

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Imax Corporation (“Imax”) with Moore and Imax each individually referred to as a “Party” and, collectively, as the “Parties.” Moore 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. Imax 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 & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

#### 1.2 General Allegations

Moore alleges that Imax manufactures, sells, and distributes for sale in California vinyl/PVC trays containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

#### 1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC trays containing DEHP that are sold or distributed for sale, in California, by Imax including, but not limited to, the *Tray, #883, #52061-M, UPC #7 84185 52063 7*, (“Products.”)

#### 1.4 Notice of Violation

On December 6, 2016, Moore served Imax, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Imax violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks 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**

Imax denies the material, factual, and legal allegations in the Notice, and maintains that all of the products it has sold and 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 Imax 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 Imax of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Imax. This Section shall not, however, diminish or otherwise affect Imax'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 June 30, 2017.

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

Commencing on the Effective Date and continuing thereafter, Imax agrees to only manufacture, import, purchase, distribute, sell or offer for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, Reformulated Products are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice and referred to in this Settlement Agreement, within ten (10) days of the Effective Date, Imax agrees to pay \$2,500 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment

("OEHHA"), and the remaining twenty-five percent (25%) of the penalty paid to Moore. Imax shall issue its payment in two checks for the following amounts: (a) "OEHHA" in the amount of \$1,875; and (b) "John Moore, Client Trust Account" in the amount of \$625. Moore's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

### **3.2 Attorneys' 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 the issue to be resolved after the material terms of this Settlement Agreement were finalized. After the Parties reached an agreement as to all other settlement terms, the Parties then reached 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 § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Under these legal principles, within ten (10) days of the Effective Date, Imax agrees to pay \$25,500 to Moore and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Imax's management, and negotiating a settlement in the public interest. Imax's payment shall be delivered in the form of a check payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

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

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

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

This Settlement Agreement is a full, final, and binding resolution between Moore, on his own behalf and not on behalf of the public, and Imax, of any violation of Proposition 65 that was

or could have been asserted by Moore on his own behalf, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Imax, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, representatives, divisions, attorneys, and each entity to whom Imax, directly or indirectly, distributes or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in Products manufactured, sold or distributed for sale in California by Imax before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Moore, on his own behalf and not on behalf of the public, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Imax and Releasees, including, without limitation, all actions and causes of action, 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 the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by Imax, before the Effective Date.

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

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

Imax, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Moore and his attorneys and other representatives, for any and all actions taken or statements 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.

**4.3 Mutual Waiver of California Civil Code Section 1542**

The Parties each acknowledge he/it is familiar with Section 1542 of the Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties each on his/its own behalf, and on behalf of his/its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Civil Code § 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.1 and 4.2, above.

**5. 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.

**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 otherwise rendered inapplicable, by reason of law generally, or as to the Products, then Imax may provide written notice to Moore of any asserted change in the law, and shall have no further injunctive 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 Imax:

Al Bulak, President  
Imax Corporation  
12502 East 55<sup>th</sup> Street  
Tulsa, OK 74146

With a copy to:

Melissa A. Jones, Partner  
Stoel Rives LLP  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814

For Moore:

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

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)**

Moore and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 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, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 6/20/2017

Date: June 12, 2017

By: 

JOHN MOORE

By: 

Al Bulak, President  
IMAX CORPORATION