

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 John Moore and Foremost Groups, Inc.

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Foremost Groups, Inc. (“Foremost”), with Moore and Foremost 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. Foremost 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 Foremost has manufactured, distributed, sold and/or offered for sale in California ottomans containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to Proposition 65 as a chemical 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 ottomans containing DEHP including, but not limited to, *Ottoman, Red, D1052, C6424, #400068084248*, manufactured, distributed, sold and/or offered for sale in California by Foremost, hereinafter the “Products.”

1.4 Notice of Violation

On or about May 10, 2012, Moore served Foremost 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 Foremost for failing to warn its customers and consumers in California that the 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

Foremost 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 Foremost 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 Foremost of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Foremost. However, this section shall not diminish or otherwise affect Foremost'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 September 26, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards and Commitment

Commencing on the Effective Date and continuing thereafter, Foremost shall only manufacture, distribute, sell and/or offer for sale in California Products that are "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, or any method utilized by state or federal agencies for the purposes of determining the DEHP content in a solid substance.

2.2 Product Warnings

Commencing on the Effective Date, Foremost 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.

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

WARNING: This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

(b) **Point-of-Sale Warnings.** Alternatively, Foremost 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 Foremost's customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains chemicals, including DEHP, known to the State of California to cause 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:¹

WARNING: The following products contain chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm:
[list products for which warning is required]

¹ For purposes of this 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.

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

3.1 Initial Civil Penalty

Foremost shall pay an initial civil penalty of \$3,200, 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. Foremost 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 \$2,400 representing 75% of the initial civil penalty; and (b) one check made payable to "The Chanler Group in Trust for John Moore" in the amount of \$800, representing 25% of the initial civil penalty. 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. 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 Pursuant to Health & Safety Code § 25249.7(b)

Foremost shall pay a final civil penalty in the amount of \$12,000 on February 28, 2013. As incentive for Foremost to reformulate the Products, however, this final civil penalty shall be waived in its entirety if an officer of Foremost certifies in writing that it, as of February 15, 2013, will sell, ship and offer for sale in California only Reformulated Products. Such certification must be received by The Chanler Group on or before February 15, 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 Moore. Foremost

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 \$9,000, representing 75% of the total final penalty; and (b) one check made payable to “The Chanler Group in Trust for John Moore” in the amount of \$3,000, representing 25% of the total final penalty. 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 Foremost 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. Foremost 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, Foremost shall reimburse Moore’s counsel for fees and costs incurred as a result of investigating, bringing this matter to Foremost’s attention, and negotiating a settlement in the public interest. Foremost shall pay Moore’s counsel \$19,800 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

Foremost 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 Foremost, 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 Foremost, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Foremost directly or indirectly distributes or sells Products, including but not limited to Ross Stores, Inc and any other 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 Products that were manufactured, distributed, sold and/or offered for sale by Foremost 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

DEHP in the Products manufactured, distributed, sold and/or offered for sale by Foremost before the Effective Date (collectively “claims”), against Foremost and Releasees.

5.2 Foremost’s Release of Moore

Foremost 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, Foremost 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 Foremost 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, Foremost 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 \$15,000, exclusive of fees and cost that may be incurred on appeal. Foremost will remit payment to The Chanler Group, at the address set forth in Section 9 below. Such additional fees shall be paid by Foremost 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 Foremost 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 Foremost Groups, Inc.:

Joe Chen, President
Foremost Groups, Inc.
906 Murray Road, Suite 2
East Hanover, NJ 07936

To Moore:

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

With copy to:

Bonnie Cohen
Law Offices of Bonnie R. Cohen
3096 Washington Street
San Francisco, CA 94115

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”) signature, 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: 9/25/12

Date: _____

By: 
John Moore

By: _____
Joe Chen, President
Foremost Groups, Inc.

10. COUNTERPARTS; FACSIMILE SIGNATURES

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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: September 24, 2012

By: c/o [Signature]
Joe Chen, President
Foremost Groups, Inc.