

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Allstar Marketing Group, LLC (“Allstar”), with Brimer and Allstar each individually referred to as a “Party” and collectively as the “Parties.” Brimer is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Brimer alleges that Allstar 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 Allstar manufactures, sells, and/or distributes for sale in California, vinyl/PVC Car Phone Mount Suction Cups containing di(2-ethylhexyl)phthalate (“DEHP”) and Lead. DEHP and Lead are listed pursuant to Proposition 65 as chemicals known to cause birth defects or other reproductive harm. Brimer alleges that Allstar failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP and Lead from vinyl/PVC car phone mounts.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC car phone mounts containing DEHP and Lead, including, but not limited to the *GripGo Universal Car Phone Mount (Suction Cup)*, Item# GR011124 (UPC# 7 40275 01085 3), manufactured, sold or distributed for sale in California by Allstar (“Products”).

1.4 Notice of Violation

On or about January 29, 2016, Brimer served Allstar and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Allstar

violated Proposition 65 when it failed to warn its customers and consumers in California that its Products expose users to DEHP and Lead. 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

Allstar denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products subject to Mr. Brimer's Notice, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Allstar of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Allstar of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Allstar. However, this Section shall not diminish or otherwise affect Allstar'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 July 15, 2016.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

On or before July 15, 2016 and continuing thereafter, Allstar agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products". For purposes of this Settlement Agreement, "Reformulated Products" are:

- (a) Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid

substance.

AND,

- (b) Products containing no more than to 90 parts per million (“ppm”) lead when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; and (b) yield no more than 1.0 microgram (“ug”) of lead when a wipe is applied to all surfaces according to NIOSH Test Method No. 9100.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Allstar agrees to pay six thousand dollars (\$6,000.00) in civil penalties. On or before the Effective Date, Allstar shall pay the civil penalty in the amount of six thousand dollars \$6,000.00. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Brimer, and delivered to the address in Section 3.3 herein. Allstar will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of four thousand-five hundred dollars (\$4,500.00) and (b) “Russell Brimer, Client Trust Account” in the amount of one thousand-five hundred (\$1,500.00).

3.2 Attorneys’ 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, Allstar agrees to pay thirty one thousand- five hundred (\$31,500.00) to Brimer and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Allstar's management, and negotiating a settlement that provides a significant public benefit. Allstar's payment shall be due on the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

3.3 Payment Address

All payments 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 Allstar This Settlement Agreement is a full, final and binding resolution between Brimer, as an individual and not on behalf of the public, and Allstar, 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/or assignees ("Releasers"), and Releasers hereby release any such claims, against Allstar, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Allstar directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about alleged exposures to DEHP and Lead contained in Products manufactured, distributed, sold or offered for sale by Allstar in California before the date that this Settlement Agreement is fully executed by the Parties.

In further consideration of the promises and agreements herein contained, Brimer, as an individual and not on behalf of the public, on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP and Lead contained in the Products manufactured, distributed, sold and/or offered for sale by Allstar before the date that this Settlement Agreement is fully executed by the Parties. The releases provided by Brimer under this Settlement Agreement are provided solely on Brimer's behalf and are not releases on behalf of the public.

4.2 Allstar's Release of Brimer

Allstar, on its own behalf, and on behalf of 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 to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. 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.

6. 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 otherwise rendered inapplicable by reason of law generally, as to Allstar specifically as a result of a statutory exemption, or as to the Products, then Allstar may provide written notice to Brimer of any asserted change in the law, or its applicability to Allstar or the Products, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Allstar or the Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

Allstar

Scott Boilen, President
Allstar Marketing Group, LLC
2 Skyline Drive
Hawthorne, NY 10532

Donald Beshada, Esq.
BESHADA FARNESE, LLP
108 Wanaque Avenue
Pompton Lakes, NJ 07442

Brimer

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

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

8. **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.

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

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

10. MODIFICATION

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

11. 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: 6/15/2016

By:


RUSSELL BRIMER

AGREED TO:

Date: 7/13/16

By:


JENNIFER DE MARCO
GENERAL COUNSEL
ALLSTAR MARKETING GROUP, LLC