

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Russell Brimer and Charles Leonard Inc.

This Settlement Agreement is entered into by and between, on the one hand, Russell Brimer (hereinafter "Brimer") and on the other hand, Charles Leonard Inc. (hereinafter "Charles Leonard"), with Brimer and Charles Leonard 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. Charles Leonard 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 Charles Leonard has manufactured, distributed and/or sold in the State of California colored, vinyl-coated paper fasteners. 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 be a reproductive toxicant. 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: colored, vinyl-coated paper fasteners containing lead, manufactured, imported, distributed and/or sold in California by Charles Leonard. Such products collectively are referred to herein as the "Products."

#### 1.4 Notice of Violation

On or about March 5, 2009, Brimer served Charles Leonard and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Charles Leonard and such public enforcers with notice that alleged that Charles Leonard was in violation of California Health & Safety Code §25249.6 for failing to warn

consumers and customers that the Products exposed users in California to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

### **1.5 No Admission**

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

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 9, 2009.

## **2. WARNINGS AND REFORMULATION**

### **2.1 Product Warnings**

After the Effective Date, Charles Leonard shall not sell, ship, or offer to be shipped for sale in California any Products containing lead unless: such Products are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b), or comply with the reformulation standard set forth in Section 2.3.

Each warning 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. Each warning 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.

**(a) Retail Store Sales.**

**(i) Product Labeling.** Charles Leonard may perform its warning obligation by ensuring that a warning is affixed to the packaging, labeling, or directly on each Product sold in retail outlets in the State of California by Charles Leonard or its agents, that states:

**WARNING:** This product contains Lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

**(ii) Point-of-Sale Warnings.** Charles Leonard may, alternatively, perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the Products are sold. 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 states:

**WARNING:** This product contains Lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.3), the following statement must be used:

**WARNING:** The following products contain Lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

[LIST PRODUCTS]

**(b) Mail Order Catalog and Internet Sales.** Charles Leonard does not directly sell any products to consumers via mail order catalogs or the Internet, but it does sell to resellers via mail order catalogs or the Internet.

In the event that Charles Leonard sells its Products via catalog or internet to customers located in California after the Effective Date, Charles Leonard shall provide a warning: (i) in the

mail order catalog; or (ii) on the website. 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 2.1(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than 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:

|                 |   |
|-----------------|---|
| <b>WARNING:</b> | This product contains 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, Charles Leonard may utilize a designated symbol (▼) to cross reference the applicable warning 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):

|                 |   |
|-----------------|---|
| <b>WARNING:</b> | 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 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, Charles Leonard must provide a header or footer directing the reseller to the warning language and definition of the designated symbol.

If Charles Leonard 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 the date of entry of this consent judgment.

(ii) **Internet Website Warning.** 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 than the Product description text:

**WARNING:** This product contains 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, as follows:

**WARNING:** Products identified on this page with the following symbol contain Lead, a chemical known to the State of California to cause birth defects and other reproductive harm: ▼

## **2.2 Exceptions To Warning Requirements**

The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

## **2.3 Reformulation Standards**

Reformulated Products are defined as those containing no more than 300 parts per million (“ppm”) of lead in any component that may be handled, touched or mouthed by a consumer, when using a method of detection and analysis authorized under 27 C.C.R. §25900.

# **3. MONETARY PAYMENTS**

## **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be \$1,000. Civil penalties are 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 (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer as provided by California Health & Safety Code §25249.12(d).

Charles Leonard shall issue two separate checks for each of the penalty payments: (a) one check made payable to Chanler Law Group in Trust for the State of California’s Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$750, representing 75% of the total penalty; and (b) one check to Chanler Law Group in Trust for Brimer in the amount of \$250, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$750. The second 1099 shall be issued to Brimer in the amount of \$250, whose address and tax identification number shall be furnished, upon request, three calendar days before payment is due. The payment shall be made payable to Chanler Law Group and shall be delivered within ten (10) days of the Effective Date, at the following address:

Chanler Law Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

#### **4. REIMBURSEMENT OF FEES AND COSTS**

##### **4.1 Attorney 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. Charles Leonard then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual execution of this agreement. Charles Leonard shall

reimburse Brimer and his counsel, in two equal payments, for a combined total of \$15,250, for fees and costs incurred as a result of investigating, bringing this matter to Charles Leonard's attention, and litigating and negotiating a settlement in the public interest. Charles Leonard shall issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall make the checks payable to "Chanler Law Group." The first check, in the amount of \$7,625 shall be delivered within ten (10) days of the Effective Date, to the following address:

Chanler Law Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

The second, and final check, in the amount of \$7,625 shall be delivered to the same address as the first check, and it shall be delivered no later than December 21, 2009.

## **5. RELEASE OF ALL CLAIMS**

### **5.1 Brimer's Release of Charles Leonard**

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"), that were brought or could have been brought against Charles Leonard, or its parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers, licensors, licensees, or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell Products, and the officers, directors, managers, employees, members,

shareholders, agents, insurers and representatives of each of them (collectively "Releasees") in this matter. This release is limited to, but is intended to be a full, final, and binding resolution of, those Claims that arise under Proposition 65, as against Charles Leonard and the Releasees, as such Claims relate to Charles Leonard's alleged failure to warn about exposures to the Listed Chemical contained in the Products. Charles Leonard's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 for Charles Leonard and the Releasees with respect to the Listed Chemical in such items after the Effective Date.

Brimer also, in his individual capacity only and *not* in his representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind, known or unknown, suspected or unsuspected, relating to any chemical listed under Proposition 65 and contained in any product sold, shipped or offer to be shipped for sale by Charles Leonard. Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Brimer, in his individual capacity only and *not* in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

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

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Charles Leonard or the Releasees under Proposition 65 as covered under this release. If requested in writing by Charles Leonard (within twelve months of the Effective Date), Charles Leonard may ask Brimer to file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law. If requested, Brimer agrees to reasonably cooperate with Charles Leonard and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP Sections 1021 and 1021.5, Charles Leonard will reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an amount not to exceed \$15,000. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Charles Leonard to have Brimer file a complaint and seek a consent judgment. Charles Leonard will remit payment to Chandler Law Group, at the address set forth in Section 8 below. Such additional fees shall be paid by Charles Leonard within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

#### **5.2 Charles Leonard's Release of Brimer**

Charles Leonard 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 them in this matter, and/or with respect to the Products.

Charles Leonard also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Charles Leonard of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Charles Leonard acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Charles Leonard expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

#### **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. 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

Charles Leonard 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.

## **8. 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:

For Charles Leonard:

David Hirsch  
Charles Leonard Inc.  
145 Kennedy Drive  
Hauppauge, NY 11788

With a copy to:

Edward P. Sangster  
K&L Gates LLP  
4 Embarcadero Center, Suite 1200  
San Francisco, CA 94111

For Brimer:

Proposition 65 Coordinator  
Chanler Law Group  
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.

## **9. 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.

**10. 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).

**11. MODIFICATION**

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

**12. 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.

|   |                                   |
|---|-----------------------------------|
| <b>AGREED TO:</b>   | <b>AGREED TO:</b>                 |
| Date: <u>11/11/07</u>   | Date: _____                       |
| By: <br>Russell Brimer | By: _____<br>Charles Leonard Inc. |

**10. 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).

**11. MODIFICATION**

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

**12. 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.

|                             |  |
|-----------------------------|--|
| <b>AGREED TO:</b>           | <b>AGREED TO:</b>  |
| Date: _____                 | Date: <u>11/11/09</u>                                    |
| By: _____<br>Russell Brimer | By: <u><i>David J. Hines</i></u><br>Charles Leonard Inc. |