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12 Attorneys for Plaintiff
RUSSELL BRIMER

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

15
16 RUSSELL BRIMER,
17 Plaintiff,
18 v.
19 PROVO CRAFT & NOVELTY, INC.; and
DOES 1 through 150, inclusive,
20 Defendant.

CASE NO. CGC-11-508609
SETTLEMENT PURSUANT TO C.C.P.
SECTION 664.6

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22
23 The Parties have agreed to settle this lawsuit pursuant to C.C.P. Section 664.6 on the
24 terms and conditions noted hereinafter.

25 1. This settlement is made pursuant to C.C.P. § 664.6. The court shall retain jurisdiction
26 over the parties to enforce the settlement until performance in full of the terms of the settlement.
27 Plaintiff Russell Brimer (“Brimer”) and Defendant Provo Craft & Novelty, Inc. (“Provo Craft”)
28 (collectively Brimer and Provo Craft shall be referred to as the “Parties”), consent to the

1 jurisdiction and venue of the San Francisco County Superior Court.

2 2. Brimer brought this lawsuit in the public interest, and hereby warrants and represents
3 that he has the authority to bind the plaintiff to this settlement and to enter into the release noted
4 herein in the public interest.

5 3. Donald Olsen, General Counsel, Provo Craft & Novelty, Inc., hereby warrants and
6 represents that he has the authority to bind Provo Craft to this settlement.

7 4. On or about October 29, 2010, Brimer served Provo Craft and various public
8 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging a violation of
9 California Health & Safety Code § 25249.6 regarding storage binders with storage pages. The
10 listed chemical at issue was lead. No public enforcer has diligently prosecuted the allegations set
11 forth in the Notice. A copy of this Notice is attached hereto as Exhibit “A.”

12 5. On or about September 1, 2011, Brimer served Provo Craft and various public
13 enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supplemental Notice”)
14 alleging a violation of California Health & Safety Code § 25249.6 regarding the same storage
15 binders with storage pages noted in Para. 4, herein. The listed chemical at issue was the phthalate
16 DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Supplemental
17 Notice. A copy of this Supplemental Notice is attached hereto as Exhibit “B.”

18 6. On or about November 17, 2011, Brimer served Provo Craft and various public
19 enforcement agencies with a Second Supplemental 60-Day Notice of Violation” (“Second
20 Supplemental Notice”) alleging a violation of California Health & Safety Code § 25249.6
21 regarding the aforementioned storage binders and additionally binder inserts/pages, shoulder
22 bags, and tote bags with keychains. The listed chemicals were either lead or DEHP, or both. No
23 public enforcer has diligently prosecuted the allegations set forth in the Second Supplemental
24 Notice. A copy of this Second Supplemental Notice is attached hereto as Exhibit “C.”

25 7. The Notice, the Supplemental Notice, and the Second Supplemental Notice shall be
26 collectively referred to as the “NOTICE.” The specific items set forth in the NOTICE are listed
27 in Paragraph 11 herein.

28 8. On or about February 28, 2011, a complaint was filed in the Superior Court in and for

1 the County of San Francisco entitled Brimer v. Provo Craft et al, Case No. CGC-11-508609,
2 regarding the product and violations stated in the Notice.

3 9. On or about December 9, 2011, a complaint in the Superior Court in and for the
4 County of San Francisco entitled Brimer v. Provo Craft et al, Case No. CGC-11-516509,
5 regarding the product and violations stated in the Supplemental Notice. This complaint was
6 amended on or about Feb. 10, 2012, and addressed matters set forth in the Second Supplemental
7 Notice.

8 10. Brimer and Provo Craft have agreed to settle this case and Case No. CGC-11-516509
9 in order to avoid the cost and uncertainty of litigation. The case denominated CGC-11-508609
10 and CGC-11-516509 shall collectively be referred to as the “CASE.”

11 11. The products addressed in the NOTICE and the CASE (hereinafter the “Products At
12 Issue”) are:

- 13 The Cuttlebug storage binder and the Cuttlebug storage binder with page insert
- 14 (aka Cuttlebug Die & Embossing Folder Storage), #37-1575 (#0 93573 41575 3)¹;
- 15 Cuttlebug A2 Binder Insert, #37-1576 (#0 93573 41576 0);
- 16 Cuttlebug Tote, #2000970 (#0 93573 58871 6);
- 17 Cricut Shoulder Bag, # 29-0692 (#0 93573 106927); and
- 18 Cuttlebug 2x2 Binder Insert, #37-1577 (#0 93573 41577 7).

19 12. Brimer asserts and alleges violations of Proposition 65 as set forth in the NOTICE
20 and the CASE. Defendant Provo Craft denies that it has any liability for the Products At Issue as
21 asserted in the CASE. Provo Craft further denies the material, factual, and legal allegations
22 contained in the NOTICE and the CASE, and maintains that all products it has sold, imported
23 and/or distributed in California, and all Provo Craft products manufactured, imported, sold, or
24 distributed by others, including the Products At Issue, have been and are in compliance with all
25 laws, including but not limited to Proposition 65. Nothing herein shall be construed as an
26 admission by Provo Craft of any fact, finding, issue of law, or violation of law, nor shall
27

28 ¹ Erroneously identified in San Francisco County Superior Court Case No. CGC-11-516509 as
#37-1575 (#0 93573 41575 7).

1 compliance with this settlement constitute or be construed as an admission by Provo Craft of any
2 fact, finding, conclusion, issue of law, or violation of law.

3 13. Except as noted in paragraphs 13.1 and 13.2, Provo Craft agrees that as of the date
4 the Court approves this settlement it shall not itself sell or itself distribute the Products At Issue in
5 California.

6 13.1 Brimer and Provo Craft stipulate that the Cricut Shoulder Bag, #29-0692 (#0 93573
7 10692 7) complies with Proposition 65 in terms of the listed chemicals DEHP and lead, and as
8 such this Product At Issue may be distributed and sold in California.

9 13.2 Brimer and Provo Craft further stipulate that Products At Issue, other than the
10 Cricuit Shoulder Bag, whose sale and distribution is addressed in Section 13.1, that are no longer
11 in the possession of Provo Craft as of the date the Court approves this settlement are subject to
12 the releases contained herein and future sales of these released Products At Issue by unaffiliated
13 third-parties shall not be separately actionable in another case brought pursuant to Section
14 25249.7(d) of the Health and Safety Code alleging a failure to warn for lead and DEHP under
15 Proposition 65.

16 14. Provo Craft agrees to pay a civil penalty of \$15,000, to be apportioned in accordance
17 with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these
18 funds earmarked for the Office of Environmental Health Hazard Assessment (“OEHHA”) and the
19 remaining 25% of these monies earmarked for plaintiff Brimer.

20 15. Provo Craft agrees to reimburse Brimer’s counsel, pursuant to C.C.P. § 1021.5, a total
21 of \$55,000 for fees and costs incurred as a result of this litigation. This figure includes those
22 future fees and costs to be incurred in seeking judicial approval of this settlement as well as any
23 other legal work performed after the execution of this settlement which is incurred in an effort to
24 obtain finality of the case.

25 16. Provo Craft shall convey those payments noted in Paragraphs 14 and 15 herein within
26 five calendar days of receipt of notification from plaintiff that the settlement has been approved
27 by the Court and that no entity has given formal or informal notice within such five-day period
28 that it intends to appeal the approval of the settlement by the Court. Upon receipt of the payments

1 noted in Paragraphs 14 and 15 herein, Brimer shall dismiss the CASE with prejudice. Brimer
2 shall keep Provo Craft fully informed of any scheduled date(s) for hearing on a motion for
3 judicial approval of the settlement (or an ex parte motion to shorten time for hearing a motion for
4 judicial approval of the settlement) in order to allow Provo Craft to plan payment in the normal
5 course of business operations.

6 17. Payments.

7 A. All payments noted in Paragraphs 14 and 15 shall be delivered to The Chanler Group
8 at the following address:

9 The Chanler Group
10 Attn: Proposition 65 Controller
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710

14 B. After this settlement has been approved and the settlement funds required by
15 Paragraphs 14 and 15 have been transmitted to The Chanler Group, Provo Craft shall issue
16 three separate 1099 forms, as follows:

- 17 i. The first 1099 shall be issued to the OEHHA, P.O. Box 4010,
18 Sacramento, CA 95814 (EIN: 68-0284486) in the amount of
19 \$11,250;
20 ii. The second 1099 shall be issued to Russell Brimer in the amount of
21 \$3,750; Brimer's address and tax identification number shall be
22 furnished to Provo Craft upon request; and,
23 iii. The third 1099 shall be issued to The Chanler Group (EIN: 94-
24 3171522) at the address noted in Para. 28 herein in the amount of
25 \$55,000.

26 18. Brimer, suing in the public interest, hereby releases Provo Craft; all entities that
27 supplied or distributed the Products At Issue to Provo Craft; all entities that manufactured the
28 Products At Issue that were directly or indirectly supplied to Provo Craft; all distributors and
retailers of the Products At Issue, including, but not limited to, Wal-Mart Stores, Inc.;
Amazon.com, Inc.; Hancock Fabrics, Inc.; Kmart Corporation; Scrapbook Island; Sears Holding

1 Corporation; Notions Marketing Corp.; Ensign Group International; and, the affiliates and
2 subsidiaries of each of these aforementioned entities; all entities served with a 60-day notice, and, the
3 divisions, successors, subsidiaries, parent corporations, related entities, affiliates, agents,
4 contractors, experts, consultants, counsel, service providers, officers, directors, and employees of
5 Provo Craft & Novelty, Inc., Wal-Mart Stores, Inc.; Amazon.com, Inc.; Hancock Fabrics, Inc.;
6 Kmart Corporation; Scrapbook Island; Sears Holding Corporation, Notions Marketing Corp.,
7 Ensign Group International; and, the aforementioned entities described or named in this Para. 18
8 (collectively, all of these entities are referred to herein as the “DEFENDANT”), of any liability
9 whatsoever under Proposition 65 related to the Products At Issue and the alleged failure to warn
10 California consumers of an alleged exposure to lead or to DEHP from any of the Products At
11 Issue sold in California on or before the date the Court approves this settlement or pursuant to
12 Para 13.1 or 13.2.

13 19. Additionally, Brimer in his individual capacity and *not* in his representative capacity,
14 hereby waives any and all rights and benefits which he now has, or in the future may have,
15 conferred upon him with respect to any and all legal or equitable actions that arise from or are
16 related to Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco Superior Court, Docket No.
17 CGC-11-508609 or Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco County Superior
18 Court Case No. CGC-11-516509, the Products At Issue, or by virtue of the provisions of Section
19 1542 of the California Civil Code, which provides as follows:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
21 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
22 EXIST IN HIS OR HER FAVOR AT THE TIME OF
23 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

24 Brimer understands and acknowledges the significance and consequence of this waiver
25 pursuant to California Civil Code Section 1542, and understands and acknowledges that the
26 waiver applies to any and all legal or equitable actions that arise from or are related directly or
27 indirectly, in whole or in part, to the Products At Issue, Brimer v. Provo Craft & Novelty, Inc., et
28 al, San Francisco Superior Court, Docket No. CGC-11-508609, or Brimer v. Provo Craft &

1 Novelty, Inc., et al, San Francisco County Superior Court Case No. CGC-11-516509, statements
2 made regarding Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco Superior Court,
3 Docket No. CGC-11-508609 or Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco
4 County Superior Court Case No. CGC-11-516509, acts and omissions related to investigating
5 Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco Superior Court, Docket No. CGC-11-
6 508609 or Brimer v. Provo Craft & Novelty, Inc., et al, San Francisco County Superior Court
7 Case No. CGC-11-516509, and the underlying facts of the lawsuit or claims made in Brimer v.
8 Provo Craft & Novelty, Inc., et al, San Francisco Superior Court, Docket No. CGC-11-508609 or
9 Brimer v. Provo Craft & Novelty, Inc., et al., San Francisco County Superior Court Case No.
10 CGC-11-516509. Furthermore, Brimer acknowledges that he intends these consequences for any
11 such claims related to the Products At Issue which may exist as of the date of this release but
12 which Brimer does not know exist, and which, if known, would materially affect his decision to
13 enter into this Agreement, regardless of whether the lack of knowledge is the result of ignorance,
14 oversight, error, negligence or any other cause. Brimer further waives all rights to institute any
15 form of legal or equitable action or defense (including without limit contribution, indemnity, set-
16 off and by right of subrogation) against the DEFENDANT for any and all acts or omissions or
17 statements made or activities directed to be undertaken or activities that were undertaken by
18 DEFENDANT in the course of those lawsuits known as Brimer v. Provo Craft & Novelty, Inc., et
19 al, San Francisco Superior Court, Docket No. CGC-11-508609; and Brimer v. Provo Craft &
20 Novelty, Inc., et al, San Francisco County Superior Court Case No. CGC-11-516509,

21 20. Provo Craft , on behalf of itself, its past and current agents, representatives, attorneys,
22 successors, and/or assignees, hereby waives any and all claims against Brimer, his attorneys and
23 other representatives, for any and all actions taken or statements made (or those that could have
24 been taken or made) by Brimer and his attorneys and other representatives, whether in the course
25 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
26 with respect to the Products At Issue.

27 21. The Parties agree, understand, and acknowledge that this settlement represents a
28 compromise of this action, and the release of claims as set forth herein, and neither the fact nor

1 the terms of this settlement is to be construed as an admission of liability or wrongdoing on the
2 part of the Parties.

3 22. Each of the Parties acknowledges that they had the right and ability to consultation
4 with and the advice of counsel of their choice and each voluntarily has entered into this
5 settlement.

6 23. Except to the extent otherwise noted, each of the Parties shall bear its own costs and
7 fees.

8 24. This settlement may be modified only: (1) by written agreement of the Parties and
9 upon entry of a modified settlement by the Court thereon; or (2) upon a successful noticed motion
10 of any Party and entry of a modified settlement by the Court.

11 25. Unless specified herein, all correspondence and notices required to be provided
12 pursuant to this settlement shall be in writing and personally delivered or sent by: (i) first-class
13 registered or certified mail with a return receipt requested; or (ii) overnight courier to the
14 following addresses:

15 **To Provo Craft & Novelty, Inc.:**

16 Provo Craft & Novelty, Inc.
17 Attn.: Don Olsen, General Counsel
18 10876 South River Front Pkwy, Ste. 600
19 South Jordan, UT 84095-5929

20 **To Brimer:**

21 Proposition 65 Coordinator
22 The Chanler Group
23 2560 Ninth Street
24 Parker Plaza, Ste. 214
25 Berkeley, CA 94710-2565

26 **With a copy to:**

27 Thomas H. Clarke, Jr.
28 Ropers, Majeski, Kohn & Bentley
201 Spear St., Suite. 1000
San Francisco, CA 94105-1667

For all notices and correspondence required to be provided pursuant to this settlement in writing, the Parties shall also send a courtesy notice by electronic mail to counsel with the correspondence or notice attached thereto. The provision of such courtesy notice shall not lessen, diminish, or void the requirement noted herein regarding how actual notices and correspondence are to be sent. Further, 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.

1 26. The Parties agree that pending approval of this settlement agreement by the Superior
2 Court, no responsive pleading is required of any defendant named in San Francisco County
3 Superior Court Case No. CGC-11-516509.

4 27. Brimer has sent trial subpoenas (with document production) to various individuals
5 and entities requiring their appearance at the trial of San Francisco County Superior Court Case
6 No. CGC-11-508609. Subsequent to sending the subpoenas, Brimer agreed to modify the
7 subpoenas so that they were converted to subpoenas duces tecum only, and that any person or
8 entity served would have 14 days notice of the requirement for document production. As part of
9 this settlement herein, the Parties agree that Brimer shall notify the persons and entities subject to
10 the subpoenas, and inform them that the subpoenas are being withdrawn by Brimer and thus
11 rendered null and void. Provo Craft & Novelty, Inc. shall receive a draft copy of the letter
12 withdrawing the subpoenas and shall have five days upon receipt to comment upon its language.
13 The Parties agree to use good faith in resolving any disagreement regarding the wording of such
14 letter. The Parties agree that the withdrawal of the subpoenas is a term and condition of the
15 settlement noted herein.

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28 28. As discussed in paragraphs 4-7, above, Brimer served sixty-day notices to various

1 persons and entities in connection with the Products at Issue. The Parties agree that Provo Craft
2 shall notify the persons and entities subject to these sixty-day notices, that the allegations in the
3 NOTICE have been resolved by this settlement and that each is a party to the release contained
4 herein. Brimer shall, consistent to with Code and Regulations, report this settlement on the
5 Attorney General's website so that there is a public record of this settlement, which resolves all
6 outstanding claims with respect to the NOTICE.

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Dated: 8.13.12


BY: _____
Russell Brimer, Plaintiff

Dated:

FOR: Provo Craft & Novelty, Inc., Defendant
BY: Donald Olsen
ITS: General Counsel

1 persons and entities in connection with the Products at Issue. The Parties agree that Provo Craft
2 shall notify the persons and entities subject to these sixty-day notices, that the allegations in the
3 NOTICE have been resolved by this settlement and that each is a party to the release contained
4 herein. Brimer shall, consistent to with Code and Regulations, report this settlement on the
5 Attorney General's website so that there is a public record of this settlement, which resolves all
6 outstanding claims with respect to the NOTICE.
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8 Dated:

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BY: Russell Brimer, Plaintiff

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Dated:

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FOR: Provo Craft & Novelty, Inc., Defendant

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BY: Donald Olsen

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ITS: General Counsel

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