

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”), and The Betesh Group (“Betesh Group”) with Moore and Betesh Group collectively referred to as the “parties.” Moore is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Betesh Group 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 Betesh Group has manufactured, distributed, and/or sold in the state of California handbags and cases for mobile electronic devices containing di(2-ethylhexyl)phthalate (“DEHP”) without providing the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition 65, as a chemical known to the State of California to cause birth defects and other reproductive harm. DEHP is referred to hereinafter as the “Listed Chemical.”

1.3 Product Description

The products that are covered by this Settlement Agreement are handles on handbags and cases for mobile electronic devices containing the Listed Chemical (collectively “Products”), including, without limitation, the *Icon Compact Camcorder/Digital Camera Case, SLV26-BLK* (#7 37073 04512 5), and the *Harvé Benard by Bernard Holtzman Handbag, HB016BRN, #31000479* (#7 89829 09644 8), that are manufactured, imported, distributed, and/or sold in California by Betesh Group.

1.4 Notices of Violation

On or about April 8, 2011, Moore served Betesh Group, three affiliated entities under common ownership, and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Betesh Group and its affiliated entities were alleged to be in violation of Proposition 65 for failing to warn their customers and consumers in California that the Products expose users to the Listed Chemical. 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

Betesh Group denies the material, factual, and legal allegations contained in Moore’s Notice, and maintains that all of the products it has sold 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 Betesh Group of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Betesh Group. This section shall not, however, diminish or otherwise affect Betesh Group’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 March 31, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION

Commencing on the Effective Date and continuing thereafter, Betesh Group shall only manufacture, distribute, sell, or offer to ship to an unaffiliated third-party for sale in California “Reformulated Products.” For purposes of this Settlement Agreement, Reformulated Products are Products containing no more than 1,000 parts per million (0.1%) of the Listed Chemical when analyzed according to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other method utilized by state or federal agencies (including but not limited to the U.S. Consumer Product Safety Commission) to determine DEHP content in a solid substance.

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

Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all of the violations alleged in the Notice and referred to in this Settlement Agreement, Betesh Group shall pay \$4,500 in civil penalties. Betesh Group’s penalty payments shall be allocated according to California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment and the remaining 25% remitted to Moore.

Betesh Group shall issue two checks for the following amounts made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$3,000 ; and (b) “The Chanler Group in Trust for John Moore” in the amount of \$1,500 Two 1099 forms shall also be provided for payments to: (a) Office of Environmental Health Hazard Assessment, 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, after this Settlement Agreement is fully executed by the parties. Payment shall be delivered to Moore’s counsel on or before December

12, 2011 at the following address:

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

4. REIMBURSEMENT OF MOORE'S 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 California Code of Civil Procedure § 1021.5 for all work performed in this matter. Under these legal principles, Betesh Group shall pay \$28,000 for fees and costs incurred as a result of Moore's investigating, bringing this matter to its attention, and negotiating a settlement in the public interest. Payment shall be in the form of a check payable to "The Chanler Group" and delivered to Moore's counsel on or before December 12, 2011 at the following address:

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

Betesh Group shall also issue a third 1099 form for its payment to The Chanler Group (EIN: 94-3171522).

5. CLAIMS COVERED AND RELEASED

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations

This Consent Judgment is a full, final, and binding resolution between Moore, on behalf of himself and the public, and Betesh Group, of any violation of Proposition 65 that was or could have been asserted by Moore against Betesh Group, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Betesh Group directly or indirectly distributes or sells Products and handbags, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees,

cooperative members, licensors, and licensees (“Releasees”), based on the alleged failure to warn about exposures to the Listed Chemical contained in the Products.

5.2 Moore’s Public Release of Proposition 65 Claims

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, and in the interest of the general public, 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, exclusive of fees and costs on appeal, if any, arising under Proposition 65 (collectively “Claims”) that were brought or could have been brought against Betesh Group and Releasees for unwarned exposures to the Listed Chemical in the Products sold by Betesh Group.

5.3 Moore’s Individual Release of Claims

Moore, in his individual capacity only and *not* in his representative capacity, also provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims, liabilities and demands of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to the Listed Chemical in the Products sold by Betesh Group.

5.4 Betesh Group’s Release of Moore

Betesh 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 or otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

7. 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 Betesh Group shall provide written notice to Moore of any asserted change in the law, and it shall have no further obligations under this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

For Betesh Group:

Michael Betesh, President
The Betesh Group
1 East 33rd Street, 10th Floor
New York, NY 10016

with a copy to:

Federick Locker, Esq.
Locker Greenberg & Brainin, PC
420 Fifth Avenue
New York NY 10018

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.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

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

11. MODIFICATION


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

AGREED TO:

AGREED TO:

Date: DECEMBER 1, 2011

Date: _____

By: 
John Moore

By: _____
Michael Betesh, President
The Betesh Group

For Moore:

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

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AGREED TO:

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Date: _____

Date: November 21, 2011

By: _____
John Moore

By:  _____
Michael Betesh, President
The Betesh Group