

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Marco Group, Inc. (“Marco Group”), with Moore and Marco Group collectively referred to as the “Parties.” Moore is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Marco Group 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 Marco Group imports, manufactures, sells, or distributes for sale in the state of California, chairs with vinyl seats containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable consumer warning required by Proposition 65. 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 covered by this Settlement Agreement are chairs with vinyl seats containing DEHP and that are sold or distributed for sale in California by Marco Group, including, but not limited to, the *MGI Commercial Quality Stack Chair, #108-040 (#6 64255 52002 9)* (collectively “Products”).

### 1.4 Notice of Violation

On or about March 29, 2012, Moore served Marco Group and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Moore’s allegation that Marco Group 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**

Marco Group 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 Marco Group 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 Marco Group of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Marco Group. This section shall not, however, diminish or otherwise affect Marco Group'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 October 1, 2012.

## **2. INJUNCTIVE RELIEF**

Commencing on January 15, 2013, and continuing thereafter, Marco Group shall only import, manufacture, ship, sell, or distribute for sale in California, Products that are "Reformulated Products." For purposes of this Settlement Agreement, Reformulated Products are Products that contain a maximum DEHP content of 1,000 parts per million (0.1%) in any accessible component (i.e., any component of a Product that can be touched or handled during a reasonably foreseeable use) 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.

## **3. MONETARY PAYMENTS**

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

Pursuant to Health & Safety Code § 25249.7(b), except as provided in section 3.1.2, Marco Group shall pay \$11,000 in civil penalties. The civil penalty payments 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 the California Office of Environmental

Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) of the penalty amount earmarked for Moore.

### **3.1.1 Initial Civil Penalty**

Marco Group shall pay an initial civil penalty of \$3,500. Marco Group shall deliver its payment on or before the Effective Date in the form of two checks for the following amounts made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$2,625; and (b) “The Chanler Group in Trust for John Moore” in the amount of \$875.

Two 1099 forms shall also be provided for the 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 on or before the Effective to the Payment Address provided in section 3.3 Date.

### **3.1.2 Final Civil Penalty**

On January 15, 2013, Marco Group shall pay a final civil penalty of \$7,500. The final civil penalty shall be waived in its entirety, however, if, between December 1, 2012 and January 1, 2013, an officer of Marco Group certifies in writing to Moore’s counsel that, as of January 1, 2013, and continuing thereafter, one hundred percent of the Products Marco Group sells or distributes for sale in California are Reformulated Products as defined in section 2.

Unless waived, Marco Group shall provide its payment in the form of two checks made payable to OEHHA and Moore, and is to provide Moore’s counsel with two additional 1099 forms for its payments to OEHHA and Moore in the 2013 calendar year.

### **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, Marco Group shall pay \$22,000 for all fees and costs incurred investigating, bringing this matter to the attention of Marco Group, and negotiating a settlement in the public interest.

Marco Group shall provide its payment in the form of a third check payable to “The Chanler Group”, issue a separate form 1099 for fees and costs paid to The Chanler Group (EIN: 94-3171522), and deliver payment on or before the Effective Date to the Payment Address provided in section 3.3.

### **3.3 Payment Address**

All payments and tax documents required by Settlement Agreement shall be delivered to 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 Marco Group**

This Settlement Agreement is a full, final, and binding resolution between Moore and Marco Group 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 Marco Group and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Marco Group directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on alleged unwarned exposures to DEHP contained in Products imported, manufactured, sold, or distributed for sale in California by Marco Group 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 Marco Group 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, without limitation, 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 Marco Group before the Effective Date.

#### **4.2 Marco Group's Release of Moore**

Marco Group 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 Marco Group 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, 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 Marco Group agree to reasonably cooperate, and to use their best efforts and that of their counsel to obtain approval of this settlement by a superior court in California, and an entry of judgment in accordance with the terms herein in a timely manner.

Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, if so requested, Marco Group will reimburse Moore and his counsel for the reasonable fees and costs incurred in connection with work performed under this section in an amount not to exceed \$15,000, exclusive of fees and costs incurred on appeal, if any. Within ten days of receiving a monthly invoice from Moore's counsel for work performed under this section, Marco Group shall remit payment to the address provided in section 3.3.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of its provisions 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 Marco Group 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 notices 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 Marco Group:

Richard Davidson, President  
Marco Group, Inc.  
5400 Doniphan Drive  
Neosho, MO 64850

with a copy to:

Bruce Nye, Esq.  
Adams Nye Becht, LLP  
222 Kearny Street, 7th Floor  
San Francisco, CA 94108-4521

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**

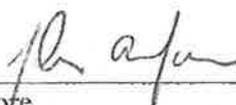
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 9/28/12

Date: 9/27/2012

By:   
John Moore

By:   
Richard Davidson, President  
Marco Group, Inc.