

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 John Moore and Darice, Inc.**

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Darice, Inc. (“Darice”), with Moore and Darice 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. Darice 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 and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Moore alleges that Darice has manufactured, imported, sold and/or distributed for sale in California, vinyl/PVC cutting mats (“Cutting Mats”) containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. Moore alleges that Darice failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Cutting Mats.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as Cutting Mats containing DEHP including, but not limited to, *Darice Crafter’s Toolbox Cutting Mat & Knife, #2319, #2505-27, UPC #6 52695 10147 2*, manufactured by or for Darice (hereinafter the “Products”). The Products include vinyl/PVC cutting mats sold as standalone items or as part of a set and whether branded in Darice’s own name or that of another brand or private label.

### **1.4 Notice of Violation**

On June 14, 2016, Moore served Darice and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn its customers,

consumers, and other individuals of the health hazards associated with exposures to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

**1.5 No Admission**

Darice denies the material, factual, and legal allegations contained in Moore's Notice and maintains that all products that it has manufactured, imported, distributed, and/or sold in California, including the Products, have been, and are, in compliance with Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Darice 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 Darice of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Darice'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 the date on which this document has been executed by all Parties.

**2. INJUNCTIVE RELIEF**

**2.1 Interim Warnings for Products in Inventory**

By no later than the Effective Date, to the extent it cannot confirm that Products currently in shipment to or remaining within its inventory meet the Reformulation Standard set forth in Section 2.2 below, Darice shall apply stickers to the consumer packaging of all Products containing one of the following Proposition 65 warning statements:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm.

Or

**WARNING:** This product contains a chemical known to the state of California to cause cancer and birth defects or other reproductive harm.

Or

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

This warning statement 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.

## **2.2 Reformulation as to Newly Manufactured Products**

Relative to any Products manufactured after the Effective Date which may subsequently be offered by Darice for sale in California, Darice shall ensure their components that may be touched or mouthed are each manufactured in concentrations less than 1,000 parts per million (0.1%) DEHP when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

## **2.3 Extended Reformulation Commitment**

To the extent Darice decides to offer Products for sale in California after the Effective Date, it shall also ensure their components that may be touched or mouthed are each manufactured in concentrations of less than 1,000 parts per million (0.1%) each of butyl benzyl phthalate (“BBP”), di-n-butyl phthalate (“DBP”), di-isodecyl phthalate (“DIDP”), diisononyl phthalate (“DINP”), and di-n-hexyl phthalate (“DnHP”) when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the phthalate content in a solid substance.<sup>1</sup>

## **3. MONETARY PAYMENTS**

### **3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(b)**

In settlement of the claims referred to in this Settlement Agreement, Darice has been assessed a total of \$4,000 in civil penalties in light of information it provided to Moore

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<sup>1</sup> DEHP, BBP, DBP, DIDP, DINP, are DnHP, are collectively referred to herein as the “Listed Chemicals.”

concerning its California sales associated with the Products in the year prior to the issuance of the Notice and the prompt action it undertook to provide Proposition 65 warnings on its remaining and incoming inventory of the Products. This amount also accounts for a penalty reduction associated with the commitments Darice has made hereunder as set forth in Sections 2.2 and 2.3 above.

The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (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 Moore, and delivered to the address in Section 3.3 herein. On or before September 30, 2016, Darice shall therefore provide civil penalty payments to address the violations addressed in the Notice in two checks as follows: (a) to “OEHHA” in the amount of \$3,000; and (b) to “John Moore, Client Trust Account” in the amount of \$1,000.

### **3.2 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 reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Darice 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 section 1021.5 for all work performed through the mutual execution of this agreement.

Darice shall pay \$25,700 for fees and costs incurred as a result of investigating, bringing this matter to Darice’s attention through the Notice, and negotiating a settlement in the public interest. Darice shall make the check for the payment required by this section payable to “The Chanler Group” and shall deliver payment on or before September 30, 2016, to the address listed in Section 3.3 below.

### **3.3 Payment Procedures**

All payments owed pursuant to Sections 3.1 and 3.2 shall be delivered to the following payment address:

The Chanler Group  
Attn: Proposition 65 Controller (Moore v. Darice)  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

Within ten business days of its receipt, Moore's counsel shall forward the check drawn to OEHHA to:

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

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

### **4.1 Moore's Release of Darice**

This Settlement Agreement is a full, final, and binding resolution between Moore and Darice 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 Darice, its directors, officers, employees, attorneys, parent and corporate affiliates, and each entity to whom Darice directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers (including, but not limited to Jo-Ann Stores), franchisees, cooperative members and licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to DEHP in the Products as they were manufactured or distributed before the Effective Date. This release is provided in Moore's individual capacity and is not a release on behalf of the public.

In further consideration of and reliance on the representations and warranties provided by Darice in Section 2.3 above, Moore on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all of his rights 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 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, with respect to Listed Chemicals in the Products as manufactured or distributed before the Effective Date. This release is also provided in Moore's individual capacity and is not a release on behalf of the public.

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

Darice, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives 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 on or before the Effective Date, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or otherwise with respect to the Products.

#### **5. SEVERABILITY**

If 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.

#### **6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California.

#### **7. NOTICES**

Unless specified herein, all correspondence and notice 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) overnight courier to any party by the other party at the following addresses:

*To Defendant, Darice, Inc.:*  
Colleen O'Shea-Moran LCB, CCLS  
Director Customs & Border Protection and  
Global Compliance  
Lamrite West, Inc./Darice Inc.  
13000 Darice Parkway  
Strongsville, Ohio 44149

*To Plaintiff, John Moore:*  
Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

*with a copy to:*

Robert Falk  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105

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.

**8. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

Moore 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 a written agreement of the Parties.

11. **AUTHORIZATION**

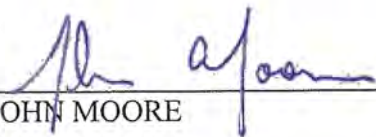
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

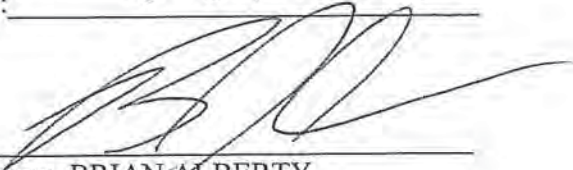
**AGREED TO:**

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Dated: 9/2/2016

Dated: 8-29-2016

By:   
JOHN MOORE

By:   
Name: BRIAN ALBERTY  
Title: VP Operations|Finance  
DARICE, INC.