

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Hugger-Mugger Yoga Products, LLC (“HMYP”), with Moore and HMYP 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. HMYP 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 HMYP has manufactured, distributed, and/or sold in the State of California weighted fitness/exercise balls containing di(2-ethylhexyl)phthalate (“DEHP”) and exercise balls containing DEHP 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:

(a) weighted fitness/exercise balls containing DEHP that are manufactured, imported, distributed, and/or sold in California by HMYP, including, but not limited to, *Hugger Mugger Power Weight Ball 3lb*, PB-005 (#8 03410 95504 1) and exercise balls containing DEHP that are manufactured, imported, distributed, and/or sold in California by HMYP, including, but not limited to, *Hugger Mugger Yoga Ball*, #0196 (#8 03410 05011 1). Subject to section 1.4

below, all such weighted fitness/exercise balls and exercise balls are referred to collectively as “Covered Products”; and

(b) pilates rings containing DEHP that are manufactured, imported, distributed, and/or sold in California by HMYP, exercise bands containing DEHP that are manufactured, imported, distributed, and/or sold in California by HMYP, and exercise bands with handles containing DEHP that are manufactured, imported, distributed, and/or sold in California by HMYP. All such pilates rings, exercise bands, and exercise bands with handles containing DEHP are referred to collectively as “Additional Products.”

#### **1.4 Notices of Violation**

On or about September 1, 2011, Moore served HMYP and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that provided the recipients with notice of Moore’s allegation that HMYP was in violation of Proposition 65 for failing to warn its customers and consumers in California that the weighted fitness/exercise balls expose users to DEHP.

On or about January 19, 2012, Moore served HMYP and various public enforcement agencies with a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”), a document that provided the recipients with notice of Moore’s further allegation that HMYP was in violation of Proposition 65 for failing to warn its customers and consumers in California that the exercise balls expose users to DEHP. Until the seventy-first (71<sup>st</sup>) day after the date of issuance of the Supplemental Notice, the definition of Covered Products herein shall only include weighted fitness/exercise balls containing DEHP. After seventy-one (71) days have passed from the date of the Supplemental Notice, the definition of Covered Products herein shall be deemed to include weighted fitness/exercise balls containing DEHP and exercise balls containing DEHP, provided that no authorized public prosecutor has, prior to that date, filed a

Proposition 65 enforcement action based on the Supplemental Notice.

The Notice and Supplemental Notice are referred to collectively herein as the "Notices." To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

**1.5 No Admission**

HMYP denies the material factual and legal allegations contained in Moore's Notices and maintains that all of the products it has manufactured, imported, distributed, and/or sold in California, including the Covered Products and the Additional Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by HMYP 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 HMYP of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by HMYP. This section shall not, however, diminish or otherwise affect HMYP'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 30, 2012.

**2. INJUNCTIVE RELIEF: REFORMULATION COMMITMENT**

Commencing on the Effective Date and continuing thereafter, HMYP shall do one of the following: (a) cease all sales, shipping, or distribution of Covered Products and Additional Products to entities in California or to entities which may offer Covered Products and/or Additional Products for sale in California; or (b) refrain from manufacturing, distributing, shipping, selling or offering to be shipped for sale in California any Covered Products and/or Additional Products unless the products contain less than or equal to 1,000 parts per million of

DEHP in any accessible component (i.e., any component that may be touched or mouthed by a user during reasonably foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or any method allowed by any state or federal agency to determine DEHP content by weight in a solid substance.

### **3. MONETARY PAYMENTS**

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

Pursuant to Health & Safety Code § 25249.7(b), HMYP shall pay a civil penalty of \$3,000. The penalty amount reflects a credit of \$5,000 agreed to by Moore in response to HMYP's commitment to Proposition 65 compliance, including reformulating the Covered Products and Additional Covered Products to comply with the DEHP content requirements established by Section 2.

The penalty payment shall be apportioned in accordance with Health & Safety Code §§ 25249.12 (c)(1) and (d), with seventy-five percent (75%) of the penalty amount earmarked for the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent (25%) of the amount earmarked for Moore.

#### **3.2 Reimbursement of Moore's 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, HMYP expressed a desire to resolve the fee and cost issue. 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 § 1021.5 for all work performed in this matter, except fees that may be incurred on appeal. Under these legal

principles, HMYP shall pay \$23,000 for fees and costs incurred investigating, litigating and negotiating a settlement of this matter.

### **3.3 Payment Procedures**

**3.3.1 Payment Timing.** All payments required by Sections 3.1 and 3.2 shall delivered on or before March 1, 2012 to The Chanler Group in three checks, made payable as follows:

- (a) one check to “The Chanler Group in Trust for OEHHA” in the amount of \$2,250;
- (b) a second check to “The Chanler Group in Trust for John Moore” in the amount of \$750; and
- (c) a third check to “The Chanler Group” in the amount of \$23,000.

**3.3.2 Issuance of 1099 Forms.** After the settlement funds have been transmitted to Moore’s counsel, HMYP shall issue three separate 1099 forms, as follows:

- (a) one 1099 form to the “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$2,250;
- (b) a second 1099 form to “John Moore” in the amount of \$750, whose address and tax identification number shall be furnished upon request; and
- (c) a third 1099 to The Chanler Group (EIN: 94-3171522) in the amount of \$23,000.

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**3.3.3 Payment Address.** All payments and tax documents required by this

Section 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. RELEASE OF ALL CLAIMS**

**4.1 Moore's Release of HMYP**

This Settlement Agreement is a full, final, and binding resolution between Moore and HMYP 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 HMYP, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom HMYP directly or indirectly distributes or sells the Covered Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the alleged failure to warn about exposures to DEHP contained in the Covered Products manufactured, distributed, sold and/or offered for sale by HMYP 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 rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against HMYP and Releasees, including, without limitation, all actions, causes of action, 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, if any) arising under

Proposition 65 with respect to DEHP in the Covered Products manufactured, distributed, sold and/or offered for sale by HMYP before the Effective Date.

Moore also, in his individual capacity only, and not in a 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 DEHP in the Covered Products and the Additional Products manufactured, distributed, or sold by HMYP.

#### **4.2 HMYP's Release of Moore**

HMYP 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 enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered Products and/or Additional Products.

### **5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement, HMYP may send Moore a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek court approval of this Settlement Agreement in the form of a consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Moore agrees to reasonably cooperate with HMYP and to use his best efforts, and that of his counsel, to obtain approval of the Parties' settlement by a superior court in California and an entry of judgment in accordance with the terms set forth herein.

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Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, HMYP will reimburse Moore and his counsel for the reasonable fees and costs incurred in 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 \$12,500, exclusive of fees and costs that may be incurred on appeal. Within ten days after its receipt of monthly invoices from Moore for work performed under this section, HMYP will remit payment to The Chanler Group, at the address set forth in Section 3.3.3.

**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 or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products and/or DEHP, then HMYP 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 Covered Products are so affected.

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**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 HMYP:

Thomas Chamberlain, President  
Hugger-Mugger Yoga Products, LLC  
1190 Pioneer Road  
Salt Lake City, UT 84104

For Moore:

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

with a copy to:

John Holt, Esq.  
Winder & Counsel PC  
175 West 200 South, Suite 400  
P.O. Box 2668  
Salt Lake City, UT 84110-2668

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 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. 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.

**12. AUTHORIZATION**

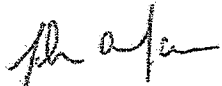
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

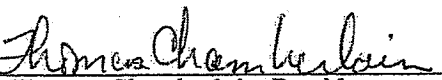
**AGREED TO:**

**AGREED TO:**

Date: MARCH 5, 2012

Date: MARCH 8 2012

By:   
John Moore

By:   
Thomas Chamberlain, President  
Hugger-Mugger Yoga Products, LLC