

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Russell Brimer and Kingsbridge International, Inc.

This Settlement Agreement is entered into by and between Russell Brimer (hereinafter “Brimer”) and Kingsbridge International, Inc., (hereinafter “Kingsbridge”), with Brimer and Kingsbridge 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. Kingsbridge 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 §§ 25249.5 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Brimer alleges that Kingsbridge has manufactured, imported, distributed and/or sold in the State of California tape measures containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm. In addition, cadmium, di(2-ethylhexyl)phthalate (“DEHP”), and other phthalates are listed as carcinogens and reproductive toxicants under Proposition 65. Lead, cadmium, and DEHP shall be collectively referred to herein as the “Listed Chemicals.”

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows:

1. Tape measures containing lead, manufactured, imported, distributed, and/or sold in California by Kingsbridge (hereinafter referred to as the “Products”);
2. Vinyl automobile accessories, manufactured, imported, distributed and/or sold in California by Kingsbridge, which contain one or more of the Listed Chemicals (hereinafter referred to as the “Additional Products”); and

3. Glassware used for the consumption of food or beverages contained exterior colored decorations, which contain one or more of the Listed Chemicals (hereinafter referred to as “Decorated Glassware”).

#### **1.4 Notice of Violation**

On or about June 17, 2010, Brimer served Kingsbridge and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Kingsbridge and such public enforcers with notice that alleged that Kingsbridge 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**

Kingsbridge 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 Kingsbridge 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 Kingsbridge 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 Kingsbridge under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean October 15, 2010.

## **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

### **2.1 Reformulation**

2.1.1 Reformulation for Products and Additional Products. As of the Effective Date, Kingsbridge shall only manufacture, or cause to be manufactured, Products and Additional Products for sale in California that are “Lead Free” and “Phthalate Free,” as defined below. For

purposes of this Settlement Agreement, with respect to Products and Additional Products, “Lead Free” shall mean Products and Additional Products containing less than or equal to 300 parts per million (“ppm”) of lead when using a method of detection and analysis authorized under 27 C.C.R. § 25900 and which yield not more than 1.0 micrograms of lead when using a wipe test pursuant to NIOSH Test Method 9100 in any component that may be handled, touched, or mouthed by a customer. “Phthalate Free” shall mean Products and Additional Products containing less than or equal to 1,000 ppm of DEHP when analyzed pursuant to any testing methodology selected by Kingsbridge that is acceptable to state or federal government agencies in determining compliance with phthalate content standards.

2.1.2 Reformulation for Decorated Glassware. Decorated Glassware items shall be considered to be reformulated and not require warnings pursuant to sections 2.2 and 2.3 below if they meet the following criteria:

1. They shall have no colored decoration in the exterior top 20 millimeters (i.e., the “lip and rim area”) or on the interior food/beverage contact area;
2. They must only utilize decorating materials on their exterior of the lip and rim area which contains 90 ppm of lead or less (0.009% of lead by weight or less) and 300 ppm of cadmium or less (0.03% of cadmium by weight or less) as measured either before or after the material is fired onto (or otherwise affixed to) the item, using EPA Test Method 3050B.<sup>1</sup> If the State of California adopts a lower standard for cadmium in decorations or surface coatings used on ceramic or glassware subsequent to the Effective Date, either by statute or regulation, or through a Proposition 65 judgment entered into by, or at the request of, the California Attorney General on behalf of the People of the State, then that cadmium standard shall

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<sup>1</sup> If the decoration is tested after it is affixed to the Covered Product, the percentage of lead or cadmium 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).

automatically supersede the 300 ppm cadmium standard set forth in the preceding sentence.

## **2.2 Product Warnings**

After the Effective Date, Kingsbridge shall not sell, ship, or offer to be shipped for sale in California, Products, Additional Products, or Decorated Glassware containing any of the Listed Chemicals in levels above the reformulation standards set forth in Sections 2.1.1 and 2.1.2, as applicable, unless such goods are shipped with the clear and reasonable warnings set out in Section 2.3.

Any warning issued for Products pursuant to Section 2.3 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 goods shipped directly to an individual in California, before use.

## **2.3 Warnings via Packaging, Labeling, or On-Item Itself**

Where applicable, Kingsbridge shall perform its warning obligation by affixing a warning to the packaging or label of, or, if no label exists, directly on, each Product, Additional Product, or Decorated Glassware product which may be offered for sale in California that states:

**WARNING: The materials used in this product contain lead, cadmium, and one or more phthalates, chemicals known to the State of California to cause birth defects or other reproductive harm.<sup>2</sup>**

## **2.4 Exceptions**

The warning requirements set forth in Sections 2.2 and 2.3 shall not apply to:

(i) Any Products or Additional Products received by Kingsbridge prior to receipt of the Notice, provided that Kingsbridge does not have actual knowledge, or reason from

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<sup>2</sup> The references to “lead” or “cadmium” or “phthalates”, but not all three, may be deleted from the above where Kingsbridge has obtained information indicating that the levels of the chemical whose name is to be deleted is below the applicable reformulation level for that chemical as defined in Section 2.1.1 or 2.1.2 above as applicable.

communications with its suppliers of the Products or Additional Products to believe, that the Listed Chemicals are present in concentrations exceeding 300 ppm for lead and 1,000 ppm for DEHP;<sup>3</sup>

(ii) Any Products, Additional Products, or Decorated Glassware items shipped by Kingsbridge to its California customers before the Effective Date; or

(iii) Reformulated Products (meeting the definitions set forth in Sections 2.1.1 and 2.1.2 above as applicable).

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

In settlement of all the claims referred to in this Settlement Agreement, Kingsbridge shall pay \$8,000 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 ("OEHHA") and the remaining 25% of these penalty remitted to Brimer as provided by California Health & Safety Code § 25249.12(d). Kingsbridge shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment in the amount of \$6,000, representing 75% of the total penalty and (b) one check to The Chanler Group in Trust for Brimer in the amount of \$2,000, 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 \$6,000. The second 1099 shall be issued to Brimer in the amount of \$2,000, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before October 25, 2010, to the following address:

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<sup>3</sup> This exemption is not applicable to Decorated Glassware.

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, Kingsbridge shall reimburse Brimer's counsel for fees and costs incurred as a result of investigating, bringing this matter to Kingsbridge's attention, and negotiating a settlement in the public interest. Kingsbridge shall pay Brimer and his counsel \$32,500 for all attorneys' fees, expert and investigation fees, and related costs. Kingsbridge shall issue a separate 1099 for fees and costs (EIN: 9403171522) and shall make the check payable to "The Chanler Group." This check shall be delivered on or before October 25, 2010, to the following address:

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

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Kingsbridge 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 above, 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"), against Kingsbridge and each of its downstream distributors,

wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Rite Aid Corporation), 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, as such claims relate to Kingsbridge’s alleged failure to warn about exposures to or identification of lead contained in the Products.

In addition to the foregoing, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all Claims against Kingsbridge and each of its Releasees. This additional release, which Brimer is providing in his individual capacity, is limited to those Claims that arise with respect to Proposition 65, as such Claims relate to Kingsbridge’s alleged failure to warn about exposures to or identification of:

1. DEHP or other phthalates in the Products;
2. Listed Chemicals in the Additional Products; and
3. Listed Chemicals in Decorated Glassware.

The Parties further understand and agree that all of the above releases shall not extend upstream to any entities that manufactured the goods in question or any component parts thereof, or any distributors or suppliers who sold the goods in question or any component parts thereof to Kingsbridge.

## **5.2 Kingsbridge’s Release of Brimer**

Kingsbridge 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, Additional Products, and Decorated Glassware.

**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 specifically as to the Products, Additional Products or Decorated Glassware, then Kingsbridge 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, Additional Products, or Decorated Glassware 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 Kingsbridge:

Kingsbridge International, Inc.  
9425 Canoga Avenue  
Chatsworth, California 91311

With a copy to:

Robert Falk, Esq.  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105

For Brimer:

The Chanler Group  
Proposition 65 Coordinator  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, California 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)**

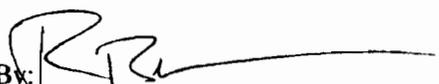
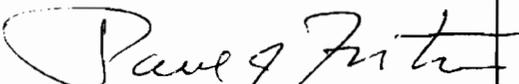
Brimer agrees to comply with the reporting requirements referenced in California Health & Safety Code § 25249.7(f).

**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>10 - 8 10</u>	Date: <u>10 - 11 - 10</u>
By:  Russell Brimer	By:  Kingsbridge International, Inc.