

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) on the one hand, and Landry’s Inc., and Bubba Gump Shrimp Co. Restaurants, Inc. (collectively “Landry’s”) on the other hand, with Moore and Landry’s 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 in consumer products. Landry’s 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 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Moore alleges that Landry’s sells and distributes for sale in California, footwear with vinyl/PVC straps containing di-n-butyl phthalate (“DBP”). DBP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moore alleges that Landry’s failed to provide the health hazard warnings required by Proposition 65 for exposures to DBP from its flip flop products.

1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as footwear with vinyl/PVC straps containing DBP that are offered for sale, sold, or distributed for sale in California by Landry’s including, but not limited to, the *Bubba Gump Flip Flops*, #101187732 #01614-0046, UPC #4 16140 04600 4 identified in Moore’s 60-day notice of violation. “Additional Products” are defined as footwear containing DBP, di(2-ethylhexyl)phthalate (DEHP), di-isononyl phthalate (DINP), and/or butyl benzyl phthalate (BBP). DBP, DEHP, and BBP are each listed pursuant to Proposition 65 as

chemicals that are known to cause birth defects or other reproductive harm. DINP is listed pursuant to Proposition 65 as a known carcinogen. DBP, DEHP, DINP and BBP are referred to collectively hereinafter as the “Listed Phthalate Chemicals.”

1.4 Notice of Violation

On December 6, 2016, Moore served Landry’s, the California Attorney General, and all other requisite public enforcement agencies with a 60-day notice of violation (“Notice”). The Notice alleges that Landry’s violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to DBP from the Products. No public agency has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Landry’s 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 and/or Additional Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Landry’s 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 Landry’s of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Landry’s. This Section shall not, however, diminish or otherwise affect Landry’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 that this Settlement Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on the Effective Date and continuing thereafter, Landry’s agrees to only sell or distribute for sale in California, “Reformulated Products.” For purposes of

this Settlement Agreement, "Reformulated Products" are defined as Products containing a maximum of 1,000 parts per million (0.1%) each of any of the Listed Phthalate Chemicals in any component 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 phthalate content in a solid substance.

3. MONETARY TERMS

3.1 Civil Penalty Payment

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, Landry's agrees to pay \$2,500.00 in civil penalties within fourteen days of the Effective Date. Landry's 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 retained by Moore. Landry's shall deliver its payment in two checks for the following amounts made payable to (a) "OEHHA" in the amount of \$1,875.00, and (b) "John Moore, Client Trust Account" in the amount of \$625.00. Moore's counsel shall be responsible for delivering OEHHA's portion of the civil penalties paid 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 the agreement had been settled. Shortly after the other settlement terms had been reached, the Parties negotiated Landry's reimbursement of Moore's attorneys' fees and costs 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 fourteen days of the Effective Date, Landry's agrees to pay \$19,500.00

in a single check made payable to “The Chanler Group.” Landry’s payment under this Section shall cover all fees and costs incurred investigating, bringing this matter to the attention of Landry’s management, and negotiating a settlement that provides a significant public benefit.

3.3 Payment Address

All payments under 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 Landry’s

This Settlement Agreement is a full, final, and binding resolution between Moore, in his individual capacity only and not on behalf of the public in California, and Landry’s, and each of them, of any violation of Proposition 65 that was or could have been asserted by Moore, on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Landry’s, and each of them, and their respective parents, subsidiary, and affiliated entities under common ownership, directors, officers, shareholders, representatives, employees, agents, and attorneys, and each entity to whom Landry’s directly or indirectly distributes or sells the Products or Additional Products, including their downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on or related to any alleged or actual failure to warn about exposures to any of the Listed Phthalate Chemicals from Products or Additional Products sold or distributed for sale by Landry’s prior to the Effective Date.

In further consideration of the promises and agreements herein, Moore, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and 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, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 and/or alleging a failure to warn about exposures to any of the Listed Phthalate Chemicals in Products or Additional Products manufactured, distributed, sold or offered for sale by Landry's before the Effective Date.

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

4.2 Landry's Release of Moore

Landry's, 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products or Additional Products.

4.3 Mutual Waiver of Civil Code § 1542

The Parties, Landry's on its own behalf, and Moore on his own behalf and not on behalf of the public in California, each hereby acknowledge that they are familiar with California Civil Code Section 1542 and that they hereby waive and relinquish any right or benefit which they have or may have under that section, 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.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, 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 Landry's may provide written notice to Moore of any asserted change in the law, and shall have no further injunctive obligation 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 Landry's:

Andrew A. Hunter, Esq.
Von Behren & Hunter LLP
2041 Rosecrans Avenue, Suite 367
El Segundo, California 90245

Steven L. Scheinthal, Executive Vice President and General Counsel
Landry's, Inc.
1510 West Loop South
Houston, TX 77027

For Moore:

The Chanler Group
Attn: Prop 65 Coordinator
2560 9th Street
Parker Plaza Suite 214
Berkeley, CA 94710-2565

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 section 25249.7(f).

10. MODIFICATION

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

11. AUTHORIZATION

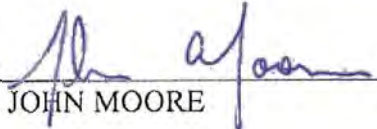
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

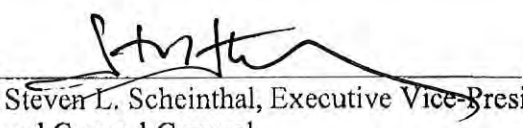
AGREED TO:

AGREED TO:

Date: 4/28/2017


Date: 4.27.2017

By: 
JOHN MOORE

By: 
Steven L. Scheinthal, Executive Vice-President
and General Counsel
LANDRY'S, INC.

AGREED TO:

Date: 4.27.2017

By: 
Steven L. Scheinthal, Executive Vice-President
BUBBA GUMP SHRIMP CO. RESTAURANTS, INC.

Legal 