

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Arlee Home Fashions, Inc. (“Arlee”), with Moore and Arlee 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. Arlee 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 Arlee has manufactured, distributed and/or sold in the State of California vinyl/PVC curtains containing concentrations of 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 or other reproductive harm.

1.3 No Admission

Arlee denies the material, factual and legal allegations contained in Moore’s Notice, and maintains that all of the products it has manufactured, imported, distributed and/or sold 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 Arlee 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 Arlee of any fact, finding, conclusion of law, issue of law or violation of law, such being specifically denied by Arlee. This Section shall not, however, diminish or otherwise affect Arlee’s obligations, responsibilities and duties under this Settlement Agreement.

1.4 Product Description

The products that are covered by this Settlement Agreement are defined as vinyl/PVC

curtains containing DEHP that are manufactured, imported, distributed and/or sold in California by Arlee including, but not limited to, *Tab Top Curtains*, Item #29-12217NAT, #29-40526NAT (#0 28967 040494 5). All such curtains are referred to collectively herein as the “Products.”

1.5 Notice of Violation

On or about August 31, 2012, Moore served Arlee and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of Moore’s allegation that Arlee was in violation of Proposition 65 for failing to warn its customers and consumers in California that vinyl/PVC curtains sold by Arlee 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.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date of the complete execution of the Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION COMMITMENT

Commencing thirty (30) days after the Effective Date and continuing thereafter, Arlee shall cease from manufacturing, distributing, shipping, selling or offering for sale in California any Products unless the Product(s) are Reformulated Products. Reformulated Products are defined as those Products which contain DEHP in concentrations of less than or equal to 0.1 percent (1,000 parts per million) of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or any method allowed by any state or federal agency to determine DEHP content by weight in a solid substance.

3. MONETARY PAYMENTS

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)

Arlee shall pay a total civil penalty of \$9,750 as follows:

3.1.1 Initial Civil Penalty. Arlee shall pay an initial civil penalty of \$3,700 on or before December 31, 2012. The initial civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) and (d), with seventy-five percent (75%) of

the penalty amount to be remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) of the amount to be remitted to Moore.

3.1.2 Final Civil Penalty. Arlee shall pay a final civil penalty of \$6,000 on or before April 15, 2013. The final civil penalty shall be waived in its entirety, however, if an officer of Arlee provides Moore with written certification that, as of the Effective Date and continuing into the future, Arlee has met the reformulation standard specified in Section 2 above such that all Products manufactured, produced, assembled, imported, distributed, shipped, sold or offered for sale in California are Reformulated Products. Moore must receive any such certification on or before April 1, 2013, and time is of the essence. The final civil penalty shall also be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) & (d), with seventy-five percent (75%) of the penalty amount to be remitted to OEHHA and the remaining twenty-five percent (25%) of the amount to be remitted to Moore.

3.2 Reimbursement of Moore’s 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 issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Arlee expressed a desire to resolve the fee and cost issue. The Parties then attempted to (and did) reach 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 § 1021.5 for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, on or before January 14, 2013, Arlee shall pay either \$20,300 for fees and costs incurred in investigating, litigating and negotiating a settlement of this matter.

3.3 Payment Procedures

3.3.1 Initial Payments. All payments required by Sections 3.1.1 and 3.2 shall be delivered to The Chanler Group in three checks made payable as follows:

- (a) one check to “The Chanler Group in Trust for OEHHA” in the amount of \$2,775;
- (b) a second check to “The Chanler Group in Trust for John Moore” in the amount of \$925; and
- (c) a third check to “The Chanler Group” in the amount of \$20,300.

3.3.2 Final Civil Penalty Payments. If the final civil penalty referenced in Section 3.1.2 above is not waived, payments shall be delivered in two checks made payable as follows:

- (a) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$2,775; and
- (b) One check to “The Chanler Group in Trust for John Moore” in the amount of \$925.

3.3.3 Issuance of 1099 Forms. After the settlement funds have been transmitted to Moore’s counsel, Arlee shall issue separate 1099 forms, as follows:

- (a) one 1099 form to the “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$2,775;
- (b) a second 1099 form to “John Moore” in the amount of \$925, whose address and tax identification number shall be furnished upon request;
- (c) a third 1099 to “The Chanler Group” (EIN: 94-3171522) in the amount of \$20,300 or the amount awarded at arbitration;
- (c) If the penalty referenced in Section 3.1.2 above is paid, a fourth 1099 shall be issued to the “Office of Environmental Health Hazard Assessment” in the amount of \$4,500; and
- (d) If the penalty referenced in Section 3.1.2 above is paid, a fifth 1099 shall be issued to “John Moore” in the amount of \$1,500.

3.3.4 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. RELEASE OF ALL CLAIMS

4.1 Moore's Release of Arlee

This Settlement Agreement is a full, final, and binding resolution between Moore and Arlee 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 Arlee, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Arlee directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers ("Releasees"), based on the alleged failure to warn about exposures to DEHP contained in the Products manufactured, distributed, sold and/or offered for sale by Arlee 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 rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Arlee and Releasees, including, without limitation, all actions, causes of action, 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 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Arlee before the Effective Date.

4.2 Arlee' Release of Moore

Arlee 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 enforcement of Proposition 65 against it in this matter and/or with respect to the Products.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the complete execution of this Settlement Agreement by the Parties, Arlee may send Moore a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek court approval of this Settlement Agreement in the form of a 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 Arlee and to use his best efforts, and that of his 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.

Pursuant to California Code of Civil Procedure §§ 1021 and 1021.5, Arlee will reimburse Moore and his counsel for the reasonable fees and costs incurred in drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement, in an amount not to exceed \$18,000, exclusive of fees and costs that may be incurred on any appeal. Within ten days after its receipt of monthly invoices from Moore for work performed under this Section, Arlee will remit payment to The Chanler Group at the address set forth in Section 3.3.4 above.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products and/or DEHP, then Arlee 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 to be provided pursuant to this Settlement Agreement shall be sent by: (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

For Arlee:

David Frankel, President
Arlee Home Fashions, Inc.
261 5th Avenue
New York, NY 10016

with a copy to:

Mort Hartwell, Esq.
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1126

For Moore:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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.

9. COUNTERPARTS; FACSIMILE/PDF 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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Moore agrees to comply with the reporting form requirements referenced in California 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

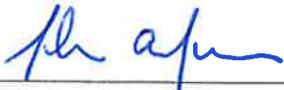
respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

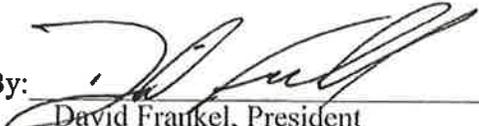
AGREED TO:

AGREED TO:

Date: JANUARY 8, 2013

Date: 1/7/2013

By: 
John Moore

By: 
David Frankel, President
Arlee Home Fashions, Inc.