

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement is entered into by and between Russell Brimer (hereinafter "Brimer") and LRI Holdings Company, LLC/Lynn Roberts International (hereinafter jointly "LRI"), with LRI and Brimer 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. LRI 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 §§25249.5 *et seq.* ("Proposition 65").

1.2 General Allegations

Brimer alleges that LRI has manufactured, distributed and/or sold into the State of California, whether directly or indirectly, eyewear retention cords made with materials containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to be a reproductive toxicant. Lead shall be referred to herein as the "Listed Chemical."

1.3 Product Description

The products covered by this Settlement Agreement are eyewear cords, such as AMO Eyewear Cord, Style #85050 (Product #0 37435 85050 4) manufactured or caused to be manufactured by LRI. Such products shall be referred to herein as the "Covered Product."

1.4 Notice of Violation

On or about November 23, 2010, Brimer served LRI and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided LRI and those public enforcers with notice that alleged that LRI was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers in California that the Covered Products exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

LRI denies the material factual and legal allegations contained in Brimer's Notice and maintains that all Covered Product that it has sold and distributed in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by LRI 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 LRI of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by LRI. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of LRI under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 14, 2011.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, LRI shall only ship, sell or offer to ship for sale into California, or ship, sell or offer to be shipped or sold to any retail entity that LRI has reason to know maintains one or more retail store locations inside California, Covered Products that are Lead Free, as set forth below.

For purposes of this Settlement Agreement, "Lead Free" products shall mean Covered Products containing materials on any outer surface of the exterior or interior of the Covered Product that may be handled, touched or mouthed during any reasonably anticipated use or misuse by a consumer ("Surface Materials"), and which Surface Materials each yield a result of less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100 and each yield a result of less than 300 parts per million ("ppm") lead when such Surface Material is analyzed pursuant to EPA testing methodologies 3050B and/or 6010B, or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance.

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

3.1 Penalty Assessment

Pursuant to Health & Safety Code §25249.7(b), LRI shall be assessed \$8,000.00 in civil penalties to be apportioned in accordance with California Health & Safety Code §25249.12(c)(1), with 75% of these

funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHHA") and the remaining 25% of these penalty monies remitted to Brimer as provided by California Health & Safety Code §25249.12(d). LRI shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHHA), representing 75% of the total penalty and (b) one check to The Chanler Group in Trust for Brimer representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486), in the amount identified hereinabove. The second 1099 shall be issued to Brimer, in the amount identified hereinabove, whose address and tax identification number shall be furnished, upon request, ten (10) calendar days before payment is due.

Payments shall be delivered on or before the Effective Date, at the following address:

THE CHANLER GROUP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

3.2 Penalty Augmentation

If within nine (9) months of the Effective Date, Brimer discovers and presents to LRI convincing evidence that the Covered Products have been distributed or caused to be distributed by LRI to any retail store in California, or have otherwise been distributed by LRI for retail sale in California, in sales volumes materially different than those identified by LRI prior to execution of this Agreement, then LRI shall be liable, subject to the good faith exception noted below, for (1) an additional penalty amount of \$150 per quantity of Covered Product sold prior to execution of this Agreement but not identified by LRI to Brimer and (2) any reasonable, additional attorney fees expended by plaintiff in discovering such additional retailers or sales.

In order for plaintiff to assert any claim against LRI under this Section, Brimer agrees to provide LRI and their counsel with a written notice of materially different sales, including identification of all convincing evidence supporting a determination of materially different relevant sales, and a demand for such claimed additional penalties and attorney fees under this Section. After service of such demand,

LRI shall have thirty (30) days to either (1) demonstrate that any alleged material differences discovered by plaintiff were the result of a good faith mistake by LRI or (2) agree to the amount fees and penalties owing by LRI and submit such payment to Brimer in accordance with the method of payment of penalties and fees identified in Sections 3.1 and 4.

Should this thirty (30) day period pass without any good faith determination or other resolution between the parties, or payment of claimed or negotiated additional penalties and fees, Brimer shall be entitled to file a formal legal claim for damages for breach of this contract. In such event as Brimer files a motion under this Section 3.2, Brimer shall be entitled to be awarded all reasonable attorney fees and costs relating to investigation into and identification of the alleged material differences, but in no event shall be entitled to any recovery of any fees incurred subsequent to Brimer's initial written notice of materially different sales and penalty/fee demand.

3.3 Optional Penalty Reductions

Defendants may reduce their penalty obligation in Section 3.1 by agreeing to perform and performing any or all of the following commitments:

(a) Defendant may realize a \$2,000.00 reduction in the total penalty amount due under Section 3.1 above if Defendant agrees, by express, written confirmation, from a director or officer of Defendant, served upon Brimer and his counsel by the Effective Date, that such Defendant successfully completed good faith efforts to, and has, withdrawn all of the non- Lead Free Covered Product in question from the retail stores to which Defendant had record of such Covered Product's distribution and/or inventory.

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, LRI shall reimburse Brimer's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Defendant's attention, and negotiating a settlement in the public interest. Except as to any attorney fees and costs expended pursuant to Section 3.2, LRI shall pay Brimer and his counsel \$27,000.00 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be made payable to The Chanler Group and shall be delivered on or before the Effective Date, at the following address:

THE CHANLER GROUP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

Paying Defendant shall issue a separate 1099 for fees and cost paid in the amount of \$27,000.00 to The Chanler Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710.

5. RELEASE OF ALL CLAIMS

5.1 Release of Defendants 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, and excepting any claim, agreement, penalty, fee or cost to be agreed or assessed under Section 3.2, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public, 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, arising out of Brimer's October 15, 60-Day Notice of Violation (collectively "Claims"), against LRI and each of LRI's 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 expressly limited to those claims that arise under Proposition 65, as such claims relate to LRI's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Covered Products and as such claims are identified in the Proposition 65 60-Day Notice to LRI and to the extent that any alleged violations occur prior to one month after the Effective Date. This Release does not release any person, party or entity from any liability for any violation of Proposition 65 regarding the Covered Products that occur over one month after the Effective Date.

The Parties further understand and agree that this release shall not extend upstream to any entities, other than LRI, that manufactured or caused to be manufactured the Covered Products or any

component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to LRI.

5.2 LRI's Release of Brimer

LRI 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 Defendant in this matter, and/or with respect to the Covered Products.

6. ELECTION TO SECURE JUDGMENT UPON SETTLEMENT

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Covered Products against LRI or the Releasees under Proposition 65 as covered under the terms of the release in Section 5. If requested in writing by LRI, within six months of the Effective Date, LRI may ask Brimer to file a complaint and seek judicial approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law. If so requested, Brimer agrees to reasonably cooperate with LRI and to use best efforts and that of his counsel to support the entry of an Order, from a Superior Court of California, approving any consent judgment incorporating the terms of this Settlement Agreement and for entry of Judgment thereupon. Pursuant to CCP Sections 1021 and 1021.5, should LRI request Brimer to file a complaint and seek judicial approval of this settlement agreement, LRI shall then reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in the amount of \$15,000.00, unless Brimer identifies having incurred a lesser amount.

Should LRI request Brimer to file such a complaint and seek judicial approval of this settlement agreement, LRI agrees to reimburse Brimer, within ten (10) days of receipt of an invoice therefor, subject to the \$15,000.00 maximum, all fees and costs incurred by Brimer and his counsel in completing such request at their then effective billing rates. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by LRI to have Brimer file a complaint and seek

settlement approval and a judgment. LRI will remit payment to The Chanler Group, at the address set forth in Section 4 above.

7. 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.

8. 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 Covered Products, then LRI 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 Covered Products are so affected.

9. 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 courier on any party by the other party at the following addresses:

For LRI, Inc.:

Keith Josephson, President
LRI Holdings Company LLC
Lynn Roberts International
9100 F Street
Omaha NE 68127

With a copy to:

Bruce Nye, Esq.
Adams Nye Becht LLP
222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521

For Brimer:

Proposition 65 Coordinator

The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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.

10. COUNTERPARTS, FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. 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).

12. MODIFICATION

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

13. 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.

Date: <u>10-7-11</u>	Date: _____
By: <u>Judith A. Wozny</u> Judy Wozny LRI Holdings Company LLC Lynn Roberts International	By: _____ Russell Brimer

The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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.

10. COUNTERPARTS, FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. 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).

12. MODIFICATION

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

13. 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.

Date: _____	Date: <u>10-12-11</u>
By: _____ Judy Wozny LRI Holdings Company LLC Lynn Roberts International	By:  Russell Brimer