

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Russell Brimer and California Pak International, Inc.**

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and California Pak International, Inc. (“Cal Pak”), with Brimer and Cal Pak collectively referred to as the “Parties.” Brimer is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Cal Pak 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 Section 25249.6, *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

Brimer alleges that Cal Pak has manufactured, distributed and/or sold duffel bags that contain lead (the “Listed Chemical”), without first providing “clear and reasonable” warnings under Proposition 65. The Listed Chemical is 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: duffel bags containing the Listed Chemical including, but not limited to, *California Pak Field Pak 20, DFP3020 (#6 02409 30663 1)*, manufactured, distributed, and/or sold in California by Cal Pak (“Products”).

#### **1.4 Notices of Violation**

On or about February 24, 2011, Brimer served Cal Pak, Big 5 Sporting Goods Corporation, and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Cal Pak and public enforcers with notice of Cal Pak’s alleged violations of

California Health & Safety Code Section 25249.6 for failing to warn consumers that the Products that Cal Pak sold exposed users in California to the Listed Chemical. To the best of the Parties' knowledge, no public enforcer has diligently prosecuted any action involving the allegations set forth in the Notice.

**1.5 No Admission**

This Settlement Agreement resolves claims that are denied and disputed by Cal Pak. 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 litigation. Cal Pak denies the material, factual and legal allegations contained in Brimer's Notice and maintains that all Products that it has sold and distributed in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Cal Pak 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 Cal Pak of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Cal Pak. However, this Section shall not diminish or otherwise affect Cal Pak'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 June 16, 2011.

**2. INJUNCTIVE RELIEF**

**2.1 Reformulation Commitment**

As of the Effective Date, Cal Pak shall not purchase, import, manufacture, sell, or ship for sale in California any Products that contain lead in concentrations more than 100 parts per million ("ppm" or "mg/kg") in each accessible component that can be touched or mouthed 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), or yielding more than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100 (the “Lead Standard”). The deadline for meeting the Lead Standard shall not be extended.

Notwithstanding the deadline for meeting the Lead Standard set forth in the preceding paragraph of this Section 2.1, Cal Pak may purchase, import, manufacture, sell, or ship for sale in California Products that do not comply with the Lead Standard under the following conditions: (i) Products, or accessible components thereof, that comply with the Lead Standard are not “reasonably commercially available”; (ii) the Products are not primarily intended for use by individuals twelve years of age or younger; and (iii) Cal Pak complies with the warning requirements set forth in Section 2.2 below. For purposes of this Section 2.1, “reasonable commercial availability” shall include consideration of the following factors: availability and supply of the Products or accessible components that meet the Lead Standard; cost of the Products or accessible components that meet the Lead Standard; and performance characteristics of the Products or accessible components that meet the Lead Standard, including but not limited to performance, safety, and stability. Upon request, Cal Pak shall produce to Brimer records demonstrating that the Products, or accessible component(s) thereof, that comply with the Lead Standard are not reasonably commercially available.

## **2.2 Warning Requirement**

Commencing on the Effective Date, Cal Pak shall not sell, ship, or offer to be shipped for sale in California any Product containing more than 100 ppm of lead or yielding more than 1.0 microgram of lead when using a wipe test in any accessible component of the Product that can be mouthed or touched, unless the conditions set forth in 2.1 are met, including the requirement that the Product be accompanied by a clear and reasonable warning that is affixed to the packaging, labeling, or directly on each Product that states:

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

and other reproductive harm.

Warnings shall be 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 of purchase or use.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement against it, Cal Pak shall make payments and receive credits totaling \$35,000, in civil penalties, as follows:

**3.1** Cal Pak 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 ("OEHHA") and the remaining 25% of these penalty monies remitted to Brimer as provided by Health & Safety Code § 25249.12(d). Cal Pak shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust for OEHHA" 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 the 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. The payments shall be delivered within 10 days of execution of this Settlement Agreement, at the address set forth in Section 3.4 below.

**3.2** Cal Pak shall receive an automatic credit of \$25,000, for its commitment to reformulate, to the extent "reasonably and commercially available", Products to contain lead in concentrations less than or equal to 100 ppm, pursuant to Section 2.1, above, or to provide a

warning pursuant to Section 2.2 above.

**3.3** All payments, unless waived, 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

**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 (California Code of Civil Procedure §1021.5) and principles of contract law. Under these legal principles, Cal Pak shall reimburse Brimer's counsel for fees and costs incurred as a result of investigating, bringing this matter to Cal Pak's attention, and negotiating a settlement in the public interest. Cal Pak shall pay Brimer and his counsel \$22,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "The Chanler Group" and shall be delivered within ten (10) days of execution of this Settlement Agreement, at the following address:

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

Cal Pak shall issue a separate Form 1099 for attorney's fees and costs paid in the amount of \$22,000 to The Chanler Group, 2560 Ninth Street, Suite 214, Berkeley, CA 94710-2565 (EIN: 94-3171522).

**5. RELEASE OF ALL CLAIMS**

**5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

This Consent Judgment is a full, final and binding resolution between Brimer, on behalf of himself and the public, and Cal Pak, of any violation of Proposition 65 that was or could have been

asserted by Brimer against Cal Pak, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Cal Pak directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to the Listed Chemical contained in the Products that were sold by Cal Pak.

**5.2 Brimer’s Public Release of Proposition 65 Claims.**

In further consideration of the promises and agreements herein contained, 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 – limited to and arising under Proposition 65 with respect to the Listed Chemical in the Products sold by Cal Pak (collectively “claims”), against Cal Pak and Releasees.

**5.3 Brimer’s Individual Release of Claims.**

Brimer also, in his individual capacity only and not in his representative capacity, provides a 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, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Listed Chemical in the Products manufactured, distributed or sold by Cal Pak or Releasees.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Cal Pak or Releasees under Proposition 65 as covered under this release. If requested in writing by Cal Pak (within twelve months of the

execution of this Settlement Agreement), Cal Pak 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 Cal Pak 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 Code of Civil Procedure Sections 1021 and 1021.5, Cal Pak 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, exclusive of fees and cost that may be incurred on appeal. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Cal Pak to have Brimer file a complaint and seek a consent judgment. Cal Pak will remit payment to The Chanler Group, at the address set forth in Section 8 below. Such additional fees shall be paid by Cal Pak within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

**5.4 Cal Pak's Release of Brimer.**

Cal Pak on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Brimer, his attorneys and other representatives, for any and all actions taken (or those that could have been taken) by Brimer and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter 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 or found by the Attorney General 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 Cal Pak 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 sent by: (i) personal delivery, (ii) first-class, (registered or certified mail) return receipt requested; or (iii) by overnight courier to any party by the other party at the following addresses:

To Cal Pak:

Tracy J. Egoscue, Esq. (tracyegoscue@paulhastings.com)  
Paul, Hastings, Janofsky & Walker LLP  
515 South Flower Street, 25th Floor  
Los Angeles, CA 90071

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. The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Cal Pak and the Releasees under Proposition 65 as covered under the Release in Section 5 of this Settlement Agreement.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**



This Settlement Agreement may be executed in counterparts and by facsimile or .pdf 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 SECTION 25249.7(f)**

Brimer and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code Section 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:**

Date: 6-2-11

By:   
Russell Brimer

**AGREED TO:**

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

By: \_\_\_\_\_  
California Pak International, Inc.

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**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:**

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

By: \_\_\_\_\_

Russell Brimer

**AGREED TO:**

Date: June 6, 2011

By: [Signature]

California Pak International, Inc.