

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 John Moore and Hancock Fabrics, Inc.

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Hancock Fabrics, Inc. (“Hancock”), with Moore and Hancock collectively referred to as the “Parties.” Moore is an individual residing in the state of California who asserts that he seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Hancock 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 § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moore alleges that Hancock has manufactured, distributed, sold and/or offered for sale in California ottomans containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are ottomans containing DEHP, including, but not limited to, *Hancock Fabrics Folding Storage Ottoman, Item SKU 3085917, Style # SQ-15 (#6 40338 02145 4)*, manufactured, distributed, sold and/or offered for sale in California by Hancock, hereinafter the “Products.”

### 1.4 Notice of Violation

On or about January 19, 2012, Moore served Hancock and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by Hancock for failing to warn its customers and consumers in California that the Products it

sold exposed 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**

Hancock denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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 Hancock 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 Hancock of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Hancock. However, this section shall not diminish or otherwise affect Hancock'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 June 1, 2012.

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

**2.1 Reformulation Standards and Commitment**

Unless as otherwise provided in Section 2.2, commencing on the Effective Date, Hancock shall only manufacture, import, distribute, sell and/or offer for sale in California Products that are "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing DEHP in concentrations less than or equal to 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 DEHP content in a solid substance.

## 2.2 Product Warnings

Commencing on the Effective Date, Hancock shall, for all Products other than Reformulated Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). 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.** Hancock shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Hancock or any person selling the Products, that states:

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

(ii) **Point-of-Sale Warnings.** Alternatively, Hancock may provide warning signs in the form below to its distributors or retailers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Hancock's distributors or retailers shall be sent by certified mail, return receipt requested.

**WARNING:** This product contains DEHP, a phthalate chemical 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 shall be used:<sup>1</sup>

**WARNING:** The following products contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm:

*[list products for which warning is required]*

**(b) Mail Order Catalog and Internet Sales.**

In the event that Hancock sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Hancock 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 2.2(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 contains DEHP, a phthalate chemical 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, Hancock 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):

---

<sup>1</sup> For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar 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:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a phthalate chemical 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, Hancock 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:** This product contains DEHP, a phthalate chemical 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 DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

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

**3.1 Initial Civil Penalty**

Hancock shall pay an initial civil penalty of \$2,000.00 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. Hancock 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 \$1,500.00, representing 75% of the initial civil penalty and (b) one check to "The Chanler Group in Trust for John Moore" in the amount of \$500.00, representing 25% of the initial civil 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) John 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 the Effective Date, 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**

Hancock shall pay a final civil penalty in the amount of \$3,500.00 on December 31, 2012. As incentive for Hancock to reformulate the Products, however, this final civil penalty shall be waived in its entirety if an officer of Hancock certifies in writing that it, as of December 15, 2012, will sell, ship and offer for sale in California only Reformulated Products. Such certification must be received by The Chanler Group on or before December 15, 2012. 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 John Moore. Hancock 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 \$ 2,625.00, representing 75% of the total final penalty; and (b) one check to “The Chanler Group in Trust for John Moore” in the amount of \$ 875.00 representing 25% of the total final 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) John Moore, whose information shall be provided five calendar days before the payment is due (if different than the information already provided to Hancock 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. Hancock 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 the private attorney general doctrine and principles of contract law. Under these legal principles, Hancock shall reimburse Moore’s counsel for fees and costs incurred as a result of investigating, bringing this matter to Hancock’s attention, and negotiating a settlement in the public interest. Hancock shall pay Moore’s counsel \$23,500.00 for all attorneys’ fees, expert and investigation fees, and related costs. The payment shall be issued in a third check made payable to “The Chanler Group” and shall be delivered on or before the

Effective Date to the following address:

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

Hancock shall issue a separate 1099 for attorneys' fees and costs paid to The Chanler Group (EIN: 94-3171522).

**5. CLAIMS COVERED AND RELEASED**

**5.1 Release**

This Settlement Agreement is a full, final and binding resolution between Moore, and Hancock, of any violation of Proposition 65 that was or could have been asserted by Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Hancock, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Hancock directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, 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 Hancock in California before the Effective Date.

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 his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, 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 -- limited to and arising under Proposition 65 with respect to



DEHP in the Products manufactured, distributed, sold and/or offered for sale by Hancock before the Effective Date (collectively “claims”), against Hancock and Releasees.

## **5.2 Moore’s Individual Release of Claims**

Moore also, 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 plaintiff 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, distributed, sold and/or offered for sale by Hancock.

Moore acknowledges that he is familiar with Section 1542 of the California 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.

Moore expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In further of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

**5.3 Hancock's Release of Moore**

Hancock on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moore, 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.

**6. POST EXECUTION ACTIVITIES**

Within twelve months of the execution of this Settlement Agreement, Hancock may ask Moore, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment and seek the court's approval of the consent judgment pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Moore agrees to reasonably cooperate with Hancock and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, Hancock 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 cost that may be incurred on appeal. Hancock will remit payment to The Chanler Group, at the address set forth in Section 9 below. Such additional fees shall be paid by Hancock 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 as to the Products, then Hancock may 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.

**9. NOTICES**

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

To Hancock Fabrics, Inc.

Robert Driskell, EVP and CFO  
Hancock Fabrics, Inc.  
One Fashion Way  
Baldwyn, MS 38824

With copy to:

Alan H. McConnell  
Kilpatrick Townsend & Stockton LLP  
4208 Six Forks Road, Suite 1400  
Raleigh, NC 27609

To 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 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. A facsimile or .pdf signature shall be as valid as the original.

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 & Safety Code § 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, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: 7/13/12

By: 

John Moore

AGREED TO:

Date: 6/11/12

By: 

Robert W. Driskell, Executive Vice President  
and Chief Financial Officer  
Hancock Fabrics, Inc.