

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Clover Needlecraft, Inc. (“Clover”), with Moore and Clover 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. Clover 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 Clover manufactures, distributes, and/or sells in the state of California pouches containing di(2-ethylhexyl)phthalate (“DEHP” or the “Listed Chemical”) without 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.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: pouches containing DEHP that are manufactured, imported, distributed, and/or sold in California by Clover, including, but not limited to, the pouch that holds the *Clover Knit Mate (Knitting Accessory Set)*, #3003 (0 51221 35305 5) (hereinafter “Products”).

### 1.4 Notice of Violation

On or about September 1, 2011, Moore served Clover and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients that Clover was alleged to be in violation of Proposition 65 for failing to warn its 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**

Clover denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or 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 Clover 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 by Clover of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Clover. This section shall not, however, diminish or otherwise affect Clover'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 October 31, 2012.

## **2. CLOVER'S DUTIES**

### **2.1 Reformulation Standards**

As of the Effective Date, Clover shall not ship, sell, or offer to be shipped for sale in California any Product unless it is a "Reformulated Product;" provided, however, that shipment, sale or offer for sale in California on or before the Effective Date by Defendant or its customers of Products, which are on the date hereof, (i) in inventory, (ii) in production or (iii) on route, shall not constitute a violation of this Consent Judgment. Reformulated Products are defined as those Products which yield less than 1,000 parts per million ("ppm") of DEHP in each Accessible Component of the pouch when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

## **3. MONETARY PAYMENTS**

### **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

Defendant shall make payments totaling \$4,000 on or before the Effective Date, to be apportioned in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and

(d), with 75% of these funds earmarked for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of these penalty monies earmarked for Moore.

#### **4. REIMBURSEMENT OF FEES AND COSTS**

##### **4.1 Attorney 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 for all work performed in this matter. Under these legal principles, Clover shall pay \$21,000 for all fees and costs incurred as a result of investigating, bringing this matter to the attention of Clover, and negotiating a settlement in the public interest. Clover shall provide its payment in the form of a third check payable to "The Chanler Group," issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment on or before the Effective Date at the following address:

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

#### **5. RELEASES**

##### **5.1 Moore's Release of Clover**

This Settlement Agreement is a full, final, and binding resolution between Moore and Clover, 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 Clover, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Clover directly or indirectly distributes or sells the 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 the Listed Chemical contained in the

Products that were manufactured, distributed, sold and/or offered for sale by Clover in California as of the Effective Date of this Settlement Agreement

### **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, hereby waives all of his rights to institute or participate in directly or indirectly, any form of legal action and releases all claims that Moore 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 the Listed Chemical in the Products manufactured, distributed, sold and/or offered for sale by Clover prior to the execution of this Settlement Agreement (collectively "claims"), against Clover and Releasees.

### **5.3 Clover's Release of Moore**

Clover 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. 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 and/or the

Listed Chemical, then Clover 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.

## **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 Clover:

Yasuhiro Okada, President  
Clover Needlecraft, Inc.  
1441 South Carlos Avenue  
Ontario, CA 91761

and

Toy Fields, Esq.  
Lamb & Kawakami LLP  
333 S. Grand Ave., Suite 4200  
Los Angeles, CA 90071

For Moore:

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

Any party may, from time to time, 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 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.

## **10. POST-EXECUTION ACTIVITIES**

Within twelve months of the execution of this Settlement Agreement, Clover may send Moore a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment that provides a release in the public interest for the released Products, and to seek court approval of the consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Moore and

Clover agree to reasonably cooperate, and to use their best efforts and that of their counsel to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

If so requested by Clover in writing, pursuant to Code of Civil Procedure §§ 1021 and 1021.5, then Clover will reimburse Moore and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$7,000, exclusive fees and costs incurred on appeal, if any. Clover shall remit payment to The Chanler Group at the payment address provided in section 3.3 within five business days of receiving a monthly invoice from Moore's counsel for work performed under this section.

**11. MODIFICATION**

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

**12. 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:**

**AGREED TO:**

Date: October 31, 2012

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

By:   
John Moore

By: \_\_\_\_\_  
Yasuhiro Okada, President  
Clover Needlecraft, Inc.

Clover agree to reasonably cooperate, and to use their best efforts and that of their counsel to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

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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:**

**AGREED TO:**

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

Date: 8 / 11 / 2012

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

By: 岡田 康弘  
Yasuhiro Okada, President  
Clover Needlecraft, Inc.