

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 John Moore and Loomcraft Textile & Supply Co.

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Loomcraft Textile & Supply Co. (“Loomcraft”), with Moore and Loomcraft collectively referred to as the “Parties.” Moore is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Loomcraft employs ten or more persons and is a person in the course of doing business for purposes of California Health & Safety Code §25249.6 *et seq.* (“Proposition 65”).

#### 1.2 General Allegations

Moore alleges that Loomcraft, has manufactured, distributed, and/or sold in the State of California storage furniture containing excessive amounts of di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is identified by the State of California as a chemical known to cause birth defects and other reproductive harm. DEHP shall be referred to herein as the “Listed Chemical.”

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: storage furniture containing the Listed Chemical that is manufactured, imported, distributed, and/or sold in California by Loomcraft, including, but not limited to, upholstered storage furniture products (such as chairs, benches and ottomans), including, but not limited to, *Storage Ottoman, Style Relx-01BR (#8 75639 00673 6)*. All such items are referred to herein as “Products.”

#### **1.4 Notice of Violation**

On or about February 1, 2001, Moore served Loomcraft and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Loomcraft and such public enforcers with notice that Loomcraft was alleged to be in violation of California Health & Safety Code §25249.6 for failing to warn consumers that the Products exposed users in California to the Listed Chemical. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

Loomcraft denies the material, factual, and legal allegations contained in Moore’s 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 Loomcraft 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 Loomcraft of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Loomcraft. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Loomcraft under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean April 25, 2011.

## 2. INJUNCTIVE RELIEF

### 2.1 Reformulation Commitment

As of December 31, 2011, Loomcraft shall not manufacture, distribute, sell or offer for sale in California any Products unless they are "DEHP Free." For purposes of this Settlement Agreement, "DEHP Free" shall mean Products containing no more than 0.1 percent (1,000 parts per million) of the Listed Chemical when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C.

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

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all claims alleged in the Notice and referred to in this Settlement Agreement, Loomcraft shall pay \$10,000 in civil penalties in combined credits and payments. For its cooperation in the settlement of this matter, its prompt response upon receipt of the Notice to investigate the alleged violations, and for its commitment to reformulate the Products to be DEHP Free, thereby, ensuring that sales of Product after December 31, 2011 will not require a Proposition 65 warning, plaintiff agrees to provide Loomcraft a \$2,000 credit toward the total penalty amount. Thereafter, Loomcraft shall pay the remaining penalty amount of \$8,000.

Payment of the civil penalties shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c) & (d), with seventy-five percent of the penalty funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining twenty-five percent of the penalty remitted to Moore. Loomcraft 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" in the amount of \$6,000; and (b) one check payable to "The Chanler Group in Trust for John Moore" in the amount of \$2,000. Two 1099 forms shall be issued for the above payments to: the California Office of

Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) to John Moore, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The penalty payments shall be delivered within five days of the Effective Date to 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**

##### **4.1 Attorney 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. Loomcraft 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 general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual execution of this agreement. Loomcraft shall pay the total of \$32,000.00 (thirty-two thousand dollars) for fees and costs incurred as a result of investigating, bringing this matter to Loomcraft's attention, and negotiating a settlement in the public interest. Loomcraft shall make the check payable to "The Chanler Group," shall issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment within ten days of the Effective Date to the following address:

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

## 5. RELEASE OF ALL CLAIMS

### 5.1 Moore's Release of Loomcraft

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, 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) of any nature whatsoever, fixed or contingent (collectively "Claims"), that were brought or could have been brought against Loomcraft, or its parents, subsidiaries or affiliates, and all of their downstream customers, distributors, wholesalers, retailers, licensors, licensees, or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers and representatives of each of them, including, but not limited to, Loomcraft Textile & Supply Company, Poe Sales & Marketing LLC, Kohl's Corporation, Bed, Bath & Beyond Inc., TJX Companies Inc., Ross Stores Inc. (collectively "Releasees") in this matter. This release shall be limited to Claims arising from or related to the presence of the Listed

Chemical in the Products. The Parties further understand and agree that this release shall not extend upstream to any third parties that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Loomcraft.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding Claims related to the presence of the Listed Chemical in the Products against Loomcraft or the Releasees under Proposition 65 as covered under this release. If requested in writing by Loomcraft (within twelve months of the Effective Date), Loomcraft 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 Loomcraft 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, Loomcraft 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 Loomcraft to have Moore file a complaint and seek a consent judgment. Loomcraft will remit payment to The Chanler Group, at the address set forth in Section 8 below. Such additional fees shall be paid by Loomcraft within ten days after its receipt of monthly invoices from Moore for work performed under this paragraph.

## **5.2 Loomcraft's Release of Moore**

Loomcraft 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 them in this matter, and/or 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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products and/or the Listed Chemical, then Loomcraft 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 in writing and personally delivered or sent by: (i) first-class, registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Loomcraft:

Stan Lazar  
Shepard Schwartz & Harris LLP  
123 North Wacker Drive, Suite 1400  
Chicago, Illinois 60606

For Kohl's Corporation:

General Counsel, Kohl's Dept Stores, Inc.  
N56 W17000 Ridgewood Drive  
Menomonee Falls, WI 53051

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).

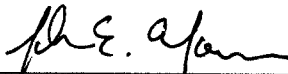

**11. MODIFICATION**

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



**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.

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: <u>April 26, 2011</u>	Date: <u>4/22/11</u>
By: <u></u>	By: <u></u>
John Moore	<u>RONALD FRANKEL</u> , President Loomcraft Textile & Supply Co.