

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Russell Brimer and Kingsbridge International

This Settlement Agreement is entered into by and between Russell Brimer (hereinafter “Brimer”) and Kingsbridge International, Inc., (hereinafter “Kingsbridge”), with Brimer and Kingsbridge collectively referred to as the “Parties.” Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Kingsbridge 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, Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Brimer alleges that Kingsbridge has manufactured, distributed, and/or sold in the State of California tools with grips containing lead and di(2-ethylhexyl)phthalate (“DEHP”). Lead, DEHP, and other phthalates including butyl benzyl phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”), are listed under Proposition 65 as chemicals known to cause birth defects and other reproductive harm. Lead, DEHP, BBP, and DBP are collectively referred to herein as “Listed Chemicals.”

### 1.3 Product Description

The products that are addressed by this Settlement Agreement are: (a) tools with handles containing one or more of the Listed Chemicals (referred to hereinafter as the “Products”); and (b) luggage tags and tape measures containing one or more Listed Chemicals which are sold in California (referred to hereinafter as the “Additional Products”).

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

On or about January 31, 2012, Brimer served Kingsbridge and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice that alleged that Kingsbridge was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to lead and DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

Kingsbridge denies the material, factual and legal allegations contained in the Notice and maintains that all 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 Kingsbridge of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Kingsbridge of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Kingsbridge. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Kingsbridge 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 fully executed.

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

#### **2.1 Reformulation Commitment**

As of the Effective Date, Kingsbridge shall only manufacture, or cause to be manufactured, for sale in California, the following: (i) Products and Additional Products with grips that may be handled, touched or mouthed by a consumer, and which grips yield less than 300 parts per million (“ppm”) of lead when analyzed pursuant to U.S. Environmental Protection

Agency (“EPA”) 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 (ii) Products or Additional Products containing pliable plastic, soft grip or poly vinyl chloride components that may be handled, touched or mouthed by a consumer and which components yield less than or equal to 1,000 ppm each of DEHP, BBP, and DBP, when analyzed pursuant to EPA testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining phthalate content.

## **2.2 Additional Reformulation**

To the extent it certifies as to the additional penalty waiver pursuant to Section 3.3 below, as of November 1, 2013, Kingsbridge shall then only manufacture, or cause to be manufactured, for sale in California, Products containing grips that may be handled, touched or mouthed by a consumer, and which grips yield less than 100 ppm of lead when analyzed pursuant to EPA 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.

## **2.3 Exceptions**

The requirements set forth in Sections 2.1 shall not apply to:

- (i) Any Products or Additional Products received by Kingsbridge prior to the Effective Date; and/or
- (ii) Any Products or Additional Products shipped by Kingsbridge for sale outside of California.<sup>1</sup>

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<sup>1</sup> Products or Additional Products Kingsbridge manufactures, or causes to be manufactured for sale outside of California are exempted from this agreement, but may either meet the reformulation commitment set forth above or bear clear and reasonable Proposition 65 warnings so as to address the statute’s requirements in the event that Products or Additional Products are transshipped or reshipped into California without Kingsbridge’s knowledge.

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

Kingsbridge shall pay \$16,000 under this section, as follows:

**3.1 Initial Civil Penalty**

Kingsbridge shall pay an initial civil penalty in the amount of \$4,000 and be apportioned in accordance with Health & Safety Code § 25249.12, subdivisions (c)(1) and (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Brimer.

**3.2 Payment to Silent Spring**

Kingsbridge shall pay the sum of \$4,000 to Silent Spring Institute ("Silent Spring"), a not-for-profit institution, in lieu of further civil fines pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3202(b). Silent Spring will use such funds in one or more of the following ways: (a) to continue its work identifying the links between exposure to environmental chemicals including lead, DEHP, DBP, BBP and reproductive and developmental harm, as well as educating the public about such potential exposures; (b) to conduct exposure and risk-based prioritization of chemicals listed under Proposition 65, or chemicals OEHHA has identified as candidates for listing, in order to identify exposures of potential public health significance; (c) to monitor compliance with the reformulation requirements of this and other similar consent judgments addressing Proposition 65-listed chemical exposures; or (d) to conduct additional exposure measurements that evaluate the levels of chemical exposures to users of products that contain lead, DEHP, DBP, and BBP.

**3.3 Additional Civil Penalty**

An additional civil penalty of \$8,000 shall be due on December 1, 2013. However, such payment shall be waived if an officer of Kingsbridge or its designee certifies in writing on or before November 1, 2013, that Kingsbridge has complied with the additional reformulation

described in Section 2.2. In the event that the additional civil penalty is not waived, it shall be paid as follows: (a) one check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$6,000, representing 75% of the total additional penalty; and (b) one check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$2,000, representing 25% of the total additional penalty.

### **3.4 Payment Procedures**

Within ten days of the Effective Date, Kingsbridge shall issue three separate checks for the payments required by Section 3.1 and 3.2 as follows: (a) one check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$3,000, representing 75% of the total initial penalty; (b) one check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,000, representing 25% of the total initial penalty; and (c) one check in the amount of \$4,000, made payable to “The Chanler Group in Trust for Silent Spring Institute.” Three separate 1099s shall be issued for the above payments as follows: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); (b) Russell Brimer, whose information shall be provided by email or other means within five calendar days of Kingsbridge’s execution and delivery of this Settlement Agreement document to Brimer’s counsel; and (c) Silent Spring Institute, 29 Crafts Street, Newton, Massachusetts 02458, whose information shall be provided by email or other means within five calendar days of final execution of this Settlement Agreement. All payments due under this Settlement Agreement shall be delivered to Brimer’s counsel at the following address:

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

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Brimer and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Kingsbridge shall reimburse Brimer’s counsel for fees and costs, incurred as a result of investigating, bringing this matter to Kingsbridge’s attention, and negotiating a settlement in the public interest. Kingsbridge shall pay Brimer and his counsel \$26,000 for all attorneys’ fees, expert and investigation fees, and related costs. The payment shall be issued in a fourth separate check made payable to “The Chanler Group” and shall be delivered on or before ten days following the Effective Date, at the following address:

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

Kingsbridge shall issue a separate 1099 for fees and cost paid in the amount of \$26,000 to The Chanler Group, Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, California 94710 (EIN: 94-3171522).

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Kingsbridge and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, 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, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys’ fees) of any nature whatsoever,

whether known or unknown, fixed or contingent against Kingsbridge and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively “Releasees”). This release is limited to those claims that arise with respect to the Listed Chemicals under Proposition 65 which are contained in the Products or the Additional Products.

**5.2 Kingsbridge’s Release of Brimer**

Kingsbridge waives any and all claims against Brimer, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Brimer and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products or Additional Products.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**7. 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 or Additional Products, then Kingsbridge shall provide written notice to Brimer of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products and Additional Products are so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party at the following addresses:

For Kingsbridge:

Bob Sommer  
Kingsbridge International, Inc.  
2950 North Madera Road  
Simi Valley, California 93065

with a copy to:

Robert Falk, Esq.  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105

For Brimer:

Proposition 65 Coordinator  
The Chanler Group  
Parker Plaza  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**9. 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.



**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

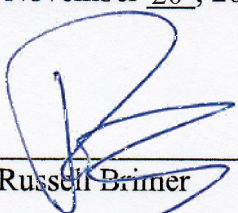
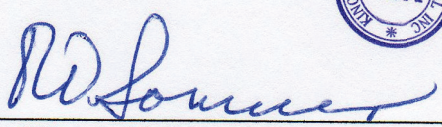

Brimer agrees to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties. In addition, upon the written request of Kingsbridge made within eighteen months following the Effective Date, Brimer shall: (a) take such actions as necessary to convert this Settlement Agreement into a Consent Judgment containing a public release with respect to the Products, and/or issue a 60-Day Notice of Violation pursuant to Health & Safety Code §25249.7 as to one or more of the Additional Products and, at the expiration of the associated notice period, include such Additional Products in such a Consent Judgment. In the latter instance, Kingsbridge shall cooperate with Brimer in providing additional information or representations necessary to enable Brimer to assess whether any additional statutory penalty payment is warranted and to issue the sixty day notice and a valid Certificate of Merit concerning any such Additional Products. Pursuant to CCP §§ 1021 and 1021.5, Brimer and his counsel will be entitled to seek reasonable fees and costs incurred in converting the Settlement Agreement into a Consent Judgment and, to the extent applicable, issuing the sixty day notice to include in such a Consent Judgment one or more Additional Products, in an amount not to exceed \$15,000 if no Additional Products are to be addressed or \$23,000 if one or more Additional Products are to be addressed. Payment for any such attorneys' fees shall be made payable to The Chanler Group and rendered within ten days following the entry of such a Consent Judgment.

12. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: November <u>20</u>, 2012</p> <p>By:  _____ Russell Brimer</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: November <u>20</u>, 2012</p> <p>By:  _____ Kingsbridge International, Inc.</p> 
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