

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 John Moore and Blue Star Clothing Company, Inc.

This Settlement Agreement is entered into by and between plaintiff John Moore (“Moore” or “Plaintiff”) and Blue Star Clothing Company, Inc. (“Blue Star”), with Moore and Blue Star collectively referred to as the “parties.”

1.2 John Moore

Moore is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products.

1.3 Blue Star, Inc.

Moore alleges that Blue Star 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”).

1.4 General Allegations

Moore alleges that Blue Star has manufactured, imported, distributed and/or sold exercise balls containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause birth defects and other reproductive harm.

1.5 Product Description

As used in this Settlement Agreement, “Products” mean exercise balls containing DEHP, including, but not limited to, *Yogablue 55 cm Balance Ball, RN 122786 (#8 76471 00388 4)*, manufactured, imported, distributed and/or sold by, or on behalf of, Blue Star in California.

1.6 Notice of Violation

On or about July 20, 2011, Moore served Blue Star and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with notice that alleged that Blue Star was in violation of California Health & Safety Code § 25249.6 for

failing to warn consumers and customers that the Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice. In the event that a public enforcer elects to prosecute this matter prior to the expiration of the 60-Day Notice period, this Settlement Agreement shall be null and void and shall be of no force or effect. In which case, all monies paid to Moore and/or The Chanler Group by Blue Star shall be returned.

1.7 No Admission

Blue Star denies the material, factual and legal allegations contained in Moore's Notice and Complaint and maintains that all products that it has sold, manufactured, imported and/or 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 Blue Star 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 Blue Star of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Blue Star's obligations, responsibilities, and duties under this Settlement Agreement.

1.8 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 1, 2011.

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) in each accessible component 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, Blue Star 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. Blue Star shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Blue Star 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, Blue Star 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 instruction sent to Blue Star's customers 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:¹

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]

¹For 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.

(b) Mail Order Catalog and Internet Sales. In the event that Blue Star sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Blue Star 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, Blue Star 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 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, Blue Star must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

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.

(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.

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

3.1 **Civil Penalty**

Blue Star shall pay a civil penalty in the amount of \$3,000, 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 John Moore. Blue Star shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of \$2,250, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for John Moore" in the amount of \$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) John Moore, whose information shall be provided five calendar days before the payment is due.

Payment shall be delivered to Moore's counsel on or before September 15, 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 ATTORNEY'S 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 (CCP) § 1021.5. Blue Star shall reimburse Moore and his counsel \$20,500 for fees and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a settlement in the public interest. This figure includes Moore's future fees and costs including attorney's fees to be incurred in seeking judicial approval of this Settlement Agreement as well as any other legal work performed after the execution of this Settlement Agreement incurred in an effort to obtain finality of the case. However, in the event a third party were to appeal entry of this Settlement Agreement, Plaintiff and his counsel shall be entitled to seek their reasonable attorney's fees and costs associated with all appellate work defending the entry of judgment pursuant to CCP § 1021.5.

The check for reimbursement of fees and costs shall be made payable to "The Chanler Group" and shall be delivered on or before September 15, 2011, to the following address:

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

A separate 1099 shall be issued to "The Chanler Group" (EIN: 94-3171522) for the amount of the reimbursement of Plaintiff's fees and costs.

5. **CLAIMS COVERED AND RELEASED**

5.1 **Full, Final and Binding Resolution of Proposition 65 Allegations**

This Settlement Agreement is a full, final and binding resolution between Moore, on behalf of himself and the public, and Blue Star, of any violation of Proposition 65 that was or could have been asserted by Moore against Blue Star, its parents, subsidiaries, affiliated entities that are under

common ownership, directors, officers, employees, attorneys, and each entity to whom Blue Star directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers including, but not limited to Bed Bath & Beyond, Inc., franchisees, cooperative members, licensors and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the Products that were sold by Blue Star.

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, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to DEHP in the Products sold by Blue Star (collectively “claims”), against Blue Star and Releasees.

5.3 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 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 the DEHP in the Products manufactured, distributed or sold by Blue Star.

5.4 Blue Star’s Release of Moore

Blue Star 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. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are 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, preempted 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 require as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Blue Star 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 Blue Star from any obligation to comply with any pertinent state or federal toxics control law.

8. 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 from the other party at the following addresses:

To Blue Star:

Jeffrey S. Dweck, Esq.
The Law Firm of Jeffrey S. Dweck, P.C.
100 West 33rd Street, Suite 1017
New York, New York 10001

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.

9. COUNTERPARTS; FACSIMILE 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. A facsimile or pdf signature shall be as valid as the original.

10. 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).

11. POST EXECUTION ACTIVITIES

In the event that an authorized public prosecutor of Proposition 65 files a lawsuit against Blue Star with respect to DEHP in the Products, prior to running of the sixty (60) day period established by the Notice issued by Moore pursuant to Section 1.6 above, Moore shall refund the full payment submitted to them by Blue Star and this Settlement Agreement shall be null and void.

The parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Blue Star or the Releasees under Proposition 65 as covered under this release. If requested in writing by Blue Star (within twelve months of the Effective Date), Blue Star may ask Moore to file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law.

If requested, Moore agrees to reasonably cooperate with Blue Star 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, Blue Star will reimburse Moore and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an amount not to exceed \$15,000. No fees under this paragraph will be due and owing to Moore or his counsel

unless a written request is made by Blue Star to have Moore file a complaint and seek a consent judgment. Blue Star will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Blue Star within ten days after its receipt of monthly invoices from Moore for work performed under this paragraph. In the event a third party were to appeal the entry of a Consent Judgment sought pursuant to this Section 12, Moore and his counsel shall be entitled to seek their fees and costs associated with all such appealed work pursuant to CCP Section 1021.5.

12. MODIFICATION

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

13. AUTHORIZATION

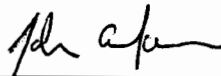
The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

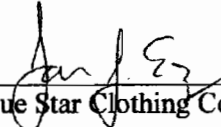
AGREED TO:

AGREED TO:

Date: November 18, 2011

Date: 9-14-2011

By: 
John Moore

By:  Jack S. Egan
Blue Star Clothing Company, Inc.