

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 John Moore and Interstol Trading Co., Inc.

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Interstol Trading Co., Inc. (“Interstol”), with Moore and Interstol 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. At the times relevant to this matter, Moore alleges that Interstol employed ten or more persons and is a person in the course of doing business for purposes of 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 Interstol has manufactured, distributed, sold and/or offered for sale in the State of California eyewear cases containing the phthalate chemical 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 eyewear cases containing DEHP including, but not limited to, *Visual Impact Polarized Clip-on Sunglasses, Square 405258 (#4 00004 05258 4)*, manufactured, distributed, sold and/or offered for sale in California by Interstol, hereinafter the “Products.”

#### 1.4 Notice of Violation

On or about June 29, 2012, Moore served Interstol, Costco Wholesale Corporation 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 Interstol 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**

Interstol 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 Interstol 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 Interstol of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Interstol. However, this section shall not diminish or otherwise affect Interstol'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: REFORMULATION**

As of the Effective Date, Interstol 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%) of DEHP when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C.

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

Pursuant to Health & Safety Code § 25249.7(b), Interstol shall pay \$12,000 in civil penalties. Interstol shall pay an initial civil penalty of \$3,000 and a final civil penalty of \$9,000. However, the final civil penalty shall be waived in its entirety if an

officer of Interstol provides Moore with a written certification that, as of October 1, 2012, and continuing on into the future, Interstol shall not manufacture, distribute, sell and/or offer for sale any Products for distribution and sale in California that are not Reformulated Products as defined by Section 2 of this Settlement Agreement. Moore must receive any such certification no later than March 15, 2013, and time is of the essence.

Interstol shall issue two checks for the initial civil penalty payment: (a) one check payable to "The Chanler Group in Trust for OEHHA" in the amount of \$2,250; and (b) one to "The Chanler Group in Trust for John Moore" in the amount of \$750. Two 1099 forms shall be provided for the above 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, at least five (5) calendar days before payment is due. Payment shall be delivered within 20 days of execution of this agreement by the Parties at the following address:

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

If the final civil penalty payment is not waived, Interstol shall issue two checks for the final civil penalty payment: (a) one check made payable to "The Chanler Group in Trust for OEHHA" in the amount of \$6,750; and (b) one to "The Chanler Group in Trust for John Moore" in the amount of \$2,250. Two 1099 forms shall be provided for the above 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, at least five (5) calendar days before payment is due. Payment shall be delivered on or before March 15, 2013 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 the fee issue to be resolved after the material terms of the agreement had been settled. Interstol 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, Interstol shall reimburse Moore's counsel for fees and costs incurred as a result of investigating, bringing this matter to Interstol's attention, and negotiating a settlement in the public interest. Interstol shall pay Moore's counsel \$19,500 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

Interstol 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 Interstol, 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 Interstol, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Interstol directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, including specifically Costco Wholesale Corporation, 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 Interstol 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 Interstol before the Effective Date (collectively “claims”), against Interstol and Releasees.

**5.2 Interstol’s Release of Moore**

Interstol 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, Interstol 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 Interstol and to use his 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 Code of Civil Procedure §§ 1021 and 1021.5, Interstol 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 \$10,000, exclusive of fees and cost that may be incurred on appeal. Interstol will remit payment to The Chanler Group, at the address set forth in Section 9 below. Such additional fees shall be paid by Interstol 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 Interstol 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 Interstol:

David Stoltenberg, President  
Interstol Trading Co., Inc.  
2712 NE 54<sup>th</sup> Street  
Seattle, WA 98105

To Moore:

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

With copy to:

Renee D. Wasserman  
Lauren B. Kramer  
Rogers Joseph O'Donnell  
311 California Street, 10<sup>th</sup> Floor  
San Francisco, CA 94104

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

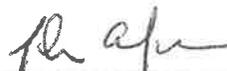
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 9/25/12

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

By:   
John Moore

By: \_\_\_\_\_  
David Stoltenberg, President  
Interstol Trading Co., Inc.

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.

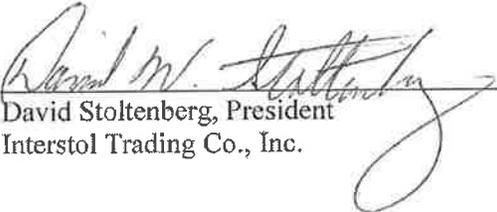
AGREED TO:

AGREED TO:

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

Date: 26 SEPTEMBER 2012

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

By:   
David Stoltenberg, President  
Interstol Trading Co., Inc.