

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and Sun 'N' Sand Accessories, Inc.

This Settlement Agreement is entered into by and between Russell Brimer ("Brimer") and Sun 'N' Sand Accessories, Inc. ("Sun 'N' Sand"), with Brimer and Sun 'N' Sand collectively referred to as the "Parties." Brimer is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Sun 'N' Sand employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (Proposition 65).

1.2 General Allegations

Brimer alleges that Sun 'N' Sand manufactured, distributed and/or sold in California luggage tags containing lead without first providing a "clear and reasonable warning" in violation of Health & Safety Code § 25249.6. Lead is listed pursuant to Proposition 65 as a chemical that is known to cause birth defects and other reproductive harm. Lead shall be referred to hereinafter as the "Listed Chemical."

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: luggage tags containing lead, including, but not limited to, the *Laurel Burch On Board Companions Luggage Tag, LB5080*. All such items are referred to hereinafter as the "Products."

1.4 Notice of Violation

On or about June 17, 2010, Brimer served Sun 'N' Sand and various public enforcement agencies with a document titled "60-Day Notice of Violation" ("Notice") that provided Sun 'N' Sand and those public enforcers with notice Sun 'N' Sand was allegedly in violation of Health & Safety Code § 25249.6 for not having warned its

customers and consumers in California that the Products exposed users to the Listed Chemical.

1.5 No Admission

Sun 'N' Sand 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 have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Sun 'N' Sand of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Sun 'N' Sand of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Sun 'N' Sand. However, this section shall not diminish or otherwise affect Sun 'N' Sand's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Execution Date

For purposes of this Settlement Agreement, the term "Execution Date" shall mean the date on which this Consent Judgment is signed by all Parties.

1.7 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean May 1, 2010.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date, Sun 'N' Sand shall only ship, sell, or offer to ship for sale in California, Products that are "Lead Free." For purposes of this Settlement Agreement, "Lead Free" shall mean Products that contain than no more than 100 parts per million lead content when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that yield a result of less than 1.0 micrograms of lead when tested pursuant to the NIOSH 9100 testing protocol or other methods of detection and analysis authorized under Title 27 California Code of Regulations § 25900.

2.2 Requirements for Products Remaining in Inventory in California

For Products distributed and/or sold before the Effective Date that are not Reformulated Products and remain in inventory with retailers and distributors, Sun 'N' Sand must either provide Proposition 65 warnings or request that the retailer or distributor return the unsold Products. To this end, Sun 'N' Sand hereby agrees that within thirty (30) days of the Effective Date, it will send a letter, via certified mail with a copy to counsel for plaintiff, to each California retailer or distributor that is known or believed to have any inventory of the Products. The letter shall explain, in detail, the retailer's or distributor's duty to provide clear and reasonable warnings for the Products, in compliance with Proposition 65, and either:

(a) include a sufficient number of warning stickers containing the following language:

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

with instructions that the stickers be placed on the product packaging for those Products that remain on the sales floor of the retailer or are otherwise in inventory at the store or distribution facility. The instructions shall advise retailers and distributors that warning stickers issued for Products 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

(b) request that the retailer or distributor return Products remaining in inventory in California, if any, to Sun 'N' Sand, and state that Sun 'N' Sand will pay for shipping of the returned product.

As part of the instructions under either option (a) or (b), Sun 'N' Sand must specify the product name, product number, and shop keeping unit (SKU) number, if available, for each Product covered by the instruction letter.

3. **PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

Pursuant to Health & Safety Code Section 25249.7(b), the total civil penalty assessed shall be \$8,000. In consideration of Sun 'N' Sand's immediate and cooperative efforts, upon receipt of Brimer's Notice, to investigate the alleged presence of the Listed Chemical in the Products, to offer, pursuant to Section 2.1, only Reformulated Products in California after the Effective Date, and otherwise cooperate with Brimer's enforcement of Proposition 65, Brimer will provide Sun 'N' Sand with a penalty credit of \$7,000 to be applied to the penalty amount. As a result of this credit, Sun 'N' Sand shall pay the remaining sum \$1,000 to be apportioned in accordance with Health & Safety Code §§ 25249.12(c)(1) & (d). Seventy-five percent of the penalty amount shall be remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent of the penalty remitted to Brimer.

Sun 'N' Sand shall issue two checks the penalty payment: (a) one check made payable to "The Chanler Group in Trust Office of Environmental Health Hazard Assessment" in the amount of \$750, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$250, representing 25% of the total penalty. Two 1099 forms shall be issued for the above payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486); and (b) Russell Brimer, whose address and tax identification number shall be furnished upon request five days before payment is due. All payments made pursuant to this Section shall be delivered to Brimer's counsel on or before May 16, 2011, at the following address:

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

4. REIMBURSEMENT OF FEES AND COSTS

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, Sun 'N' Sand shall reimburse Brimer's counsel for fees and costs incurred as a result of investigating, bringing this matter to Sun 'N' Sand's attention, and negotiating a settlement in the public interest. Sun 'N' Sand shall pay \$15,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in three payments as follows:

\$5,000 due on or before May 16, 2011;

\$5,000 due on or before June 15, 2011; and

\$5,000 due on or before July 15, 2011

All checks shall be made payable to "The Chanler Group" and delivered to Brimer's counsel on at the following address:

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

Sun 'N' Sand shall issue a separate 1099 form for attorneys' fees and costs paid to The Chanler Group (EIN: 94-3171522).

5. RELEASE OF ALL CLAIMS

5.1 Brimer's Release of Sun 'N' Sand

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 and in his representative capacity, 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

attorney's fees) of any nature whatsoever, whether fixed or contingent (collectively "Claims"), against Sun 'N' Sand and each of its downstream wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, cooperative members, 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") that arise under Proposition 65, as such Claims relate to Sun 'N' Sand's alleged failure to warn about exposures to the Listed Chemical contained in the Products.

5.2 Sun 'N' Sand's Release of Brimer

Sun 'N' Sand, on behalf of itself and its Releasees, waives any and all claims against Brimer, his attorneys, and other representatives for any and all actions taken 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.

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 Sun 'N' Sand may 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:

To Sun 'N' Sand:

Rish Mehra, Vice President
Sun 'N' Sand Accessories, Inc.
1813 109th Street
Grand Prairie, TX 75050

To Brimer:

Proposition 65 Coordinator
The Chanler 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 or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or .pdf signature shall be as valid as the original.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Brimer and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by 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.

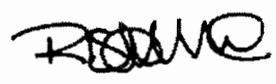
AGREED TO:

Date: 5-4-11

By: 
Russell Brimer

AGREED TO:

Date: 5/4/11

By: 
Rish Mehra, Vice President
Sun 'N' Sand Accessories, Inc.

SUN 'N' SAND ACCESSORIES
1813 10911 STREET
GRAND PRAIRIE, TX 75050
(972)641-3292