

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Russell Brimer and United Technologies Corporation**

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and United Technologies Corporation by and on behalf of its indirect wholly-owned subsidiary UTC Fire & Security Americas Corporation, Inc. (“United Technologies”), with Brimer and United Technologies collectively referred to as the “Parties.” Brimer is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Brimer alleges that United Technologies 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 United Technologies has manufactured, imported, distributed, sold, and/or offered for sale in the State of California portable locks with vinyl/PVC shackles containing di (2-ethylhexyl) phthalate (“DEHP”), without the requisite Proposition 65 health hazard warnings. DEHP is 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 portable locks with vinyl/PVC shackles including, but not limited to, the *GE Access Point Portable KeySafe Original 3-Key Pushbutton No. 001000 (#0 90928 01000 7)*; C3/Alset II No. 000394; C3/Alset II No. 000524; C3 Mortise No. 000544; GE AccessPoint

Portable KeySafe Original 3-Key Pushbutton No. 001005; C3/Alset I Pro-Series No. 001010; C3/Alset I Pro-Series No. 001012; C3 Pushbutton Pro-Series No. 001166; C3 Pushbutton Pro-Series No. 001192; C3/G2 Clay No. 001350; C3/G2 Clay-D No. 001404; C3/G2 Black-D No. 001406; C3 Black/T3 Black No. 104104-01; and C3 Black/T3 Black No. 104114-01, C3 Black Tital 2, Brass No. 104294, C3 Black No. 001352, C3 Assorted No. 001000, C250 KeySafe Pro Bulk No. 002121; C250 KeySafe Pro Portable No. 002122; C250 KeySafe Pro No. 002123; C250 KeySafe Pro No. 002137 manufactured, imported, distributed, shipped, sold and/or offered for sale or shipment by United Technologies in the State of California, hereinafter “Products.”

#### **1.4 Notice of Violation**

On December 20, 2012, Brimer served United Technologies and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in California 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. United Technologies received the Notice on January 2, 2013.

#### **1.5 No Admission**

United Technologies denies the material, factual and legal allegations contained in Brimer’s Notice and maintains that all products that it has sold, manufactured, imported, distributed, and/or offered 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 United Technologies 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 United Technologies of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied. However, this section shall

not diminish or otherwise affect United Technologies' or Brimer'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 May 15, 2013.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulated Products**

Commencing sixty (60) days after the Effective Date and continuing thereafter, United Technologies agrees that the Products it imports, distributes, ships, sells or offers to ship for sale in California, will be "Reformulated Products." For purposes of this Settlement Agreement, Reformulated Products comply with the following content limits: DEHP in concentration less than 1,000 parts per million ("ppm") DEHP by weight in any Accessible Component (i.e. any component that may be touched or handled during a reasonably foreseeable use) 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. PAYMENT OF PENALTIES**

**3.1 Initial Civil Penalty**

In settlement of all the claims referred to in this Settlement Agreement, United Technologies shall pay an initial statutory civil penalty in the amount of \$9,000.00. The civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), 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 Russell Brimer. United Technologies shall issue two separate checks for the penalty payment: (a) one check made payable to OEHHA in the amount of \$6,750.00 representing 75% of the total penalty; and (b) one check to "The Chanler

Group in Trust for Russell Brimer” in the amount of \$2,250.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 3.3 below.

### **3.2 Final Civil Penalty**

Pursuant to Health & Safety Code § 25249.7(b), on March 1, 2014, United Technologies shall pay a final civil penalty in the amount \$20,000.00. The final civil penalty shall be waived in its entirety, if, on or before November 1, 2013, an officer of UTC Fire & Security Americas Corporation, Inc. certifies to Brimer’s counsel, in writing, that all Products sold or offered for sale by United Technologies in California after November 1, 2013, are Reformulated Products, and that United Technologies will continue to do so after the date of certification.

Unless waived, the final civil penalty shall be allocated according to Health & Safety Code § 25249.7(c)(1) and (d), with 75% of the penalty payment earmarked for OEHHA, and the remaining 25% of the penalty earmarked for Brimer. United Technologies shall issue two separate checks for the final penalty payment: (a) one check made payable to OEHHA in the amount of \$15,000.00 representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$5,000.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 3.3 below.

### **3.3 Payment Procedures**

**3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- (a) All payments owed to Brimer, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyrics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

**3.3.2 Issuance of 1099 Forms.** After each penalty payment, United Technologies shall issue separate 1099 forms for each payment to Brimer, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

4. **REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS**

The parties acknowledge that Brimer and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. United Technologies then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. In addition to civil penalties, the Parties reached an accord on the compensation due to Brimer and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure ("CCP") § 1021.5, and principles of contract law. United Technologies shall reimburse Brimer and his counsel \$32,000.00 for fees and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a settlement. United Technologies shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before ten (10) days after the Effective Date, to the following address:

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

5. **RELEASES**

5.1 **Brimer's Release of United Technologies**

This Settlement Agreement is a full, final and binding resolution between Brimer and United Technologies. In further consideration of the promises and agreements herein contained, and for the payment to be made pursuant to Sections 3 and 4 above, Brimer on behalf of himself, his past, current and future 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, 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 United Technologies, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom United Technologies directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"). This release and waiver is limited to those Claims that arise under or in relation to California Code of Civil Procedure sections 1021 and 1021.5; Proposition 65; and all claims arising from, relating to, or which could have resulted from Brimer's investigation of the Products manufactured, distributed, shipped, sold and/or offered for sale or shipment by United Technologies prior to the Effective Date, including any other statutory or common law claim, to the fullest extent that any such claims were or could have been asserted by Brimer, with respect to the Products. Compliance with the terms of this Settlement Agreement resolves any issue now, in the past, and in the future, concerning compliance by Releasees with the requirements of California Code of Civil Procedure sections 1021 and 1021.5; Proposition 65; and all other laws or regulations which could have been implicated by Brimer's investigation of the Products manufactured, distributed, shipped, sold and/or offered for sale or shipment by United Technologies prior to the Effective Date.

## **5.2 Section 1542 Waiver**

Brimer on behalf of himself, his past, current and future agents, representatives, attorneys, successors, and/or assignees, acknowledges that there is a risk that subsequent to the execution of this Agreement, facts may be discovered or claims may be suffered or incurred which are unknown or are unanticipated at the time this Agreement is executed. Brimer on behalf of himself, his past, current and future agents, representatives,

attorneys, successors, and/or assignees, acknowledges and agrees that he understands and is assuming the risk of such unknown and unanticipated facts and claims, and in connection therewith, expressly and unconditionally waives any rights or benefits arising under Section 1542 of the California Civil Code, which 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.**

By entering into this Agreement, Brimer, on behalf of himself, his past, current, and future agents, representatives, attorneys, successors, and/or assignees, certifies he is aware of the meaning of Section 1542 and intends to assume the risk of as yet unknown claims.

### **5.3 United Technologies' Release of Brimer**

United Technologies 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 by Brimer and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking enforcement of Proposition 65 in this matter, or with respect to application of Proposition 65 to the Products.

United Technologies on behalf of itself, its past, current and future agents, representatives, attorneys, successors, and/or assignees, acknowledges that there is a risk that subsequent to the execution of this Agreement, facts may be discovered or claims may be suffered or incurred which are unknown or are unanticipated at the time this Agreement is executed. United Technologies on behalf of itself, its past, current and future agents, representatives, attorneys, successors, and/or assignees, acknowledges and



agrees that they understands and are assuming the risk of such unknown and unanticipated facts and claims, and in connection therewith, expressly and unconditionally waives any rights or benefits arising under Section 1542 of the California Civil Code, which 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.**

By entering into this Agreement, United Technologies, on behalf of itself, its past, current, and future agents, representatives, attorneys, successors, and/or assignees, certifies they are aware of the meaning of Section 1542 and intends to assume the risk of as yet unknown claims.

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

Within twelve (12) months of the execution of this Settlement Agreement, United Technologies may ask Brimer, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a consent judgment, and seek the court's approval of the consent judgment pursuant to Health and Safety Code § 25249.7, or as may otherwise be allowed by law. If so requested, Brimer agrees to reasonably cooperate with United Technologies, and the Parties and their respective counsel agree to mutually employ their best efforts to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, United Technologies will reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$15,000.00 exclusive of fees and costs that may be incurred on appeal. United Technologies will

remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by United Technologies within ten days (10) after its receipt of monthly invoices from Brimer for work performed under this paragraph.

**7. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed 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 shall apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable as to the Products, then United Technologies 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 to comply with any pertinent state or federal toxic control laws.

**9. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

**10. 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:

To United Technologies:

Rick Rothman, Esq.  
Bingham McCutchen LLP  
355 S. Grand Avenue, Suite 4400  
Los Angeles, CA 90071

To 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.

**11. 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. A facsimile or pdf signature shall be as valid as the original.

**12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Brimer and his attorneys agree to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

**13. MODIFICATION**

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

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**14. AUTHORIZATION**

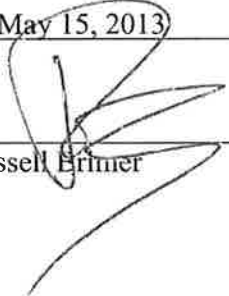
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: May 15, 2013

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

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

By: \_\_\_\_\_  
Jurgen Timperman, President, Security  
and Access Solutions  
United Technologies Corporation

**14. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

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

Date: 5/15/13

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

By:   
Jurgen Timpeiman, President, Security  
and Access Solutions  
United Technologies Corporation