

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Orange Circle Studio Corporation (“Orange Circle”), with Brimer and Orange Circle 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. Orange Circle 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

Brimer alleges that Orange Circle manufactures, distributes, and/or sells in the state of California planners/calendars with covers containing di(2-ethylhexyl)phthalate (“DEHP”), (sometimes referred to hereinafter as the “Listed Chemical”) without the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: the *2012 and 2013 Two-Year Pocket Planner, Item #17541 (#8 46307 00487 3)* containing DEHP that is manufactured, imported, distributed, and/or sold in California by Orange Circle (hereinafter “Products”).

### 1.4 Notice of Violation

On or about March 8 2012, Brimer served Orange Circle and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients that Orange Circle was alleged to be in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical.

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**

Orange Circle denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold 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 Orange Circle of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Orange Circle of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Orange Circle. This section shall not, however, diminish or otherwise affect Orange Circle'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 December 1, 2012.

**2. INJUNCTIVE RELIEF**

Commencing on the Effective Date and continuing thereafter, Orange Circle shall only manufacture, distribute, ship, sell or offer to ship for sale in California Products that contain a maximum DEHP content of 1,000 parts per million (0.1%) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

**3. MONETARY PAYMENTS**

**3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

Pursuant to Health & Safety Code § 25249.7(b), Orange Circle shall pay \$10,000 in combined civil penalty payments and credits. As a result of Orange Circle's commitment to Proposition 65 compliance, including offering only DEHP-Free Products pursuant to Section 2, Brimer will provide a penalty credit of \$5,000. Thereafter, Orange Circle shall pay the

remaining sum of \$5,000 on or before the Effective Date. Civil penalties shall be allocated according to California Health & Safety Code §§ 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment and the remaining twenty-five percent (25%) remitted to Brimer.

Orange Circle shall issue two checks for the penalty payment as follows: (a) one check to “The Chanler Group in Trust for OEHHA” in the amount of \$3,750; and (b) a second check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,250.

Two 1099 forms shall also be issued for the penalty payments as follows: (a) one 1099 form to the “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) a second 1099 form to “Russell Brimer,” whose address and tax identification number shall be furnished, upon request, three days before payment is due. Payment 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

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

##### **4.1 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5 for all work performed in this matter. Under these legal principles, Orange Circle shall make payments totaling \$25,000 for all fees and costs incurred as a result of investigating, bringing this matter to the attention of Orange Circle, and negotiating a settlement in the public interest, as follows:

- a) \$5,000 due on or before December 1, 2012;
- b) \$5,000 due on or before January 1, 2013;
- c) \$5,000 due on or before February 1, 2013;
- d) \$5,000 due on or before March 1, 2013; and

e) \$5,000 due on or before April 1, 2013.

Orange Circle shall provide its payments in the form of checks payable to “The Chanler Group,” issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment at the following address:

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

## **5. CLAIMS COVERED AND RELEASED**

### **5.1 Brimer’s Release of Orange Circle**

This Settlement Agreement is a full, final and binding resolution between Brimer, and Orange Circle, of any violation of Proposition 65 that was or could have been asserted by Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Orange Circle, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Orange Circle directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on their failure to warn about alleged exposures to the Listed Chemical contained in the Products that were manufactured, distributed, sold and/or offered for sale by Orange Circle in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all his 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, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys’ fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to the Listed Chemical in the Products manufactured,

distributed, sold and/or offered for sale by Orange Circle before the Effective Date (collectively “claims”), against Orange Circle and Releasees.

## **5.2 Orange Circle’s Release of Brimer**

Orange Circle on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Brimer and 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

## **6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement, Orange Circle may send Brimer a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment that provides a release in the public interest for the released Products, and to seek court approval of the consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Brimer and Orange Circle agree to reasonably cooperate, and to use their best efforts and that of their counsel to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

If so requested by Orange Circle in writing, pursuant to Code of Civil Procedure §§ 1021 and 1021.5, then Orange Circle will reimburse Brimer and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$7,000, exclusive fees and costs incurred on appeal, if any. Orange Circle shall remit payment to The Chanler Group at the payment address provided in section 4.1 within five business days of receiving a monthly invoice from Brimer’s counsel for work performed under this section.

**7. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision is 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 Products and/or the Listed Chemical, then Orange Circle 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 are so affected.

**9. NOTICES**

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

For Orange Circle:

Scott Whang, President  
Orange Circle Studio Corporation  
8687 Research Drive, Suite 150  
Irvine, CA 92618

and

Frank N. Lee, Esq.  
Law Office of Frank N. Lee  
3435 Wilshire Blvd. #450  
Los Angeles, CA 90010

For Brimer:

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 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 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. POST-EXECUTION ACTIVITIES**

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.

**12. AUTHORIZATION**

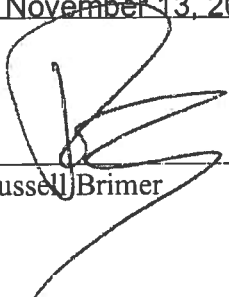
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

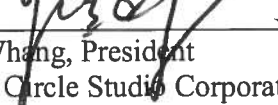
**AGREED TO:**

**AGREED TO:**

Date: November 13, 2012

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Russell Brimer

By:  \_\_\_\_\_  
Scott Whang, President  
Orange Circle Studio Corporation