

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) confirms and documents the settlement of a dispute between Russell Brimer (“Brimer”) and Norpro (“Norpro”). Brimer and Norpro are collectively referred to as the “Parties” and each of them as a “Party” regarding Norpro’s compliance with the Judgment and Order Approving Proposition 65 Settlement and Consent Judgment (“Consent Judgment”) entered by the San Francisco Superior Court on August 17, 2005 in the action entitled, *Brimer v. The Boelter Companies, et al.*, San Francisco Superior Court Case No. CGC-05-440811 (“Action”), as follows:

### **1. INTRODUCTION**

- 1.1** Brimer is an individual residing in the State of 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.
- 1.2** Norpro is a company that manufactures and/or distributes glassware products with decorative exterior designs.
- 1.3** On April 28, 2005, in the interest of the general public in California, Brimer filed a complaint in the Action, alleging that the defendants violated Health & Safety Code § 25249.6 when they failed to provide clear and reasonable warnings about the risks of exposure to lead and the harms associated with such exposures to lead contained in certain products that, *inter alia*, defendants sold.
- 1.4** On or about June 13, 2005, Brimer and the defendants executed a [Proposed] Consent Judgment binding the defendants to the terms of the Consent Judgment. On August 17, 2005, the Court entered a Judgment pursuant to the Consent Judgment. The Consent Judgment requires a maximum lead content level (the “lead limits”) for, *inter alia*, “Glassware Food/Beverage Products” or “Category A Products” (collectively “Products”) and specifies that defendants would only sell or distribute for sale in California, Products that met the lead limits established by Section 2.3.1 of the Consent Judgment.
- 1.5** On October 26, 2005, Norpro executed a “Stipulation for Entry of Judgment,” opting in to the Consent Judgment with respect to “Glassware Food/Beverage Products” or “Category A Products” (hereinafter, the “Products”).
- 1.6** On October 17, 2012, Brimer filed an Application for an Order to Show Cause Re: Contempt as to Norpro (“Application”) which, among other things, sought an order from the Court requiring Norpro to appear and show cause why it should not be held in contempt for violating the

Judgment entered in the Action pursuant to the terms of the Consent Judgment. In his Application, Brimer alleged that Norpro had sold Products in violation of the lead limits after the October 26, 2005 Stipulation for Entry of Judgment for Norpro's compliance set forth in the Consent Judgment.

- 1.7 The Parties dispute, among other things, whether Norpro complied with the Consent Judgment in terms of whether Norpro adhered to the established lead limits set forth in Section 2.3.1 of the Consent Judgment. A substantial amount of investigation, testing, and analysis by the Parties was undertaken to determine whether Norpro's "Healthy Dressing" salad dressing maker/shaker product (Item # 809) complied with the terms of the Consent Judgment. The Parties also engaged in legal analysis and numerous conferences to evaluate the basis of any claims of civil contempt and/or breach of the settlement.
- 1.8 Nothing in this Agreement shall be construed as an admission by any Party of any fact, finding, conclusion, 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. This paragraph shall not, however, diminish or otherwise affect the Parties' obligations, responsibilities, and duties under this Agreement.
- 1.9 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.
- 1.10 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, but in no event later than January 15, 2013.

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

- 2.1 Reformulation of Products. As of the Effective Date, Norpro shall only manufacture, or cause to be manufactured, distributed, or sold, Products in California that are "Reformulated," as defined below.
- 2.2 Reformulation for Glassware with Colored Artwork or Designs Containing Lead. Decorated Glassware items shall be considered to be reformulated if they meet the following criteria:
  - 2.2.1. Decorated Glassware shall have no colored decoration in the exterior top 20 millimeters (i.e., the "lip and rim area") or on the interior food/beverage contact area;
  - 2.2.2. Decorated Glassware must only utilize decorating materials on the remaining area of the Products which either (a) contains 100 parts per

million of lead or less (0.010% of lead by weight or less) as measured either before or after the material is fired onto (or otherwise affixed to) the item, using EPA Test Method 3050B,<sup>1</sup> or, in the alternative, for products eligible to use a wipe test under the Consent Judgment, the Decorated Glassware must produce a test result no higher than .5 micrograms (ug) of lead as applied to the Exterior Decorations and performed as outlined in NIOSH method no. 9100.

- 2.3** Plaintiff acknowledges and understands that some Products remain in the stream of commerce upon execution of this Agreement. Therefore, no further action may be instituted by Plaintiff against Defendant unless Plaintiff provides proof that Defendant sold such Product after January 31 2013.

### **3. RELEASE OF ALL CLAIMS**

- 3.1** Brimer, on behalf of himself, his past and current agents, representatives, attorneys, successors 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 (collectively "Claims") against Norpro and each of its downstream distributors, wholesalers, retailers, customers, parent company, corporate affiliates, subsidiaries and their respective officers, directors, attorneys, representatives, shareholders, agents, representatives, insurers and employees (collectively, "Releasees") either (i) arising under Proposition 65 based on alleged unwarned exposures to lead contained in the Products Norpro manufactured, sold, or distributed for sale in California before the Effective Date; or (ii) any alleged failure by Norpro to comply with the terms of the Consent Judgment entered by the San Francisco Superior Court on August 15, 2005, before the Effective Date.
- 3.2** Norpro, by this Agreement, waives all rights to institute any form of legal action and releases any and all claims against Brimer and his attorneys or other representatives, for all actions taken or statements made, by Brimer and his attorneys or other representatives, 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 expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown,

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<sup>1</sup> If the decoration is tested after it is affixed to any Products, the percentage of lead by weight must relate only to the decorating material and must not include any quantity attributable to non-decorating material (e.g., the glass substrate).

fixed or contingent (collectively “Claims”) against Brimer and his attorneys and other representatives arising in the course of (i) seeking to enforce Proposition 65; or (ii) seeking to enforce the Judgment entered by the San Francisco Superior Court on August 15, 2005.

- 3.3** Brimer and Norpro are aware of the contents of Section 1542 of the Civil Code. The Parties acknowledge that the claims released in this Agreement 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 and Norpro understand and acknowledge the significance of this waiver of Section 1542 of the Civil Code is that if either Party discovers additional claims or causes of action relating to the released matters, such Party will not be able to enforce or prosecute those claims or causes of action. Furthermore, Brimer and Norpro 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 either Party does not know exists and which, if known, would materially affect either Party’s decision to execute this Agreement, regardless of whether either Party’s lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

#### **4. MONETARY PAYMENTS**

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

Norpro shall pay \$100,000 under this section, as follows:

**(a) Initial Civil Penalty.** Norpro shall pay an initial civil penalty of \$40,000 within ten days of the Effective Date. The civil penalties shall be apportioned in accordance with Health and Safety Code § 25192, 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, as provided by Health and Safety Code § 25249.12(d).

**(b) Final Civil Penalty.** Norpro shall pay a final civil penalty of \$60,000 on January 15, 2014. The final civil penalty shall be waived in its entirety, however, if an Officer of Norpro provides Brimer with written certification that, as of the January 1, 2014, and continuing into the future, Norpro has met and will continue to meet the reformulation standard specified in Section 2.3 above such that all Products manufactured, produced, assembled, imported, distributed, shipped, sold or offered for sale in California are Reformulated Products, as defined in Section 2.3 above. Brimer must receive any such certification on or before January 1, 2014, and time is of the

essence. The civil penalties shall be apportioned in accordance with Health and Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Brimer, as provided by Health and Safety Code § 25249.12(d).

#### **4.2 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, Norpro shall reimburse Brimer's counsel for fees and costs incurred investigating, bringing this matter to Norpro's attention, preparing and filing the Application for an Order To Show Cause Re Contempt, and negotiating a settlement in the public interest. Norpro shall pay \$95,000 for all attorneys' fees, expert and investigation fees, and related costs. Norpro shall issue a separate Form 1099 for fees and cost paid in the amount of \$95,000 to The Chanler Group, 2560 Ninth Street, Suite 214, Berkeley, CA 94710-2565 (EIN: 94-3171522). Payment shall be issued in a third check made payable to "The Chanler Group" and shall be delivered to Brimer's counsel at the Payment Address provide in Section 4.3 on or before February 15, 2013.

#### **4.3 Payment Procedures**

**(a) Initial Payments.** The initial civil penalty payment required by Section 4.1 and the payment required by Section 4.2 shall be delivered within ten days of the Effective Date and on or before February 15, 2013, respectively, to The Chanler Group in three checks each, made payable as follows:

- (i) one check to "The Chanler Group in Trust for OEHHA" in the amount of \$30,000;
- (ii) a second check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$10,000; and
- (iii) a third check to "The Chanler Group" in the amount of \$95,000.

**(b) Final Payments.** If the final civil penalty of \$60,000 referenced in Section 4.1 above is not waived, payments shall be delivered on or before January 1, 2014, to The Chanler Group in two checks, made payable as follows:

- (i) one check to "The Chanler Group in Trust for OEHHA" in the amount of \$45,000; and
- (ii) a second check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$15,000.

**(c) Issuance of 1099 Forms.** After the settlement funds have been transmitted to Brimer's counsel, Norpro shall issue separate 1099 forms, as follows:

- (i) one Form 1099 to the “Office of Environmental Health Hazard Assessment,” P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the full amount paid pursuant to Section 4.3(a)(i) and, if applicable, Section 4.3(b)(i) above;
- (ii) a second Form 1099 to “Russell Brimer” in the amount paid pursuant to Section 4.3(a)(ii) above and, if applicable, Section 4.3(b)(ii) above, whose address and tax identification number shall be furnished upon request; and
- (iii) a third Form 1099 to The Chanler Group (EIN: 94-3171522) in the amount paid pursuant to Section 4.3(a)(iii) above.

### **4.3 Payment Address**

All payments and tax documentation required by this Section 4 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 94710-2565

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

The undersigned represent that they are authorized to execute this Agreement on behalf of their respective Parties and to bind the Parties legally and that they have read, understood, and agree to all of the terms and conditions provided herein.

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

This 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..

### **7. ENFORCEMENT**

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, any Party may thereafter seek judicial intervention.

### **8. MODIFICATION OF AGREEMENT**

Any modification to this Agreement shall be in writing between the Parties and signed by the Parties.

**9. APPLICATION OF AGREEMENT**

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

**10. SEVERABILITY**

In the event that a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the enforceability of the remaining provisions shall not be adversely affected.

**11. GOVERNING LAW**

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

**12. NOTIFICATION REQUIREMENTS**

Any notice required or permitted hereunder shall be effective only if in writing and sent by: (a) personal delivery; (b) first-class registered or certified mail, return receipt requested; or (c) a recognized overnight courier to any Party by the other Party at the following addresses:

For Norpro:

Kirsten Miller, President  
Norpro  
2215 Merrill Creek Parkway  
Everett, WA 98203

with a copy to:

Todd O. Edmister, Esq.  
Bingham McCutchen LLP  
Three Embarcadero Center  
San Francisco, California 94111-4067


For Brimer:

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

Any Party, from time to time, may change its designee(s) for purposes of notification by providing notice of such change pursuant to this section.

**AGREED TO:**

Dated: January 15, 2013

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

**AGREED TO:**

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

By: \_\_\_\_\_  
NORPRO



Any Party, from time to time, 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

**AGREED TO:**

Dated: 1/15/13

By:   
NORPRO