

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties. This Settlement Agreement is entered into by and between John Moore (“Moore”) and West Chester Holdings, Inc. (“West Chester”), with Moore and West Chester individually referred to as a “Party” and collectively 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. West Chester 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations. Moore alleges that West Chester manufactures, imports, sells, or distributes for sale in the state of California, vinyl/PVC rainwear that contains di(2-ethylhexyl)phthalate (“DEHP”) and/or lead without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP and lead are each listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are vinyl/PVC rainwear containing lead and/or DEHP that are manufactured, sold, or distributed for sale in California by West Chester, including, but not limited to, the *Westchester Master Gear Industrial Rainsuit, Style 4025E, (UPC No 2 06 62909 57225 1)* (“Products”).

1.4 Notices of Violation. On December 20, 2012, Moore served West Chester’s affiliate, WCM Holdings, Inc., and certain requisite public enforcement agencies with a 60-Day Notice of Violation 65 (“WCM Notice”), alleging that WCM violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to lead and DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice. Thereafter, on May 3, 2013, Moore served West Chester, and the same public enforcement agencies with a second, Notice of

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Violation (“West Chester Notice”), which, in addition to the allegations regarding WCM, alleged that West Chester violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to lead and DEHP.

The WCM Notice and the West Chester Notice are referred to collectively hereinafter as the “Notices.” To the best of the Parties knowledge, no public enforcer has commenced and is diligently prosecuting the violations alleged in the Notices

1.5 No Admission. West Chester denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale 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 West Chester 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 West Chester of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by West Chester. This section shall not, however, diminish or otherwise affect West Chester’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 August 15, 2013

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS

2.1 Reformulated Products. Commencing on the Effective Date and continuing thereafter, West Chester shall only manufacture, ship, sell, or distribute for sale in California, Reformulated Products or, in the alternative, Products that are sold with a clear and reasonable warning in accordance with Section 2.2. For purposes of this Settlement Agreement, “Reformulated Products” are Products that contain a maximum DEHP concentration of 1,000 parts per million (“ppm”) (0.1%) when analyzed pursuant to U S Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C. For Products containing lead, Reformulated Products are defined as those that contain a maximum lead concentration of 90 ppm when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent

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methodologies utilized by state and federal agencies to determine lead and/or DEHP content in a solid substance.

2.2 Clear and Reasonable Warnings. Commencing on the Effective Date, and continuing thereafter, for all Products that West Chester sells or distributes for sale in California that are not Reformulated Products, West Chester agrees to provide a clear and reasonable health hazard warning in accordance with this Section. West Chester further agrees to provide such warning affixed to the packaging or labeling, or directly to the Product with the following statement:

WARNING: This product contains chemicals that are known to the State of California to cause birth defects and other reproductive harm

The warning shall be prominently placed with such conspicuousness when 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.

3. MONETARY PAYMENTS

~~3.1 Civil Penalty Payments.~~ Pursuant to Health and Safety Code Section 25249 7(b), West Chester shall pay \$3,000 in civil penalties. Each penalty payment shall be allocated according to Health and Safety Code section 25249 12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty paid to Moore.

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, West Chester shall make an initial civil penalty payment of \$1,000. West Chester shall provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$750; and (b) "The Chanler Group in Trust for John Moore" in the amount of \$250. The initial civil penalty payments are to be delivered to Moore and OEHHA at the addresses provided in section 3.3.

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3.1.2 Final Civil Penalty. On or before November 1, 2013, West Chester will make a final civil penalty payment of \$2,000. Pursuant to title 11 California Code of Regulations section 3203(c), the final civil penalty payment will be waived in its entirety if, no later than October 15, 2013, an officer of West Chester certifies in writing to Moore's counsel that, as of such date, one-hundred percent (100%) of the Products West Chester manufactures for sale or purchases for sale in California are Reformulated Products as defined by Section 2.1, and that West Chester will continue to only offer Reformulated Products in California in the future. The option to certify reformulation in lieu of making the final civil penalty payment constitutes a material term of this Settlement Agreement, and time is of the essence. Unless waived, final civil penalty payments to Moore and OEHHA shall be delivered to the addresses provided in section 3.3.

3.2 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 Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, West Chester shall pay \$19,000 for all fees and costs incurred investigating, bringing this matter to the attention of West Chester's management, and negotiating a settlement in the public interest. Payment shall be delivered within five days of the Effective Date to the address provided in Section 3.3.1.

3.3 Payment Procedures

3.3.1 Payment Address for Moore and The Chanler Group. All payments to Moore and The Chanler Group shall be delivered to the following address:

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

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3.3.2 Payment Addresses for OEHHA. All payments to OEHHA made pursuant to section 3.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") to one of the following addresses:

For United States Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Courier or other Non-U.S. Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.3 Copy of Payments to OEHHA. West Chester agrees provide Moore's counsel with a copy of the checks to OEHHA to be delivered to address provided in Section 3.3.1.

3.3.4 Tax Documentation. For the payments made under this Settlement Agreement, West Chester agrees to provide a completed IRS 1099 form for each of the following payees:

- (a) "John Moore" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;
- (b) "The Chanler Group" (EIN: 94-3171522) at the address provided in section 3.3.1; and
- (c) "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486), 1001 I Street, Sacramento, CA 95814.

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4. **CLAIMS COVERED AND RELEASED**

4.1 **Moore's Release of West Chester.** This Settlement Agreement is a full, final, and binding resolution between Moore and West Chester of any violation of Proposition 65 that was or could have been asserted by Moore, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against West Chester, its parents, subsidiaries, affiliated entities under common ownership (including, without limitation, WCM Holdings, Inc.), directors, officers, employees, attorneys, and each entity to whom West Chester directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on unwarned exposures to DEHP and/or lead from Products manufactured, sold or distributed for sale in California by West Chester prior to the Effective Date

In further consideration of the promises and agreements herein contained, Moore, on his own behalf and on behalf of 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 West Chester and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP and/or lead in Products manufactured, sold, or distributed for sale in California by West Chester prior to the Effective Date.

4.2 **West Chester's Release of Moore.** West Chester, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have 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

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5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, West Chester may request in writing that Moore draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Moore and West Chester agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, West Chester agrees to reimburse Moore and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$15,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from Moore's counsel for work performed under this section, West Chester will remit payment to the address provided in section 3.3.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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, then Moore may provide written notice to Moore of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the 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 in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For West Chester Holdings, Inc.:

Kyle S. Packer, Chief Financial Officer
West Chester Holdings, Inc.
100 Corridor Park Drive
Monroe, OH 45050

With a copy to:

John J. Allen, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
515 South Figueroa Street, 9th Floor
Los Angeles, CA 90071-3398

For Moore:

The Chanler Group
Attn: Proposition 65 Coordinator
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

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10. POST-EXECUTION ACTIVITIES

Moore agrees to comply with the reporting form requirements referenced in Health and Safety Code section 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.

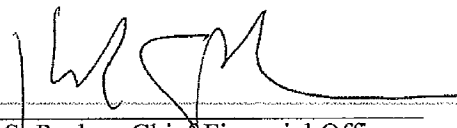
AGREED TO:

AGREED TO:

Date: _____

Date: 8-13-13

By: _____
John Moore

By: 

Kyle S. Packer, Chief Financial Officer
West Chester Holdings, Inc

10. POST-EXECUTION ACTIVITIES

Moore agrees to comply with the reporting form requirements referenced in Health and Safety Code section 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: August 15, 2013

Date: 8-13-13

By: 

John Moore

By: 

Kyle S. Packer, Chief Financial Officer
West Chester Holdings, Inc.