

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore, (“Moore”) and Jem Accessories Inc., (Jem) with Moore and Jem each individually referred to as a “Party” and collectively as the “Parties.” Moore is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Jem 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 section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moore alleges that Jem manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, vinyl/PVC headphone cords that contain the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and/or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are headphone cords made with vinyl/PVC containing DEHP, that are manufactured, sold and/or distributed for sale in California by Jem, including, but not limited to, *Xtreme DJ Style Foldable Headphones, #99214, UPC #8 05106 99214 9* (collectively, “Products”).

### 1.4 Notice of Violation

On February 27, 2015, Moore served Jem and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Jem violated Proposition 65 when it failed 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**

Jem 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 Jem 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 Jem of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Jem. This Section shall not, however, diminish or otherwise affect Jem'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 November 1, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing on the Effective Date and continuing hereafter, Jem shall only purchase for sale or manufacture for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 1,000 ppm (0.1%) DEHP content in any component analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining DEHP content in a solid substance. As of the Effective Date, Jem represents that it is not currently offering the Products for sale in California, but agrees that if it recommences sales, it will only offer Reformulated Products. Before commencement of sales, an officer of Jem will provide Moore with an original, signed written certification that all of the Products it ships for sale or distributes for sale in California as of the date of its certification are Reformulated

Products, and that Jem will continue to offer only Reformulated Products in California in the future.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Payment Pursuant to Health and Safety Code § 25249.7(b)(2)**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Jem agrees to pay \$2,800 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% of the penalty amount paid to Moore. Moore’s counsel shall be responsible for remitting Jem’s penalty payment(s) under this settlement to OEHHA. Within two days of the Effective Date, Jem shall provide its payment in a single check made payable to “John Moore Client Trust Account”, to be delivered to the address provided in section 3.3, below.

**3.2 Reimbursement of Moore’s Attorneys’ 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 Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, Jem agrees to pay \$21,000 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of Jem’s management, and negotiating a settlement in the public interest.

### **3.3 Payment Address**

All payments required by this Consent Judgment shall be delivered to the following address:

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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Moore's Release of Jem**

This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and not on behalf of the public, and Jem, of any violation of Proposition 65 that was or could have been asserted by Moore on his own behalf, or on behalf of himself, his past and current agents, representatives, attorneys, successors, and assignees, against (a) Jem, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Jem directly or indirectly distributes or sells Products, including but not limited to Tuesday Morning Corporation and Tuesday Morning, Inc., and (b) all downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees of the entities identified in (a), above; and (c) all past and current parents, subsidiaries, affiliates, directors, officers, employees, shareholder, agents, attorneys, successors, and assignees of the entities and individuals identified in (a) and (b), above (the released entities and individuals identified in (a), (b), and (c), above, are collectively referred to as "Releasees"), for alleged violations of Proposition 65 with respect to Jem's failure to warn about DEHP in the Products sold by Jem prior to the Effective Date, as alleged in the Notice. Compliance with the terms of this Settlement Agreement by Jem shall constitute compliance with Proposition 65 with respect to any exposures to DEHP in the Products.

In further consideration of the promises and agreements herein contained, Moore as an individual and not on behalf of the public, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, and not in his representative capacity, 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 the Releasees, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not limited to investigation fees, expert fees, and attorneys' fees, (Collectively "Claims") arising under Proposition 65 with respect to DEPH, including the failure to warn about exposures to DEHP, from Products sold or distributed for sale by Jem.

The Parties further understand and agree that the releases provided under this Settlement Agreement shall not extend upstream to any entity that manufactures the Products, or any component parts thereof, or any distributor or supplier who sold the products, or any component parts thereof, to Jem. The releases provided by Moore under this Settlement Agreement are provided solely on Moore's behalf and are not releases on behalf of the public.

#### **4.2 Jem's Release of Moore**

Jem on its own behalf and on behalf of 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**5. 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 remaining enforceable provisions shall not be adversely affected.

**6. 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 Jem 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.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Jem:

Jeffrey P. Resnick, Esq.  
Sherman, Silverstein, Kohl, et al.  
East Gate Corporate Center  
308 Harper Drive, Suite 200  
Moorestown, NJ 08057

For Moore:

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

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

**8. 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.

11. **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:**

Date: 11/24/2015

By:   
John Moore

**AGREED TO:**

Date: 11/12/15

By:  CEO  
Ellie Chemtob, ~~President~~ CEO  
Jcm Accessories, Inc.