

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 John Moore and Pelican Products, Inc.**

This Settlement Agreement (“Settlement Agreement”) is entered into by and between John Moore (“Moore”) and Pelican Products, Inc. (“Pelican”) with Moore and Pelican collectively referred to as the “Parties.” Moore is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Pelican 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 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Moore alleges that Pelican manufactures, imports, sells and/or distributes for sale in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning that Moore alleges is required by Proposition 65. 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 seat cushions containing DEHP including, but not limited to, *Pelican ProGear 65QT/95QT Cooler Seat Cushion, Part #65Q-SEAT-GRN, #60825494048374, UPC #8 25494 04837 2* that are manufactured, imported, distributed, sold and/or offered for sale by Pelican in the state of California, hereinafter the “Products.”

### **1.4 Notice of Violation**

On or about May 26, 2016, Moore served Pelican, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Pelican

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**

Pelican denies the material, factual and legal allegations contained in the Notice and maintains that all 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 Pelican of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Pelican of any fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 17, 2017.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

**2.2 Reformulation Commitment**


As of the Effective Date, Pelican shall not manufacture, import, distribute, sell or offer the Products for sale in the state of California unless they are Reformulated Products pursuant to Section 2.1 above, or Products containing appropriate health hazard warnings as described in Section 2.3 below.

### **2.3 Product Warnings**

Commencing on or before the effective date, Pelican shall provide clear and reasonable warnings as set forth in this Section. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Settlement Agreement, a clear and reasonable warning satisfying these criteria shall consist of a warning affixed directly to the packaging, labeling, or directly on each Product provided for sale in California that states:

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

OR, if Pelican determines that it must revise the warning language in order to comply with the newly promulgated warning requirements of Cal. Code Regs. tit. 27, section 25600 et seq., it may use the following warning:

 **WARNING:** This product can expose you to chemicals, including DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

## **3. MONETARY PAYMENTS**

### **3.1 Civil Penalty**

Pursuant to Health and Safety Code section 25249.7(b), Pelican shall pay civil penalties in the amount of \$2,500. The penalty payment shall be allocated according to Health and Safety Code sections 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Moore. On or before February 24, 2017, Pelican shall issue a check payable to

“The Chanler Group, John Moore Client Trust Account” in the amount of \$625, and a check made payable to “OEHHA” in the amount of \$1,875. Moore’s counsel shall be responsible for remitting Pelican’s penalty payment under this Settlement Agreement to OEHHA.

### **3.2 Reimbursement of Attorneys’ 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, Pelican expressed a desire to resolve Moore’s fees and costs. The Parties then negotiated a resolution of 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 section 1021.5. For all work performed through the mutual execution of this agreement, Pelican shall reimburse Moore and his counsel \$20,000 on or before February 24, 2017. Pelican’s payment shall be delivered to the address in Section 3.3 in the form of a check payable to “The Chanler Group.” The reimbursement shall cover all fees and costs incurred by Moore investigating, bringing this matter to Pelican’s attention and negotiating a settlement of the matter in the public interest.

### **3.3 Payment Address**

All payments required by this Settlement Agreement 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 Proposition 65 Claims**

Moore acting on his own behalf, and *not* on behalf of the public, releases Pelican, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Pelican directly or indirectly distributes or sells

the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Pelican.

#### **4.2 Moore’s Individual Releases of Claims**

Moore, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of Moore of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Pelican prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Pelican. Nothing in this Section affects Moore’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Pelican’s Products.

#### **4.3 Pelican’s Release of Moore**

Pelican, on behalf of itself, its past and current agents, representatives, attorneys, successors, and 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 or otherwise seeking to enforce Proposition 65 against it in this matter 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 enforceable provisions remaining 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Pelican shall provide written notice to Moore of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Pelican from any obligation to comply with any pertinent state or federal toxics control law.

**7. NOTICE**

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

For Pelican:

Michael E. Delehunt  
Foley & Lardner LLP  
555 California Street, Suite 1700  
San Francisco, CA 94104-1520

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.

**8. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

Moore agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

**10. MODIFICATION**

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

**11. AUTHORIZATION**

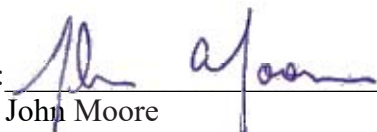
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: 2/22/2017

Date: \_\_\_\_\_

By:   
John Moore

By: \_\_\_\_\_  
Lyndon Faulkner, President  
Pelican Products, Inc.

For Moore:

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

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The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

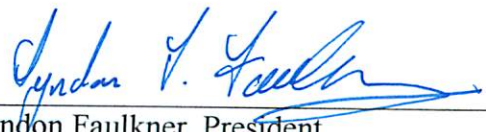
**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 2/16/17

By: \_\_\_\_\_  
John Moore

By:   
Lyndon Faulkner, President  
Pelican Products, Inc.