

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 John Moore and PS Brands, LLC

This Settlement Agreement is entered into by and between John Moore (“Moore”) on one hand, and PS Brands, LLC and Adjmi Apparel Group (individually and collectively, “PS Brands”) on the other hand, with Moore, and PS Brands 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. PS Brands employs ten or more persons and is a person in the course of doing business for purposes of Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Moore alleges that PS Brands has manufactured, imported, distributed, sold and/or offered for sale in the State of California, footwear containing di(2-ethylhexyl)phthalate (“DEHP”) and di-n-butyl phthalate (“DBP”). DEHP and DBP are listed pursuant to Proposition 65 as chemicals 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 footwear containing DEHP and DBP including, but not limited to, *The Simpsons 20 Years Flip-Flops, Item #176767 (#7 01570 00554 8)* and *HipFlops By SunTime, Style #MFF100 (#7 01570 01303 1)*, manufactured, imported, distributed, sold and/or offered for sale by PS Brands in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On May 31, 2012, Moore served PS Brands and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients

with notice that PS Brands was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that their Products exposed users in California to DEHP and DBP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

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

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 10, 2012.

2. INJUNCTIVE RELIEF

2.1 Product Warnings

Commencing on the Effective Date, PS Brands shall not sell, ship, or offer to ship for sale in California any Products containing the Listed Chemicals unless such Products are: (1) sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b); or (2) exempt pursuant to Section 2.2 as compliant with the reformulation standards set forth in Section 2.3.

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.** PS Brands may affix a warning to the packaging, labeling, or directly on any Products that are not Reformulated Products sold in retail outlets in California that states:

WARNING: This product contains DEHP and DBP, phthalate chemicals known to the State of California to cause birth defects or other reproductive harm.

(ii) **Point-of-Sale Warnings.** Alternatively, PS Brands may provide warning signs in the form below to its retailers in California with instructions to post the signs in close proximity to the point of display of any such Products for the benefit of its retailers' customers.

WARNING: This product contains DEHP and DBP, phthalate chemicals known to the State of California to cause birth defects or other reproductive harm.

Where any such Products are sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement must be used:

WARNING: The following product(s) contain DEHP and DBP, phthalate chemicals known to the State of California to cause birth defects or other reproductive harm:
[list product(s) for which warning is required]

(b) **Mail Order Catalog and Internet Sales.** In the event that PS Brands sells any Products that are not Reformulated Products via mail order catalog or the Internet to customers located in California after the Effective Date, PS Brands shall provide a warning for such Products sold via mail order catalog or the Internet to California residents pursuant to section 2.1(a)(i) above, in the mail order catalog, or on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog must 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 and DBP, phthalate chemicals known to the State of California to cause birth defects or 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, PS Brands 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 or back cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼¹ and offered for sale in this catalog contain DEHP and DBP, phthalate chemicals known to the State of California to cause birth defects or 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, PS Brands must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning may be given in conjunction with the sale of the Products via the Internet, provided it is displayed to a purchaser during the checkout process and appears 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; or (c) on the same page as the price for any Product.

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¹The symbol “▼” is to appear in the color red.

2.2 Exceptions to Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Standards

As of the Effective Date, PS Brands shall use its best efforts to manufacture, produce, assemble, import, distribute, ship, sell or offer to ship for sale in California only Reformulated Products. For purposes of this Section, “best efforts” includes, without limitation, complying with the vendor notification requirements contained in Section 2.4. Reformulated Products are defined as those Products containing DEHP and DBP in concentrations of less than 0.1 percent (1,000 parts per million) 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 and DBP content in a solid substance. By entering into this Settlement Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon PS Brands by laws other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to PS Brands under laws other than Proposition 65.

2.4 Vendor Notification Requirement

To the extent it has not already done so, no more than thirty (30) days after the Effective Date, PS Brands shall provide the reformulation standards specified in section 2.3 for Reformulated Products to any and all of its vendors of Products that will be sold or offered for sale to California consumers, and shall instruct each vendor to use its best efforts to provide only Reformulated Products, as such Products are defined in Section 2.3.

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

In settlement of all the claims referred to in this Settlement Agreement, PS Brands shall pay \$22,000 in civil penalties. Civil penalties are 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 Moore. PS Brands 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 ("The Chanler Group in Trust for OEHHA") in the amount of \$16,500, representing 75% of the total penalty; and

(b) one check to "The Chanler Group in Trust for Moore" in the amount of \$5,500, representing 25% of the total penalty.

Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to Moore, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on August 10, 2012, 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**

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. PS Brands 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. PS Brands shall pay \$32,000 for fees and costs incurred as a result of investigating, bringing this matter to PS Brands' attention, and negotiating a settlement in the public interest. PS Brands shall issue a separate

1099 for fees and costs (EIN: 94-3171522), shall make the check payable to “The Chanler Group” and shall deliver payment on August 10, 2012, to the following address:

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

5. RELEASES

5.1 Moore’s Release of PS Brands

This Settlement Agreement is a full, final and binding resolution between Moore and PS Brands 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 PS Brands, its parents, subsidiaries, affiliated entities under common ownership or control, including E & E Hosiery, Inc., directors, officers, employees, attorneys (“Releasees”), and each entity to whom PS Brands directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream Releasees”), based on their failure to warn about alleged exposures to DEHP and DBP contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by PS Brands 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 Moore’s 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 DEHP and DBP in the Products

manufactured, distributed, sold and/or offered for sale by PS Brands before the Effective Date (collectively “claims”), against PS Brands, its Releasees, and its Downstream Releasees.

5.2 PS Brands’ Release of Moore

E & E Hosiery, Inc. and PS Brands, on behalf of themselves, the Releasees, the Downstream Releasees, their past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive 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. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement PS Brands may ask Moore, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court’s approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Moore agrees to reasonably cooperate with PS Brands and to use his best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, PS Brands will reimburse Moore and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$13,000, exclusive of fees and costs that may be incurred on appeal. PS Brands will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by PS Brands within ten days after its receipt of monthly invoices from Moore for work performed under this paragraph.

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7. **SEVERABILITY**

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

8. **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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then PS Brands 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 PS Brands from any obligation to comply with any pertinent state or federal toxics control law.

9. **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 by the other party at the following addresses:

For PS Brands:

Elie Levy, President
PS Brands, LLC
100 West 33rd Street, Suite 1105
New York, NY 10001

For Moore:

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

Copy on behalf of PS Brands:

Joseph Sasson
General Counsel
463 Seventh Avenue, 4th Floor
New York, NY 10018

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.

10. COUNTERPARTS; FACSIMILE AND 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.

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

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

12. MODIFICATION

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

13. AUTHORIZATION

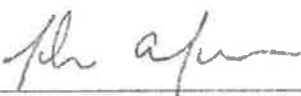
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: August 7, 2012

Date: _____

By: 
John Moore

By: _____
Elie Levy, President
PS Brands, LLC

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13. AUTHORIZATION

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

AGREED TO:

Date: _____

By: _____

John Moore

AGREED TO:

Date: 8/7/2012

By:  _____

Elic Levy, President
PS Brands, LLC