

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Mark Moorberg (“Moorberg”) and Mann & Bros., Inc. (“Mann & Bros.”), with Moorberg and Mann & Bros. each individually referred to as a “Party” and collectively as the “Parties.” Moorberg is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Mann & Bros. employs ten or more persons and is alleged to be a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moorberg alleges that Mann & Bros. manufactures, sells, and distributes for sale in California, vinyl/PVC toiletry bags containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moorberg alleges that Mann & Bros. failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the vinyl/PVC toiletry bags.

### 1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC toiletry bags containing DEHP that are manufactured, sold, or distributed for sale in California by Mann & Bros., including, but not limited to, the *Van Heusen Studio Dobb Kit Black, #1399 00078 2370, RN#18731, UPC #4 46012 30016 3* (“Products”).

### 1.4 Notice of Violation

On June 26, 2015, Moorberg served Mann & Bros. and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Mann

& Bros. violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

Mann & Bros. denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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 Mann & Bros. 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 Mann & Bros. of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Mann & Bros.. This Section shall not, however, diminish or otherwise affect Mann & Bros' 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 15, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing on the Effective Date and continuing thereafter, Mann & Bros. agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 1,000 parts per million (0.1%) DEHP when analyzed pursuant to Environmental Protection Agency 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 SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Mann & Bros. agrees to pay \$3,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Moorberg. Within five business days of the Effective Date, Mann & Bros. shall deliver its penalty payment in a single check in the amount of \$3,000 made payable to “Mark Moorberg, Client Trust Account.” Moorberg’s counsel shall be responsible for delivering OEHHA’s portion of any civil penalty payment(s) made under this Settlement Agreement to OEHHA.

#### **3.2 Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Moorberg 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, within five business days of the Effective Date, Mann & Bros. agrees to pay \$13,000 in a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of Mann & Bros’ management, and negotiating a settlement in the public interest.

#### **3.3 Payment Address**

All payments under this Settlement Agreement shall be delivered to the following address:

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

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Moorberg's Release of Mann & Bros**

This Settlement Agreement is a full, final and binding resolution between Moorberg, on his own behalf and not in any representative capacity, and Mann & Bros., of any violation of Proposition 65 that was or could have been asserted by Moorberg on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Mann & Bros., its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Mann & Bros. directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale in California by Mann & Bros. before the Effective Date.

In further consideration of the promises and agreements herein, Moorberg, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to exposures to DEHP from Products manufactured, distributed, sold and/or offered for sale by Mann & Bros. before the Effective Date.

The releases provided by Moorberg under this Settlement Agreement are provided solely on Moorberg's own behalf and not on behalf of the public in California.

**4.2 Mann & Bros.' Release of Moorberg**

Mann & Bros., on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moorberg and his attorneys and other representatives, for any and all actions taken or statements made by Moorberg and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**5. SEVERABILITY**

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

**6. 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 Mann & Bros. may provide written notice to Moorberg 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.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Mann & Bros:

Jack Mann, President  
Mann & Bros. Inc.  
48 West 37<sup>th</sup> Street, Room 1100  
New York, NY 10018

For Moorberg:

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

With a copy to Mann & Bros. counsel:

Kenneth R. Schachter, Esq.  
Sills Cummis & Gross P.C.  
101 Park Avenue, 28<sup>th</sup> Floor  
New York, NY 10178

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

**8. 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.

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

Moorberg and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

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

**11. AUTHORIZATION**

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


**AGREED TO:**

Date: 11/17/2015

By:   
MARK MOORBERG

**AGREED TO:**

Date: Oct 21 - 2015

By:   
Jack Mann, President  
MANN & BROS. INC.