

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer And Arctic Circle Enterprises, Inc.

This Settlement Agreement is entered into by and between Russell Brimer (hereinafter "Brimer") and Arctic Circle Enterprises, LLC (formerly Arctic Circle Enterprises, Inc.; hereafter "Arctic Circle"), with Brimer and Arctic Circle 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. Arctic Circle employs ten or more persons and is a person in the course of doing business in California for purposes of Proposition 65.

1.2 General Allegations

Brimer alleges that Arctic Circle has manufactured, distributed and/or sold in the State of California certain beverage ware 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 §§25249.5 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:

- (A) Glass beverages and tableware products with colored artwork, designs and/or markings on the exterior surface that have been manufactured, decorated,

imported, distributed or offered for use or sale by Artic Circle and that are purchased and/or used by individuals in California for the storage, serving or consumption of food or beverages including, but not limited to: glasses, pilsners, mugs, carafes, tumblers, bottles, condiment dispensers, bowls, cups, saucers, plates, trays, pitchers, punch bowls, serving utensils, serving platters and other like items, and

- (B) Ceramicware products with with colored artwork, designs and/or markings on the exterior surface that have been manufactured, decorated, imported, distributed or offered for use or sale by Artic Circle and that are purchased and/or used by individuals in California for the storage, serving or consumption of food or beverages including, but not limited to: mugs, steins, carafes, bowls, drinking vessels, bottles, condiment dispensers, cups, saucers, plates, trays, pitchers, punch bowls, serving utensils, serving platters and other like items,

including, but not limited to ceramic and glass drinking vessels identified in Exhibit A to this Settlement Agreement. All such drinking vessels with colored artwork or designs (containing lead) on the exterior shall be referred to herein as the "Products."

1.4 Notices of Violation

On or about October 19, 2007, Brimer served Arctic Circle and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Arctic Circle and such public enforcers with notice that alleged that Arctic Circle was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and

customers that the Products that Arctic Circle sold exposed users in California to the Listed Chemical.

1.5 No Admission

Arctic Circle 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 Arctic Circle 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 Arctic Circle of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Arctic Circle. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Arctic Circle under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean March 24, 2008.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 After the Effective Date, Arctic Circle 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 Arctic Circle'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 Arctic Circle 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. Arctic Circle 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. Arctic Circle must receive a written commitment from each retailer to whom Arctic Circle 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. Arctic Circle 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, Arctic Circle 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, Arctic Circle must provide a header or footer directing the consumer to the warning language and definition of the Designated Symbol.

If Arctic Circle 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 January 15, 2008.

(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, Arctic Circle 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 Arctic Circle 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

Arctic Circle hereby commits that all Products that it offers for sale in California after June 15, 2008, shall qualify as Reformulated Products.

3. MONETARY PAYMENTS

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

3.1 In settlement of all the claims referred to in this Settlement Agreement-against Arctic Circle, it shall pay \$5,500 in civil penalties to be apportioned 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 remitted to [plaintiff] as provided by California Health & Safety Code §25249.12(d). Defendant shall issue two separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$4,125, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for Russell Brimer in the amount of \$1,375, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$4,125. The second 1099 shall be issued to Russell Brimer in the amount of \$1,375, whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due.

4. REIMBURSEMENT OF FEES AND COSTS

4.1. Arctic Circle shall reimburse Brimer and his counsel for fees and costs incurred as a result of investigating, bringing this matter to Arctic Circle's attention, and negotiating a settlement in the public interest. The parties reached an accord on the compensation due to Brimer and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Arctic Circle shall reimburse Brimer's counsel for fees and costs, incurred as a result of investigating and bringing this action for alleged Proposition 65 violations for lead paint on the Products.

Arctic Circle shall pay Brimer and his counsel \$24,500 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 within 10 days of the Effective Date to the following address:

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

Arctic Circle shall issue a separate 1099 for fees and cost paid in the amount of \$24,500 to Hirst & Chanler LLP, 455 Capitol Mall, Suite 605, Sacramento, CA 95814 (EIN: 20-3929984).

5. RELEASE OF ALL CLAIMS

5.1 Release of Arctic Circle 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 the general public to the extent allowed by law, 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 Arctic Circle 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, , and under the unfair competition provisions of the California Business & Professions Code §17200 et seq and §17500 et seq., as such claims relate to Arctic Circle 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 Arctic Circle.

5.2 Arctic Circle Release of Brimer

Arctic Circle 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) Arctic Circle 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 Arctic Circle 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 Arctic Circle:

Lawrence S. Bazel, Esq.
BRISCOE, IVESTER & BAZEL LLP
155 Sansome Street, 7th Floor
San Francisco, CA 94104

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.

AGREED TO:	AGREED TO:
Date: <u>3.25.08</u>	Date: _____
By:  RUSSELL BRIMER, Plaintiff	By: _____ PAUL SERVENTI, President, Arctic Circle Enterprises, LLC

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.

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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:	AGREED TO:
Date: _____	Date: <u>March 25, 2008</u>
By: _____ RUSSELL BRIMER, Plaintiff	By: <u>Paul Serventi</u> PAUL SERVENTI, President, Arctic Circle Enterprises, LLC

APPROVED AS TO FORM:

Date: _____

HIRST & CHANLER LLP

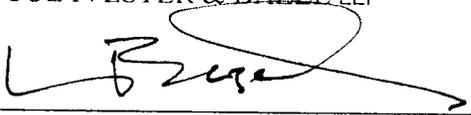
By: _____

David R. Bush, Esq.
Attorneys for Russell Brimer

APPROVED AS TO FORM:

Date: 27 Mar 2008

BRISCOE IVESTER & BAZEL LLP

By:  _____

Lawrence S. Bazel, Esq.
Attorneys for Arctic Circle Ent., Inc.

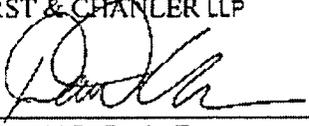
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>3/26/08</u></p> <p>HIRST & CHANLER LLP</p> <p>By: </p> <p>David R. Bush, Esq. Attorneys for Russell Brimer</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>BRISCOE IVESTER & BAZEL LLP</p> <p>By: _____</p> <p>Lawrence S. Bazel, Esq. Attorneys for Arctic Circle Ent., Inc.</p>
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EXHIBIT A

The Products covered by this Settlement Agreement include, but not limited to:

1. Sea Turtles V-shaped Mug, PM011 (#7 23748 92083 5);
2. Humpback Whales V-Shaped Mug (#7 23748 92081 1);
3. Shark V-Shaped Mug.