

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Glenoit LLC (“Glenoit”), with Brimer and Glenoit 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 contained in consumer products. Brimer alleges that Glenoit 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 section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Brimer alleges that Glenoit manufactures, sells, and/or distributes for sale in California, vinyl/PVC napkin rings containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm. Brimer alleges that Glenoit failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from vinyl/PVC napkin rings.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC napkin rings containing DEHP including, but not limited to, the *Kemp & Beatley Napkin Ring*, *Gerber Daisy*, #300-025SM-5296/810, UPC #0 23967 02698 2, manufactured, sold or distributed for sale in California by Glenoit (collectively, the “Products”).

### 1.4 Notice of Violation

On or about June 30, 2016, Brimer served Glenoit, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Glenoit

violated Proposition 65 by failing to warn its customers and consumers in California that its 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**

Glenoit 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 Glenoit 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 Glenoit of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Glenoit. However, this Section shall not diminish or otherwise affect Glenoit'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 the date on which the parties execute this Settlement Agreement.

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

### **2.1 Reformulation Commitment**

On or before the Effective Date and continuing thereafter, Glenoit 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 Products containing DEHP in concentrations of 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.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

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, Glenoit agrees to pay a total of \$2,000 in civil penalties. 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 retained by Brimer, and delivered to the address in Section 3.3 herein. Within 5 business days of the Effective Date, Glenoit shall provide its payment as follows: (i) a check in the amount of \$1,500 payable to “OEHHA” and (ii) a check in the amount of \$500 payable to “Russell Brimer Client Trust Account.” Brimer’s counsel shall be responsible for delivering OEHHA’s portion of the penalty payments made under this Settlement Agreement.

#### **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, within 5 business days of the Effective Date, Glenoit agrees to pay \$23,000 to Brimer and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Glenoit’s management, and negotiating a settlement that provides a significant public benefit. Glenoit’s payment shall be delivered within 5 business days of the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to “The Chanler Group.”

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### **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

### **3.4 Issuance of 1099 Forms**

After the settlement funds required by Sections 3.1 and 3.2 have been transmitted to The Chanler Group at the address provided at Section 3.3 of this Settlement Agreement, Glenoit will issue three separate 1099 forms, as follows:

3.4.1 The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, PO Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,500;

3.4.2 The second 1099 shall be issued to Brimer in the amount of \$500 at the address indicated in Section 3.3; Brimer's tax identification number shall be furnished upon request; and,

3.4.3 The third 1099 shall be issued to the Chanler Group (EIN: 94-3171522) in the amount of \$23,000 at the address indicated in Section 3.3.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Brimer's Release of Glenoit**

This Settlement Agreement is a full, final and binding resolution between Brimer, as an individual, and not on behalf of the public, and Glenoit, of any violation of Proposition 65 that was or could have been asserted by Brimer on behalf of himself, his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, and/or assignees and heirs, against Glenoit, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom

Glenoit directly or indirectly distributes, ships, or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Stein Mart, and their owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Releasees”), for any and all claims based on the failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Glenoit in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Brimer as an individual and not on behalf of the public, on behalf of himself, his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, successors, and/or assignees, hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Brimer may have, 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 exclusively, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 with respect to DEHP in the Products, as alleged in the Notice, manufactured, distributed, sold and/or offered for sale by Glenoit, before the Effective Date (collectively “claims”), against Glenoit and Releasees.

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 in California.

#### **4.2 Glenoit’s Release of Brimer**

Glenoit, 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 articulated in the Notice, 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 Glenoit specifically as a result of a statutory exemption, or as to the Products, then Glenoit may provide written notice to Brimer of any asserted change in the law, or its applicability to Glenoit or the Products, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Glenoit 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:

**Glenoit**

Joe Granger, Chief Executive Officer  
Glenoit LLC  
1500 North Carolina Street  
Goldsboro, NC 27530

Robert J. Parks, Esq.  
Buchanan Ingersoll & Rooney LLP  
One America Plaza  
600 West Broadway, Suite 1100  
San Diego, CA 92101

**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: 3/15/2017

By: 

RUSSELL BRIMER

**AGREED TO:**

Date: 3/28/17

By: 

Joe Granger, C.E.O.  
GLENOIT LLC