

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Orgill, Inc. (“Orgill”), with Brimer and Orgill 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. Orgill 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 § 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

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

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC-coated padlocks containing DEHP that are manufactured, sold or distributed for sale in California by Orgill, including, but not limited to, the *MintCraft Laminated Steel Padlock with Security Cable*, SKU #250-2151, UPC #0 45734 99295 5 (“Products”).

1.4 Notice of Violation

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

that the vinyl/PVC coating on its padlocks 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

Orgill 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 Orgill 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 Orgill of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Orgill. This Section shall not, however, diminish or otherwise affect Orgill'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 January 22, 2016.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on the Effective Date and continuing thereafter, Orgill agrees to only manufacture for sale or purchase for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products with a maximum of 1,000 parts per million (0.1%) DEHP content in each component analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state 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, Orgill agrees to pay \$8,000 in civil penalties. Each 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. Brimer's counsel shall be responsible for delivering OEHHA's portion of any civil penalty payment(s) made under this Settlement Agreement to OEHHA.

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, Orgill shall pay an initial civil penalty of \$2,000. Orgill agrees to provide its payment in a single check made payable to "Russell Brimer Client Trust Account."

3.1.2 Final Civil Penalty. On April 1, 2016, Orgill shall make a final civil penalty payment of \$6,000. The final civil penalty shall be waived in its entirety if, no later than March 15, 2016, an officer of Orgill provides Brimer's counsel with a signed declaration certifying that, as of the date of its declaration, all of the Products that Orgill ships or distributes for sale in California are Reformulated Products, and that Orgill will continue to only offer Reformulated Products in California in the future. The option to provide a declaration in lieu of making the final civil penalty payment is a material term, and time is of the essence.

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 five days of the Effective Date, Orgill agrees to pay \$22,000 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 Orgill's management, and negotiating a settlement in the public interest.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to:

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 Orgill

This Settlement Agreement is a full, final and binding resolution between Brimer and Orgill, of any violation of Proposition 65 that was or could have been asserted by Brimer on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, against Orgill, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Orgill directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged failure to warn about exposures to DEHP from Products manufactured, distributed, sold or offered for sale by Orgill in California before 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 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 exposures to DEHP from Products manufactured, distributed, sold and/or offered for sale by Orgill before the Effective Date.

The releases provided by Brimer under this Settlement Agreement are provided solely on Brimer's own behalf and not on behalf of the public in California.

4.2 Orgill's Release of Brimer

Orgill, 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, 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 provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining 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 Orgill 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 Orgill:

Alan Crockett, Vice President
Orgill, Inc.
3742 Tyndale Drive
Memphis, TN 38125

with a copy to:

Bruce Nye, Esq.
Adams | Nye | Becht LLP
222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521

For Brimer:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
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.

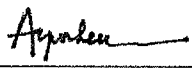
AGREED TO:

AGREED TO:

Date: _____

Date: 1/22/16

By: _____
RUSSELL BRIMER

By: 
ORGILL, INC.

11. **AUTHORIZATION**

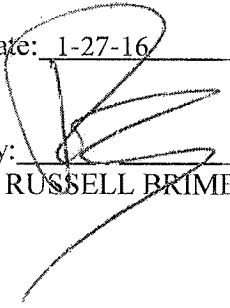
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 1-27-16

Date: _____

By:  _____
RUSSELL BRIMER

By: _____
ORGILL, INC.