

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and The Northwest Company LLC

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and The Northwest Company LLC (“Northwest”) with Brimer and Northwest collectively referred to as the “Parties.” Brimer is an individual residing in the state of California who asserts that he seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Northwest 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 Northwest has manufactured, distributed, sold and/or offered for sale in California steering wheel covers containing lead without the requisite Proposition 65 warnings. Lead is listed pursuant to Proposition 65 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 steering wheel covers manufactured, distributed, sold and/or offered for sale in California by Northwest containing lead including, but not limited to, *Dale Jr. NASCAR Steering Wheel Cover (#0 87918 81878 1)*, hereinafter the “Products.”

1.4 Notice of Violation

On or about July 20, 2011, Brimer served Northwest and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided the recipients with notice of alleged violations of Proposition 65 by Northwest for failing to warn its customers and consumers in California that the Products it sold exposed users to lead. To the best of the Parties’ knowledge, no public enforcer has

commenced and is diligently prosecuting the allegations set forth in the July 20, 2011 Notice.

1.5 No Admission

Northwest denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and 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 Northwest 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 Northwest of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Northwest. However, this section shall not diminish or otherwise affect Northwest'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 December 31, 2011.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Northwest shall only manufacture, distribute, sell and/or offer for sale in California Products that are "Lead Free." For purposes of this Settlement Agreement, "Lead Free" Products shall mean Products containing components that may be handled, touched, or mouthed by a consumer, and which components yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH test method 9100, and yield less than 100 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.

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

In settlement of all claims referred to in this Settlement Agreement, Northwest shall pay \$5,000 in combined penalty payments and credits in civil penalties.

For its cooperation in the settlement process and its commitment to reformulate the Products to be Lead Free pursuant to Section 2.1 above, Brimer shall provide Northwest with a penalty credit of \$3,000. Thereafter, the remaining penalty amount of \$2,000 will be paid by Northwest and apportioned according to Health & Safety Code §§ 25249.12 (c)(1) & (d), with 75% of the penalty amount remitted to the state of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty paid to Brimer.

Northwest shall issue two checks for the penalty payment: (a) one check payable to "The Chanler Group in Trust for OEHHA" in the amount of \$1,500 and (b) one to "The Chanler Group in Trust for Russell Brimer" in the amount of \$500. Two 1099 forms shall be provided for the above payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Brimer, whose address and tax identification number shall be furnished, upon request, at least five (5) calendar days before payment is due. Payment shall be delivered on or before the Effective Date to the following address:

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

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Brimer and his counsel offered to resolve this dispute without reaching terms on the amount of 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. Northwest 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 the private attorney general doctrine and principles of contract law. Under these legal principles, Northwest shall reimburse Brimer's counsel for fees and costs incurred as a result of investigating, bringing this matter to Northwest's attention, and negotiating a settlement in the public interest. Northwest shall pay Brimer's counsel \$24,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third check made payable to "The Chanler Group" and shall be delivered on or before the Effective Date to the following address:

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

Northwest shall issue a separate 1099 for attorneys' fees and costs paid to The Chanler Group (EIN: 94-3171522).

5. CLAIMS COVERED AND RELEASED

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations

This Settlement Agreement is a full, final and binding resolution between Brimer, on behalf of himself and the public, and Northwest, of any violation of Proposition 65 that was or could have been asserted by Brimer against Northwest, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Northwest 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 lead contained in the Products that were manufactured, distributed, sold and/or offered for sale by Northwest.

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, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to lead in the Products manufactured, distributed, sold and/or offered for sale by Northwest (collectively "claims"), against Northwest and Releases.

5.3 Brimer 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 plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead in the Products manufactured, distributed sold and/or offered for sale by Northwest.

5.4 Northwest's Release of Brimer

Northwest 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 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 to enforce Proposition 65 against it in this matter with respect to the Products.

6. POST EXECUTION ACTIVITIES

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Northwest or the Releasees under Proposition 65 as covered under this release. If requested in writing by Northwest (within twelve months of the Effective Date), Northwest 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 § 25249.7, or as may be otherwise allowed by law. If requested, Brimer agrees to reasonably cooperate with Northwest 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, Northwest 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 \$16,000. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Northwest to have Brimer file a complaint and seek a consent judgment. Northwest will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Northwest within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph. In the event a third party were to appeal the entry of a consent judgment sought pursuant to this Section 6, Brimer and his counsel shall be entitled to seek their fees and costs associated with all such appealed work pursuant to CCP § 1021.5.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the

validity of the enforceable provisions remaining shall not be adversely affected.

8. 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 Northwest 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.

9. 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: (a) first-class, registered or certified mail, return receipt requested; or (b) overnight courier on any party by the other party at the following addresses:

To Northwest:

Ross Auerbach, President
The Northwest Company LLC
49 Bryant Avenue
Roslyn, NY 11576

With copy to:

Bruce Nye
Adams | Nye | Becht LLP
222 Kearny Street, Seventh Floor
San Francisco, CA 94108

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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

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

11. 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).

12. MODIFICATION

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

13. 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: 12-15-11

Date: _____

By:  _____

By: _____

Russell Brimer

Ross Auerbach, President
The Northwest Company LLC

10. COUNTERPARTS; FACSIMILE SIGNATURES

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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: 12/28/11

By: 
Ross Auerbach, President
The Northwest Company LLC