

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer And Moylan's Brewing Company

This Settlement Agreement is entered into by and between Russell Brimer (hereinafter "Brimer") and Moylan's Brewing Company, (hereafter "Moylan's"), with Brimer and Moylan's collectively referred to as the "Parties." Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Moylan's employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

1.2 General Allegations

Brimer alleges that Moylan's has manufactured, distributed and/or sold in the State of California certain Glass Beer Bottles and Other Glassware Intended for the Consumption of Food or Beverages With Colored Artwork or Designs on the Exterior that contain lead. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 et seq. ("Proposition 65"), as a chemical known to the State of California to cause birth defects and other reproductive harm. Lead shall be referred to herein as the "Listed Chemical."

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: Glass Beer Bottles and Other Glassware Intended for the Consumption of Food or Beverages With

Colored Artwork or Designs on the Exterior containing lead including, but not limited to, the products identified in Exhibit A to this Settlement Agreement. All such Glass Beer Bottles and Other Glassware Intended for the Consumption of Food or Beverages With Colored Artwork or Designs on the Exterior shall be referred to herein as the "Products."

1.4 Notices of Violation

On or about February 13, 2006, Brimer served Moylan's and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Moylan's and such public enforcers with notice that alleged that Moylan's was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products that Moylan's sold exposed users in California to the Listed Chemical.

1.5 No Admission

Moylan's denies the material factual and legal allegations contained in Brimer's Notice and maintains that all 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 Moylan's of any fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Moylan's of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Moylan's. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Moylan's under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean

September 1, 2006.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 After the Effective Date, Moylan's shall not sell, ship or offer to be shipped for sale in California Products containing the Listed Chemical unless such Products are sold or shipped with the clear and reasonable warnings set out in Section 2.2 or comply with the Reformulation Standards set forth in Section 2.3.

Any warning issued for Products pursuant to this Section 2.2 below 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, for Products shipped directly to an individual in California, before use.

2.2 Product Warnings

2.2.1 Clear and Reasonable Warnings. This Section describes Moylan's options for satisfying the warning obligations required by Section 2.1, depending, in part, on the manner of sale:

(a) Retail Store Sales

(i) Product Labeling. From the Effective Date, a warning will be affixed to the packaging, labeling or directly on the Product by Moylan's or its agent, 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 and other reproductive harm.

(ii) **Point-of-Sale Warnings.** Moylan's may perform its warning obligations by insuring to the greatest extent possible that signs are posted at retail outlets in the State of California where the Products are sold. Moylan's must receive a written commitment from each retailer to whom Moylan's sells Products directly that it will post the warning signs. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of 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 and other reproductive harm.

A point-of-sale warning shall be provided in a manner such that the consumer understands to which specific Products the warning applies.

(b) **Mail Order Catalog and Internet Sales.** Moylan's shall satisfy its warning obligations for Products that are sold by mail order catalog or from the Internet to California residents, by providing a warning: (a) in the mail order catalog and/or on the website; or (b) with the Product when it is shipped to an address in California. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.2.1(b)(i), (ii) and/or (iii) as applicable:

(i) **Mail Order Catalog.** Any warning provided in a mail order catalog must be in the same type size or larger as the product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

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 and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Moylan's may utilize a designated symbol to cross reference the applicable warning ("Designated Symbol") and shall define the term Designated Symbol with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: The materials used as colored decorations on the exterior of certain products identified with this symbol ▼ and offered for sale in this catalog contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

The Designated Symbol (shown on Exhibit B attached hereto) must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the Designated Symbol appears, Moylan's must provide a header or footer directing the consumer to the warning language and definition of the Designated Symbol.

If Moylan's elects to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Products printed after October 1, 2006.

(ii) **Internet Web Sites and Pages.** A warning may be given in conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form

for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger as the product description text:

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 and other reproductive harm.

Alternatively, the Designated Symbol may appear adjacent to or immediately following the display, description or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page:

WARNING: Products identified on this page with the following symbol use materials that contain lead as colored decorations on their exterior, a chemical known to the State of California to cause birth defects and other reproductive harm: ▼

(iii) Package Insert or Label. For all Products sold by catalog or via the Internet, a warning may be provided with the Product when it is shipped directly to an individual in California, by either: (a) affixing the following warning language to the packaging, labeling or directly to a specific Product; (b) inserting a warning card measuring at least 4" x 6" in the shipping carton which contains the following warning language; or (c) by placing the following warning statement on the packing slip or customer invoice on the line directly below the description of the Product on the packing slip or customer invoice:

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

Alternatively, Moylan's may place the following language on the packing slip or invoice and specifically identifying the Product in lettering of the same size or larger as the description of the Product:

WARNING: The materials used as colored decorations on the exterior of the following product(s) contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm: *[list products for which warning is given]*.

The Moylan's shall, in any of these instances, in conjunction with providing the warning, also inform the consumer, in a conspicuous manner, that he or she may return the Product for a full refund (including shipping costs for both the receipt and the return of the Product) within thirty (30) days of his or her receipt of the Product.

2.2.2 Exceptions

The warning requirements set forth in Section 2.2.1 shall not apply to:

- (i) Any Products shipped to a third party before the Effective Date; or
- (ii) Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Standards

The following Products shall be deemed "Reformulated Products" and to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements under Sections 2.2: The products must only utilize decorating materials that contain six one-hundredths of one

percent (0.06%) or less of lead by weight; and there must be no detectable lead in the lip-and-rim area.¹

2.4 Reformulation Commitment

Moylan's hereby commits that all Products that it offers for sale in California after January 1, 2007, shall qualify as Reformulated Products.

3. MONETARY PAYMENTS

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

Pursuant to Health & Safety Code §25249.7(b), Moylan's shall pay \$1,000 in civil penalties, with the penalty payment on or before September 15, 2006. Said payments shall be made payable to the "HIRST & CHANLER LLP in Trust For Russell Brimer" and shall be delivered to plaintiff's counsel at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

¹ "Lip and Rim Area" is defined as the exterior top 20 millimeters of a hollowware food or beverage Product.

penalties paid in accordance with this Section.

4. 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 issue to be resolved after the material terms of the agreement had been settled. Under the private attorney general doctrine, Moylan's shall reimburse Brimer and his counsel for fees and costs incurred as a result of investigating, bringing this matter to Moylan's attention, and negotiating a settlement in the public interest. Moylan's shall pay Brimer and his counsel \$7,500 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be made payable to HIRST & CHANLER LLP and shall be delivered on or before September 15, 2006 at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

5. RELEASE OF ALL CLAIMS

5.1 Release of Moylan's 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, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Moylan's and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Moylan's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Products.

The Parties further understand and agree that this release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Moylan's.

5.2 Moylan's Release of Brimer

Moylan's waives any and all claims against Brimer, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, 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.

7. ATTORNEYS' FEES

In the event that, after the execution of this settlement agreement: (1) a dispute arises with respect to any provision of this Settlement Agreement; (2) Moylan's or any third party seeks modification of this Settlement Agreement pursuant to Section 14 below; or (3) Brimer takes reasonable and necessary steps to enforce the terms of this Settlement Agreement, Brimer shall be entitled to his reasonable attorneys' fees and costs pursuant to CCP §1021.5.

8. 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 Moylan's 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 are so affected.

9. NOTICES

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

To Moylan's:

Brendan Moylan
Moylan's Brewing Company
15 Rowland Way
Novato, CA 94945

To Brimer:

Proposition 65 Controller
HIRST & CHANLER LLP
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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement 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).

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

13. 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.

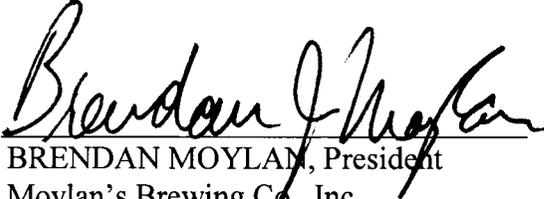
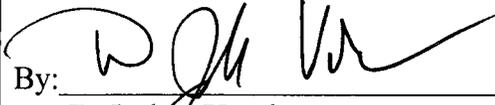
<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>9-14-06</u></p> <p>By:  RUSSELL BRIMER, Plaintiff</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>9-12-2006</u></p> <p>By:  BRENDAN MOYLAN, President Moylan's Brewing Co., Inc.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>9/14/06</u></p> <p>HIRST & CHANLER LLP</p> <p>By:  D. Joshua Voorhees Attorneys for Russell Brimer</p>	

EXHIBIT A

The Products covered by this Settlement Agreement are Glass Beer Bottles and Other Glassware Intended for the Consumption of Food or Beverages with Colored Artwork or Designs on the Exterior containing lead including, but not limited to:

1. Moylan's 2005 White Christmas Double Whet Ale (#7 42499 00030 6)

Exhibit B

The Designated Symbol [Yellow Triangle] that Defendant will use to identify Products containing the Listed Chemical which are sold through its catalogs or on its website is:

