

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 John Moore, Learning Resources, Inc.**

This Settlement Agreement (“Settlement Agreement”) is entered into by and between John Moore (“Moore”) and Learning Resources, Inc. (“LR”) with Moore and LR 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. LR employs ten or more persons and are each 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 §§ 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Moore alleges that LR manufactures, imports, sells and/or distributes for sale in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that they do 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 vinyl/PVC greenhouse covers for educational greenhouses containing DEHP including, but not limited to, the *Green Thumb Classroom Greenhouse, EI-5103, UPC #0 86002 05103 5* that are manufactured, imported, distributed, sold and/or offered for sale by LR in the State of California (hereinafter the “Products”).

**1.4 Notice of Violation**

On or about September 28, 2017, Moore served LR and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that LR violated Proposition 65 when they failed to warn their 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**

LR denies the material, factual and legal allegations contained in the Notice and maintains that all products that they have 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 LR 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 LR 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 December 22, 2017.

**2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

**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.

(a) Based upon inquiry for purposes of this Settlement, LR represents that it has investigated and concluded that its suppliers of DEHP are in the process of developing products that are “DEHP free” and would qualify as Reformulated Products, but that time and phasing is needed for the marketplace of DEHP suppliers to make the adjustments necessary to deliver Products meeting the definition of Reformulated Products as described above.

(b) As of April 1, 2018, LR shall only manufacture, or cause to be manufactured, Products containing DEHP as described above.

(c) LR shall retain compliance documentation for three years after delivery of a lot of Reformulated Products and compliance documentation shall be made available within 30 days of a written request by John Moore, who may make no more than two such requests annually.

## **2.2 Reformulation Commitment**


Any Products remaining in LR’s inventory after April 1, 2018, shall carry appropriate health hazard warnings for any Covered Products distributed, offered for sale or sold in California per section 2.3, below.

## **2.3 Product Warnings**

LR shall provide clear and reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) that do not qualify as Reformulated Products. 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.

### **(a) Retail Store Sales.**

(i) **Product Labeling.** LR shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:


 **WARNING:** This product can expose you to Di(2-ethylhexyl)phthalate, 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).

Or:

 **WARNING: Cancer and Reproductive Harm-**  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

**(b) Mail Order Catalog and Internet Sales.** In the event that LR sell Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, LR shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

**(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:


 **WARNING:** This product can expose you to Di(2-ethylhexyl)phthalate, 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).

Or:

 **WARNING: Cancer and Reproductive Harm-**  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, LR may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the


following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

 **WARNING:** Certain products identified with this symbol ▼ can expose you to Di(2-ethylhexyl)phthalate, 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).

Or:  **WARNING: Cancer and Reproductive Harm-**  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)


The designated symbol must appear on the same page and near the display and/or description of the Product. On each page where the designated symbol appears, LR must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

 **WARNING:** Certain products identified with this symbol ▼ can expose you to Di(2-ethylhexyl)phthalate, 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).

Or:  **WARNING: Cancer and Reproductive Harm-**  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Alternatively, where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, LR may utilize a designated symbol to cross reference the applicable warning with a “designated symbol” which may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

 **WARNING:** Certain products identified with this symbol ▼ can expose you to Di(2-ethylhexyl)phthalate, 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).

Or:  **WARNING: Cancer and Reproductive Harm-**  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

### 3. MONETARY SETTLEMENT TERMS

#### 3.1 Payments 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, LR shall pay a total of \$4,000.00 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, as follows: on or before the Effective Date, LR shall issue two checks: (1) to “John Moore, Client Trust Account” totaling \$1,000.00; and (2) to the “Office of Environmental Health Hazard Assessment” totaling \$3,000.00. Upon receipt, Moore and his counsel will then ensure payment to OEHHA. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

### **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, LR 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 § 1021.5. For all work performed through the mutual execution of this agreement, LR shall collectively reimburse Moore and his counsel \$18,000.00. LR's payment shall be delivered to the address in Section 3.3, on or before the Effective Date, 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 LR's attention and negotiating a settlement of the matter.

### **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 LR, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom LR and/or EI directly or indirectly distribute or sell 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 LR.

#### **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 LR 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 LR. Nothing in this Section affects Moore's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve LR's Products.

#### **4.3 LR's Release of Moore**

LR, on behalf of themselves, their past and current agents, representatives, attorneys, successors, and assignees, hereby waive 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 LR 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 LR 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 LR:

Richard Woldenberg, President  
Learning Resources, Inc.  
Educational Insights, Inc.  
380 North Fairway Drive  
Vernon Hills, IL 60061

Daniel J. Herling, Esq.  
Mintz Levin Cohn Ferris Glovsky and Popeo PC  
44 Montgomery Street, 36<sup>th</sup> Floor  
San Francisco, CA 94104

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 § 25249.7(f)**

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

**10. MODIFICATION**

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

11. **AUTHORIZATION**

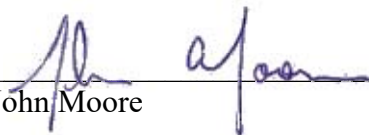
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: 12/22/2017

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

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

By: \_\_\_\_\_  
Richard Woldenberg, President  
Learning Resources, Inc.

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:**

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

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

**AGREED TO:**

Date: 12/22/17

By:   
Richard Woldenberg, President  
Learning Resources, Inc.