

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and The Vollrath Company, L.L.C. (“Vollrath”), with Brimer and Vollrath each referred to individually as a “Party” and collectively as the “Parties.” Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Vollrath 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 and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Brimer alleges that Vollrath manufactures, imports, sells, or distributes for sale in the State of California, vinyl/PVC guest check holders that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed as a chemical that is known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are the *Traex Check Holder, TED3459* including all colors thereof (the “Products”).

1.4 Notice of Violation

On or about August 31, 2012, Brimer served Vollrath and the requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Brimer’s allegation that Vollrath violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action involving the allegations set forth in the Notice.

1.5 No Admission

Vollrath denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale in California have been and are in compliance with all laws. Vollrath further maintains that it has not sold or distributed the Products in California at any time relevant to the claims asserted in the Notice. Nothing in this Settlement Agreement shall be construed as an admission by Vollrath 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 Vollrath of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Vollrath. This Section shall not, however, diminish or otherwise affect Vollrath'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 the date on which it is fully executed by all Parties.

2. INJUNCTIVE RELIEF

Commencing on the Effective Date and continuing thereafter, Vollrath shall not manufacture, distribute, ship, sell, or offer to ship for sale in California any Products unless the Products qualify as "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products containing a maximum of 1,000 parts per million of DEHP 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.

Products that are in the stream of commerce as of the date of the Notice are not subject to Section 2, and such Products are subject to the release of claims in Section 4.1.

3. MONETARY PAYMENTS

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

Pursuant to Health & Safety Code § 25249.7(b), Vollrath shall pay \$9,500 in civil penalties. Vollrath shall pay an initial civil penalty of \$2,500 within 15 days after the Effective Date. Vollrath shall pay the remaining penalty amount of \$7,000 within 45 days after the Effective Date; provided however, this remaining portion of the penalty will be waived in its entirety if, no later than 30 days after the Effective Date, an officer of Vollrath certifies in writing to Brimer's counsel that, as of the date of the Notice, Vollrath has not manufactured, distributed, shipped, sold, or offered to ship for sale in California any of the Products unless the Products are Reformulated Products.

Civil penalties shall be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) of the penalty retained by Brimer. Within 15 days of the Effective Date, Vollrath shall issue two checks for the following amounts made payable to: (a) "The Chanler Group in Trust for OEHHA" in the amount of \$1,875; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$625.

Vollrath shall also issue a separate 1099 form for its 2012 penalty payments to: (a) "Office of Environmental Health Hazard Assessment," P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) "Russell Brimer," whose address and tax identification number shall be furnished, upon request, after this Settlement Agreement is fully executed by the Parties. Payment shall be delivered to Brimer's counsel upon execution and delivery of this Agreement at the Payment address provided in § 3.3.

3.2 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 Code of Civil Procedure § 1021.5 for all work performed in this matter. Under these legal principles, Vollrath

shall pay \$22,000 for fees and costs incurred by Brimer in investigating, bringing this matter to the attention of Vollrath's management, and negotiating a settlement in the public interest.

Vollrath shall deliver its payment within 15 days of the Effective Date a check payable to "The Chanler Group," and provide a separate 1099 form for fees and costs reimbursed to The Chanler Group (EIN: 94-3171522).

3.3 Payment Address

All payments and tax forms required by this Settlement Agreement shall be delivered to the following address:

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

4. CLAIMS COVERED AND RELEASED

4.1 Brimer's Release of The Vollrath Company, L.L.C.

Brimer, on behalf of himself, his agents, representatives, attorneys, successors and/or assignees, forever releases and discharges: (a) Vollrath, Dane Holding Company f/k/a Traex and Libbey Glass, Inc., and each of their respective parents, subsidiaries, affiliates, predecessors, predecessors-in-interest, and divisions; (b) each of their respective downstream licensors, licensees, franchisors, franchisees, joint venturers, partners, and vendors; (c) each of the downstream distributors, wholesalers, retailers, users, packagers, retail customers and all other entities in the chain of distribution down to the consumer of any Products of the persons and entities described in (a) and (b) above; (d) each of the respective officers, directors, shareholders, employees, agents, predecessors, successors and assigns of the persons and entities described in (a) through (c) above (the persons and entities identified in (a), (b), (c), and (d) above are collectively referred to as the "Released Parties"), from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees (including but not limited to investigation fees, attorney's fees and expert fees), costs and expenses (collectively, "Claims"), whether known or unknown, as to any alleged violation of Proposition 65 regarding DEHP in the

Products, or based on or arising from any alleged exposure to DEHP in the Products. Brimer acknowledges that this Settlement Agreement is expressly intended to cover and include all such Claims involving DEHP in the Products, and Brimer waives all of his rights to institute or participate in, directly or indirectly, any form of legal action against any of the Released Parties with respect to DEHP in the Products. Brimer further acknowledges that compliance with the terms of Section 2 of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to DEHP in the Products.

Brimer has full knowledge of the contents of California Civil Code § 1542. Brimer acknowledges that the Claims released in this § 4.1 may include unknown Claims, and Brimer nevertheless waives California Civil Code § 1542 as to any such unknown claims with respect to DEHP in the Products. California Civil Code § 1542 reads 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 acknowledges and understands the significance and consequences of this specific waiver of California Civil Code § 1542 with respect to DEHP in the Products.

4.2 Vollrath’s Release of Brimer

Vollrath, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have 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 and in the Notice, or with respect to the Products.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Vollrath may request in writing that Brimer draft and file a complaint, to incorporate the terms of this

Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code § 25249.7, or as may otherwise be allowed by law. If requested, Brimer and Vollrath agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, if so requested, Vollrath agrees to reimburse Brimer and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$15,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from Brimer's counsel for work performed under this section, Vollrath will remit payment to the address provided in § 3.3.

6. 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.

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 Product, then Vollrath may 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.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class,

registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For The Vollrath Company, L.L.C.:

Steven Heun
The Vollrath Company, L.L.C.
1236 North 18th Street
Sheboygan, WI 53081

with a copy to:

Trent Norris, Esq.
Arnold & Porter LLP
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111

For Brimer:

The Chanler Group
Attn: Proposition 65 Coordinator
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.

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. POST-EXECUTION ACTIVITIES

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

11. MODIFICATION

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

12. AUTHORIZATION

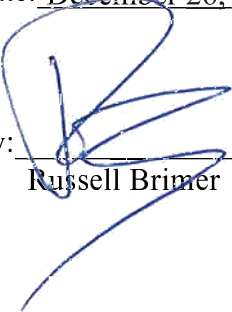
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: December 26, 2012

Date: _____

By:  _____
Russell Brimer

By: _____
Steven Heun
The Vollrath Company, L.L.C.

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: _____

Date: 12/28/12 _____

By: _____
Russell Brimer

By:  _____
Steven Heun
The Vollrath Company, L.L.C.