

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by John Moore (“Moore”) and, Top Flight, Inc. (“Top Flight”), with Moore and Top Flight 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 contained in consumer products. Top Flight employs ten or more individuals 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 Top Flight sells and distributes for sale in California, binder/notebook covers containing di(2-ethylhexyl) phthalate (“DEHP”), and that it does so without providing a Proposition 65 health hazard warning. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as binder/notebook covers, including portfolios containing DEHP that are manufactured, sold, or distributed for sale in California by Top Flight including, but not limited to, the *Teo Jasmin Binder*, TMCN-0316, UPC #0 75755 11706 8 identified in Moore’s Notice.

1.4 Notice of Violation

On September 28, 2017, Moore served Top Flight, the California Attorney General, and all other requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleges that Top Flight violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to

DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Top Flight denies the material, factual, and legal allegations in the Notice, and maintains that all the products that it has manufactured, imported, 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 Top Flight of any allegation, 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 Top Flight of any allegation, fact, finding, conclusion, issue of law, or violation of law, all of which are specifically denied by Top Flight. This Section shall not, however, diminish or otherwise affect Top Flight'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 January 15, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate Products

Commencing on the Effective Date and continuing thereafter, Top Flight shall only manufacture for sale or purchase for sale Reformulated Products as defined by Section 2.2. With regard to any Products that are currently in Top Flight's inventory and that have not been shipped into California, they shall only be offered for sale within California with a clear and reasonable warning pursuant to Section 2.3, below.

2.2 Reformulated Products Defined

For the purposes of this Settlement Agreement, "Reformulated Products" are defined as Products with a maximum DEHP concentration of 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing

methodologies 3580A and 8270C or equivalent methodologies utilized by state or federal agencies to determine DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for any Products sold into or distributed for sale in California by Top Flight that are not Reformulated Products, Top Flight will only offer such Products with a clear and reasonable warning in accordance with this Section, or Title 27 California Code of Regulations section 25600, et seq., as amended from time to time. Top Flight further agrees that any warning used will be prominently placed in relation to the Products 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 of purchase or use. For purposes of this Settlement Agreement, a warning satisfying the above criteria that is affixed directly to a Product, or its accompanying labeling or packaging containing the following statement shall be deemed clear:

WARNING: This product can expose you to chemicals including DEHP, which is known to the State of California to cause birth defects or other reproductive harm.

If Top Flight sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

3. MONETARY SETTLEMENT 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 and referred to in this Settlement Agreement, Top Flight agrees to pay \$4,000 in civil penalties. 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 paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by Moore. Top Flight will deliver its payment within five days of the Effective Date in two checks made payable to: (a) "OEHHA" in the amount of \$3,000 and (b) "John Moore, Client Trust Account" in the amount of \$1,000. Moore's counsel shall be responsible for delivering OEHHA's portion of the penalty payment.

3.2 Attorneys' 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. Top Flight agrees to pay \$20,500 to Moore and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Top Flight's management, and negotiating a settlement that provides a significant public benefit. Top Flight's payment shall be delivered within five days of the Effective Date in a check made 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 Top Flight

This Settlement Agreement is a full, final, and binding resolution between Moore, in his individual capacity and not on behalf of the public, and Top Flight, 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, principals, representatives, and assignees, against Top Flight or its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, representatives, predecessors, successors, assignees ("Releasees"), and each downstream entity to whom Top Flight directly or indirectly distributes, ships, or sells the Products. Such downstream entities include, without limitation, Top Flight's distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, representatives, predecessors, successors, and assignees (collectively, "Downstream Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale by Top Flight before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Moore, in his individual capacity and not on behalf of the public, and on behalf of his past and current agents, principals, representatives, and assignees hereby waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Top Flight Releasees, and Downstream Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, 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, sold, or distributed for sale by Top Flight before the Effective Date.

4.2 Top Flight's Release of Moore

Top Flight, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against Moore, Moore's attorneys, and other representatives, for any action taken or statement made, 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, 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. If Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, or as to the Products, then Top Flight may provide written notice to Moore of the asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement, to the extent that the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required by 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 Top Flight:

George Robinson, Chief Executive Officer
Top Flight, Inc.
1300 Central Avenue
Chattanooga, TN 37408

with a copy to:

George Dowell, Esq.
Dowell LLP
1153 Lincoln Avenue, Suite C
San Jose, CA 95125

For Moore:

The Chanler Group
Attn: Prop 65 Coordinator
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 section 25249.7(f).

10. MODIFICATION

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

11. ENFORCEMENT OF SETTLEMENT AGREEMENT

Only the Parties may enforce this Settlement Agreement. Either Party may enforce the terms and conditions of this Settlement Agreement by filing suit in a California Superior Court. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement. No action to enforce this Settlement Agreement, however, may be commenced or maintained unless the Party seeking enforcement notifies the other of the basis for any claimed or alleged breach or violation of this Settlement Agreement and, thereafter, meets and confers with the other

Party for a period of not less than 30 days in an effort to resolve the alleged breach informally before filing any brief or pleading alleging a breach or violation of this Settlement Agreement.

12. AUTHORIZATION

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

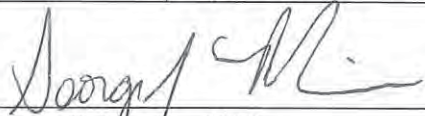
AGREED TO:

Date: 1-17-2018

By: 
JOHN MOORE

AGREED TO:

Date: 1-16-18

By: 
George Robinson, CEO
TOP FLIGHT, INC.