

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and Privateer Press, Inc.

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Privateer Press, Inc. (“Privateer”), with Brimer and Privateer collectively referred to as the “Parties.” Brimer is an individual residing in 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. Privateer 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”).

1.1 General Allegations

Brimer alleges that Privateer has manufactured, imported, sold and/or distributed for sale in California, vinyl/PVC tool grips containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

1.2 Product Description

The products that are covered by this Settlement Agreement are defined as vinyl/PVC tool grips including, but not limited to those in, *Formula P3 File Set, PIP 93101, UPC #875582003776*, that are manufactured, imported, sold and/or distributed for sale in California by Privateer (hereinafter the “Products”). Privateer has in the past manufactured, imported, acquired, sold and/or distributed for sale in California a variety of additional products which may have contained DEHP or other phthalate chemicals listed under Proposition 65, including (a) WarMachine and Hordes miniatures, (b) other items contained in or used with its miniature and game sets, and (c) accessories to or associated with its miniatures and game sets (“Additional Products”).

1.3 Notice of Violation

On March 31, 2015, Brimer served Privateer and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") that provided the recipients with notice of alleged violations of Proposition 65 based on Privateer's alleged failure to warn its customers, consumers, and other individuals that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.4 No Admission

Privateer denies the material factual and legal allegations contained in Brimer's Notice and maintains that all products that it has manufactured, imported, acquired, distributed, and/or sold in California, including the Products and Additional Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Privateer 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 Privateer of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Privateer's obligations, responsibilities, and duties under this Settlement Agreement.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 31, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standard

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

2.2 Reformulation and Interim Warning Commitments

As of the Effective Date, all Products and Additional Products manufactured, imported, or acquired for sale by Privateer that could potentially be sold in the State of California shall be products that qualify as Reformulated Products as defined in Section 2.1 above. Unless it restricts their authorized sale from reaching consumers located in the State of California, Privateer shall, within 60 days of the Effective Date, attempt to label all previously-acquired Products and Additional Products remaining in its inventory for which it does not have good faith reason to believe are Reformulated Products with the following Proposition 65 warning by means of affixing a warning to the packaging of, or, if no packaging exists, directly on, each non-reformulated Product and Additional Product sold in California that states:

WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer, and birth defects and other reproductive harm.¹

Any warning issued pursuant to this Section 2.2 shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase.

2.3 Representations and Warranties

Based on its receipt of Brimer's Notice, Privateer represents and warrants that it has extended its compliance program to limit DEHP, butyl benzyl phthalate ("BBP"), di-n-butyl phthalate ("DBP"), di-isodecyl phthalate ("DIDP"), and diisononyl phthalate ("DINP") in components of the Products and Additional Products that may be handled, touched, or mouthed to concentrations of less than 0.1 percent (1,000 parts per million) each when analyzed pursuant

¹ Privateer may substitute the word "chemicals" for "DEHP, a chemical" where it has obtained information indicating that a Product or Additional Product contains DEHP in amount that meets the Reformulation Standard set forth in Section 2.1 above, but has reason to believe the Product or Additional Product contains other Proposition 65-listed chemicals at levels at which a warning is likely to be required if the Product or Additional Product is sold in California. Privateer may also add the term "and other chemicals" to the above warning statement where it has reason to believe the Product or Additional Product contains other Proposition 65-listed chemicals.

to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the phthalate content in a solid substance, including in circumstances where the Products and Additional Products are not subject to the federal Consumer Product Safety Improvement Act.²

3. MONETARY PAYMENTS

3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(b)

In settlement of all the matters referred to in this Settlement Agreement, Privateer has been assessed a total of \$5,400 in civil penalties.³ In accordance with California Health & Safety Code § 25249.12(c)(1) and (d), on or before August 14, 2015, Privateer shall provide its payment in two checks: (a) one check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$4,050; and (b) the other check made payable to “The Chanler Group Trust for Russell Brimer” in the amount of \$1,350. Separate 1099s shall be issued for the above payments as follows: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); (b) Russell Brimer, whose information shall be provided by email or other means within five (5) calendar days of Privateer’s execution and delivery of this agreement to Brimer’s counsel. All penalty payments shall be delivered to the address listed in Section 3.3 below.

3.2 Reimbursement of 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 this fee reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Privateer expressed a desire to resolve the fee and cost issue. The parties then attempted to (and did) reach an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5

² DEHP, BBP, DBP, DIDP, and DINP are hereinafter collectively referred to herein as the “Listed Chemicals.”

³ A credit of \$5,000 was extended to Privateer in light of its extended reformulation effort and the representations and warranties Privateer has provided in Section 2.3 above.

for all work performed through the mutual execution of this agreement. Privateer shall pay \$22,700 for fees and costs incurred as a result of investigating, bringing this matter to Privateer's attention, and negotiating a settlement in the public interest. Brimer's counsel has agreed to reduce the amount due under this paragraph based, in part, on Privateer's Reformulation Commitment as set forth in Section 2.2 above and the representations and warranties Privateer has given in Section 2.3 above. Privateer shall make the check payable to "The Chanler Group" and issue a separate 1099 for it using EIN: 94-3171522. Privateer shall also deliver this payment on or before August 14, 2015, to the address listed in Section 3.3.1(a) below.

3.3 Payment Procedures

3.3.1 Issuance of Payments

All payments owed pursuant to Sections 3.1 and 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

4. CLAIMS COVERED AND RELEASED

4.1 Brimer's Release of Privateer

This Settlement Agreement is a full, final and binding resolution between Brimer and Privateer of any violation of Proposition 65 that was or could have been asserted by Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, against Privateer, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Privateer directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, imported, distributed, sold or offered for sale by Privateer in California before the Effective Date. This release is provided in Brimer's individual capacity and is *not* a release on

behalf of the public.

In further consideration of and reliance on the Reformulation and Warning Commitments set forth in Section 2.2 above and the representations and warranties provided by Privateer in Section 2.3 above, Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all of his rights 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 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 -- limited to and arising under Proposition 65 with respect to Listed Chemicals in the Products and Additional Products manufactured, imported or acquired by Privateer before the Effective Date. This release is also provided in Brimer's individual capacity and is *not* a release on behalf of the public.

4.2 Privateer's Release of Brimer

Privateer, 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 (or those that could have been taken or 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 or Additional Products.

5. SEVERABILITY

If any of the provisions of this Settlement Agreement are held 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. 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 or are no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Products, then Privateer shall 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 and Additional Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Privateer from any obligation to comply with any pertinent state or federal laws.

7. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the other party at the following addresses:

To Defendant Privateer :

Matt Wilson
Privateer Press, Inc.
1705 136th Place, NE, #120
Bellevue, WA 98005
with a copy to:
Robert Falk
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

To Plaintiff Russell 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.

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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.

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 & Safety Code section 25249.7(f).

10. **MODIFICATION**

This Settlement Agreement may be modified only by a 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: July 22, 2015

Date: July 22, 2015

By: 

Russell Brimer

By: 

Matt Wilson, CCO and Principal
Privateer Press, Inc.