

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Thomas Nelson, Inc.¹ (“Thomas Nelson”), with Brimer and Thomas Nelson individually referred to 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. Thomas Nelson 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Brimer alleges that Thomas Nelson has manufactured, distributed and/or sold in the State of California, books with vinyl/PVC covers that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 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 books with vinyl/PVC covers and vinyl-type covers containing DEHP that are manufactured, sold, or distributed for sale in California by Thomas Nelson, including, but not limited to, *The Complete Life’s Little Instruction Book*, #51999, ISBN: 978-1-5585-3490-2 (“Products”).

1.4 Notice of Violation

On or about October 26, 2012, Brimer served Thomas Nelson and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Thomas

¹ Effective May 31, 2013, Thomas Nelson, Inc. will be changing its name to HarperCollins Christian Publishers, Inc.

Nelson 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 the allegations set forth in the Notice.

1.5 No Admission

Thomas Nelson 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, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Thomas Nelson 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 Thomas Nelson of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Thomas Nelson. This section shall not, however, diminish or otherwise affect Thomas Nelson' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean May 24, 2013.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standards

"Reformulated Products" shall mean Products that contain a maximum of 1,000 parts per million DEHP content when analyzed pursuant to U.S. Environmental Protection Agency 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.

2.2 Past and Future Reformulation Steps

Thomas Nelson hereby commits that one-hundred percent (100%) of the Products that it manufactures for sale in California after the Effective Date shall qualify as Reformulated Products as defined by Section 2.1. The reformulation requirement of this Section does not

require Thomas Nelson to recall or otherwise address any inventory of Product that was manufactured, distributed, shipped or sold by Thomas Nelson prior to the Effective Date.

3. MONETARY PAYMENTS

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

Pursuant to Health & Safety Code Section 25249.7(b), Thomas Nelson shall pay \$2,000 in civil penalties. The penalty amount reflects a penalty credit of \$4,000 provided by Brimer to Thomas Nelson in exchange for its commitment to reformulate the Products and to only offer Reformulated Products in the future in California. The civil penalty shall be due on the Effective Date and shall be allocated according to Health and Safety Code section 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.

Thomas Nelson shall deliver the civil penalty in two checks made payable as follows: (a) “OEHHA” in the amount of \$1,500; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$500.

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 section 1021.5 for all work performed in this matter. Under these legal principles, Thomas Nelson shall pay \$17,000 for all fees and costs incurred investigating and bringing this matter to the attention of Thomas Nelson’s management, and negotiating a settlement in the public interest. Thomas Nelson shall deliver its payment on the Effective Date in a check payable to “The Chanler Group.”

3.3 Payment Procedures

3.3.1 Payment Addresses

(a) All payments owed to Russell Brimer and The Chanler Group pursuant to Sections 3.1 and 3.2 shall be delivered to the following address:

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

(b) All payments to OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following address:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

Thomas Nelson agrees to provide a copy of the checks paid to OEHHA by mail to The Chanler Group at the address provided in Section 3.3.1(a).

3.3.2 Required Tax Documentation

For each payment required by this Settlement Agreement, Thomas Nelson agrees to provide Brimer’s counsel with a separate 1099 form for each payee. Brimer’s counsel will provide the addresses and tax identification numbers for Russell Brimer and The Chanler Group after this Settlement Agreement has been fully executed by the Parties. For OEHHA, a completed 1099 should be provided to “Office of Environmental Health Hazard Assessment,” 1001 I Street, Sacramento, CA 95814 (EIN: 68-0284486).

4. CLAIMS COVERED AND RELEASED

4.1 Brimer’s Release of Thomas Nelson, Inc.

This Settlement Agreement is a full, final, and binding resolution between Brimer and Thomas Nelson of any violation of Proposition 65 that was or could have been asserted by Brimer, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Thomas Nelson, its parents (including HarperCollins Publishers L.L.C.), subsidiaries, affiliated entities under common ownership (including The Zondervan Corporation L.L.C.), directors, officers, employees, attorneys, agents, representatives, successors and assigns (including HarperCollins Christian Publishers, Inc.) and

each entity to whom Thomas Nelson directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on unwarned exposures to DEHP contained in Products manufactured, shipped, sold or distributed for sale by Thomas Nelson in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Brimer, on his own behalf and on behalf of 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 that he may have against Thomas Nelson and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP in Products manufactured, shipped, sold, or distributed for sale in California by Thomas Nelson prior to the Effective Date. In addition, Brimer in his individual capacity only and not in any representative capacity, expressly waives any and all rights and benefits which he now has, or in the future may have, under California Civil Code § 1542, which provides 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.

It is expressly agreed and understood that the general release by Brimer of Thomas Nelson and Releasees is a determinative consideration of Thomas Nelson’s willingness and decision to enter into this Settlement Agreement.

4.2 Thomas Nelson’ Release of Brimer

Thomas Nelson, 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 by Brimer and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products. In addition, Thomas Nelson expressly waives any and all rights and benefits which it now has, or in the future may have, under California Civil Code § 1542, which provides 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.

It is expressly agreed and understood that the general release by Thomas Nelson is a determinative consideration of Brimer's willingness and decision to enter into this Settlement Agreement.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within eighteen months of the execution of this Settlement Agreement, Thomas Nelson may request in writing that Brimer draft and file a complaint, 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 section 25249.7, or as may be otherwise allowed by law. If requested, Brimer and Thomas Nelson 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 sections 1021 and 1021.5, if so requested, Thomas Nelson agrees to reimburse Brimer and his counsel for the reasonable hourly 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, Thomas Nelson will remit payment to the address provided in section 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 Products, then Thomas Nelson 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 Thomas Nelson, Incorporated:

Mark Schoenwald, President & CEO
Thomas Nelson, Inc.
501 Nelson Place
Nashville, TN 37214

With a copy to:

Roger A. Cerda, Esq.
Alston & Bird, LLP
333 South Hope Street
Sixteenth Floor
Los Angeles, CA 90071

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 section 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:


Date: May 15, 2013

By: 

Russell Brimer

AGREED TO:

Date: 5/10/2013

By: 

Mark Schoenwald, President & CEO
Thomas Nelson, Inc.