

2008-2009 Proposition 65 Settlement Reporting Form

Attorney: L. HAVESON
Case Name: BRIMER v. EURO PRO
Case No.: N/A - ooc
Case Type: Pb
Date of Execution: 11/2/09
Effective Date: 11/2/09

PENALTIES

TOTAL NUMBER OF PAYMENTS: 2
\$ 6,480 DUE: By 11/12/09
\$ 2,160 DUE: By 11/12/09
\$ _____ DUE: _____
\$ _____ DUE: _____
\$ _____ DUE: _____
\$ _____ DUE: _____

COMMENTS: Totaling 8640

FEES & COSTS

TOTAL NUMBER OF PAYMENTS: 1
\$ 20,000 DUE: _____
\$ _____ DUE: _____
\$ _____ DUE: _____

COMMENTS: _____

IS THE CJ ATTACHED TO THIS FORM?

YES NO

HAS THE CJ BEEN REPORTED?

YES NO

HAS CASE BEEN MOVED TO SCL?

YES NO

SUPPLEMENTAL NOTICE TO BE ISSUED?

YES NO

DATE: _____

COMMENTS: _____

SEND W-9 TO:

(Contact Info)

Lt pls provide

BACK END FEE(S) \$ N/A

COMMENTS: _____

SRF Executed By: RC

Date: 11/3/09

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and Euro-Pro Operating LLC

This Settlement Agreement is entered into by and between, on the one hand, Russell Brimer (hereinafter "Brimer") and on the other hand, Euro-Pro Operating LLC (hereinafter "Euro-Pro"), with Brimer and Euro-Pro 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. Euro-Pro 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 Euro-Pro has manufactured, distributed and/or sold in the State of California vinyl coated measuring tapes containing lead on the exterior surface. 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: vinyl coated measuring tapes containing lead, manufactured, imported, distributed and/or sold in California by Euro-Pro, such as the *Euro-Pro Sewing Accessory Kit, #XX707 (#6 22356 51959 5)*. All such vinyl coated measuring tapes shall be referred to herein as the "Products."

1.4 Notice of Violation

On or about April 30, 2009, Brimer served Euro-Pro and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Euro-Pro and such public enforcers with notice that alleged that Euro-Pro 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

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

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 2, 2009.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date, Euro-Pro shall not ship, sell or offer to be shipped for sale in California any of the Products unless such Products is "Lead Free." For purposes of this Consent Judgment, "Lead Free" Products shall mean Products containing components that may be handled, touched or mouthed by a consumer, and which components yield less than 1.0 micrograms of lead when using a wipe test pursuant to NIOSH Test Method 9100, and yield less than 300 parts per million ("ppm") lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance. Products that are Lead Free are referred to hereinafter as "Reformulated Products."

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 \$8,640. 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).

Euro-Pro shall issue two separate checks for each of the penalty payments: (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 \$6,480, representing 75% of the total penalty; and (b) one check to Hirst & Chanler LLP in Trust for Brimer in the amount of \$2,160, 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 \$6,480. The second 1099 shall be issued to Brimer in the amount of \$2,160, 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 Hirst & Chanler LLP and shall be delivered 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

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. Euro-Pro 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. Euro-Pro shall reimburse Brimer and his counsel the total of \$20,000 for fees and costs incurred as a result of investigating, bringing this matter to Euro-Pro's attention, and litigating and negotiating a settlement in the public interest. Euro-Pro shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler LLP" and shall be delivered within ten (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

5. RELEASE OF ALL CLAIMS

5.1 Brimer's Release of Euro-Pro

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 Euro-Pro, 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 Euro-Pro and the Releasees, as such Claims relate to Euro-Pro's alleged failure to warn about exposures to the Listed Chemical contained in the Products. Euro-Pro's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 for Euro-Pro 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, arising out of the subject matter of this dispute. 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 Euro-Pro or any component parts thereof or to any distributors or suppliers who sold the Products or any component parts thereof to Euro-Pro.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Euro-Pro or the Releasees under Proposition 65 as covered under this release. If requested in writing by Euro-Pro (within twelve months of the Effective Date), Euro-Pro 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 Euro-Pro 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, Euro-Pro 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 Euro-Pro to have Brimer file a complaint and seek a consent judgment. Euro-Pro will remit payment to Hirst & Chanler LLP, at the address set forth in Section 8 below. Such additional fees shall be paid by Euro-Pro within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

5.2 Euro-Pro's Release of Brimer

Euro-Pro 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.

Euro-Pro 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 Euro-Pro of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Euro-Pro 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.

Euro-Pro 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

Euro-Pro 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 Euro-Pro:

Jennifer McCabe, Esq.
General Counsel
Euro-Pro Operating LLC
1210 Washington Street
West Newton, MA 02465

With a copy to:

Jeffrey M. Tanzer, Esq.
Venable LLP
2049 Century Park East
Suite 2100
Los Angeles, CA 90067

For Brimer:

Proposition 65 Coordinator
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.

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)

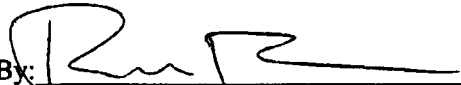

Brimer agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f).

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.

AGREED TO:	AGREED TO:
Date: <u>10.30.09</u>	Date: <u>11/2/09</u>
By:  Russell Brimer	By:  Euro-Pro Operating LLC