

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 John Moore and Custom Accessories, Inc.**

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Custom Accessories, Inc. (“Custom Accessories”) (collectively “Parties”). Moore asserts he 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. Custom Accessories 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 §§ 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Moore alleges that Custom Accessories has manufactured, distributed and/or sold in the State of California automobile document holders containing di(2-ethylhexyl)phthalate (“DEHP”). 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 automobile document holders containing DEHP including, but not limited to, *Custom Accessories Registration Holder, #17525 (#0 77341 17525 4)*, which are manufactured, distributed and/or sold by Custom Accessories in the State of California (“Products”).

### **1.4 Notice of Violation**

On May 24, 2012, Moore served Custom Accessories and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Custom Accessories was in violation of California Health & Safety

Code § 25249.6 for failing to warn consumers that the Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Custom Accessories denies the material, factual and legal allegations contained in Moore’s 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 Custom Accessories 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 Custom Accessories of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not 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 October 31, 2012.

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

**2.1 Reformulation Standards**

“Reformulated Products” are defined as those Products that yield less than 0.1 percent (1,000 parts per million) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any testing methodology selected by Custom Accessories that is utilized by federal or state government agencies in determining DEHP content in a solid substance.

**2.2 Reformulation Commitment**

As of the Effective Date, all Products manufactured, distributed or sold in the State of California by Custom Accessories shall be Products that qualify as Reformulated Products as defined in Section 2.1 above, or shall carry a Proposition 65 warning as further set forth in Section 2.3 below.

### **2.3 Product Warnings**

Except as provided in Section 2.4 below, for all Products other than Reformulated Products that enter the stream of commerce for sale in California after the Effective Date, warnings shall be provided as set forth herein at subsections 2.3(a) and (b). Each warning shall be prominently placed upon a product's label or other labeling or displayed at the retail outlet with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

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

Custom Accessories 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 contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

**(b) Point-of-Sale Warnings.** Alternatively, Custom Accessories may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such written instruction sent to Custom Accessories' customers shall be sent by certified mail, return receipt requested.

**WARNING:** This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement must be used:<sup>1</sup>

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<sup>1</sup>For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

**WARNING:** This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm:

*[list products for which warning is required]*

(c) **Mail Order Catalog.** 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 contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

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, Custom Accessories 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 ▼ and offered for sale in this catalog contain chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Custom Accessories must provide a reference directing the consumer to the warning language and definition of the designated symbol.

(d) **Internet Website Warning.** A warning shall be given in conjunction with the sale or description 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:** This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

Alternatively, the designated symbol 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:** Products identified on this page with the following symbol ▼ contain chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

#### **2.4 Warning Exceptions**

The requirements set forth in Section 2.3 shall not apply to any Products shipped by Custom Accessories in California before the Effective Date, including those containing the following warning label:

**WARNING:** This product contains chemicals, including lead, known to the State of California to cause cancer and birth defects or other reproductive harm. Keep out of reach of children.

### **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all claims referred to in this Settlement Agreement, and pursuant to California Health & Safety Code § 25249.7(b), Custom Accessories shall pay civil penalties in the amount of \$29,500 as follows:

### **3.1 Initial Civil Penalty**

In settlement of all claims referred to in this Settlement Agreement, Custom Accessories shall pay an initial civil penalty of \$6,500 to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Moore. Custom Accessories shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("The Chanler Group in Trust for OEHHA") in the amount of \$4,875, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Moore" in the amount of \$1,625, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) and the second 1099 shall be issued to Moore, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before November 15, 2012, to the following address:

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

### **3.2 Final Civil Penalty**

Custom Accessories shall pay a second and final civil penalty of \$23,000 on or before April 1, 2013. As incentive for Custom Accessories to reformulate its Products, however, the final civil penalty shall be waived in its entirety if an officer of Custom Accessories certifies in writing that it, as of March 15, 2013, sells, ships and offers for sale in California only Reformulated Products and that it will continue to sell, ship and offer for sale in California only Reformulated Products. Such certification must be received by The Chanler Group on or before March 15, 2013. The final civil penalty payment shall be apportioned in accordance with

California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Moore. Custom Accessories shall issue two separate checks for the final civil penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount of \$17,250, representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Moore” in the amount of \$5,750, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Moore, whose information shall be provided five calendar days before the payment is due (if different than the information already provided to Custom Accessories under Section 3.1 above).

Payment shall be delivered to Moore’s counsel at the following address:

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

#### **4. REIMBURSEMENT OF 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 this fee issue to be resolved after the material terms of the agreement had been settled. Moore then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on 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 (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. Custom Accessories shall pay \$25,000 for fees and costs incurred as a result of investigating, bringing this matter to Custom Accessories’ attention and negotiating a settlement in the public interest. Custom Accessories shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to “The Chanler Group” and shall deliver payment on or before November 15, 2012, to the following address:

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

**5. RELEASES**

**5.1 Moore's Release of Custom Accessories**

In further consideration of the promises and agreements herein contained, Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions and causes of action in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses – including, but not limited to, investigation fees, expert fees and attorneys' fees, but exclusive of fees and costs on appeal – against Custom Accessories, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Custom Accessories directly or indirectly distributes or sells Products including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Custom Accessories in California before the Effective Date.

**5.2 Custom Accessories' Release of Moore**

Custom Accessories, on behalf of itself, 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, otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.



**6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement, Custom Accessories may ask Moore, in writing, to file a complaint in the public interest, to incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Moore agrees to reasonably cooperate with Custom Accessories and the Parties agree to use their best efforts, and that of their counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Custom Accessories will reimburse Moore and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$16,000, exclusive of fees and costs that may be incurred on appeal. Custom Accessories will remit payment to The Chanler Group, at the address set forth in Section 4. Such additional fees shall be paid by Custom Accessories within ten days after its receipt of monthly invoices from Moore for work performed under this paragraph.

**7. 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.

**8. 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 Custom Accessories shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve Custom Accessories from any obligation to comply with any pertinent state or federal toxics control law.

**9. NOTICES**

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 addresses below.

For Custom Accessories:

Ed Matthew, President  
Custom Accessories, Inc.  
5900 Ami Drive  
Richmond, IL 60071

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.

**10. 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.

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

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

12. **MODIFICATION**

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

13. **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: November 15, 2012

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

By:   
John Moore

By: \_\_\_\_\_  
Ken Matthew, President  
Custom Accessories, Inc.

12. **MODIFICATION**

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

13. **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: \_\_\_\_\_

Date: 11-9-2012

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

By:   
Ed Matthew, President  
Custom Accessories, Inc.