

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1. Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Cousin Corporation of America (“Cousin”), with Moore and Cousin 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. Cousin 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 section 25249.6 *et seq.* (“Proposition 65”).

1.2. General Allegations

Moore alleges that Cousin manufactures, distributes, and/or sells in the State of California craft tools with grips 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 are defined as follows: craft tools with grips containing DEHP that are manufactured, imported, distributed, and/or sold in California by Cousin, including, but not limited to, *Jewelry Making Starter Kit & How-To Guide, #64119 (#0 16321 01823 5)* (hereinafter “Products”). The Hole Punch/Eyelet Setter “M’Bellish” is not included within the definition of Products.

1.4. Notice of Violation

On or about January 19, 2012, Moore served Cousin and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), alleging that Cousin was in violation of Proposition 65 for failing to warn its customers and consumers in California that the 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

Cousin 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 Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Cousin 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 Cousin of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Cousin. This section shall not, however, diminish or otherwise affect Cousin'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 August 15, 2012.

2. INJUNCTIVE RELIEF

2.1. Reformulation

As of the Effective Date and continuing thereafter, Cousin shall only manufacture, import, or otherwise acquire Products for distribution and sale in California that contain no more than 1,000 parts per million (0.1%) of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.2. Warning for Existing Inventory

For Products in Cousin's inventory before the Effective Date that Cousin distributes, ships, sells, or offers to ship for sale in California, Cousin shall provide a clear and reasonable warning consistent with the requirements of California Code of Regulations, title 27, section 25601 et seq. The warning shall have the following text:

"WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm."

This section shall not apply to Products coming into Cousin's control on or after the Effective Date.

2.3. Prohibition Against Over-Warning

Cousin shall not provide, nor require or request that any other party provide, a warning pursuant to Proposition 65 for any Product it knows does not contain one or more chemicals listed pursuant to Proposition 65, including DEHP or DEHP in concentrations below those set forth in Section 2.1.

3. MONETARY PAYMENTS

In settlement of the claims covered by this Settlement Agreement, Cousin has been assessed civil penalties in the amount of \$36,000, to be paid or credited pursuant to Sections 3.1 and 3.2 below.

3.1. Initial Civil Penalty

Cousin shall pay an initial civil penalty of \$8,000. The initial civil penalty shall be apportioned in accordance with Health and Safety Code section 25249.12, subdivisions (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. Cousin shall issue two separate checks for the initial civil penalty payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of \$6,000 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Moore" in the amount of \$2,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95812 (EIN: 68-0284486); and (b) Moore, whose information shall be provided five calendar days before the payment is due.

3.2. Final Civil Penalty

Cousin shall pay a second and final civil penalty of \$28,000 on or before January 1, 2013. The final civil penalty shall be waived in its entirety if an Officer of Cousin certifies in writing that, as of January 1, 2013, Cousin shall only distribute, ship, sell or offer to ship for sale in California Products that fulfill the 1,000 parts per million DEHP standard described in Section

2.1, and that Cousin as of January 1, 2013, no longer sells products requiring a warning pursuant to Section 2.2. Such certification must be received by The Chanler Group on or before January 1, 2013. The final civil penalty payment shall be apportioned in accordance with Health & Safety Code sections 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Moore. Cousin 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 \$21,000, representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Moore” in the amount of \$7,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95812 (EIN: 68-0284486); and (b) Moore, whose information shall be provided five calendar days before the payment is due (if different than the information already provided to Cousin under Section 3.1 above).

3.3. 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 Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Cousin shall pay \$21,500 for all fees and costs incurred investigating, bringing this matter to the attention of Cousin, and negotiating a settlement in the public interest. Cousin shall provide its payment in the form of a check payable to “The Chanler Group,” issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment on or before the Effective Date at the Payment Address provided in Section 3.4.

3.4. Payment Address

All payments and tax documentation required by this Section 3 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. RELEASES

4.1. Moore's Release of Cousin

This Settlement Agreement is a full, final and binding resolution between Moore, and Cousin, 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 Cousin, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Cousin 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 their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Cousin 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 Moore's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Moore 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 Products manufactured, distributed, sold and/or offered for sale by Cousin before the Effective Date (collectively "claims"), against Cousin and Releasees.

4.2. Cousin's Release of Moore

Cousin 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 Products.

5. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Cousin may send Moore a written request to draft and file a complaint, incorporating the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Moore agrees to reasonably cooperate with Cousin and to use his best efforts, and that of his counsel, to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Cousin will reimburse Moore and his counsel for their reasonable fees and costs incurred drafting and 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 costs incurred on appeal, if any. Cousin will remit payment to The Chanler Group, at the Payment Address provided in Section 3.3. Such additional fees shall be paid by Cousin within ten days after its receipt of monthly invoices from Moore's counsel for work performed under this section.

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 enforceable provisions remaining 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.

8. 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 on any party by the other party at the following addresses:

For Cousin:

Jeffrey Cousin, President
Cousin Corporation of America
12333 Enterprise Boulevard
Largo, FL 33773

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 section 25249.7, subdivision (f).

11. MODIFICATION

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

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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: August 7, 2012

Date: _____

By: 
John Moore

By: _____
Jeffrey Cousin, President
Cousin Corporation of America

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.

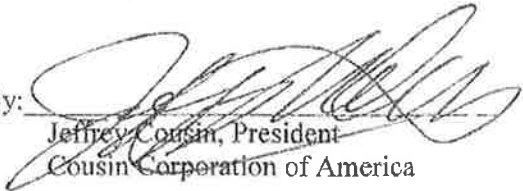
AGREED TO:

AGREED TO:

Date: _____

Date: 8/1/12

By: _____
John Moore

By: 
Jeffrey Cousin, President
Cousin Corporation of America