

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered by and between John Moore (“Plaintiff” or “Moore”) and Victory Christian Center of Murfreesboro, Inc., a 501(c)(3) non profit religious/church entity, dba Swanson Christian Products (“Swanson”), with Moore and Swanson 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 contained in consumer products. Moore alleges that Swanson 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 25249.5 et seq. (“Proposition 65”).

1.2 General Allegations

Moore alleges that Swanson manufactures, imports, sells and/or distributes for sale in California, book covers containing di(2-ethylhexyl) phthalate (“DEHP”), and that it does so without providing a Proposition 65 warning.

Moore also alleges that Swanson manufactures, imports, sells, and/or distributes for sale in California (i) book covers containing one or more of the following Proposition 65-listed chemicals: DEHP, diisononyl phthalate (“DINP”), di-n-butyl phthalate (“DBP”), Butyl Benzyl phthalate (“BBP”), Di-n-Hexyl phthalate (“DnHP”), Di-isodecyl phthalate (“DIDP”)(collectively, the “Listed Phthalates”) and/or lead; (ii) soft balls with vinyl, plastic, or other faux leather cover materials containing one or more Listed Phthalates; and (iii) bags containing one or more Listed Phthalates and/or lead, and that it does so without first providing a Proposition 65 warning. The Listed Phthalates and lead are each listed pursuant to Proposition 65 as chemicals known to cause cancer and/or birth defects or other reproductive harm.

1.3 Products and Additional Products Defined

For purposes of this Settlement Agreement “Products” are defined as book covers containing DEHP, that are sold or distributed for sale in California by Swanson in California including, but not limited to the *Swanson Bible Covers, Item No. 02-16 6, #10146739 – 100052, UPC No. 7 88200 53680 1*, identified in Moore’s Notice.

For purposes of this Settlement Agreement “Additional Products” are defined as: (i) book covers containing Listed Phthalates and/or lead including, but not limited to the *Swanson Bible Cover Noah’s Ark, Free Man Apparel Ladybug Bible Cover, Swanson Bible Cover Princess Daughter of The King*; (ii) soft balls with vinyl, plastic, or other faux leather cover materials containing Listed Phthalates including, but not limited to, the *Christian Soft Ball Cover*; and (iii) bags containing Listed Phthalates and/or lead including, but not limited to, the *Free Man Apparel Maroon Bible Bag*. Additional Products are released by Moore in exchange for Swanson’s commitment to apply the injunctive terms of this Settlement Agreement to the Additional Products, they are not the subject of Moore’s 60-Day Notice of Violation.

1.4 Notice of Violation

On September 12, 2017, Moore served Swan-Son, Inc., the California Attorney General, and all other requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleges that Swan-Son, Inc. violated Proposition 65 by failing to warn its customers and consumers in California about DEHP allegedly present in the certain book cover products sold or offered for sale by Swanson in California. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

The Parties enter into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notice, and as to the Additional Products, arising out of the facts and/or conduct alleged in the Notice and this Settlement Agreement. Swanson denies the material, factual, and legal allegations in the

Notice and as to the Additional Products, and maintains that all the products that it has manufactured, imported, sold or distributed for sale in California, including the Products and Additional Products, have been, and are, in compliance with all laws and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Swanson of any allegation, 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 Swanson of any allegation, fact, finding, conclusion, issue of law, or violation of law, all of which are specifically denied by Swanson. This Section shall not, however, diminish or otherwise affect Swanson'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 15, 2018.

2. INJUNCTIVE RELIEF

2.1 Commitment to Provide Reformulated Products or Warnings

Commencing on the Effective Date and continuing thereafter, Swanson shall only manufacture for sale, purchase for sale, or import for sale in California either: (a) Reformulated Products, as defined in Section 2.2, below; or (b) Products sold with a clear and reasonable warning pursuant to Section 2.3, below.

2.2 Reformulated Products Defined

2.2.1 Reformulation Standard Applicable to Listed Phthalates

For the purposes of this Settlement Agreement, "Reformulated Products" are defined as Products and/or Additional Products with a maximum Listed Phthalate concentration of 1,000 parts per million (0.1%) per each Listed Phthalate in any accessible component analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

2.2.2 Reformulation Standard Applicable to Lead

For purposes of this Settlement Agreement, "Reformulated Products" are defined

as Products and Additional Products containing no more than 100 parts per million (0.01%) lead content when sampled and analyzed pursuant to EPA testing methodologies 3050B and 6010B.


2.2.3 Other Test Methods

In addition to the above test methodologies, the Parties may use equivalent methodologies utilized by a state or federal agency to determine Listed Phthalate and/or lead content in a solid substance.

2.3 Clear and Reasonable Warnings

2.3.1 Warning Obligation and Warning Content

Commencing on the Effective Date, subject to Section 2.1 above, for all Products and Additional Products that do not meet the definition of Reformulated Products established in Section 2.2, Swanson shall provide clear and reasonable warnings in accordance with this Section, or title 27 California Code of Regulations sections 25602 and 25603. Swanson further agrees that any warning used will be prominently placed in relation to a Product or Additional Product with such conspicuousness when compared with other words, statements, designs or devices, as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase or use. For purposes of this Settlement Agreement, a warning displayed or transmitted according to the above criteria that is affixed directly to a Product or Additional Product or its accompanying labeling or packaging that contains one of the following statements shall be deemed clear and reasonable (language in brackets is optional):

 [California Proposition 65] **WARNING:** This product can expose you to chemicals, including [DEHP] [DINP] [DBP] [DIDP] [BBP] [DnHP] [Lead], which is [are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov¹

¹ Bracketed language is optional except that the “long-form” warning must refer to at least one of the chemicals present in the product above the content limits established by Section 2.2, above, for Listed Phthalates or lead.

or the following “short-form” warning:

 [California Proposition 65] **WARNING:** [Cancer and] Reproductive Harm - www.P65Warnings.ca.gov²

2.3.2 Warnings for Internet Sales

Pursuant to title 27 California Code of Regulations section 25602(b), if Swanson sells Products or Additional 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 or Additional Product is displayed and/or described; (b) on the same page as the price for the Product or Additional Product; or (c) on one or more web pages displayed to a purchaser prior to purchase. 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 or Additional Product, if 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. The warning may also be provided by using a hyperlink labeled “WARNING” on the product display page, or otherwise prominently displaying the warning prior to purchase.

2.3.3 Warnings for Catalog Sales

Pursuant to title 27 California Code of Regulations section 25602(c), if Swanson sells Products or Additional Product via mail order catalog it may use either of the two warning statements set forth in Section 2.3.1, above, provided the warning statement is presented in the catalog in a manner that clearly associates it with the item being purchased. If the “short-form” warning is provided directly on a Product or Additional Product or their accompanying packaging or labeling pursuant to Section 2.3.1, above, the catalog warning may use the same “short-form” warning statement. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle

² This short-form warning may be used only on a Product or Additional Product, Product or Additional Product label or package, or as part of an internet or catalog warning provided it is also affixed to the Product or Additional Product or their packaging/labeling, and should be in a type size no smaller than the largest type size used for consumer information on the product and in no case smaller than 6-point type. The short-form warning may not be used on a warning sign, *e.g.*, point-of-sale or shelf sign.

may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere in a manner that clearly associates it with the product(s) to which the warning applies.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged or that could have been alleged in the Notice and referred to in this Settlement Agreement, Swanson will pay a total of \$2,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Moore. Swanson will deliver its payment within ten business days of the Effective Date in two checks made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “John Moore, Client Trust Account” in the amount of \$500. Moore’s counsel shall be solely responsible for delivering the penalty payment to OEHHA.

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. Swanson agrees to pay a total of \$17,000 to Moore and his counsel for all fees, costs and other expenses incurred investigating, bringing this matter to the attention of Swanson’s management, and negotiating this Settlement Agreement that provides a significant public benefit. Swanson’s payment shall be delivered within five business days of the Effective Date in a 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: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Moore's Release of Swanson

This Settlement Agreement is a full, final, and binding resolution between Moore, in his individual capacity and not on behalf of the public, and Swanson, of any violation or alleged 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, principals, representatives, and assignees, against Swan-Son, Inc., Swanson or its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, representatives, predecessors, successors, assignees ("Releasees"), and each downstream entity to whom Swanson directly or indirectly distributes, ships, or sells the Products or Additional Products. Such downstream entities include, without limitation, Swanson's distributors, wholesalers, customers (including, but not limited to, Half Price Books, Records, Magazines, Incorporated), retailers, franchisees, cooperative members, and licensees, and their owners, directors, officers, employees, agents, principals, representatives, predecessors, successors, and assignees (collectively, "Downstream Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to Listed Phthalates and/or lead in Products or Additional Products manufactured, sold, or distributed for sale by Swanson before the Effective Date. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 by Swanson with respect to the alleged or actual failure to warn about exposures to Listed Phthalates and/or lead from Products or Additional Product manufactured, imported, sold or distributed for sale by Swanson after the Effective Date.

In further consideration of the promises and agreements herein contained, Moore, in his individual capacity and not on behalf of the public, and on behalf of his past and current agents, principals, representatives, and assignees hereby waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Swanson Releasees, and Downstream 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 arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to Listed Phthalates and/or lead in Products or Additional Products manufactured, sold, or distributed for sale by Swanson before the Effective Date.

4.2 Swanson's Release of Moore

Swanson, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against Moore, Moore's attorneys, and other representatives, for any action taken or statement made, whether in the course of investigating claims, or seeking to enforce Proposition 65 against it in this matter with respect to the Products or Additional Products.

4.3 Mutual California Civil Code Section 1542 Waiver

The Parties each acknowledge that he/it is familiar with Section 1542 of the Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties, each on his/its own behalf (and Moore in his individual capacity only and *not* in any representative capacity), and on behalf of his/its past and current agents, representatives, counsel, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them

by, the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.1 and 4.2, above.

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. If Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, or as to the Products or Additional Products, then Swanson may provide written notice to Moore of the asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement, to the extent that the Products or Additional Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required by 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 Swanson:

Adam Swanson, CEO
Victory Christian Center of Murfreesboro, Inc.
1200 Park Avenue
Murfreesboro, TN 37129

with a copy to:

J. Robert Maxwell, Esq.
Rogers Joseph O'Donnell
311 California Street, 10th Floor
San Francisco, CA 94104

For Moore:

The Chanler Group
Attn: Prop 65 Coordinator
2560 Ninth Street
Parker Plaza, 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. JOINT PREPARATION

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

9. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth in writing between the Parties.

10. 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. 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).

12. MODIFICATION

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

13. AUTHORIZATION

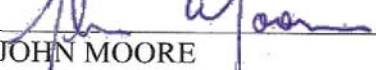
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agree to all the terms and conditions set forth herein.

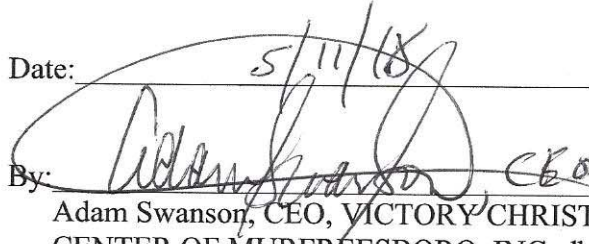
AGREED TO:

AGREED TO:

Date: 5/15/2018

Date: 5/11/18

By: 
JOHN MOORE

By:  CEO
Adam Swanson, CEO, VICTORY CHRISTIAN
CENTER OF MURFREESBORO, INC. dba
SWANSON CHRISTIAN PRODUCTS