

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Uncas International LLC (“Uncas”), with Moore and Uncas 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. Moore alleges that Uncas 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 Uncas imports, 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 Uncas failed to provide the health hazard warning required by Proposition 65 for exposures to lead from its mugs.

### 1.3 Product Description

The products covered by this Settlement Agreement are mugs with exterior designs allegedly containing lead, that are imported, sold or distributed for sale in California by Uncas, including, but not limited to, the *From the Studio of Sandra Magsamen “I thank God for you everyday” Coffee Mug, ADX0112043, CR526881R1WM, UPC #6 56514 53530 1*, hereinafter “Products.”

### 1.4 Notices of Violation

On June 14, 2016, Moore served Wal-Mart Stores, Inc. (“Wal-Mart”), FP Holdings, Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Wal-Mart violated Proposition 65, when it

failed to warn its customers and consumers in California that its Products expose users to lead.

On August 8, 2016, Moore served Uncas, Wal-Mart, FP Holdings, Inc., and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supplemental Notice”), alleging that, in addition to Wal-Mart and FP Holdings, Inc., Uncas also violated Proposition 65 when it failed to warn its customers and consumers in California that its Products expose users to lead. Hereinafter, the Notice and Supplemental Notice will be referred to as the “Notices.” No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Uncas denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products 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 Uncas 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 Uncas of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Uncas. This Section shall not, however, diminish or otherwise affect Uncas’ 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 20, 2017.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

Within 30 days of the Effective Date, and continuing thereafter, Uncas agrees to only import for sale, purchase for sale, or distribute for sale, in or into California, “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” are Products that: (a) contain no more than 90 parts per million lead when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent

methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; and (b) yield a result of no more than 1.0 micrograms of lead when sampled according to NIOSH Test Method No. 9100 protocol and analyzed according to EPA 6010B.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notices or referred to in this Settlement Agreement, Uncas agrees to pay \$8,000 in civil penalties. Uncas' penalty payment will be allocated in accordance with California Health and Safety Code §§ 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 retained by Moore. Uncas shall deliver its payment within five days of the Effective Date, in two checks for the following amounts, made payable to: (a) "OEHHA" in the amount of \$6,000; and (b) "John Moore, Client Trust Account" in the amount of \$2,000. 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 had been settled. 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 Code of Civil Procedure § 1021.5 for all work performed in this matter. Under these legal principles, the Parties agree that Uncas shall make three, equal installment payments of \$10,000 each, for a total of \$30,000, for all fees and costs incurred in investigating, bringing this matter to the attention of Uncas' management, and negotiating a settlement that provides a significant public benefit.

On February 20, 2017, Uncas shall make the first of its three installment payments, by delivering a check in the amount of \$10,000. Uncas shall make the final two installment payments of \$10,000 each, by delivering a check, on or before each of the following due dates: March 20, 2017 and April 20, 2017. Should Uncas fail to make any of its installment payments in a timely manner, the Parties agree and understand that any and all unpaid amounts will be immediately due and owing, and that Moore will be entitled to recover his reasonable costs and fees, if any, incurred in seeking to enforce the monetary terms of this Consent Judgment.

All payments required by this Section shall be 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 Uncas**

This Settlement Agreement is a full, final and binding resolution between Moore, as an individual and not on behalf of the public, and Uncas, 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 Uncas, its parents, subsidiaries, affiliated entities under common ownership (including, but not limited to, FP Holdings, Inc.), directors, officers, employees, attorneys, and each entity to whom Uncas directly or indirectly distributes or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including, but not limited to, Wal-Mart Stores, Inc. and its affiliates and subsidiaries), franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about alleged exposures to lead contained in Products distributed, sold or offered for sale by Uncas before the Effective Date, as alleged in the Notices.

In further consideration of the promises and agreements herein contained, Moore as an individual and not on behalf of the public, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all 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, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the failure to warn about alleged exposures to lead in Products distributed, sold or offered for sale by Uncas, before the Effective Date, as alleged in the Notices.

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 Uncas' Release of Moore**

Uncas, 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.

#### **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, as to the Products, then Uncas 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 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 Uncas:**

Steven J O'Neil, CFO/Member  
Uncas International LLC  
1600 Division Road  
West Warwick, RI 02983

**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: 1/19/2017

Date: JANUARY 13, 2017

By:   
JOHN MOORE

By:   
STEVEN J O'NEIL, CFO/MEMBER  
UNCAS INTERNATIONAL LLC