

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and Whiteside Manufacturing Company

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Whiteside Manufacturing Company (“Whiteside”), with Brimer and Whiteside 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. Brimer 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 Whiteside has manufactured, distributed, sold and/or offered for sale in California coverings for seats containing lead without the requisite Proposition 65 health hazard 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 coverings for seats containing lead including, but not limited to, the *Craftsman Swivel Caster Wheels Roller Seat, #951167 (#0 86739 51167 3)*, manufactured, distributed, sold and/or offered for sale in California by Whiteside (“Products”).

1.4 Notice of Violation

On or about July 20, 2011, Brimer served Whiteside and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by Whiteside 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 Notice.

1.5 No Admission

Whiteside 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 Whiteside 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 Whiteside of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Whiteside. However, this section shall not diminish or otherwise affect Whiteside'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 15, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date, Whiteside shall only manufacture, distribute, sell and/or offer for sale in California Products that are "Reformulated Products" or Products that contain the proper warning language pursuant to Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing components that may be handled, touched, or mouthed by a consumer, and which components yield no more than 1.0 microgram of lead when using a wipe test pursuant to NIOSH test method 9100, and yield no more 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.

2.2 Product Warnings

Commencing on the Effective Date, Whiteside shall, for all Products other than Reformulated Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). Each warning 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 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.

(a) **Retail Store Sales.**

(i) **Product Labeling.** Whiteside shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Whiteside or any person selling the Products, that states:

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

(ii) **Point-of-Sale Warnings.** Alternatively, Whiteside may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Whiteside's customers shall be sent by certified mail, return receipt requested.

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: The following products contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm:

[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales.

In the event that Whiteside sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Whiteside shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall 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, Whiteside 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 cover of the

¹ For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar 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.

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, Whiteside must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear 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 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. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

3.1 Initial Civil Penalty

Whiteside shall pay an initial civil penalty of \$5,000 to be apportioned in accordance with California Health & Safety Code §§ 25249.12(c) & (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 the penalty remitted to Brimer.

Whiteside 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 \$3,750; and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,250.

Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments 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

3.2 Final Civil Penalty

Whiteside shall pay a final civil penalty in the amount of \$10,000 on June 30, 2013. As incentive for Whiteside to reformulate the Products, however, this final civil penalty shall be waived in its entirety if an officer of Whiteside certifies in writing that it, as of June 15, 2013, will sell, ship and offer for sale in California only Reformulated Products. Such certification must be received by The Chanler Group on or before June 30, 2013. The final civil penalty payment shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Russell Brimer. Whiteside

shall issue two separate checks for the final civil penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount of \$7,500; and (b) one check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$2,500. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose information shall be provided five calendar days before the payment is due (if different than the information already provided to Whiteside under Section 3.1 above).

Payment shall be delivered to Brimer’s counsel at 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. Whiteside 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, Whiteside shall reimburse Brimer’s counsel for fees and costs incurred as a result of investigating, bringing this matter to Whiteside’s attention, and negotiating a settlement in the public interest. Whiteside shall pay Brimer’s counsel \$27,000 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 February 15, 2013 to the following address:

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

Whiteside 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 Release

This Settlement Agreement is a full, final and binding resolution between Brimer, and Whiteside, of any violation of Proposition 65 that was or could have been asserted by Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Whiteside, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Whiteside 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 Whiteside in California before the Effective Date.

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, hereby waives all his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, 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 Whiteside before the Effective Date (collectively “Claims”), against Whiteside and Releasees.

5.2 Whiteside’s Release of Brimer

Whiteside 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 CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Whiteside may send Brimer a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment that provides a release in the public interest for the released Products, and to seek court approval of the consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Brimer and Whiteside agree to reasonably cooperate, and to use their best efforts and that of their counsel to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

If so requested by Whiteside in writing, pursuant to Code of Civil Procedure §§ 1021 and 1021.5, then Whiteside will reimburse Brimer and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$16,000, exclusive fees and costs incurred on appeal, if any. Whiteside shall remit payment to The Chanler Group at the payment address provided in section 3.2 within five business days of receiving a monthly invoice

from Brimer's counsel for work performed under this section.

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 Whiteside 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: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to any party by the other party at the following addresses:

To Whiteside:

Robert Whiteside, President
Whiteside Manufacturing Corporation
309 Hayes Street
Delaware, OH 43015

To Brimer:

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

With copy to:

Winfred T. Colbert
Attorney
P.O. Box 130734
Houston, TX 77219

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.

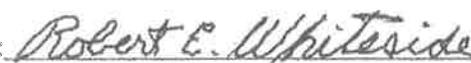
AGREED TO:

Date: December 3, 2012

By: 
Russell Brimer

AGREED TO:

Date: 12/12/2012

By: 
Robert Whiteside
Whiteside Manufacturing Corporation