

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Swift Distribution, Inc. (“Swift”), with Moore and Swift 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. Swift 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 Swift manufactures, distributes, and/or sells in the state of California keyboard benches with vinyl seats containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical that is 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 keyboard benches with vinyl seats that contain DEHP and are sold or distributed for sale in California by Swift, including, but not limited to, *Jamstands by Ultimate Support Medium Keyboard Bench, Product Item #16801 (#7 84887 16801 4)* (collectively “Products”).

### 1.4 Notice of Violation

On or about February 28, 2012, Moore served Swift and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Moore’s allegation that Swift 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**

Swift denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has sold or distributed for sale 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 Swift 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 Swift of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Swift. This section shall not, however, diminish or otherwise affect Swift'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 31, 2012.

## **2. INJUNCTIVE RELIEF**

Commencing on the Effective Date and continuing thereafter, Swift shall only manufacture, distribute, ship, sell or offer to ship for sale in California, Products that contain a maximum of 1,000 parts per million (0.1%) DEHP in any accessible component (i.e. any component that may be touched by a user during a reasonably foreseeable use) analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by state or federal agencies to determine DEHP content in a solid substance.

## **3. MONETARY PAYMENTS**

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

Pursuant to Health & Safety Code § 25249.7(b), Swift shall pay \$2,000 in civil penalties. This amount reflects a penalty credit of \$2,000 agreed to by Moore in response to Swift's commitment to Proposition 65 compliance, including reformulating the products to comply with the DEHP content limits established by Section 2. The civil penalty payment shall be allocated

according to California Health & Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty amount earmarked for California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) earmarked for Moore.

Within five days of the Effective Date, Swift shall issue two checks for the following amounts made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$1,500; and (b) “The Chanler Group in Trust for John Moore” in the amount of \$500.

Two 1099 forms shall also be provided for the penalty payments to: (a) “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 after this Settlement Agreement has been fully executed by the Parties. Payment shall be delivered to the payment address provided in section 3.3.

### **3.2 Attorney Fees and Costs**

The Parties reached 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 (“CCP”) § 1021.5 for all work performed in this matter. Under these legal principles, Swift shall pay \$16,500 for all fees and costs incurred investigating, bringing this matter to the attention of Swift, and negotiating a settlement in the public interest. Swift shall provide payment in the form of four checks made payable to “The Chanler Group” and delivered according to the following schedule: (a) on or before September 15, 2012, Swift shall deliver a check for \$4,125; (b) on or before October 15, 2012, Swift shall deliver a second check for \$4,125; (c) on or before November 15, 2012, Swift shall deliver a third check for \$4,125; and (d) on or before December 15, 2012, Swift shall deliver a fourth check for \$4,125. Swift shall also provide Moore’s counsel with a single 1099 form for the fee and cost payments made to The Chanler Group (EIN: 94-3171522).

Swift represents that, as of the Effective Date, it lacks the financial capacity to satisfy all of the monetary obligations provided by this Settlement Agreement, and must do so in

installments, as set forth above. The Parties agree, however, that, in the event that Swift fails to make any payment required by this Settlement Agreement, or any payment is delayed by more than five days, all amounts owed will become due immediately.

### **3.3 Payment Address**

All payments and tax documents required by this section 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. CLAIMS COVERED AND RELEASED**

### **4.1 Moore's Release of Swift**

This Settlement Agreement is a full, final, and binding resolution between Moore and Swift 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 Swift, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Swift 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 the alleged failure to warn about exposures to DEHP contained in Products imported, manufactured, sold or distributed for sale in California by Swift 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 against Swift and Releasees, 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 arising under Proposition 65 for unwarned exposures to DEHP in Products imported, manufactured, sold, or distributed for sale in California by Swift before the Effective Date.

#### **4.2 Swift's Release of Moore**

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

#### **5. POST-EXECUTION CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement, Swift may send Moore a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and to seek court approval of the settlement pursuant to Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Moore and Swift agree to reasonably cooperate, and to use their best efforts and that of their counsel to obtain approval of the Parties' settlement by a superior court in California, and an entry of judgment in accordance with the terms set forth herein in a timely manner.

Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, Swift will reimburse Moore and his counsel for the reasonable fees and costs incurred filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the settlement, in an amount not to exceed \$15,000, exclusive of fees and cost that may be incurred on appeal, if any. Swift shall remit payment to The Chanler Group, at the address provided in section 3.3, within ten days of receiving a monthly invoice 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 remaining provisions 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Swift 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 Products are so affected.

**8. NOTICES**

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

For Swift:

Michael Belitz, President  
Swift Distribution, Inc.  
5836 Wright Drive  
Loveland, CO 80538

with a copy to:

Anna Amarandos, Esq.  
Rutan and Tucker  
611 Anton Blvd., Suite 1400  
Costa Mesa, CA 92626

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 § 25249.7(f).

**11. MODIFICATION**

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

**12. AUTHORIZATION**

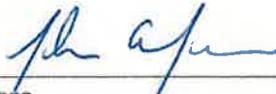
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: August 28, 2012

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

By:   
John Moore

By: \_\_\_\_\_  
Michael Belitz, President  
Swift Distribution, Inc.

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 § 25249.7(f).

**11. MODIFICATION**

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

**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.

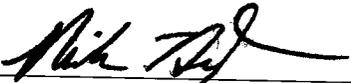
**AGREED TO:**

**AGREED TO:**

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

Date: 8/29/2012

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

By:   
Michael Belitz, President  
Swift Distribution, Inc.