

## PROPOSITION 65 SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 The Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”), Franklin Sports, Inc. (“Franklin Sports”) with Brimer and Franklin Sports 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. Franklin Sports employs 10 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 Franklin Sports manufactured, distributed and/or sold, in the State of California, certain types of baseball uniform belts composed of material containing lead that exposed users to lead, without first providing “clear and reasonable warning” under Proposition 65. Lead is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.”

#### 1.3 Product Description

The products covered by this Settlement Agreement are baseball uniform belts composed of materials containing lead, including, but not limited to, Baseball Belt, Gold, SKU #24259507 (#0 25725 24279 5), caused to be manufactured and/or distributed by Franklin Sports. Such products shall be referred to herein as the “Covered Product” or “Covered Products.”

#### 1.4 Notice of Violation

On October 15, 2010, Brimer served Franklin Sports and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of lead, a toxic chemical found in and on the Covered

Products sold in California. To the best of the Parties' knowledge, no public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

### **1.5 No Admission**

This Settlement Agreement resolves claims that are denied and disputed by Franklin Sports. The Parties enter into this Settlement Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Franklin Sports denies the material factual and legal allegations contained in the Notice, maintains that they did not knowingly or intentionally expose California consumers to lead through the reasonably foreseeable use of the Covered Products, and otherwise contends that all Covered Products they have manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Settlement Agreement shall be construed as an admission by Franklin Sports 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 Franklin Sports of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Franklin Sports. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Franklin Sports' obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 18, 2011.

### **1.7 Lead Free Covered Products**

For purposes of this Settlement Agreement, the term "Lead Free" Covered Products shall mean Covered Products containing components that may be handled, touched or mouthed by a consumer, and which components 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.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Commitment**

2.1.1 As of the Effective Date, Franklin Sports shall not order, cause to be ordered, manufacture or cause to be manufactured any Covered Product for distribution to, or sale in, California that is not Lead Free, nor shall Franklin Sports distribute, cause to be distributed, sell or cause to be sold, in California, three months thereafter any Covered Product that is not Lead Free.

2.1.2 For every Covered Product ordered, caused to be ordered, manufactured or caused to be manufactured for distribution to or sale in California after the Effective Date, and for every Covered Product distributed, caused to be distributed, sold or caused to be sold in California by Franklin Sports, Franklin Sports shall maintain copies of all testing of such products demonstrating compliance with this section.

## **3. MONETARY PAYMENTS**

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

Subject to the potential offsets described in Section 3.2 below, Franklin Sports shall pay a total of \$6,000 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds (\$4,500) remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% (\$1,500) of these penalty monies remitted to Brimer as provided by California Health & Safety Code §25249.12(d).

Franklin Sports 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 ("The Chanler Group in Trust for OEHHA") for 75% of the total penalty required and (b) one check to "The Chanler Group in Trust for Russell Brimer" for the remaining 25% of the total penalty required. 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). The second 1099 shall be issued to Brimer, 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 to the following address:

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

### **3.2 Reduction in Penalty Payments**

Franklin Sports may reduce the total penalty payment due pursuant to Section 3.1 above by satisfying the following penalty offset option (in which event the division of remaining total penalties due shall be proportioned between OEHHA and Brimer in the same ratio as set forth in Section 3.1 above):

Franklin Sports may realize a \$2,000 reduction in the total penalty amount due under section 3.1 above if Franklin Sports agrees, by express, written confirmation to counsel for Brimer, that, no later than the Effective Date, the definition of the term "Lead Free" in section 2.1.1 above shall be deemed to have been replaced by the following definition:

The term "Lead Free" Covered Products shall mean Covered Products containing components that may be handled, touched or mouthed by a consumer, and which components yield less than 100 ppm lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, CPSC or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance.

### **3.3 Penalty Payment Terms**

Payment of the amount due pursuant to Sections 3.1 and 3.2 shall be delivered to Brimer's counsel on or before the Effective Date, 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 ATTORNEY FEES AND COSTS**

### **4.1 Attorney Fees and Costs**

The Parties reached 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. Franklin Sports shall pay Brimer and his counsel a total of \$31,000 as compromise reimbursement of a portion of the fees and costs incurred by Brimer and his counsel as a result of investigating, bringing this matter to Franklin Sports' attention, and negotiating the Settlement Agreement in the public interest. It is expressly understood that the sum of \$31,000 shall include compensation for Brimer and his counsel as reimbursement for a portion of the additional attorney fees and costs that Brimer's counsel will expend for all statutory reporting and other activities reasonably necessary to conclude this matter. Payment of the amount due pursuant to this section shall be delivered to Brimer's counsel on or before the Effective Date, at the following address:

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

## **5. CLAIMS COVERED AND RELEASE**

### **5.1 Brimer's Release of Franklin Sports**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, and excepting any claim, agreement, penalty, fee or cost to be agreed or assessed under Section 3.3, 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, arising out of Brimer's Notice (collectively "Claims"), against Franklin Sports and each of Franklin Sports' downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, 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 expressly limited to those claims that arise under Proposition 65, as such claims relate to Franklin Sports' alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Covered Products and as such claims are identified in the Proposition 65 Notice to Franklin Sports.

The Parties further understand and agree that this release shall not extend upstream to any entities, other than Franklin Sports, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Franklin Sports.

## **5.2 Franklin Sports' Release of Brimer**

Franklin Sports waive 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 Covered Products.

Franklin Sports also provide 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 Franklin Sports of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the settlement. Franklin Sports 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.

Franklin Sports expressly waives and relinquishes any and all rights and benefits that 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 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, unless the court finds that any unenforceable provision is not severable from the remainder of the Settlement Agreement.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California.

**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 Franklin Sports, Inc. to:

Larry Franklin, President  
Franklin Sports, Inc.  
17 Campanelli Parkway  
Stoughton MA 02072

With copy to their counsel:

Frederick Locker, Esq.  
Locker Greenberg & Brainin PC  
420 Fifth Avenue  
New York NY, 10018

For Brimer to:

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

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

**9. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

**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).

**12. MODIFICATION**

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



**13. COUNTERPARTS, FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same documents.



**14. AUTHORIZATION**

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

<p>Dated: November 1, 2011</p>  <p>Russell Brimer</p>	<p>Dated: November 1, 2011</p>  <p>Larry Franklin, President 11/21/2011 Franklin Sports, Inc.</p>
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