

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between plaintiff John Moore (“Moore”) and Castle Brands Inc. (“Castle Brands”), with Moore and Castle Brands 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 in consumer products. Castle Brands employs ten or more individuals 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moore alleges that Castle Brands sells, and distributes for sale in California, glassware with exterior designs containing Lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moore alleges that Castle Brands failed to provide individuals exposed to Lead from its glassware products with a warning regarding the health hazards associated with exposures to Lead, as required by Proposition 65.

### 1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as glassware with exterior designs containing Lead that is sold, or distributed for sale in California, by Castle Brands including, but not limited to, the glass offered in connection with the *Pallini Roma Limoncello*, UPC No. 7 36040 50500 6.

### 1.4 Notice of Violation

On June 14, 2016, Moore served Castle Brands, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”),

alleging that Castle Brands violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to Lead from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

Castle Brands denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it sold, and distributed for sale 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 Castle Brands 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 Castle Brands of any fact, finding, conclusion, issue of law, or violation of law, the same being denied by Castle Brands. This Section shall not, however, diminish or otherwise affect Castle Brands' obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 20, 2017.

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

### **2.1 Commitment to Provide Reformulated Products or Warnings**

Commencing one month from Effective Date and continuing thereafter, Castle Brands shall only purchase for sale or manufacture for sale in California, (a) "Reformulated Products" as defined by Section 2.2; or (b) Products sold with a clear and reasonable warning in California in accordance with Section 2.3.

### **2.2 Reformulated Products Defined**

For purposes of this Settlement Agreement, Reformulated Products are defined as Products that (a) contain Lead in concentrations of no more than 90 parts per million ("ppm") (0.09%) in any exterior decorations analyzed pursuant to U.S. Environmental

Protection Agency (“EPA”) testing methodologies 3050B and 6010B; (b) yield a result of no more than 1.0 micrograms of Lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol; and (c) yield a result of “Non-detect” (defined as no more than 25 ppm Lead content) in any decoration(s) located in the upper 20 centimeters of a Product, i.e., the “Lip-and-Rim” area of the vessel, or on any decoration(s) located on the interior surface of the Product (i.e., the beverage-containing portion) when analyzed pursuant to EPA testing methodologies 3050B and 6010B. In addition to the testing methodologies provided above, the Parties may use equivalent methodologies utilized by state or federal agencies for the purpose of determining Lead content in a solid substance to analyze a Product for the purpose of determining whether it qualifies as a Reformulated Product under this Settlement Agreement.

### **2.3 Clear and Reasonable Warnings**

Except as provided in Section 2.4, Commencing 30 days from the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by Castle Brands that are not Reformulated Products, Castle Brands will only offer such Products for sale with a clear and reasonable warning in accordance with this Section. Castle Brands further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when 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 of purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying labeling or packaging sold in California that states:

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

or

**WARNING:** Coating used on complimentary glass contains lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

In the event that Castle Brands sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.

Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided that the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the Product(s) to which the warning applies.

#### **2.4 Point of Sale Warnings**

No warning is required for, and the requirements of Section 2 shall not apply to, any Products sold or distributed for sale in California by a retailer that has posted a point of sale or shelf warning that is mandated by or in compliance with an enforceable consent judgment to which the retailer is a party, concerning exposures to lead from glassware or similar products. In the event that such a warning is employed Castle Brands agrees to provide Moore with a copy of such consent judgment upon receiving a request in writing from Moore's counsel.

### **3. MONETARY SETTLEMENT TERMS**

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

In settlement of all the claims referred to in this Settlement Agreement, Castle Brands shall pay a total of \$4,500 in civil penalties in accordance with this Section. Each civil penalty payment will be allocated in accordance with Health and Safety Code § 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty remitted to the

California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty retained by Moore.

### **3.1.1 Initial Civil Penalty**

Castle Brands shall make an initial civil penalty payment of \$4,500 within ten (10) days of the Effective Date. Castle Brands shall deliver its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,375; and (b) “John Moore, Client Trust Account” in the amount of \$1,125.

### **3.1.2 Final Civil Penalty; Waiver for Complete Reformulation**

On June 1, 2017, Castle Brands shall make a final civil penalty payment of \$13,500. The final civil penalty shall be waived in its entirety, however, if, on or before May 15, 2017, an officer of Castle Brands provides Moore with a signed declaration certifying that, as of the date of its declaration all Products imported, distributed, sold and offered for sale in California after the Effective Date by Castle Brands are Reformulated Products, and that Castle Brands will continue to only offer Reformulated Products for sale in California in the future. The option to provide a declaration certifying complete reformulation in lieu of making the final civil penalty payment is a material term, and time is of the essence. Unless waived, Castle Brands shall deliver the final civil penalty payment in two checks for the following amounts made payable to “OEHHA” in the amount of \$10,125; and “John Moore, Client Trust Account” in the amount of \$3,375.

### **3.2 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 ten days of the Effective Date, Castle Brands agrees to pay \$23,000 for all fees and costs incurred investigating, bringing this matter to the attention

of Castle Brands' management, and negotiating a settlement that provides a significant public benefit. Castle Brands' payment shall be delivered in a single check made payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

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

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

### **4.1 Moore's Release of Castle Brands**

This Settlement Agreement is a full, final, and binding resolution between Moore and Castle Brands, of any violation of Proposition 65 that was or could have been asserted by Moore, on his own behalf, or on behalf of his past and current agents, representatives, attorneys, successors, and assigns, against Castle Brands, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, MHW, Ltd. and each entity to whom Castle Brands directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and the manufacturers, importers and suppliers of the Products ("Releasees"), based on the failure to warn about exposures to Lead in Products manufactured, sold or distributed for sale in California by Castle Brands before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Moore on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Castle Brands, MHW, Ltd., and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines,

penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees for claims arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to Lead in Products manufactured, distributed, sold or offered for sale by Castle Brands, before the Effective Date, as alleged in the Notice.

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 in California.

#### **4.2 Castle Brands' Release of Moore**

Castle Brands, on its own behalf and on behalf of 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 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 provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining 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 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Castle Brands may 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.

#### **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 Castle Brands:

John Glover, Chief Operating Officer  
Castle Brands Inc.  
122 East 42<sup>nd</sup> Street, Room 5000  
New York, NY 10168

with a copy to:

Greg Sperla, Esq.  
Greenberg Traurig, LLP  
1201 K Street, Suite 1100  
Sacramento, CA 95814

For Moore:

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

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.

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

Moore and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

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



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:**

**AGREED TO:**

Date: 1/19/2017

Date: January 18, 2017

By:   
JOHN MOORE

By:   
John Glover, Chief Operating Officer  
CASTLE BRANDS INC.