

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Rolf C. Hagen (USA) Corp. (“Hagen”), with Brimer and Hagen 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. Hagen 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Brimer alleges that Hagen sells and distributes for sale in California, Vinyl/PVC Tie-Out Cables (“Tie-Out Cables”) 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 Hagen failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Tie-Out Cables.

### 1.3 Product Description

The products covered by this Settlement Agreement are Tie-Out Cables containing DEHP that are manufactured, sold or distributed for sale in California by Hagen, including, but not limited to, the Tie-Out Cables offered in connection with the *Dog It Vinyl-Coated Tie-Out Cable, # 71790, UPC #0 22517 71790 5* (“Products”).

### 1.4 Notice of Violation

On September 7, 2016, Brimer served Hagen and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Hagen violated

Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Products. 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**

Hagen 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 Hagen 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 Hagen of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Hagen. This Section shall not, however, diminish or otherwise affect Hagen'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 February 24, 2017.

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

### **2.1 Reformulation Standard**


For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP 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. Commencing on the Effective Date and continuing thereafter, Hagen shall only manufacture, distribute, ship, sell, or offer to ship for sale in California Products that are Reformulated Products, or

Products that comply with the warning requirements set forth below in Section 2.2.

Hagen and any downstream entities shall have no obligation to reformulate (pursuant to Section 2.1) or label or re-label (pursuant to Section 2.2 below) Products that entered the stream of commerce prior to the Effective Date.

**2.2 Warnings Required:**

Commencing on the Effective Date, Hagen shall provide clear and reasonable warnings as set forth in this section for all Products sold in California that do not qualify as Reformulated Products. Each warning 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 or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Settlement Agreement, a clear and reasonable warning satisfying these criteria shall consist of a warning affixed directly to the packaging, labeling, or directly on each Product provided for sale in California that states:

 **WARNING:** This product can expose you to chemicals, including DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

OR

**WARNING:** This product contains a chemical known to the state of California to cause cancer, and birth defects, and other reproductive harms.

### **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, Hagen agrees to pay \$5,000.00 in civil penalties. On or before February 24, 2017, Hagen shall pay the civil penalty in the amount of \$5,000.00. 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. Hagen will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,750.00 and (b) “Russell Brimer, Client Trust Account” in the amount of \$1,250.00. Brimer’s counsel will deliver OEHHA’s portion of the penalty paid under this Settlement Agreement.

#### **3.2 Attorneys’ 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Hagen expressed a desire to resolve Brimer’s 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, on or before the February 24, 2017, Hagen agrees to pay \$26,000.00 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 Hagen’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 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 Hagen**

This Settlement Agreement is a full, final, and binding resolution between Brimer in his individual capacity, not on behalf of the public in California and Hagen, 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 assignees, against Hagen, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Hagen 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 or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by Hagen in California before the Effective Date.

In further consideration of the promises and agreements herein, Brimer, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, not on behalf of the public in California 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, expenses, 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 Hagen 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 Hagen's Release of Brimer**

Hagen, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and 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 deemed 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 Hagen may provide written notice to Brimer of any asserted change in the law, and shall have no further injunctive 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 Hagen:

For Brimer:

Rolf Hagen, Jr., President  
Rolf C. Hagen (USA) Corp.  
305 Forbes Boulevard  
Mansfield, MA 02048

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**

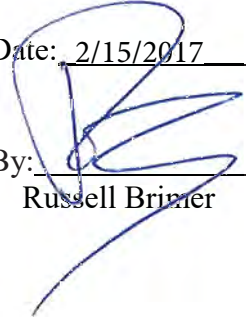
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

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Date: 2/15/2017

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Russell Brimer

By: \_\_\_\_\_  
Rolf Hagen, Jr.  
ROLF C. HAGEN (USA) CORP.

For Hagen:

Rolf Hagen, Jr., President  
Rolf C. Hagen (USA) Corp.  
305 Forbes Boulevard  
Mansfield, MA 02048

For Brimer:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
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**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: FEBRUARY 10<sup>th</sup> 2017

By: \_\_\_\_\_

Russell Brimer

By:  \_\_\_\_\_

Rolf Hagen, Jr.  
ROLF C. HAGEN (USA) CORP.