in California including, but not limited to, Walgreen Co. The Notification letter shall advise the recipient that the Noticed Products and Additional DEHP Products contain DEHP and that the Additional Lead Products contain lead. The Notification letter shall also request that the recipient: (1) confirm whether it has any Products in inventory; (2) if it has such Products in inventory for sale in, or distribution to, California to label the products with the proper health hazard warnings pursuant to Section 2.3 below or return, at RI Textile’s sole expense, all units of the Products to RI Textile or a party RI Textile has otherwise designated; and (3) provide RI Textile with notification of the action taken. RI Textile shall maintain records of all correspondence or other communications generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records upon Moore’s written request.

## **2.3 Product Warnings**

Commencing on the Effective Date, all Products, other than Reformulated Products, shall provide clear and reasonable warnings as set forth in subsections 2.3(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, whereas 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 2.3(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 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 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:<sup>1</sup>

**WARNING:** The following products contain chemicals, including [DEHP or lead], known to the State of California to cause cancer, birth defects, and 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 2.3(b)(i) and (ii).

(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 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):

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<sup>1</sup> For purposes of the Modified 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.

**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 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 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 other reproductive harm.

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

**3.1 Initial Civil Penalty**

In addition to the initial civil penalty paid by RI Textile subject to the December 17, 2012 Settlement Agreement, RI Textile shall pay an additional initial civil penalty of \$2,000, 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% split evenly between Moore and Moorberg. RI Textile shall issue three separate checks for the penalty payment: (a) one check to "OEHHA" in the amount of \$1,500; (b) one check to "John Moore, Client Trust Account" in the amount of \$250; and (c) one check to "Mark Moorberg, Client Trust Account" in the amount of \$250. The payments shall be delivered on or before the Effective Date, to the addresses listed in Section 3.3 below.

**3.2 Final Civil Penalty**

RI Textile shall pay a final civil penalty in the amount of \$4,000 on or before January 15, 2015. As incentive for RI Textile to reformulate the 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 January 15, 2015, will sell, ship, and offer for sale in California only 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 January 1, 2015. 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% split evenly between John Moore and Moorberg. RI Textile shall issue three separate checks for the final civil penalty payment: (a) one check to "OEHHA" in the amount of \$3,000; (b) one check to "John Moore, Client Trust Account" in the amount of \$500; and (3) one check to "Mark Moorberg, Client Trust Account" in the amount of \$500. The payments shall be delivered on or before the



Effective Date, to the addresses listed in Section 3.3 below.

**3.3 Payment Procedures**

**3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

(a) All payments owed to Moore/Moorberg, pursuant to Sections 3.1 and 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA, pursuant to Sections 3.1 and 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

**4. REIMBURSEMENT OF FEES AND COSTS**

RI Textile acknowledges that Moore and his counsel agreed to accept \$33,000 for fees and costs incurred as a result of investigating, and negotiating the previous Settlement Agreement in the public interest. In addition to the \$33,000 for fees and costs

paid by RI Textile pursuant to the previous Settlement Agreement, the Parties have reached an accord on the compensation due to Moore, Moorberg and their counsel, under the private attorney general doctrine and principles of contract law, for the fees and costs incurred as a result of modifying the previous Settlement Agreement and negotiating this Modified Settlement Agreement. RI Textile shall pay Moore and Moorberg's counsel \$13,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a 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

**5. CLAIMS COVERED AND RELEASED**

**5.1 Releases**

This Modified Settlement Agreement is a full, final and binding resolution between Moore, in his individual capacity and not on behalf of the public, 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, their parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys ("Releasees"), and each entity to whom RI Textile directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, including specifically, Walgreen Co. and its wholly owned subsidiary Drugstore.com (hereafter "Walgreen"), franchisees, cooperative members, licensors, and licensees ("Downstream 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, in his individual capacity only, 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 and Downstream Releasees.

Additionally, in further consideration of the promises and agreements herein contained, Moorberg, in his individual capacity only, 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 vinyl/PVC pet tie-out cables distributed to Walgreen by RI Textile and sold and/or offered for sale by Walgreen Co. in the State of California before the Effective Date, against Walgreen.

## **5.2 RI Textile's Release of Moore and Moorberg**

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 Moorberg, and their attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it or Walgreens in this matter with respect to the Products.

**6. SEVERABILITY**

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

**7. GOVERNING LAW**

The terms of this Modified 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 Modified 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 Modified 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/Moorberg:

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

With copy to:

Robert R. Cross  
Skootsky & Der LLP  
90 New Montgomery, Suite 600  
San Francisco, CA 94105

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.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Modified 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.

**10. 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).

**11. MODIFICATION**

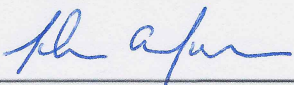
This Modified Settlement Agreement may be modified only by written agreement of the Parties.

12. **AUTHORIZATION**

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

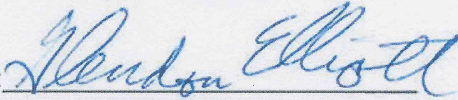
AGREED TO:

Date: 10/24/2014

By:   
John Moore

AGREED TO:

Date: 10/20/2014

By:   
Glendon Elliott, President  
Rhode Island Textile Company

AGREED TO:

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

By: \_\_\_\_\_  
Mark Moorberg

**12. AUTHORIZATION**

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

AGREED TO:

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

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

AGREED TO:

Date: 10/20/2014

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

AGREED TO:

Date: 10.03.11

By: \_\_\_\_\_  
Mark Moorberg

