

# RELEASE AND SETTLEMENT AGREEMENT

## 1. INTRODUCTION

1.1 **Russell Brimer and Van Group, Inc.:** This Release and Settlement Agreement (“Agreement”) is entered into by and between Russell Brimer (“Brimer”) and Van Group, Inc., (“Van Group”), with Brimer and Van Group collectively referred to as the “Parties” and each individually referred to as a “Party.”

1.2 **Brimer:** Brimer is an individual residing in Alameda County, California, who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.3 **Van Group:** Van Group is a corporation that sells to consumers in the state of California, among other things, decorated glassware that is intended to be used for the consumption of food and beverages.

1.4 **General Allegations:** Brimer alleges that Van Group has distributed and/or sold in the State of California certain glassware with colored artwork or designs (containing lead and/or cadmium) on their exterior surface. Lead and cadmium are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health & Safety Code §§25249.5 et seq.) (“Proposition 65”), to cause cancer and birth defects and other reproductive harm. Lead and cadmium shall be referred to herein as “Listed Chemicals.”

1.5 **Products Descriptions:** The products that are covered by this Agreement are defined as follows: all glassware with colored designs and/or artwork (containing lead and cadmium) on their exterior surface. Such products are collectively referred to herein as the “Products”) and include the products identified in Exhibit A.

**1.6 Notices of Violation:** On or about November 24, 2004, Brimer served Van Group and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided Van Group and such public enforcers with notice that alleged that Van Group was in violation of California Health & Safety Code §25249.6 for failing to warn purchasers that certain products that Van Group sold expose users in California to lead and cadmium.

**1.7 No Admission:** Van Group denies the material factual and legal allegations contained in the Notice and maintains that the Products that it has sold and distributed in California have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Van Group of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Van Group of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Van Group. Nothing in this Agreement shall apply to, or be used as evidence regarding compliance for, any other product sold, or offered for sale, by Van Group with Proposition 65 or any other statute or regulation. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Van Group under this Agreement.

**1.8 Consent to Jurisdiction:** For purposes of this Agreement only, the Parties stipulate that the Superior Court of the State of California for the City and County of San Francisco has jurisdiction to enforce the provisions of this Agreement.

**1.9 Effective Date:** For purposes of this Agreement, the term "Effective Date" shall mean January 31, 2005.

2. **INJUNCTIVE RELIEF**

2.1 Van Group shall not sell Products in California or offer Products for sale in California after February 19, 2005, unless such Products comply with Sections 2.2, 2.3 or 2.4 of this Agreement.

2.2 **Product Warnings**

Subject to Sections 2.1 and Section 2.4 of this Agreement, after February 19, 2005, Van Group shall not ship or otherwise cause to be sold any Products in California stores, unless warnings are provided as set forth in Sections 2.2.1 or Section 2.2.2 of this Agreement.

2.2.1 **Warning on the Products or Product Packaging:** A warning is affixed to the packaging, labeling or directly to or on the Products by Van Group (or someone on its behalf, such as its agents, or the manufacturers, importers or distributors of the Products) that states:

**WARNING: The materials used as colored decorations on the exterior of this product contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.**

Warnings issued for the Products pursuant to this subsection 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 of use or purchase. Any changes to the language or format of the warning required by this subsection shall only be made with Brimer's approval, but Brimer shall not unreasonably withhold his approval and consent.

**2.2.2 Point of Sale Warnings:** As an alternative to product warnings under Section 2.2.1, Van Group may comply with any warning obligations under Proposition 65 and this Agreement through the posting of signs at those retail outlets in the State of California where its Products are sold, in accordance with the terms specified in Sections 2.2.2 (a-d).

**2.2.2(a)** Point of Sale warnings may be provided through one or more signs posted at or near the point of sale or display of the Products that state:

**WARNING: The materials used as colored decorations on the exterior of this product contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.**

or

**WARNING: The materials used as colored decorations on the exterior of glassware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.**

or

**WARNING: The materials used as colored decorations on the exterior of the following glassware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.**

**2.2.2(b)** In lieu of displaying warning signs with the language set forth above, retailers of the Products may elect to combine any point-of-sale warning signs required for decorated glassware with any warnings that they provide for ceramic tableware (as defined in the Consent Judgment in *People v. Josiah Wedgwood & Sons, Inc.*) or lead crystal (as defined in the Consent Judgment in *Mateel Environmental Justice Foundation v. T.J. Maxx*), through use of the warning signs in the form of Exhibits B or C. If a retailer of the Products elects to provide combined warnings through the use of Exhibit B or a sign substantially similar

thereto, then the retailer should place the Designated Symbol (the yellow triangle shown in Exhibit B) next to each display of the Product, ceramic tableware, and lead crystal for which a warning is to be given. If a retailer elects to provide combined warnings through the use of Exhibit C or a sign substantially similar thereto, then the Products for which the warning is to be given shall be identified by manufacturer and pattern in the warning sign, and Designated Symbols need not be displayed. If retailer elect to combine its Products, ceramic tableware, and lead crystal warnings under this subsection, display of warnings for ceramic tableware, leaded crystal, and the Products in the manner set forth in this subsection shall constitute compliance with Proposition 65 for all such products.

**2.2.2(c)** Any point of sale warning provided pursuant to subsection 2.2.2(a) of this Agreement 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 of use or purchase and shall be placed or written in a manner such that the consumer understands to which Products the warnings apply so as to minimize if not eliminate the chances that an overwarning situation will arise. Any changes to the language or format of the warning required by this subsection shall only be made with Brimer's approval, but Brimer shall not unreasonably withhold his approval and consent.

**2.2.2(d)** If Van Group intends to utilize point of sale warnings to comply with this Agreement, Van Group must provide notice to each retailer to whom Van Group ships the Products for sale in California and obtain the written consent of such retailer before shipping the Products. Such notice shall include a copy of this Agreement and any required warning materials (including, as appropriate, signs and/or stickers with the Designated Symbol). Van Group shall not be found to have violated this Agreement or Proposition 65 if it has complied with the terms of this Agreement and has proof that it transmitted the requisite

warnings in the manner provided herein and secured the consent of the retailer. Nothing in this Agreement shall alter or affect the terms of any contract between Van Group and any of its retailers which concern the Products.

**2.3 Mail Order and Internet Sales:** Subject to Section 2.4, after February 19, 2005, Van Group shall not sell or distribute the Products by mail order catalog or the Internet to California residents, unless warnings are provided as set forth below.

For the Products that require a warning pursuant to this Agreement that are sold by Van Group by mail order or from the Internet to California residents, a warning containing the language in subsection 2.2.1 shall be included, at Van Group's sole option, either: (a) in the mail order catalog (if any) or on the website (if any) pursuant to subsection 2.3.1 or 2.3.2; or (b) with the Products when any of them are shipped to an address in California pursuant to subsection 2.3.2. Any warnings given in the mail order catalogs or on the website shall identify the specific Products so as to minimize, if not eliminate, the chances that an overwarning situation will arise. If Van Group elects to provide warnings in the mail order catalog, then such warnings (at a location designated in subsection 2.3.1) shall be included in any new galley prints of such catalogs sent to the printer at least ten (10) business days after January 31, 2005. Nothing in this subsection 2.3 shall require Van Group to provide warnings for the Products ordered from a mail order catalog printed prior to January 31, 2005.

**2.3.1 Mail Order Catalog:** The Warning Message shall be stated within the catalog, either (a) on the inside front cover of any catalog, (b) on the same page as any order form, or (c) on the same page as the price, in the same type size as the surrounding, non-heading text, with the same language as that appearing in subsection 2.2.1.

**2.3.2 Internet Web Sites:** The warning text, or a link to a page containing the warning text, shall be displayed either (a) on the same page on which the Products are displayed, (b) on the same page as any order form for the Products, (c) on the same page as the price for the Products, (d) on one or more pages displayed to a purchaser over the Internet or via electronic mail during the checkout and order confirmation process for sale of the Products, or (e) in any manner such that is likely to be read and understood by an ordinary individual under customary conditions of purchase of the Products, including the same language as that appearing in subsection 2.2.1. If a link is used, it shall state “Warning Information for California Residents,” and shall be of a size equal to the size of other links on the page.

**2.3.3 Package Insert or Label:** Alternatively, a warning may be provided with the Products when any of them are shipped directly to a consumer in California, by (a) Product labeling pursuant to subsection 2.2.1, above, (b) inserting a card or slip of paper measuring at least 4” x 6” in the shipping carton, or (c) including the warning on the packing slip or customer invoice identifying the Products in lettering of the same size as the description of the Products. The warning shall include the language appearing in subsection 2.2.1 and shall inform the consumer that he or she may return the Product(s) for a full refund within thirty (30) days of receipt.

**2.4 Reformulated Products:** The Products shall be deemed Reformulated products and compliant with Proposition 65 and exempt from any Proposition 65 warning requirements under Sections 2.2 through 2.3, if they satisfy the conditions of Sections 2.4.1 or 2.4.2.

**2.4.1** If the colored artwork, designs or markings on the exterior surface of the Product do not extend into the top 20 millimeters of the ware (*i.e.*, below the exterior portion of the lip and rim area as defined by American Society of Testing and Materials Standard Test

Method C 927-99, hereinafter the "Lip and Rim Area"), produce a test result no higher than 1.0 micrograms (ug) of lead using a Ghost Wipe™ test applied on the decorated portions of the surface of the Product performed as outlined in NIOSH method no. 9100. or

**2.4.2** If the Product utilizes paints for all colored artwork, designs or markings containing six one-hundredths of one percent (0.06%) lead by weight or less as measured at Van Group's option, either before or after the material is fired onto (or otherwise affixed to) the Product, using a sample size of the materials in question measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less than 600 parts per million ("ppm").

### **3. MONETARY PAYMENTS**

**3.1 Penalties Pursuant To Health & Safety Code §25249.7(b):** Pursuant to Health & Safety Code section 25249.7(b), Van Group shall pay \$6,800.00 in civil penalties in two installments, with the first penalty payment of \$2,000.00 on or before April 1, 2005, and made payable to "Chanler Law Group in Trust For Russell Brimer." The second penalty payment of \$4,800.00 shall be paid on or before April 30, 2006; however, such payment shall be waived in the event that Van Group provides written notice to Brimer on March 15, 2006, that the Products it sold in California since the Effective Date were Reformulated Products.

**3.2 Apportionment of Penalties Received:** All penalty monies received shall be apportioned by Brimer in accordance with Health & Safety Code § 25192, with 75% of these funds remitted by Brimer to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained by Brimer as provided by Health & Safety Code § 25249.12(d). Brimer shall bear all responsibility for apportioning and

paying to the State of California the appropriate civil penalties paid in accordance with this Section.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties have reached an accord on the compensation due to Brimer and his counsel under the Private Attorney General doctrine codified at California Code of Civil Procedure § 1021.5 for all work performed through the Effective Date of the Agreement. Under the Private Attorney General doctrine, Van Group shall pay Brimer and his counsel \$24,900 for all attorneys fees, expert and investigative fees and related costs incurred as a result of investigating, bringing this matter to Van Group's attention, and negotiating a settlement in the public interest, with such payment, made payable to the Chanler Law Group, to be delivered to Brimer's counsel at the address set forth in Section 11, below, no later than February 15, 2005, with \$4,150.00 made payable no later than April 1, 2005, and subsequent installments of \$4,150.00 made payable no later than the 1<sup>st</sup> day of every month, beginning on May 1, 2005, with the last payment due on or before September 1, 2005. Except as specifically provided in this Agreement, Van Group shall have no further obligation with regard to reimbursement of Brimer's attorney's fees and costs with regard to the Products.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Van Group and Downstream Customers:** In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Van Group and each of its vendors, suppliers, distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Steve's Hallmark), franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively, "Releasees") arising under Proposition 65, Business & Professions Code § 17200 et seq. and Business & Professions Code § 17500 et seq., related to Van Group's alleged failures to warn about exposures to or identification of Listed Chemicals contained in the Products.

In addition, Brimer, on behalf of himself, his attorneys, and his agents, waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all Claims against any Releasee arising under Proposition 65, Business & Professions Code Section 17200 et seq., or Business & Professions Code Section 17500 et seq..

The Parties further agree and acknowledge that this Settlement Agreement is a full, final, and binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200 et seq. and Business & Professions Code §§ 17500 et seq., that have been or could have been asserted against Van Group for its alleged failure to provide clear and reasonable warnings of exposure to or identification of Listed Chemicals in the specific Products which are the subject of this Agreement. Provided however, Brimer shall remain free to institute any form of legal action to enforce the provisions of this Agreement.

It is specifically understood and agreed that the Parties intend that Van Group's

compliance with the terms of this Agreement resolves all issues and liability, now and in the future (so long as Van Group complies with the terms of the Agreement) concerning Van Group's compliance with the requirements of Proposition 65, Business and Professions Code §§ 17200 et seq. and Business & Professions Code §§ 17500 et seq., as to the Listed Chemicals in the specific Products which are the subject of this Agreement.

**5.2 Van Group's Release of Brimer:** Van Group waives all rights to institute any form of legal action against Brimer, his attorneys or representatives, for all actions taken or statements made by Brimer and his attorneys or representatives, in the course of seeking enforcement of Proposition 65, Business & Professions Code §§ 17200 et seq., or Business & Professions Code §§ 17500 et seq..

6. **SEVERABILITY:** If any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

7. **ATTORNEYS' FEES:** In the event that a dispute arises with respect to any provision(s) of this Agreement, the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of such dispute.

8. **GOVERNING LAW:** The terms of this 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 specific Products subject to this Agreement, then Brimer and Van Group shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, the Products are so affected.

9. **NOTICES:** Unless specified herein, all correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail, return receipt requested or (ii) overnight courier on any Party by the others at the following addresses:

To Van Group:

Peter J. Schulz, Esq.  
Greco Traficante & Edwards  
555 West Beech Street, Suite 500  
San Diego, CA 92101  
Fax: 619-234-0626

To Brimer:

Stephen S. Sayad, Esq.  
Chanler Law Group  
655 Redwood Highway, Suite 216  
Mill Valley, CA 94941

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.

10. **COUNTERPARTS; FACSIMILE SIGNATURES:** This Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f):** Brimer agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Brimer shall present this Agreement to the California Attorney General's Office within two (2) days after receiving all of the necessary signatures.

12. **MODIFICATION:** This Agreement may be modified only by written agreement of the

Parties. The Attorney General shall be served with notice of any proposed modification to this Agreement.

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

**AGREED TO:**

DATE: 3-18-05

Russell Brimer

Russell Brimer

**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Chi Van  
Van Group, Inc.

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Stephen S. Sayad, Esq.  
Chanler Law Group  
Attorneys for Russell Brimer

Parties. The Attorney General shall be served with notice of any proposed modification to this Agreement.

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

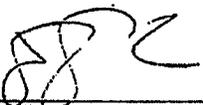
**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Russell Brimer

**AGREED TO:**

DATE: 3-25-05

  
\_\_\_\_\_  
Chi Van  
Van Group, Inc.

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Stephen S. Sayad, Esq.  
Chanler Law Group  
Attorneys for Russell Brimer

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DATE: 3-18-05

Russell Brimer

Russell Brimer

**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Chi Van  
Van Group, Inc.

**APPROVED AS TO FORM:**

<sup>49</sup>DATE: March 18, 2005

Stephen S. Sayad

Stephen S. Sayad, Esq.  
Chanler Law Group  
Attorneys for Russell Brimer

**APPROVED AS TO FORM:**

DATE: 3/20/09

  
\_\_\_\_\_  
Peter J. Schulz, Esq.  
Greco Traficante & Edwards  
Attorneys for Van Group, Inc.

Exhibit A

All glassware with colored designs and/or artwork on the exterior surface, including  
but not limited to:

Black Zinnia High Ball Glass, #BZ50104 (#6 96342 50104 8)