

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and J.W.E., Inc. This Settlement Agreement is entered into by and between Russell Brimer (hereafter "Brimer") and J.W.E., Inc. (hereafter "J.W.E."), with Brimer and J.W.E. collectively referred to as the "parties" and with Brimer and J.W.E. each being a "party."

1.2 Brimer. Brimer is an individual residing in Northern 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.

1.3 J.W.E. J.W.E. employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

1.4 Covered Products. The products that are covered by this Settlement Agreement are: shooters and any other glassware intended for the consumption in California of food or beverages with colored artwork or designs (containing lead) on the exterior, including, but not limited to, *Led Zeppelin 2 oz. Shooter Set*. All such glassware shall be referred to herein as the "Products."

1.5 General Allegations. Brimer alleges that J.W.E. has manufactured, imported, distributed and/or offered for use or sale in the State of California Products with colored artwork or designs (containing lead) on the exterior. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.*, also known as 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."

1.6 Notice of Violation. On January 12, 2007, Brimer served J.W.E. and various public enforcement agencies with a document, entitled "60-Day Notice of Violation" ("Notice") that provided J.W.E. and the public enforcers with notice that, according to Brimer, J.W.E. was allegedly in violation of California Health & Safety Code §25249.6 for failing to warn individuals that Products it sold in California expose consumers to lead contained in the exterior decorations on the Products.

1.7 No Admission. J.W.E. denies the material factual and legal allegations contained in Brimer's Notice and maintains that all Products that it has manufactured, imported, distributed and/or offered for use or sale in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by J.W.E. 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 J.W.E. of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of J.W.E. under this Settlement Agreement.

1.8 Effective Date. For purposes of this Settlement Agreement, the "Effective Date" shall be June 1, 2007.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Product Warnings. After the Effective Date, J.W.E. shall not manufacture, import, distribute and/or offer for use or sale in California any Products containing the Listed Chemical unless such Products are sold with the clear and reasonable warning set out in this Section 2.1, comply with the reformulation standards set forth in Section 2.3, or are otherwise exempt pursuant to Section 2.2.

Any warning issued for products pursuant to this Section 2.1 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 in the workplace. Any warning issued pursuant to this Section 2.1 shall be provided in a manner such that the consumer or user understands to which *specific* product the warning applies, so as to minimize if not eliminate the chance that an overwarning situation will arise.

Section 2.1(a)-(b) describes J.W.E.'s options for satisfying its warning obligations. The following warning will be applicable when the product is sold to consumers in California:

(a) **Retail Store Sales.** If the Product is sold at a retail outlet in California, J.W.E. must comply with its warning requirement by affixing the following language to the packaging, labeling, or directly to a specific Product by J.W.E., its agent, the manufacturer, the decorator, the importer, the distributor or the retailer of the Product 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 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 prior to use or purchase. For purposes of this subsection, a warning statement or sticker placed on the bottom of the product packaging is not an adequate warning. Similarly, for purposes of this Settlement Agreement, a warning insert that is

placed inside the product packaging that is not intended to be opened prior to leaving the retail establishment is deemed not reasonably calculated to transmit the health hazard warning to the individual prior to purchase.

Any changes to the language or format of the warning required for Products by this subsection shall only be made by written approval from the California Attorney General's Office, provided that written notice of at least fifteen (15) days is given to Brimer for the opportunity to comment.

(b) Internet Sales. J.W.E. shall satisfy its warning obligations for Products that are sold by the Internet to California residents, by arranging for the provision of a warning containing the language in subsection 2.1(a) to be: (i) included in an email to the customer before the sale of the Product is confirmed by the customer, and (ii) on the packing slip or customer invoice specifically identifying the Product in lettering of the same size as the description of the Product.

2.2 Exceptions To Warning Requirements. The warning requirements set forth in Section 2.1 shall not apply to:

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

2.3 Reformulation Standards. Reformulated Products are defined as follows: any Product with exterior decorations containing less than or equal to six one-hundredths of one percent (0.06%) of lead by weight or less, as measured either before or after the material is fired onto (or otherwise affixed to) the Product using EPA test methodology 3050B.¹ Products with decorations within the lip-and-rim area² must *also*

¹If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by weight must relate only to the decorating material and must not include any quantity attributable to non-decorating material (*e.g.*, the glass substrate).

contain less than or equal to two one-hundredths of one percent (0.02%) of lead by weight or less using a sample size of the material in question measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation of less than 200 ppm.

2.4 Reformulation Goal. J.W.E. hereby commits to undertake good faith efforts to ensure that as many Products as reasonably possible that it offers for sale in California, shall either qualify as Reformulated Products or will otherwise be exempt from the warning requirements of sections 2.1, with the commitment that at least eighty percent (80%) of the Products sold in California on or after June 1, 2007, will not require warnings pursuant to section 2.1, with further commitment to undertake all commercially reasonable efforts to sell one-hundred percent (100%) Reformulated Products in California, after December 31, 2007. This Section 2.4 shall not apply to Products that are part of J.W.E.'s inventory as of the Effective Date, provided that such current inventory products shall comply with the warning requirements set forth in Section 2.1.

3. MONETARY PAYMENTS

3.1 In settlement of all of the claims referred to in this Settlement Agreement against J.W.E., it shall pay \$8,000 in civil penalties to be apportioned by Brimer in accordance with California Health & Safety Code §25192, with 75% of these funds remitted 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 California 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.

²Lip-and-rim area is defined as the exterior top 20 millimeters of a hollowware food or beverage Product.

3.2 Payment Schedule. The payment set forth in this paragraph shall be made payable to "HIRST & CHANLER LLP in Trust For Russell Brimer" within ten (10) days of the Effective Date, and be delivered to Brimer's counsel at the following address:

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

4. REIMBURSEMENT OF FEES AND COSTS

4.1 The parties 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. Under the private attorney general doctrine, J.W.E. shall reimburse Brimer and his counsel for fees and costs, incurred as a result of investigating, bringing this matter to J.W.E.'s attention and negotiating a settlement in the public interest. J.W.E. shall pay Brimer and his counsel \$28,000 for all attorneys' fees, expert and investigation fees, and litigation costs. The payment shall be made payable to the "Hirst & Chanler, LLP in Trust for Russell Brimer" and shall be delivered to Brimer's counsel within ten (10) days of the Effective Date, at the following address:

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

Except as specifically provided in this Settlement Agreement, J.W.E. shall have no further obligation with regard to reimbursement of Brimer's attorneys' fees and costs with regard to the Products.

5. RELEASE OF ALL CLAIMS

5.1 Brimer's Release of J.W.E. 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 release 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 attorney's fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against J.W.E. and its distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, (collectively, "J.W.E.'s Releases") arising under or derived from Proposition 65, related to J.W.E. or J.W.E.'s Releases' alleged failure to warn about exposures to or identification of the Listed Chemical contained in the exterior decorations on the Products manufactured, decorated, imported, distributed and/or offered for use or sale on or before June 1, 2007, by J.W.E.

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 J.W.E.

5.2 J.W.E.'s Release of Brimer. J.W.E. waives all rights to institute any form of legal action against Brimer, or his attorneys or representatives, for all actions

taken or statements made by Brimer and his attorneys or representatives, in the course of investigating and/or seeking enforcement of Proposition 65, against J.W.E. 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 or application thereof, other than Section 5.1, are held by a court to be unenforceable, the validity of the enforceable provisions or applications remaining shall not be adversely affected to the extent such remaining provisions can be given effect without the unenforceable provision or application.

7. ATTORNEYS' FEES

In the event that a dispute arises with respect to any provision of this Settlement Agreement, the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable costs and attorneys' fees incurred in connection with such dispute.

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 specifically, then J.W.E. and J.W.E.'s Releasees shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, those 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 J.W.E.:

Jue Wie Zhang
President
J.W.E., Inc.
180 Madison Avenue
New York, NY 10016-5267

with a copy to:

Joshua A. Bloom, Esq.
Law Offices of Joshua A. Bloom
24 Professional Center Parkway
Suite 210
San Rafael, CA 94903

To Brimer:

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

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.

AGREED TO:

Date: 6-4-07

By: 
Russell Brimer

AGREED TO:

Date: _____

By: _____
Jue Wei Zhang, President, J.W.E., Inc.

APPROVED AS TO FORM:

Date: 6/1/07

HIRST & CHANLER, LLP

By: 
Aparna L. Reddy, Esq.
Attorneys for RUSSELL BRIMER

APPROVED AS TO FORM:

Date: _____

LAW OFFICES OF JOSHUA A. BLOOM

By: _____
Joshua A. Bloom, Esq.
Attorneys for J.W.E., INC.

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.

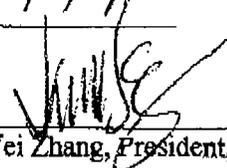
AGREED TO:

Date: _____

By: _____
Russell Brimer

AGREED TO:

Date: 5/31/07

By: 
Jue Wei Zhang, President, J.W.E., Inc.

APPROVED AS TO FORM:

Date: _____

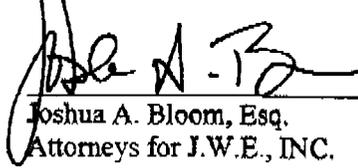
HIRST & CHANLER, LLP

By: _____
Aparna L. Reddy, Esq.
Attorneys for RUSSELL BRIMER

APPROVED AS TO FORM:

Date: 6/1/07

LAW OFFICES OF JOSHUA A. BLOOM

By: 
Joshua A. Bloom, Esq.
Attorneys for J.W.E., INC.