

## SETTLEMENT AGREEMENT BETWEEN RUSSELL BRIMER AND GIBSON OVERSEAS, INC.

This Settlement Agreement (“Agreement”) confirms and documents the settlement of a dispute among Russell Brimer (“Brimer”) and Whitney Leeman (“Leeman”), on the one hand, and Gibson Overseas, Inc. (“Gibson”), on the other hand (Brimer, Leeman, and Gibson are collectively referred to as the “Parties” and each of them as a “Party”) regarding (i) Brimer’s August 5, 2010 60-Day Notice of Intent To Sue Gibson under Cal. Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”), and (ii) Gibson’s compliance with the Judgment and Order Approving Proposition 65 Settlement And Consent Judgment (“Consent Judgment”) that was entered by the San Francisco County Superior Court on August 31, 2004 in the action entitled *Leeman v. Arc International North America, Inc., C.C.A. International, et al.*, Case No. CGC-03-418025 (the “Action”), as follows:

### 1. INTRODUCTION

1.1 Brimer and Leeman are individuals residing in California who seek to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 Gibson is a company that manufactures and/or distributes decorated glassware products.

1.3 On August 8, 2003, in the interest of the general public in California, Leeman filed a complaint in the Action, alleging violations of Health & Safety Code § 25249.6 by various defendants for an alleged failure to provide clear and reasonable warnings about the risks of reproductive harm and cancer that the State of California associates with exposure to lead and lead compounds.

1.4 On December 31, 2003, *Leeman v. Gibson Overseas, Inc., et al.*, San Francisco County Superior Court Case No. CGC-03-422636 (which is included within the definition of “Action”), was consolidated with the Action.

1.5 On or about June 22, 2004, Leeman and Gibson executed a Stipulation And Order Re: Consent Judgment in the Action, binding Gibson to the terms of the Consent Judgment. The Consent Judgment set reformulation standards for lead (“Lead Limits”) for “glassware products intended to hold substances for human consumption with colored art or designs on the exterior of the product manufactured, distributed or sold by Gibson Overseas, Inc. or its affiliated companies” (the “Covered Products”).

1.6 On August 5, 2010, Brimer served Gibson and California public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”), which provided Gibson and such public enforcers with notice that Gibson was allegedly in violation of California Health & Safety Code § 25249.6. The Notice alleged that “decorated glassware products” manufactured by Gibson contained lead, a substance known to the State of California to cause birth defects and other reproductive harm, and

that Gibson failed to provide warnings of exposures to lead. The Notice specifically identified the following glassware item: the “CC Red & White 16 oz. Conic” glass (the “Noticed Product”). For purposes of this Agreement, the Parties agree that the products at issue in the Notice are within the category of “Covered Products” addressed in the Consent Judgment.

1.7 The Parties dispute, among other things, whether Gibson complied with the Consent Judgment in terms of whether Gibson adhered to the Lead Limits provided under Section 2.1.B., 2.1.C., 2.1.D., and 2.1.E. of the Consent Judgment as to those items allegedly at issue in the Notice. A substantial amount of investigation, testing and analysis by the Parties was undertaken to determine whether such items complied with the terms of the Consent Judgment. The Parties also engaged in legal analysis and numerous conferences over the past several months to evaluate the basis of, and defenses to, any claims regarding alleged violations of the Consent Judgment.

1.8 Gibson denies all alleged violations of Proposition 65 as to matters alleged in the Notice and denies any alleged violations of the Consent Judgment. Gibson provided information and documents to Brimer that Gibson contends demonstrates its compliance with Proposition 65 and the Consent Judgment.

1.9 Nothing in this Agreement shall be construed as an admission by any Party of any fact, finding, issue of law, assertion, allegation or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by any Party of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

1.10 The Parties enter into this Agreement to memorialize their resolution of the controversy described above in order to avoid prolonged and costly litigation between them.

1.11 The Effective Date of this Agreement is the date on which it is signed by both Parties and delivered by each Party to the other Party. This Agreement shall not take effect until the Effective Date.

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

2.1 As of August 31, 2011 (the “Compliance Deadline”), Gibson shall only manufacture, or cause to be manufactured, Covered Products to be offered for sale or sold in California that are “Reformulated.” “Reformulated Covered Products” are defined as Covered Products that meet the following criteria for all colored artwork, decoration, or designs on the exterior surface (“Exterior Decorations”): (i) any Exterior Decoration present in the top 20 millimeters of a glassware item intended to hold beverages for human consumption (i.e., the “Lip and Rim Area”) must contain no detectable levels of lead, as measured either before or after the decorating material is fired onto (or otherwise affixed to) the Lip and Rim area, using EPA Test Method 3050B; and (ii) any Exterior Decoration, other than that in the Lip and Rim area, must only utilize decorating

materials that contain no more than 90 ppm of lead or no more than 0.0009% of lead by weight, as measured either before or after the material is fired onto (or otherwise affixed to) the Covered Product, using EPA Test Method 3050B. If the Exterior Decoration is tested after it is affixed to the Covered Product, the percentage of lead by weight for purposes of the reformulation standards in this Section 2.1 must relate only to the decorating material and must not include any quantity attributable to non-decorating material such as the glass substrate.

2.2 Between the Effective Date and the Compliance Deadline, Gibson shall only manufacture, or cause to be manufactured, Covered Products to be offered for sale or sold in California that bear the warnings set forth in the Consent Judgment, unless such products are Reformulated. Reformulated Covered Products are not required to bear the warnings set forth in the Consent Judgment.

2.3 The Parties agree that the reformulation commitment in Section 2.1 supersedes the Lead Limits in the Consent Judgment with respect to Gibson.

2.4 As to any Covered Products that have been sold, distributed, shipped, or offered for sale by Gibson prior to the Effective Date, the obligations of Section 2.1 and 2.2 do not apply to such Covered Products, and such Covered Products shall be released from any claims as though they were released Claims within the meaning of Section 5, below.

### **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

3.1. In settlement of all claims referred to in this Agreement against it, Gibson shall pay civil penalties as follows:

3.1.1 Initial Civil Penalty: Gibson shall pay an initial civil penalty of \$12,000 no later than ten days after the Effective Date. Gibson shall issue three separate checks for the Initial Civil Penalty payment pursuant to Health & Safety Code Section 25249.12(c) and (d): (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of \$9,000, representing 75% of the total; (b) one check to The Chanler Group in Trust for Russell Brimer in the amount of \$1,500, representing 12.5% of the total; and (c) one check to The Chanler Group in Trust for Whitney R. Leeman in the amount of \$1,500, representing 12.5% of the total. Three separate Forms 1099 shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); (b) Russell Brimer, whose information shall be provided upon execution of this Agreement; and (c) Whitney R. Leeman, whose information shall be provided upon execution of this Agreement.. The payments shall be delivered to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

3.1.2 Final Civil Penalty: To the extent required under this Section 3.1.2, Gibson shall pay a Final Civil Penalty of \$50,000, which shall be delivered to the address above on or before thirty days after the Effective Date. Provided however, as an incentive for achieving reformulation of the Products, the Final Civil Penalty shall be waived in its entirety if an Officer of Gibson certifies in writing that, as of the Compliance Deadline, the only Covered Products that Gibson sells, ships, and offers, for sale in California, if any, are Reformulated and that Gibson will thereafter only sell, ship, and offer, for sale in California, only Reformulated Products, if any. Such certification may be reasonably based on Gibson's design and ordering specifications or test results of decorating materials or production samples. The certification shall be received by The Chanler Group on or before thirty days after the Effective Date.

This Final Civil Penalty is to be apportioned in accordance with California Health & Safety Code Section 25249.12(c)1 and (d), with 75% of these funds remitted to OEHHA, and the remaining 25% of the penalty remitted to Russell Brimer and Whitney R. Leeman. The Final Civil Penalty of \$50,000 shall be apportioned accordingly: (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of \$37,500, representing 75% of the total; (b) one check to The Chanler Group in Trust for Russell Brimer in the amount of \$6,250, representing 12.5% of the penalty; and (c) one check to The Chanler Group in Trust for Whitney R. Leeman in the amount of \$6,250, representing 12.5% of the total. Three separate Forms 1099 shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); (b) Russell Brimer, whose information shall be provided upon execution of this Agreement; and (c) Whitney R. Leeman, whose information shall be provided upon execution of this Agreement.

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710-2565

#### **4. REIMBURSEMENT OF FEES AND COSTS**

4.1 The parties reached an accord on the compensation due to Brimer, Leeman and their counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Gibson shall reimburse Brimer and Leeman's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Gibson's attention, and negotiating a settlement in the public interest. Gibson shall pay Brimer, Leeman and their counsel \$53,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "The Chanler Group" and shall be delivered on or before ten days after the Effective Date, at the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710-2565

Gibson shall issue a separate Form 1099 for fees and cost paid in the amount of \$53,000 to The Chanler Group, 2560 Ninth Street, Suite 214, Berkeley, CA 94710-2565 (EIN: 94-3171522).

## **5. RELEASE OF ALL CLAIMS**

5.1 Brimer and Leeman, each on behalf of themselves, their respective past and current agents, representatives, attorneys, successors, and assignees, hereby waive all rights to institute or participate in, directly or indirectly, any form of legal action, and release and discharge all claims, including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees), or losses (collectively "Claims") of any nature whatsoever against (a) Gibson and its past, present, and future parents, subsidiaries, sister or other related companies, affiliates, divisions, successors, and assigns, (b) the officers, directors, attorneys, representatives, owners, shareholders, agents, employees, licensors, licensees, franchisors, franchisees, and downstream distributors, wholesalers, auctioneers, retailers, dealers, customers, owners, purchasers, and users of any of the persons or entities identified in (a) or (b) of this Section 5.1, and (c) any other person or entity that may be alleged to have caused exposures to lead contained in any of the Covered Products that Gibson manufactured, distributed, or sold (the persons and entities identified in (a), (b), and (c) of this Section are collectively referred to as the "Releasees"), arising under Proposition 65 based on (i) Gibson's alleged failure to provide warnings, for any exposures to lead contained in any of the Covered Products that Gibson manufactured, distributed, or sold, and (ii) any alleged failure by Gibson to comply with the terms of the Consent Judgment in the Action, whether based in Proposition 65 or any other provision of law under which the Consent Judgment may be enforced. Provided however, this release shall not extend upstream to any entity upstream of Gibson that manufactured or supplied the Covered Products or any components of the Covered Products for Gibson.

Brimer and Leeman also, on behalf of themselves, and their past and current agents, representatives, attorneys, successors, and/or assignees, and in their individual capacities only (and not on behalf of the public), provide a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims against Releasees, arising under Proposition 65 for an alleged failure to provide warnings of any carcinogenic or reproductive toxicity risks for exposures to any chemicals listed under Proposition 65 with respect to the Noticed Product.

Furthermore, compliance with the requirements of this Agreement shall constitute compliance with Proposition 65 with respect to any alleged exposures to lead or lead compounds in the Covered Products.

5.2 Gibson, by this Agreement, waives all rights to institute any form of legal action and releases any and all Claims against Brimer and Leeman, their respective predecessors or successors in interest, and their respective attorneys or representatives, for all actions or statements made by Brimer, Leeman, and/or their respective attorneys or representatives arising in the course of seeking enforcement of the Consent Judgment as to alleged exposures to lead in the Covered Products or alleged violations of the Consent Judgment related to the Lead Limits, and otherwise, under any statutory, common law or other cause of action that was or could have been asserted.

5.3 Brimer, Leeman, and Gibson are each aware of the contents of Section 1542 of the Civil Code. The Parties acknowledge that the Claims released in this Agreement in their respective individual capacities only include known and unknown Claims and hereby expressly waive all rights, benefits, and protections conferred upon them by Civil Code Section 1542, which states 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.

Brimer, Leeman, and Gibson each understand the significance of this waiver of Section 1542 of the Civil Code is that even if any Party discovers additional claims or causes of action, such Party will not be able to enforce or prosecute those claims or causes of action. Furthermore, the Parties each acknowledge that each Party intends these consequences even as to claims or causes of action that may exist as of the date of this release but which a Party does not know exists and which, if known, would materially affect any Party's decision to execute this Agreement, regardless of whether any Party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

5.4 Nothing in Section 5 limits or affects the right of any Party to enforce the terms this Agreement.

## **6. AUTHORITY TO ENTER INTO AGREEMENT**

6.1 Brimer and Leeman represent that the signatory to this Agreement has the authority to enter into this Agreement on behalf of Brimer and Leeman, and to bind Brimer and Leeman legally. Gibson represents that the signatory to this Agreement has the authority to enter into this Agreement on behalf of Gibson and to bind Gibson legally.

## **7. EXECUTION IN COUNTERPARTS AND FACSIMILE**

7.1 This Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or pdf signature shall be as valid as the original.

**8. ENFORCEMENT**

8.1 If any dispute arises regarding compliance with this Agreement, the Parties shall meet and confer in good faith in an effort to resolve such dispute. If the Parties are unable to resolve the dispute within 45 days, any Party may thereafter seek judicial intervention in San Francisco Superior Court. The Parties stipulate that this Agreement may be enforced pursuant to California Code of Civil Procedure Section 664.6.

**9. MODIFICATION OF AGREEMENT**

9.1 Any modification to this Agreement shall be in writing by the Parties.

**10. APPLICATION OF AGREEMENT**

10.1 This Agreement shall apply to, be binding upon, and inure to the benefit of, the Parties and their respective predecessors, successors and assigns.

**11. SEVERABILITY**

11.1 In the event that a court of competent jurisdiction finds unenforceable any of the provision of this Agreement, such finding shall not affect adversely the validity of the enforceable provisions.

**12. GOVERNING LAW**

12.1 The laws of the State of California shall govern the terms of this Agreement.

**13. NOTIFICATION REQUIREMENTS**

13.1 Any notice required or permitted hereunder shall be effective only if in writing and delivered in person or sent by facsimile, certified or registered mail return receipt requested, or trackable overnight delivery service, to the following designees:

For Brimer and Leeman:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Fax: (510) 848-8118

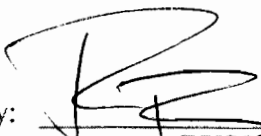
For Gibson:

Trenton H. Norris  
Sarah Esmaili  
Arnold & Porter LLP  
One Embarcadero Center, 22nd Floor  
San Francisco, CA 94111  
Fax: (415) 356-3099

13.2 Any party may change its designee(s) for purposes of notification by providing notice of such change pursuant to this section.

**AGREED TO:**

Dated: 7-21-11

By:   
\_\_\_\_\_  
RUSSELL BRIMER

Dated: 7/12/11

By:   
\_\_\_\_\_  
WHITNEY R. LEEMAN, Ph.D.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
GIBSON OVERSEAS, INC.



13.2 Any party may change its designee(s) for purposes of notification by providing notice of such change pursuant to this section.

**AGREED TO:**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
RUSSELL BRIMER

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
WHITNEY R. LEEMAN, Ph.D.

Dated: Aug. 25, 2011

By:   
GIBSON OVERSEAS, INC.