

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1. Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and LF USA Inc. (“LF”), with Moore and LF 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. LF 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 LF manufactures, distributes, and/or sells in the State of California placemats 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 the following placemats alleged to contain DEHP that are or have been manufactured, imported, distributed, and/or sold by LF to vendors who sell the placemats to consumers in California: *Hometrends Poya Placemat*, khaki color (#7 66195 21179 8; #7 66195 20722 7) and the *Hometrends Poya Placemat*, chocolate color (#7 66195 20721 0; #7 66195 21178 1) (hereinafter “Products”).

### 1.4. Notice of Violation

On or about July 11, 2012, Moore served LF and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), alleging that LF was in violation of Proposition

65 for failing to warn its customers and consumers in California that the Product 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.

LF agreed to waive its right, pursuant to an earlier judgment entered in County of San Francisco Superior Court Case No. CGC-10-497729, to receive a notice of violation in a letter prior to receiving the Notice.

**1.5. No Admission**

LF denies the material factual and legal allegations contained in the Notice and maintains that the products that are or have been manufactured, imported, distributed, and/or sold by LF to vendors who sell such products, including the Products, to consumers in California, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by LF 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 LF of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect LF'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 the date on which this Settlement Agreement is executed on behalf of LF, as indicated below.

**2. INJUNCTIVE RELIEF**

Commencing on the Effective Date and continuing thereafter, with respect to sales of Products to consumers in California, LF shall only manufacture, distribute, ship, sell, or offer to ship for sale in California Products that contain no more than 1,000 parts per million 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.

### **3. MONETARY PAYMENTS**

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

Pursuant to Health & Safety Code § 25249.7, subdivision (b) LF shall pay \$4,375 in civil penalties. Civil penalties shall be allocated according to California Health & Safety Code § 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment and the remaining twenty-five percent (25%) remitted to Moore.

LF shall issue two checks made payable as follows: (a) to “The Chanler Group in Trust for OEHHA” in the amount of \$3,281.25; and (b) to “The Chanler Group in Trust for John Moore” in the amount of \$1,093.75. Two 1099 forms shall also be provided for the payments to: (a) the “Office of Environmental Health Hazard Assessment,” P.O. Box 4010, Sacramento, CA 95812 (EIN: 68-0284486); and (b) “John Moore,” whose address and tax identification number shall be furnished upon request after this Settlement Agreement is fully executed by the Parties. Payment shall be delivered to Moore’s counsel upon execution and delivery of this Agreement at the Payment address provided in Section 3.3.

#### **3.2. 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 § 1021.5 for all work performed in this matter. Under these legal principles, LF shall pay \$30,500 for all fees and costs incurred investigating, bringing this matter to the attention of LF, and negotiating a settlement in the public interest. LF 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 upon execution and delivery of this Agreement at the Payment Address provided in Section 3.3.

**3.3. 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 LF**

This Settlement Agreement is a full, final, and binding resolution between Moore and LF 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 LF, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom LF directly or indirectly distributes or sells and/or to whom LF has supplied, distributed or sold Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including but not limited to Wal-Mart Stores, Inc. and its subsidiaries and affiliates), franchisees, cooperative members, and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP or any other chemical contained in the Products that LF manufactured, distributed, sold, offered and/or supplied for sale 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 of 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, if any--limited to and arising under Proposition 65 with respect to the Products LF manufactured, distributed, sold, offered and/or supplied for sale in California before the Effective Date (collectively "claims"), against LF and Releasees.

#### **4.2. LF's Release of Moore**

LF 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 the claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products LF manufactured, distributed, sold, offered and/or supplied for sale in California before the Effective Date.

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

Within twelve months of the execution of this Settlement Agreement, or within two months of the receipt by LF of a 60-day notice of violation issued by someone other than Moore and alleging a violation of Proposition 65 based on the alleged presence of DEHP in any Products, LF may send Moore, at the address provided in Section 8, 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 § 25249.7. If so requested, in furtherance of obtaining approval of the consent judgment, Moore and LF and their respective counsel agree to mutually employ their best efforts to support the entry of the proposed consent judgment and obtain approval of the consent judgment by the Court in a timely manner. For purposes of this section, best efforts shall include, at a minimum,

cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

If LF sends a written request to Moore as provided for in the previous paragraph, then, pursuant to Code of Civil Procedure §§ 1021 and 1021.5, LF 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. LF will remit such payment to The Chanler Group, at the Payment Address provided in Section 3.3. Such additional fees shall be paid by LF within ten business 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.

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**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by either party to the other party by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier to the other party at the following address:

For LF:

Jon Kimmins, Executive VP, Finance  
Eric Gul, Esq., Senior VP – Corporate Attorney  
LF USA Inc.  
1359 Broadway, Floor 18  
New York, NY 10018

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**

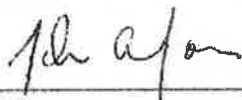
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

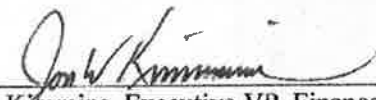
**AGREED TO:**

**AGREED TO:**

Date: DECEMBER 10, 2012

Date: December 19, 2012

By:   
John Moore

By:   
Jon Kimmins, Executive VP, Finance  
LF USA Inc.