

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 **Russell Brimer and G. H. Meiser & Co.**

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and G. H. Meiser & Co. (“G. H. Meiser”), with Brimer and G. H. Meiser 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. G. H. Meiser 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 G. H. Meiser has manufactured, distributed and/or sold tire pressure gauges which contain lead, without the requisite Proposition 65 warnings. Lead is listed as Proposition 65 list as a chemical known 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: tire pressure gauges which contain lead and that are offered for sale in California, specifically, the *Accu-Gage Tire Pressure Gauge (#0 52134 44229 4)*. This tire pressure gauge is referred to hereinafter as the “Product” or “Products.”

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

On or about October 29, 2010, Brimer served G. H. Meiser and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided G. H. Meiser and public enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers that the Products that G. H. Meiser sold exposed users in California to the Listed Chemical.

### **1.5 No Admission**

G. H. Meiser denies the material, factual, and legal allegations contained in Brimer's Notice and maintains that all of the products that it has manufactured, sold, and/or 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 G. H. Meiser 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 G. H. Meiser of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by G. H. Meiser. However, this section shall not diminish or otherwise affect G. H. Meiser's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 22, 2011.

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

### **2.1 Reformulated Products**

For an interim period that commences on the Effective Date and continues for a period of one year, G. H. Meiser shall only manufacture, distribute, sell, or offer for sale or use in California, Products that are either: (a) "Reformulated Products" or; (b) sold according to the interim warning program established by Section 2.2. For purposes of this Consent Judgment, "Reformulated Products" shall mean that the vinyl "faux tire" handle element of the Products contains no more than 90 parts per million of lead when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and 6010B (Digest Test) or that yields no more than 1.0 micrograms of lead when analyzed pursuant to NIOSH Test Method 9100 (Wipe Test) performed on the vinyl "faux tire" handle element of the Product, as that element of the Product constitutes an accessible component that may be handled, touched or mouthed by a user during reasonably foreseeable use or misuse.

Beginning on February 22, 2012, G. H. Meiser commits to only manufacture, distribute, sell or offer for sale in California, Reformulated Products as defined by Section 2.1 of this Agreement.

## **2.2 Interim Warning Program for Non-Reformulated Products**

Commencing on the Effective Date and continuing for a period of one-year thereafter, G. H. Meiser shall institute a warning program in accordance with this Section 2.2 for all Products other than Reformulated Products. Products that are not Reformulated Products shall be presented for sale or use with a warning label that is 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 use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

G. H. Meiser commits that, as of February 22, 2012, it will only distribute, sell, or offer for sale in California Reformulated Products.

### **(a) Retail Store Sales.**

(i) **Product Labeling.** G. H. Meiser may affix a warning to the packaging, labeling, or directly on any Products that are not Reformulated Products sold in retail outlets in California after the Effective Date by G. H. Meiser or its agents that states as follows:

#### **Until G.H. Meiser's existing inventory of warning labels is exhausted:**

**WARNING:** This product and/or its packaging contains a chemical known to the State of California to cause birth defects or other reproductive harm.

#### **After G.H. Meiser's existing inventory of warning labels is exhausted:**

**WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and

other reproductive harm.

For purposes of the labels described in this Section 2.2(a)(i), such labels shall be printed or affixed and be visible on the display holding the Products.

**(ii) Point-of-Sale Warnings.** Alternatively, G. H. Meiser may provide warning signs in the form below to its retail customers in California with instructions to post the signs in close proximity to the point of display of any such Products for the benefit of its customers.

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

Where any such Products are sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement must be used:<sup>1</sup>

**WARNING:** The following product(s) contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm:

*[list product(s) for which warning is required]*

**(b) Mail Order Catalog and Internet Sales.** In the event that G. H. Meiser or its retail customers sell any Products that are not Reformulated Products via mail order catalog or the Internet to customers located in California after the Effective Date, G.H. Meiser shall provide a warning for such Products sold via mail order catalog or the Internet to California residents, or provide instructions to its retailer customers requesting that a warning be placed: (1) in the mail order catalog; or (2) on the website, as appropriate. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

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<sup>1</sup> For purposes of this Consent Judgment, “sold in proximity” shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

(i) **Mail Order Catalog Warning.** Any warning provided by G. H. Meiser in a mail order catalog, or its instruction to its retailer shall state that any warning provided in a mail order catalog, as the case may be, must be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

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

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, G. H. Meiser, or the instruction to a retailer shall state that the retailer, as the case may be, may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front or back cover of the catalog or on the same page as any order form for the Product(s):

**WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, G. H. Meiser must provide a header or footer, or provide an instruction to its retailer to provide a header or footer, as the case may be, directing the consumer to the warning language and definition of the designated symbol.

If G. H. Meiser elects to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Products printed after the Effective Date, or if it elects to provide instructions to its retailer that with regard to warnings

in the mail order catalog, then its instruction must state that the warnings must be included in all catalogs offering to sell one or more Products printed after the Effective Date.

(ii) **Internet Website Warning.** A warning may be given in conjunction with the sale of the Products via the Internet, provided it appears either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances, or the instruction to a retailer shall state that the following warning statement shall be used and shall appear in any of the above instances, adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

**WARNING:** Products identified on this page with the following symbol ▼ contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

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

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

Pursuant to California Health & Safety Code §25249.7(b), and in settlement of all of the claims alleged in the Notice and referred to in this Settlement Agreement, G. H. Meiser shall, subject to the waiver upon certification provision set forth in section 3.1.2, pay a total civil penalty of \$13,500 in for all violations alleged in the Notice. The penalty amount was determined

according to the factors set forth in California Health & Safety Code § 25249.7(b)(2), including, without limitation, the nature and extent of the violation, the economic effect of the penalty on the violator, and whether the violator took good faith measures to comply with Proposition 65 and the time such measures were taken.

**3.1.1 Initial Civil Penalty**

G. H. Meiser shall pay an Initial Civil Penalty of \$4,500 to be apportioned in accordance with California Health & Safety Code §§ 25249.12 (c)(1) & (d), with seventy-five percent of the penalty remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent paid to Brimer. G. H. Meiser shall issue two checks for the penalty payment: (a) one made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$3,375; and (b) one check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,125.

The payment of the Initial Civil Penalty shall be delivered within ten days of the Effective Date, to the following address:

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

Two 1099 forms shall be issued for the above payments to: (a) California Office of Health Hazard Assessment, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose tax information shall be provided within three calendar days of payment delivery.

**3.1.2 Final Civil Penalty; Waiver Upon Certification**

G. H. Meiser shall pay a Final Civil Penalty of \$9,000 on or before February 22, 2012. However, as an incentive to achieve one-hundred percent reformulation of the Products in advance of the expiration of the interim warning period, Brimer agrees that the additional civil penalty shall be waived in its entirety upon certification in writing by an officer of G. H.

Meiser that, as of February 22, 2012, it will only distribute, ship, sell, or offer for sale in California Reformulated Products. The written certification of reformulation must be received by The Chanler Group on or before February 8, 2012.

The Final Civil Penalty, unless waived in accordance with this section 3.1.2, shall be allocated between Brimer and OEHHA according to California Health & Safety Code §§ 25249.12 (c)(1) & (d). Payment of the Final Civil Penalty, if applicable, shall be in the form of two checks made out as follows: (a) "The Chanler Group in trust Russell Brimer" for the sum of \$2,250 and (b) "The Chanler Group in Trust for OEHHA" for the sum of \$6,750. Tax information for both Brimer and OEHHA shall be provided according section 3.1.1 above. Payment of the Final Civil Penalty shall be delivered to The Chanler Group at the address provided in Section 3.1.1 on or before February 22, 2012.

**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, G. H. Meiser shall reimburse Brimer's counsel for fees and costs, incurred as a result of investigating, bringing this matter to G. H. Meiser attention, and negotiating a settlement in the public interest. G. H. Meiser shall pay the total amount of \$23,000 for all attorneys' fees, expert and investigation fees, and related costs incurred. The payment shall be issued in a third check made payable to "The Chanler Group" and shall be delivered within five days of the Effective Date, at the following address:

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

A separate form 1099 shall be issued for attorney's fees and costs paid to The Chanler Group (EIN: 94-3171522).

**5. RELEASE OF ALL CLAIMS**

**5.1 Brimer's Release of G. H. Meiser**

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 known or unknown, fixed or contingent (collectively "Claims"), against G. H. Meiser and each of its 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 G. H. Meiser's alleged failure to warn about exposures to the Listed Chemical contained in the Products.

Brimer also, on behalf of himself and his agents, attorneys, representatives, successors and assigns, 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, and agrees not to initiate, participate in or maintain any further legal action in any judicial or administrative forum, including any Claim, against G.H. Meiser arising from any alleged violations of Proposition 65 with respect to the Listed Chemical in the Products. 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, on behalf of himself and his agents, attorneys, representatives, successors and assigns, expressly waives and relinquishes any and all rights and benefits that he may have under, or that 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.

**5.2      G. H. Meiser's Release of Brimer**

G. H. Meiser, 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 or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.

G. H. Meiser 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, attorney fees, damages, losses, claims, liabilities and demands of G. H. Meiser of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of this matter. G. H. Meiser 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 settlement with the debtor.

G. H. Meiser expressly waives and relinquishes any and all rights and benefits that it may have under, or that 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.

**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 G. H. Meiser 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 G. H. Meiser:

R. Morgan Gihuly, Esq.  
Joshua A. Bloom, Esq.  
Barg, Coffin, Lewis & Trapp, LLP  
350 California Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94104-1435

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 (portable document format) 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:

AGREED TO:

Date: 2-15-11

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

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

By: \_\_\_\_\_  
Jeff Watzke, Director  
G. H. Meiser & Co.

9. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or PDF (portable document format) 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.

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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.

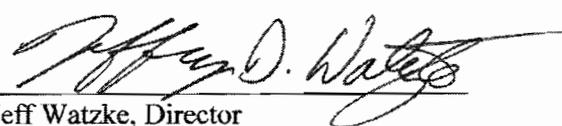
AGREED TO:

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

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

AGREED TO:

Date: Feb 16, 2011

By:   
Jeff Watzke, Director  
G. H. Meiser & Co.