

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer, (“Brimer”) and Dicksons Inc. (Dicksons) with Brimer and Dicksons 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. Dicksons 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 Dicksons manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, vinyl/PVC key rings that contain the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and/or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are key rings made with vinyl/PVC containing DEHP, that are manufactured, sold and/or distributed for sale in California by Dicksons, including, but not limited to, *Harbor House Gifts Jesus/Hope PVC Keyring, KC-460, UPC #6 03799 39272 3* (collectively, “Products”).

### 1.4 Notice of Violation

On March 31, 2015, Brimer served Dicksons and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Dicksons violated Proposition 65 when it failed to warn its customers and consumers in

California that the Products exposes 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**

Dicksons 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, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Dicksons 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 Dicksons of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Dicksons. This Section shall not, however, diminish or otherwise affect Dicksons'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 October 15, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing on the Effective Date and continuing hereafter, Dicksons shall only purchase for sale or manufacture for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 1,000 ppm (0.1%) DEHP content in any component analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining DEHP content in a solid substance.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

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, Dicksons agrees to pay \$6,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (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. Brimer’s counsel shall be responsible for remitting Dicksons’s penalty payment(s) under this settlement to OEHHA.

**3.1.1 Initial Civil Penalty.** Within fifteen days of the Effective Date, Dicksons shall pay an initial civil penalty of \$2,000. Dicksons shall provide its payment in a single check made payable to “Russell Brimer’s Client Trust Account”, to be delivered to the address provided in section 3.3, below.

**3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation.** On November 15, 2015, Dicksons shall make a final civil penalty payment of \$4,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Brimer agrees that the final civil penalty payment shall be waived in its entirety if, no later than November 1, 2015, an officer of Dicksons provides Brimer with an original, signed written certification that all of the Products it ships for sale or distributes for sale in California as of the date of its certification are Reformulated Products, and that Dicksons will continue to offer only Reformulated Products in California in the future. The option to certify early reformulation in lieu of making the final civil penalty payment otherwise required by this Section is a material term, and time is of the essence. Dicksons shall deliver its certificate, if any, to Brimer’s counsel at the address provided in Section 3.3, below.

### **3.2 Reimbursement of Brimer's 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, within fifteen days of the Effective Date, Dicksons agrees to pay \$17,500 in the form of a check made payable to "The Chanler Group" for all fees and costs incurred investigating, bringing this matter to the attention of Dicksons's management, and negotiating a settlement in the public interest.

### **3.3 Payment Address**

All payments required by this Consent Judgment 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 Dicksons**

This Settlement Agreement is a full, final and binding resolution between Brimer, as an individual and not on behalf of the public, and Dicksons, of any violation of Proposition 65 that was or could have been asserted by Brimer on his own behalf, or on behalf of himself, his past and current agents, representatives, attorneys, successors, and assignees, against Dicksons, its parents, subsidiaries, affiliated entities under common ownership (including without limitation, Templeton Coal Company, Inc.), directors, officers, employees, attorneys, and each entity to whom Dicksons 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 alleged failure to warn about exposures to DEHP in Products sold or distributed for sale by Dicksons prior to the Effective Date.

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 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 the failure to warn about exposures to DEHP from Products sold or distributed for sale by Dicksons before the Effective Date. 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 Dicksons’s Release of Brimer**

Dicksons 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 (or those that could have been taken or 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.

#### **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 remaining enforceable provisions 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 is otherwise rendered inapplicable, by reason of law generally, or as to the Products, then Dicksons 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.

**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:

For Dicksons:

Steve Vandivier, President  
Dicksons Inc  
709 B Ave East  
Seymour IN 47274

with a copy to:

Bruce Nye, Esq.  
Adams Nye Becht, LLP  
222 Kearny St., 7<sup>th</sup> Floor  
San Francisco, CA 94108

For Brimer:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St.  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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: 10-29-15

By:   
Russell Brimer

**AGREED TO:**

Date: 11 / 20 / 15

By:   
Steve Vandivier, President  
Dicksons, Inc