

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Von Maur Inc. (“Von Maur”), with Moore and Von Maur 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. Von Maur 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 Von Maur manufactures, distributes, and/or sells in the State of California vinyl clutches containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard 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 vinyl clutches containing DEHP that are manufactured, imported, distributed, and/or sold to consumers in California by Von Maur, including, but not limited to, the *La Regale Patent Flap Clutch #25488 (#7 88374 07174 0)* (hereinafter “Products”).

1.4 Notice of Violation

On or about October 12, 2012, Moore served Von Maur and the requisite public prosecutors with a “60-Day Notice of Violation” (“Notice”), alleging that Von Maur 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

Von Maur denies the material factual and legal allegations contained in the 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 Von Maur 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 Von Maur of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Von Maur. This section shall not, however, diminish or otherwise affect Von Maur'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 May 20, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standard

As of the Effective Date, Von Maur shall only manufacture, produce, assemble, import, distribute, ship, sell, or offer to ship for sale in California Reformulated Products, except as allowed by Subsection 2.3. "Reformulated Products" are defined as those Products containing DEHP and DBP in concentrations of less than 0.1 percent (1,000 parts per million) each when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 358A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining DEHP and DBP content in a solid substance ("Reformulation Standard").

By entering into this Settlement Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Von Maur by laws other than Proposition 65.

2.2 Vendor Notification Requirements

On or before thirty (30) days after the Effective Date, Von Maur shall provide the Reformulation Standard defined in Section 2.1 to each of its Vendors of Products that it believes are reasonably likely to be sold or distributed for sale to California consumers (“Vendor” means a person or entity that manufactures, imports, distributes or otherwise supplies Products to Von Maur), and shall instruct each Vendor to use its best efforts to provide only Reformulated Products as expeditiously as is practicable. In addressing the obligation set forth in this Section, Von Maur shall not in any way encourage a Vendor to delay compliance with the Reformulation Standard. Within thirty days of the Effective Date Von Maur shall provide Moore with a copy of the notification(s) sent to its Vendors.

2.3 Product Warnings for Internet Sales of Products

Commencing on the Effective Date and continuing thereafter, notwithstanding Subsection 2.1, Von Maur may, via its internet website, vonmaur.com, sell, or offer to ship for sale in California, Products that do not meet the Reformulation Standard if it provides a clear and reasonable warning in accordance with this Subsection for each such sale.

A warning shall be given in conjunction with the sale of Products via the internet, which warning shall appear on one or more Web pages or windows displayed to each purchaser during the checkout process, or which is visible on the website page which presents or offers the Product for sale. The warning shall consist of the following statement displayed in the same type size or larger and the same font as the Product description text:

WARNING: This product contains a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

3. MONETARY PAYMENTS

3.1 Civil Penalties

In settlement of all the claims referred to in this Settlement Agreement, on or before the Effective Date Von Maur shall pay a total of \$800 in civil penalties, allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”), in the form of a check issued to “OEHHA,” and the remaining 25% of the penalty remitted to Moore, in the form of a check made payable to “The Chanler Group in Trust for John Moore.” Penalty payments shall be delivered to the addresses listed in Section 3.3.1 below.

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, on or before the Effective Date, Von Maur shall pay \$9,000 for all fees and costs incurred investigating, bringing this matter to its attention, and negotiating a settlement in the public interest. Von Maur shall deliver payment, in the form of a check payable to “The Chanler Group,” upon execution and delivery of this Agreement at the address provided in Section 3.3.1(a).

3.3 Payment Procedures

3.3.1 Issuance of Payments

(a) All payments owed to Moore, pursuant to Sections 3.1 and 3.2, shall be delivered to the following address:

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

(b) All payments owed to OEHHA pursuant to Sections 3.1, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following address:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

3.3.2 Proof of Payment

A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth above in 3.3.1(a).

3.3.3 Tax Documentation

Upon each payment required by this Section 3, Von Maur shall issue separate 1099 forms as follows: For each penalty payment to OEHHA, a 1099 shall be issued to the Office of Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-0284486); for each penalty payment to John Moore, a 1099 shall be issued to “John Moore,” whose address and tax identification number shall be furnished upon request after this Settlement Agreement is fully executed by the Parties; for its reimbursement of fees and costs, Von Maur shall issue a separate 1099 form to “The Chanler Group” (EIN: 94-3171522).

4. RELEASES

4.1 Moore’s Release of Von Maur

This Settlement Agreement is a full, final, and binding resolution between Moore and Von Maur 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 Von Maur, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Von Maur directly or indirectly distributes or sells and/or to whom Von Maur has supplied, distributed or sold Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on their failure to

warn about alleged exposures to DEHP contained in the Products that Von Maur 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 Von Maur manufactured, distributed, sold, offered and/or supplied for sale in California before the Effective Date (collectively "claims"), against Von Maur and Releasees.

4.2 Von Maur's Release of Moore

Von Maur 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 Von Maur 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, Von Maur may send Moore, 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, or as may be otherwise allowed by law. If so requested, Moore agrees to reasonably cooperate with Von Maur and to use his

best efforts, and that of his counsel, to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, Von Maur will reimburse Moore and his counsel for their reasonable fees and costs incurred in connection with work performed pursuant to this Section, in an amount not to exceed \$15,000, exclusive of fees and costs incurred on appeal, if any. Von Maur will remit payment to The Chanler Group, at the Payment Address provided in Section 3.3.1(a). Such additional fees shall be paid by Von Maur within ten days after its receipt of an invoice 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.

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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: (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 Von Maur:

Richard A. Davidson
Lane & Waterman, LLP
220 North Main Street, Suite 600
Davenport, Iowa 52801-1987

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

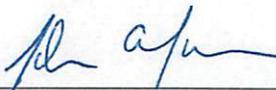
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: May 21, 2013

Date: _____

By: 
John Moore

By: _____
Robert L. Larsen
Chief Financial Officer
Von Maur, Inc.

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: _____

Date: 5/7/13

By: _____
John Moore

By: 
Robert L. Larsen
Chief Financial Officer
Von Maur, Inc.