

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between John Moore ("Moore") and Tri-Coastal Design Group Inc. ("Tri-Coastal"), with Moore and Tri-Coastal 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. Tri-Coastal 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 Tri-Coastal manufactures, sells, and/or distributes for sale in California, mugs with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moore alleges that Tri-Coastal failed to provide the health hazard warning required by Proposition 65 for exposures to lead from its mugs with exterior designs.

#### **1.3 Product Description**

The products covered by this Consent Judgment are limited to the mugs with exterior designs containing lead listed on **Exhibit A** hereto that are manufactured, imported, sold, or distributed for sale in California by Tri-Coastal (the "Products").

#### **1.4 Notice of Violation**

On June 14, 2016, Moore served Tri-Coastal and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Tri-Coastal violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from its Products. To the best of the

Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

Tri-Coastal 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 Tri-Coastal 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 Tri-Coastal of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Tri-Coastal. This Section shall not, however, diminish or otherwise affect Tri-Coastal'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 this Settlement Agreement is executed by both Parties.

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

Commencing on January 2, 2017, and continuing thereafter, Tri-Coastal shall only manufacture, import or purchase for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are defined as mugs with exterior designs containing a maximum of 90 parts per million of lead by weight in any accessible component (i.e., any component that can be touched or handled during reasonably foreseeable use, such as exterior decorations) when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that yield a result of less than 1.0 micrograms of lead when analyzed pursuant to the NIOSH 9100 testing protocol as applied to exterior decorations of glass and ceramic drinking vessels. In addition, Reformulated Products shall yield a result of no detectable lead in the "Lip and Rim Area" when analyzed according to any test methodology

authorized under Proposition 65. "Lip and Rim Area" is defined as the exterior top 20 millimeters of a Product. In addition to the EPA and NIOSH test methods provided in this Section, the Parties may test Products using equivalent test methodologies utilized by state or federal agencies to determine lead 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 referred to in this Settlement Agreement, Tri-Coastal agrees to pay \$20,000 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 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. Within five days of the Effective Date, Tri-Coastal will provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$15,000 and (b) "John Moore, Client Trust Account" in the amount of \$5,000.

#### **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, Tri-Coastal expressed a desire to resolve Moore's 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. Under these legal principles, within five days of the Effective Date, Tri-Coastal agrees to pay \$36,700 in the form of a check made payable to "The Chanler Group" for all fees and costs incurred investigating, bringing this matter to

the attention of Tri-Coastal'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 Tri-Coastal**

This Settlement Agreement is a full, final, and binding resolution between Moore and Tri-Coastal, 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 Tri-Coastal, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Tri-Coastal directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (collectively "Releasees"), based on the alleged or actual failure to warn about exposures to lead from Products sold or distributed for sale by Tri-Coastal in California before January 2, 2017.

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/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 against Releasees, 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 lead from

Products manufactured, distributed, sold and/or offered for sale by Tri-Coastal before January 2, 2017. 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 Tri-Coastal's Release of Moore**

Tri-Coastal, 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 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.

#### **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 Tri-Coastal 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 Tri-Coastal:

Tedd Levine, Esq.  
The Law Offices of Tedd S. Levine  
1305 Franklin Avenue, Suite 300  
Garden City, NY 11530

For Moore:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth 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: 11/7/2016

Date: 11/04/2016

By:

JOHN MOORE

By:

Michael Mastrangelo, President  
TRI-COASTAL DESIGN GROUP INC.

## **Exhibit A**

1. Chasing Baxter "Be The Person Your Dog Thinks You Are" mug, #1480128;
2. "You Are Adored" cute ceramic mug, #O6938433-7;
3. "It's not WHERE you WALK it's WHO WALKS with you" mug, #1480132;
4. "It is well with my soul" mug (UPC No. 8 88273 29513 8);
5. Chasing Baxter ceramic mug with paw print design "You Had Me At Woof," #1518911;
6. "STYLE IS AN ATTITUDE" mug, #1630360;
7. Chasing Baxter "Heard I'm Irresistible" ceramic mug, #1630358;
8. "IT'S A DOG'S LIFE" mug, #1673882; and
9. "PET'S ARE PEOPLE TOO" mug, #1630361.