

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Russell Brimer and Agron, Inc.

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Agron, Inc. (“Agron”), with Brimer and Agron 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. Agron employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

#### 1.2 General Allegations

Brimer alleges that Agron has manufactured, distributed, and/or sold in the State of California athletic bags containing lead. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5 *et seq.* (“Proposition 65”), as a chemical known to the State of California to be cause birth defects and other reproductive harm. Lead shall be referred to herein as the “Listed Chemical.”

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: athletic bags containing Listed Chemical that are manufactured, imported, distributed, and/or sold in California by Agron, including, but not limited to, *Adidas Diablo Small Duffel*, #718315 (#7 16106 45612 1). All such items are referred to herein as “Products.”

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

On or about October 29, 2010, Brimer served Agron and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Agron and such public enforcers with notice that Agron 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 the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

Agron 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 Agron 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 Agron of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Agron. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Agron under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean March 31, 2011.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Commitment**

As of the Effective Date, Agron shall not sell or offer for sale in California any Products that contain more than 200 ppm of lead when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B or equivalent methods.

## **3. MONETARY PAYMENTS**

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

In settlement of all the claims related to the Products and the Listed Chemical referred to in this Settlement Agreement, Agron shall make payments and receive credits totaling \$30,000, in civil penalties, as follows:

3.1.1 Agron shall make an initial payment of \$10,000 to be apportioned in accordance with Health & Safety Code § 25249.12 (c)(1) and (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies remitted to Brimer as provided by Health & Safety Code § 25249.12(d). Agron shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust for Office of Environmental Health Hazard Assessment" in the amount of \$7,500, representing 75% of the total penalty, and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$2,500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The first 1099 shall be issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$7,500. The second 1099 shall be issued to Brimer in the amount of \$2,500, whose address and tax identification number shall be furnished, upon request, at least five (5) calendar days before payment is due. The payments shall be delivered on or before March 31, 2011, at the address set forth in Section 3.4.

3.1.2 Agron shall receive an automatic credit of \$10,000, for its commitment to reformulate its Products pursuant to Section 2.1, above.

3.1.3 Agron shall pay a second civil penalty of \$10,000, on or before December 15, 2011, to be apportioned in accordance with Health & Safety Code § 25249.12 (c)(1) and (d) as described above, which penalty shall be waived in its entirety, if, by December 15, 2011, Agron certifies to Brimer that the Products contain no more than 100 ppm of lead when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B or equivalent methods and do not exceed 1.0 micrograms (“ug”) of lead as applied to all coated portions of all surfaces of the Products performed as outlined in NIOSH Test Method No. 9100.

3.1.4 All payments, unless waived, shall be delivered to the following address:

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

#### **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 attorney 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. Agron 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. Agron shall pay the total of \$28,500 for fees and costs incurred as a result of investigating, bringing this matter to Agron's attention, and negotiating a settlement in the public interest. Agron shall make the check payable to "The Chanler Group," shall issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment to The Chanler Group 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 94710-2565

## **5. RELEASE OF ALL CLAIMS**

### **5.1 Brimer's Release of Agron**

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 Agron, or its parents, subsidiaries or affiliates, and all of their 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 intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Agron or the Releasees under Proposition 65 as covered under this release. If requested in writing by Agron (within twelve months of the Effective Date), Agron 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 Section 25249.7, or as may be otherwise allowed by law. If requested, Brimer agrees to reasonably cooperate with Agron 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, Agron 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 \$15,000. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Agron to have Brimer file a complaint and seek a consent judgment. Agron will remit payment to The Chanler Group, at the address set forth in Section 8 below. Such additional fees shall be paid by Agron within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

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

Agron 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 the Listed Chemical, then Agron 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 Agron:

Wade Siegel, President  
Agron, Inc.  
2440 South Sepulveda Boulevard, Suite 201  
Los Angeles, CA 90064

with a copy to:

Larry Burke, Esq.  
Davis Wright Tremaine LLP  
1300 SW Fifth Avenue, Suite 2300  
Portland, OR 97201

For 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, 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)**

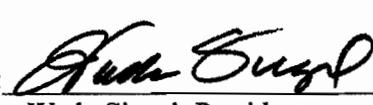
Brimer agrees to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f).

**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.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>3-27-11</u></p> <p>By:  Russell Brimer</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>3/21/11</u></p> <p>By:  Wade Siegel, President Agron, Inc.</p>
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