

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Russell Brimer and Acme United Corporation

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Acme United Corporation (“Acme”), with Brimer and Acme collectively referred to as the “Parties.” Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Acme 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 Acme has manufactured, imported, distributed, and/or sold in the State of California vinyl accessory pouches containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: vinyl accessory pouches containing lead that are manufactured, imported, distributed, and/or sold in California by Acme, including, but not limited to, *Westcott Aluminum Math Kit 5 Piece Set, #14173 (#0 73577 14173 5)*. All such items are referred to herein as “Products.”

#### 1.4 Notice of Violation

On or about October 15, 2010, Brimer served Acme and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Acme was alleged to be in violation of California Health & Safety Code §25249.6 for failing to warn consumers 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**

Acme denies the material, factual, and legal allegations contained in Brimer's Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold 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 Acme 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 Acme 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 Acme under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 28, 2011.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Commitment**

For purposes of this Settlement Agreement, "Lead Free" Products shall mean Products containing components that may be handled, touched or mouthed by a consumer, that yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100 as directly applied to each component being analyzed, and that meet one of the following standards: (a) Products that are primarily intended for use by persons ages twelve and younger shall yield less than 100 parts per million ("ppm") of 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 ("Concentration Test"); (b) all other Products, a Concentration Test shall yield less than 300 parts per million ("ppm") of lead. Products that are Lead Free are referred to hereinafter as "Reformulated Products."

Commencing on the Effective Date, Acme shall ship, sell, or offer to ship for sale in California, only Lead Free 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 \$3,000. Civil penalties are to be apportioned in accordance with California Health & Safety Code §§ 25249.12(c) & (d), with 75% of the payment amount remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty paid to Brimer.

Acme shall issue two separate checks for each of the penalty payments: (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 \$2,250 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$750, 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 \$2,250. The second 1099 shall be issued to Brimer, whose address and tax identification number shall be furnished, upon request, three calendar days before payment is due, in the amount of \$750. The payment shall be delivered on or before February 1, 2011, to 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**

**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.

Acme 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. Acme shall pay the total of \$20,750 for fees and costs incurred as a result of investigating, bringing this matter to Acme's attention, and negotiating a settlement in the public interest. Acme shall make the check payable to "The Chanler Group," shall issue a separate 1099 for fees and costs (EIN: 94-3171522 in the amount of \$20,750, and shall deliver payment to The Chanler Group on or before February 1, 2011, at 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 Brimer's Release of Acme**

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 Acme, or its parents, subsidiaries or affiliates, and all of their downstream 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.

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, for Acme, or to any distributors or suppliers who sold the Products or any component parts thereof to Acme.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Acme or the Releasees under Proposition 65 as covered under this release. If requested in writing by Acme (within twelve months of the Effective Date), Acme 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 § 25249.7, or as may be otherwise allowed by law. If requested, Brimer agrees to reasonably cooperate with Acme 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 §§ 1021 and 1021.5, Acme 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 \$18,000. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Acme to have Brimer file a complaint and seek a consent judgment. Acme will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Acme within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

## **5.2 Acme's Release of Brimer**

Acme waives any and all claims against Brimer, his attorneys, and other representatives (collectively "Brimer Releasees") 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.

## **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 and/or lead, then Acme 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 Acme:

Robin Stafford, Esq.  
Morrison & Foerster, LLP  
425 Market Street  
San Francisco, CA 94105-2482

FEB. 1. 2011 2:45PM

CHANLER LAW GROUP 510-848-8118

NO. 508

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For Brimer:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2515

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**

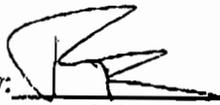
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 2-1-11

Date: \_\_\_\_\_

By:   
Russell Brimer

By: \_\_\_\_\_  
Brian S. Olschan, President  
Acme United Corporation

For Brimer:

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

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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: February 8, 2011

By: \_\_\_\_\_  
Russell Brimer

By:   
Brian S. Olschan, President  
Acme United Corporation