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Clifford A. Chanler, State Bar No. 135534  
Josh Voorhees, State Bar No. 241436  
Troy C. Bailey, State Bar No. 277424  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile:(510) 848-8118

Attorneys for Plaintiff  
RUSSELL BRIMER

**FILED**  
San Francisco County Superior Court

AUG 22 2012

CLERK OF THE COURT  
BY: [Signature]  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,  
Plaintiff,  
v.  
PROVO CRAFT & NOVELTY, INC.; *et al.*,  
Defendants.

Case No. CGC-11-508609  
<sup>61</sup>  
~~PROPOSED~~ ORDER APPROVING  
PROPOSITION 65 "SETTLEMENT  
PURSUANT TO C.C.P. SECTION  
664.6"  
Date: August 22, 2012  
Time: 9:00 A.M.  
Dept. 608  
Judge: Hon. Curtis E.A. Karnow

1 Plaintiff, Russell Brimer, and defendant, Provo Craft & Novelty, Inc., have agreed  
2 through their respective counsel that the "Settlement Pursuant C.C.P. Section 664.6" be entered  
3 in this Proposition 65 action pursuant to the terms of the settlement agreement executed by the  
4 parties and attached hereto as Exhibit 1, and plaintiff has moved this Court for judicial approval  
5 of the parties' settlement. After consideration of the papers submitted and the arguments  
6 presented, the Court finds that the settlement set forth in the Settlement Pursuant to C.C.P.  
7 Section 664.6 meets the criteria established by Health & Safety Code § 25249.7(f)(4) in that:

- 8 1. the injunctive relief required by the settlement agreement complies with  
9 Proposition 65;
- 10 2. the reimbursement of attorneys' fees and costs pursuant to the settlement  
11 agreement is reasonable under California law; and
- 12 3. based on the criteria set forth in Health & Safety Code § 25249.7(b)(2), the civil  
13 penalty required by the settlement agreement is reasonable.

14  
15 Accordingly, Plaintiff's motion for approval of the settlement is GRANTED.

16  
17 **IT IS SO ORDERED.**

18  
19 Dated: 22 August 2012

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
**CURTIS E.A. KARNOW**

## **Exhibit 1**

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A Professional Corporation  
San Francisco*

1 THOMAS H. CLARKE, JR. (SBN 47592)  
ADRIAN DRISCOLL (SBN 95468)  
2 TERRY A. ANASTIASSIOU (SBN 157996)  
ROPER, MAJESKI, KOHN & BENTLEY  
3 201 Spear Street, Suite 1000  
San Francisco, CA 94105-1667  
4 Telephone: (415) 543-4800  
Facsimile: (415) 972-6301  
5 Email: tclarke@rmkb.com

6 Attorneys for Defendant  
PROVO CRAFT & NOVELTY, INC.

7 CLIFFORD A. CHANLER (SBN 135534)  
JOSH VOORHEES (SBN 241436)  
8 THE CHANLER GROUP  
81 Throckmorton Ave., Suite 203  
9 Mill Valley, CA 94941  
10 Telephone: (415) 388-1128  
Facsimile: (415) 388-1135  
11 E-Mail: josh@chanler.com

12 Attorneys for Plaintiff  
RUSSELL BRIMER

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SAN FRANCISCO

15  
16 RUSSELL BRIMER,

17 Plaintiff,

18 v.

19 PROVO CRAFT & NOVELTY, INC.; and  
DOES 1 through 150, inclusive,

20 Defendant.  
21  
22

CASE NO. CGC-11-508609

SETTLEMENT PURSUANT TO C.C.P.  
SECTION 664.6

23 The Parties have agreed to settle this lawsuit pursuant to C.C.P. Section 664.6 on the  
24 terms and conditions noted hereinafter.

25 1. This settlement is made pursuant to C.C.P. § 664.6. The court shall retain jurisdiction  
26 over the parties to enforce the settlement until performance in full of the terms of the settlement.  
27 Plaintiff Russell Brimer ("Brimer") and Defendant Provo Craft & Novelty, Inc. ("Provo Craft")  
28 (collectively Brimer and Provo Craft shall be referred to as the "Parties"), consent to the

1 jurisdiction and venue of the San Francisco County Superior Court.

2 2. Brimer brought this lawsuit in the public interest, and hereby warrants and represents  
3 that he has the authority to bind the plaintiff to this settlement and to enter into the release noted  
4 herein in the public interest.

5 3. Donald Olsen, General Counsel, Provo Craft & Novelty, Inc., hereby warrants and  
6 represents that he has the authority to bind Provo Craft to this settlement.

7 4. On or about October 29, 2010, Brimer served Provo Craft and various public  
8 enforcement agencies with a 60-Day Notice of Violation ("Notice") alleging a violation of  
9 California Health & Safety Code § 25249.6 regarding storage binders with storage pages. The  
10 listed chemical at issue was lead. No public enforcer has diligently prosecuted the allegations set  
11 forth in the Notice. A copy of this Notice is attached hereto as Exhibit "A."

12 5. On or about September 1, 2011, Brimer served Provo Craft and various public  
13 enforcement agencies with a Supplemental 60-Day Notice of Violation ("Supplemental Notice")  
14 alleging a violation of California Health & Safety Code § 25249.6 regarding the same storage  
15 binders with storage pages noted in Para. 4, herein. The listed chemical at issue was the phthalate  
16 DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Supplemental  
17 Notice. A copy of this Supplemental Notice is attached hereto as Exhibit "B."

18 6. On or about November 17, 2011, Brimer served Provo Craft and various public  
19 enforcement agencies with a Second Supplemental 60-Day Notice of Violation ("Second  
20 Supplemental Notice") alleging a violation of California Health & Safety Code § 25249.6  
21 regarding the aforementioned storage binders and additionally binder inserts/pages, shoulder  
22 bags, and tote bags with keychains. The listed chemicals were either lead or DEHP, or both. No  
23 public enforcer has diligently prosecuted the allegations set forth in the Second Supplemental  
24 Notice. A copy of this Second Supplemental Notice is attached hereto as Exhibit "C."

25 7. The Notice, the Supplemental Notice, and the Second Supplemental Notice shall be  
26 collectively referred to as the "NOTICE." The specific items set forth in the NOTICE are listed  
27 in Paragraph 11 herein.

28 8. On or about February 28, 2011, a complaint was filed in the Superior Court in and for

1 the County of San Francisco entitled Brimer v. Provo Craft et al, Case No. CGC-11-508609,  
2 regarding the product and violations stated in the Notice.

3 9. On or about December 9, 2011, a complaint in the Superior Court in and for the  
4 County of San Francisco entitled Brimer v. Provo Craft et al, Case No. CGC-11-516509,  
5 regarding the product and violations stated in the Supplemental Notice. This complaint was  
6 amended on or about Feb. 10, 2012, and addressed matters set forth in the Second Supplemental  
7 Notice.

8 10. Brimer and Provo Craft have agreed to settle this case and Case No. CGC-11-516509  
9 in order to avoid the cost and uncertainty of litigation. The case denominated CGC-11-508609  
10 and CGC-11-516509 shall collectively be referred to as the "CASE."

11 11. The products addressed in the NOTICE and the CASE (hereinafter the "Products At  
12 Issue") are:

13 The Cuttlebug storage binder and the Cuttlebug storage binder with page insert  
14 (aka Cuttlebug Die & Embossing Folder Storage), #37-1575 (#0 93573 41575 3)<sup>1</sup>;  
15 Cuttlebug A2 Binder Insert, #37-1576 (#0 93573 41576 0);  
16 Cuttlebug Tote, #2000970 (#0 93573 58871 6);  
17 Cricut Shoulder Bag, # 29-0692 (#0 93573 106927); and  
18 Cuttlebug 2x2 Binder Insert, #37-1577 (#0 93573 41577 7).

19 12. Brimer asserts and alleges violations of Proposition 65 as set forth in the NOTICE  
20 and the CASE. Defendant Provo Craft denies that it has any liability for the Products At Issue as  
21 asserted in the CASE. Provo Craft further denies the material, factual, and legal allegations  
22 contained in the NOTICE and the CASE, and maintains that all products it has sold, imported  
23 and/or distributed in California, and all Provo Craft products manufactured, imported, sold, or  
24 distributed by others, including the Products At Issue, have been and are in compliance with all  
25 laws, including but not limited to Proposition 65. Nothing herein shall be construed as an  
26 admission by Provo Craft of any fact, finding, issue of law, or violation of law, nor shall  
27

28 <sup>1</sup> Erroneously identified in San Francisco County Superior Court Case No. CGC-11-516509 as  
#37-1575 (#0 93573 41575 7).

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1 compliance with this settlement constitute or be construed as an admission by Provo Craft of any  
2 fact, finding, conclusion, issue of law, or violation of law.

3 13. Except as noted in paragraphs 13.1 and 13.2, Provo Craft agrees that as of the date  
4 the Court approves this settlement it shall not itself sell or itself distribute the Products At Issue in  
5 California.

6 13.1 Brimer and Provo Craft stipulate that the Cricuit Shoulder Bag, #29-0692 (#0 93573  
7 10692 7) complies with Proposition 65 in terms of the listed chemicals DEHP and lead, and as  
8 such this Product At Issue may be distributed and sold in California.

9 13.2 Brimer and Provo Craft further stipulate that Products At Issue, other than the  
10 Cricuit Shoulder Bag, whose sale and distribution is addressed in Section 13.1, that are no longer  
11 in the possession of Provo Craft as of the date the Court approves this settlement are subject to  
12 the releases contained herein and future sales of these released Products At Issue by unaffiliated  
13 third-parties shall not be separately actionable in another case brought pursuant to Section  
14 25249.7(d) of the Health and Safety Code alleging a failure to warn for lead and DEHP under  
15 Proposition 65.

16 14. Provo Craft agrees to pay a civil penalty of \$15,000, to be apportioned in accordance  
17 with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these  
18 funds earmarked for the Office of Environmental Health Hazard Assessment ("OEHHA") and the  
19 remaining 25% of these monies earmarked for plaintiff Brimer.

20 15. Provo Craft agrees to reimburse Brimer's counsel, pursuant to C.C.P. § 1021.5, a total  
21 of \$55,000 for fees and costs incurred as a result of this litigation. This figure includes those  
22 future fees and costs to be incurred in seeking judicial approval of this settlement as well as any  
23 other legal work performed after the execution of this settlement which is incurred in an effort to  
24 obtain finality of the case.

25 16. Provo Craft shall convey those payments noted in Paragraphs 14 and 15 herein within  
26 five calendar days of receipt of notification from plaintiff that the settlement has been approved  
27 by the Court and that no entity has given formal or informal notice within such five-day period  
28 that it intends to appeal the approval of the settlement by the Court. Upon receipt of the payments

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1 noted in Paragraphs 14 and 15 herein, Brimer shall dismiss the CASE with prejudice. Brimer  
2 shall keep Provo Craft fully informed of any scheduled date(s) for hearing on a motion for  
3 judicial approval of the settlement (or an ex parte motion to shorten time for hearing a motion for  
4 judicial approval of the settlement) in order to allow Provo Craft to plan payment in the normal  
5 course of business operations.

6 17. Payments.

7 A. All payments noted in Paragraphs 14 and 15 shall be delivered to The Chanler Group  
8 at the following address:

9 The Chanler Group  
10 Attn: Proposition 65 Controller  
2560 Ninth Street  
11 Parker Plaza, Suite 214  
Berkeley, CA 94710

12 B. After this settlement has been approved and the settlement funds required by  
13 Paragraphs 14 and 15 have been transmitted to The Chanler Group, Provo Craft shall issue  
14 three separate 1099 forms, as follows:

- 15 i. The first 1099 shall be issued to the OEHHA, P.O. Box 4010,  
16 Sacramento, CA 95814 (EIN: 68-0284486) in the amount of  
17 \$11,250;
- 18 ii. The second 1099 shall be issued to Russell Brimer in the amount of  
19 \$3,750; Brimer's address and tax identification number shall be  
20 furnished to Provo Craft upon request; and,
- 21 iii. The third 1099 shall be issued to The Chanler Group (EIN: 94-  
22 3171522) at the address noted in Para. 28 herein in the amount of  
23 \$55,000.

24 18. Brimer, suing in the public interest, hereby releases Provo Craft; all entities that  
25 supplied or distributed the Products At Issue to Provo Craft; all entities that manufactured the  
26 Products At Issue that were directly or indirectly supplied to Provo Craft; all distributors and  
27 retailers of the Products At Issue, including, but not limited to, Wal-Mart Stores, Inc.;

28 Amazon.com, Inc.; Hancock Fabrics, Inc.; Kmart Corporation; Scrapbook Island; Sears Holding



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1 Corporation; Notions Marketing Corp.; Ensign Group International; and, the affiliates and  
2 subsidiaries of each of these aforementioned entities; all entities served with a 60-day notice, and, the  
3 divisions, successors, subsidiaries, parent corporations, related entities, affiliates, agents,  
4 contractors, experts, consultants, counsel, service providers, officers, directors, and employees of  
5 Provo Craft & Novelty, Inc., Wal-Mart Stores, Inc.; Amazon.com, Inc.; Hancock Fabrics, Inc.;  
6 Kmart Corporation; Scrapbook Island; Sears Holding Corporation, Notions Marketing Corp.,  
7 Ensign Group International; and, the aforementioned entities described or named in this Para. 18  
8 (collectively, all of these entities are referred to herein as the "DEFENDANT"), of any liability  
9 whatsoever under Proposition 65 related to the Products At Issue and the alleged failure to warn  
10 California consumers of an alleged exposure to lead or to DEHP as alleged in the NOTICE from  
11 any of the Products At Issue sold in California on or before the date the Court approves this  
12 settlement or pursuant to 13.2.

13 19. Additionally, Brimer in his individual capacity and *not* in his representative capacity,  
14 hereby waives any and all rights and benefits which he now has, or in the future may have,  
15 conferred upon him with respect to any and all legal or equitable actions that arise from or are  
16 related to Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco Superior Court, Docket No.  
17 CGC-11-508609 or Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco County Superior  
18 Court Case No. CGC-11-516509, the Products At Issue, or by virtue of the provisions of Section  
19 1542 of the California Civil Code, which provides as follows:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
21 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
22 EXIST IN HIS OR HER FAVOR AT THE TIME OF  
23 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR  
24 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
25 SETTLEMENT WITH THE DEBTOR.

24 Brimer understands and acknowledges the significance and consequence of this waiver  
25 pursuant to California Civil Code Section 1542, and understands and acknowledges that the  
26 waiver applies to any and all legal or equitable actions that arise from or are related directly or  
27 indirectly, in whole or in part, to the Products At Issue, Brimer v. Provo Craft & Novelty, Inc., et  
28 al, San Francisco Superior Court, Docket No. CGC-11-508609, or Brimer v. Provo Craft &

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1 Novelty, Inc., et al, San Francisco County Superior Court Case No. CGC-11-516509, statements  
2 made regarding Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco Superior Court,  
3 Docket No. CGC-11-508609 or Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco  
4 County Superior Court Case No. CGC-11-516509, acts and omissions related to investigating  
5 Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco Superior Court, Docket No. CGC-11-  
6 508609 or Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco County Superior Court  
7 Case No. CGC-11-516509, and the underlying facts of the lawsuit or claims made in Brimer v.  
8 Provo Craft & Novelty, Inc., et al, San Francisco Superior Court, Docket No. CGC-11-508609 or  
9 Brimer v. Provo Craft & Novelty, Inc., et al., San Francisco County Superior Court Case No.  
10 CGC-11-516509. Furthermore, Brimer acknowledges that he intends these consequences for any  
11 such claims related to the Products At Issue which may exist as of the date of this release but  
12 which Brimer does not know exist, and which, if known, would materially affect his decision to  
13 enter into this Agreement, regardless of whether the lack of knowledge is the result of ignorance,  
14 oversight, error, negligence or any other cause. Brimer further waives all rights to institute any  
15 form of legal or equitable action or defense (including without limit contribution, indemnity, set-  
16 off and by right of subrogation) against the DEFENDANT for any and all acts or omissions or  
17 statements made or activities directed to be undertaken or activities that were undertaken by  
18 DEFENDANT in the course of those lawsuits known as Brimer v. Provo Craft & Novelty, Inc., et  
19 al, San Francisco Superior Court, Docket No. CGC-11-508609; and Brimer v. Provo Craft &  
20 Novelty, Inc., et al, San Francisco County Superior Court Case No. CGC-11-516509,

21 20. Provo Craft , on behalf of itself, its past and current agents, representatives, attorneys,  
22 successors, and/or assignees, hereby waives any and all claims against Brimer, his attorneys and  
23 other representatives, for any and all actions taken or statements made (or those that could have  
24 been taken or made) by Brimer and his attorneys and other representatives, whether in the course  
25 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter  
26 with respect to the Products At Issue.

27 21. The Parties agree, understand, and acknowledge that this settlement represents a  
28 compromise of this action, and the release of claims as set forth herein, and neither the fact nor

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1 the terms of this settlement is to be construed as an admission of liability or wrongdoing on the  
2 part of the Parties.

3 22. Each of the Parties acknowledges that they had the right and ability to consultation  
4 with and the advice of counsel of their choice and each voluntarily has entered into this  
5 settlement.

6 23. Except to the extent otherwise noted, each of the Parties shall bear its own costs and  
7 fees.

8 24. This settlement may be modified only: (1) by written agreement of the Parties and  
9 upon entry of a modified settlement by the Court thereon; or (2) upon a successful noticed motion  
10 of any Party and entry of a modified settlement by the Court.

11 25. Unless specified herein, all correspondence and notices required to be provided  
12 pursuant to this settlement shall be in writing and personally delivered or sent by: (i) first-class  
13 registered or certified mail with a return receipt requested; or (ii) overnight courier to the  
14 following addresses:

15 **To Provo Craft & Novelty, Inc.:**

16 Provo Craft & Novelty, Inc.  
17 Attn.: Don Olsen, General Counsel  
18 10876 South River Front Pkwy, Ste. 600  
19 South Jordan, UT 84095-5929

15 **To Brimer:**

16 Proposition 65 Coordinator  
17 The Chanler Group  
18 2560 Ninth Street  
19 Parker Plaza, Ste. 214  
20 Berkeley, CA 94710-2565

19 **With a copy to:**

20 Thomas H. Clarke, Jr.  
21 Ropers, Majeski, Kohn & Bentley  
22 201 Spear St., Suite. 1000  
23 San Francisco, CA 94105-1667

23 For all notices and correspondence required to be provided pursuant to this settlement in  
24 writing, the Parties shall also send a courtesy notice by electronic mail to counsel with the  
25 correspondence or notice attached thereto. The provision of such courtesy notice shall not lessen,  
26 diminish, or void the requirement noted herein regarding how actual notices and correspondence  
27 are to be sent. Further, any party, from time to time, may specify in writing to the other party a  
28 change of address to which all notices and other communications shall be sent.

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1           26. The Parties agree that pending approval of this settlement agreement by the Superior  
2 Court, no responsive pleading is required of any defendant named in San Francisco County  
3 Superior Court Case No. CGC-11-516509.

4           27. Brimer has sent trial subpoenas (with document production) to various individuals  
5 and entities requiring their appearance at the trial of San Francisco County Superior Court Case  
6 No. CGC-11-508609. Subsequent to sending the subpoenas, Brimer agreed to modify the  
7 subpoenas so that they were converted to subpoenas duces tecum only, and that any person or  
8 entity served would have 14 days notice of the requirement for document production. As part of  
9 this settlement herein, the Parties agree that Brimer shall notify the persons and entities subject to  
10 the subpoenas, and inform them that the subpoenas are being withdrawn by Brimer and thus  
11 rendered null and void. Provo Craft & Novelty, Inc. shall receive a draft copy of the letter  
12 withdrawing the subpoenas and shall have five days upon receipt to comment upon its language.  
13 The Parties agree to use good faith in resolving any disagreement regarding the wording of such  
14 letter. The Parties agree that the withdrawal of the subpoenas is a term and condition of the  
15 settlement noted herein.

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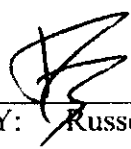
28           28. As discussed in paragraphs 4-7, above, Brimer served sixty-day notices to various

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persons and entities in connection with the Products at Issue. The Parties agree that Provo Craft shall notify the persons and entities subject to these sixty-day notices, that the allegations in the NOTICE have been resolved by this settlement and that each is a party to the release contained herein. Brimer shall, consistent to with Code and Regulations, report this settlement on the Attorney General's website so that there is a public record of this settlement, which resolves all outstanding claims with respect to the NOTICE.

Dated: 8.13.12

  
BY: Russell Brimer, Plaintiff

Dated:

FOR: Provo Craft & Novelty, Inc., Defendant  
BY: Donald Olsen  
ITS: General Counsel

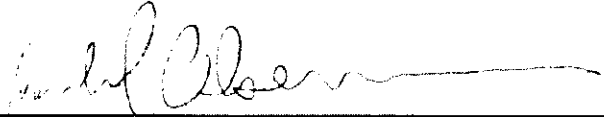
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persons and entities in connection with the Products at Issue. The Parties agree that Provo Craft shall notify the persons and entities subject to these sixty-day notices, that the allegations in the NOTICE have been resolved by this settlement and that each is a party to the release contained herein. Brimer shall, consistent to with Code and Regulations, report this settlement on the Attorney General's website so that there is a public record of this settlement, which resolves all outstanding claims with respect to the NOTICE.

Dated:

\_\_\_\_\_  
BY: Russell Brimer, Plaintiff

Dated:

  
\_\_\_\_\_  
FOR: Provo Craft & Novelty, Inc., Defendant  
BY: Donald Olsen  
ITS: General Counsel

**EXHIBIT A**

# 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

---

**DATE:** October 29, 2010

**TO:** Jim Thornton, President – Provo Craft & Novelty, Inc.  
California Attorney General's Office;  
District Attorney's Office for 58 Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

**FROM:** Russell Brimer

## I. INTRODUCTION

---

My name is Russell Brimer. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code §25249.6 *et seq.* ("Proposition 65"). As noted above, notice is also being provided to the violator, Provo Craft & Novelty, Inc. (the "Violator"). The violations covered by this Notice consist of the product exposures, routes of exposure, and types of harm potentially resulting from exposure to the toxic chemical ("listed chemical") identified below, as follows:

Product Exposure: See Section VII. Exhibit A  
Listed Chemical: Lead  
Routes of Exposure: Ingestion, Dermal  
Types of Harm: Birth Defects and Other Reproductive Harm

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under "Product Category/Type" in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the "products." The sales of these products in California dating as far back as October 29, 2007 are subject to this Notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposure to the listed chemical, resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.



## **A. CONSUMER PRODUCT EXPOSURE**

California consumers, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. By way of example but not limitation, exposures occur when California citizens use, display, clean, repair, pack, unpack, arrange, store or otherwise handle the products. These tasks cause consumers to be exposed directly or indirectly through the routine touching of the parts or portions of the products containing readily available surface amounts of the listed chemical. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemical from the products as a result of these tasks. People likely to be exposed include both children and adults.

## **B. OCCUPATIONAL EXPOSURE**

Similarly, men and women in California use or otherwise handle the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemical. Employees are exposed at any California business locations of the apparent manufacturer, distributor and retailer (and their agents, assigns and divisions) as well as all other California locations where the products, or the component parts thereof that include the listed chemical are, by way of example but not limitation, used, packed, unpacked, labeled, arranged, displayed, cleaned, stocked, stored, repaired or otherwise handled. These tasks cause employee exposure directly and/or indirectly to the listed chemical through the routine touching of the parts or portions of the products containing readily available amounts of the listed chemical on the surface.

Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemical from the products as a result of these tasks. These products are also used by sole proprietors and other persons in settings not covered by the federal Occupational Safety Health Act ("OSHA"). This Notice alleges the violation of Proposition 65 with respect to occupational exposure governed by the California State Plan for Occupational Safety and Health (the "State Plan"). The State Plan incorporates the provisions of Proposition 65, as approved by OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance contained in the general hazard communication requirement to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

## **III. CONTACT INFORMATION**

---

Please direct all questions concerning this notice to me through my counsel's office at the following address:

Russell Brimer  
c/o Clifford A. Chanler  
The Chanler Group  
Parker Plaza  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

#### IV. PROPOSITION 65 INFORMATION

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For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

#### V. RESOLUTION OF NOTICED CLAIMS

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Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

#### VI. ADDITIONAL NOTICE INFORMATION

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Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator and other distributors and retailers of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Cuttlebug Storage Binder, #37-1575 (#0 93573 41575 7)	Scrapbook Island Santa Clara County, Northern California	Provo Craft & Novelty, Inc.

**VII. EXHIBIT A**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Storage Binders with Storage Pages containing Lead	Cuttlebug Storage Binder, #37-1575 (#0 93573 41575 7)	Lead

\*The specifically identified example of the type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.