

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Ready America, Inc. (“Ready America”), with Moore and Ready America collectively referred to as the “Parties.” Moore is an individual residing in the State of 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. Ready America 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 Ready America manufactures, imports, distributes, sells, and/or offers for sale backpacks with vinyl/PVC handles containing di(2-ethylhexyl)phthalate (“DEHP”) in the State of California 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 defined as backpacks with vinyl/PVC handles containing DEHP including, but not limited to, the *Ready America 2 Person 3 Day Emergency Backpack*, #20130306, #20150925, UPC #7 53962 70280 1, which were manufactured, imported, distributed, sold and/or offered for sale by Ready America in the State of California, hereinafter referred to as the “Products.”

### 1.4 Notice of Violation

On or about September 30, 2014, Moore served Ready America and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”), alleging that Ready America was in violation of Proposition 65 for failing to warn its customers

and consumers in the State of California that the Products 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**

Ready America denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, sold and/or offered for sale in the State of 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 Ready America 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 Ready America of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Ready America. This Section shall not, however, diminish or otherwise affect Ready America'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 March 15, 2015.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Commitment**

On or before the Effective Date, Ready America shall provide written notice to all of its then current vendors of the Products that will be sold or offered for sale in California instructing each such vendor to use reasonable efforts to provide only Reformulated Products for sale in California at the earliest date possible. In any event, within three months of the Effective Date, Ready America shall only manufacture, import, distribute, sell and/or offer for sale in the State of 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 in each Accessible Component when analyzed pursuant to EPA

testing methodologies 3580A and 8270C. For purposes of this Settlement Agreement, “Accessible Component” shall mean a component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product. The above shall not apply to Products that, as of the Effective Date, are in the stream of commerce.

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

In settlement of all the claims referred to in this Settlement Agreement, Ready America shall pay a total of \$2,000 in civil penalties in accordance with this Section. The penalty payment will be 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”) and the remaining 25% of the penalty remitted to Moore. Moore’s counsel shall be responsible for remitting Ready America’s penalty payment under this Settlement Agreement to OEHHA. Payment shall be made on or before March 15, 2015 to 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 reached 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 through the mutual execution of this agreement. Ready America shall pay \$15,000 for fees and costs incurred as a result of investigating, bringing this matter to Ready America’s attention, and negotiating a settlement in the public interest. Ready America shall issue a check payable to “The Chanler Group” and shall deliver payment on or before March 15, 2015 to the address listed in Section 3 above.

## **5. RELEASES**

### **5.1 Moore's Release of Ready America**

This Settlement Agreement is a full, final and binding resolution between Moore, in his individual capacity only and not on behalf of the public, and Ready America, 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 Ready America, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Ready America directly or indirectly distributes or sells 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 were manufactured, imported, distributed, sold, and/or offered for sale by Ready America in the State of California before the Effective Date.

In further consideration of the promises and agreements herein contained, Moore, in his individual capacity only, 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, imported, distributed, sold and/or offered for sale by Ready America before the Effective Date, against Ready America and Releasees.

### **5.2 Ready America's Release of Moore**

Ready America, 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 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**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.

**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 on any party by the other party at the following addresses:

To Ready America:

Jeff Primes, President  
Ready America, Inc.  
1150 Simpson Way  
Escondido, CA 92029

To Moore:

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

With Copy to:

Joshua A. Bloom, Esq.  
Barg Coffin Lewis & Trapp, LLP  
350 California Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94104

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, subdivision (f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**12. AUTHORIZATION**

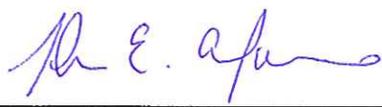
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

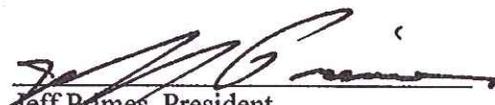
**AGREED TO:**

**AGREED TO:**

Date: 3/12/15

Date: 2/27/15

By:   
John Moore

By:   
Jeff Primes, President  
Ready America, Inc.