

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Russell Brimer and Sunny Designs, Inc.**

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”), and Sunny Designs, Inc. (“Sunny Designs”), with Brimer and Sunny Designs collectively referred to as the “Parties.” Brimer is an individual residing in 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. Sunny Designs employs ten or more persons and is a person in the course of doing business for purposes of Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Brimer alleges that Sunny Designs has manufactured, distributed, sold and/or offered for sale in the state of California, stools containing lead and the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). Lead and DEHP (hereinafter “Listed Chemicals”) are listed pursuant to Proposition 65 as chemicals 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 stools containing one or both of the the Listed Chemicals including, but not limited to, *Bar Stool, 24” H*, manufactured, distributed, sold and/or offered for sale in California by Sunny Designs, hereinafter the “Products.”

### **1.4 Notice of Violation**

On July 20, 2011, Brimer served Sunny Designs 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 Sunny Designs for failing to warn

consumers and customers that the Products exposed users in California to the Listed Chemicals. 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**

Sunny Designs 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, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Sunny Designs 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 Sunny Designs of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied Sunny Designs. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Sunny Designs under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean December 30, 2011.

**2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

**2.1 Reformulation Standards**

As of the Effective Date, Sunny Designs shall only manufacture, distribute, sell and/or offer for sale in California Products that are "Phthalate Free" and "Lead Free." For purposes of this Consent Judgment, "Phthalate Free" Products are Products containing less than or equal to 1,000 ppm of DEHP, when analyzed pursuant to any testing methodology selected by Sunny Designs that is acceptable to state or federal government agencies in determining compliance with phthalate standards. Additionally, "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. Products that are Lead Free and Phthalate Free are referred hereinafter as “Reformulated Products.”

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

In settlement of all claims referred to in this Settlement Agreement, Sunny Designs shall pay \$4,000 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 Phthalate Free and Lead Free pursuant to Section 2.1 above, Brimer shall provide Sunny Designs with a penalty credit of \$2,000. Thereafter, the remaining penalty amount of \$2,000 will be paid by Sunny Designs 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.

Sunny Designs 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) Russell 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 December 30, 2011 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. Sunny Designs 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, Sunny Designs shall reimburse Brimer's counsel for fees and costs incurred as a result of investigating, bringing this matter to Sunny Designs' attention, and negotiating a settlement in the public interest. Sunny Designs shall pay Brimer's counsel \$22,000 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 December 30, 2011 to the following address:

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

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

**5. RELEASE OF ALL CLAIMS**

**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 Sunny Designs, of any violation of Proposition 65 that was or could have been asserted by Brimer against Sunny Designs, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Sunny Designs 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 Chemicals contained in the Products that were manufactured, distributed, sold and/or offered for sale in California by Sunny Designs.

**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 the Listed Chemicals in the Products manufactured, distributed, sold and/or offered for sale in California by Sunny Designs (collectively “claims”), against Sunny Designs 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 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 the Listed Chemicals in the Products manufactured, distributed, sold and/or offered for sale by Sunny Designs.

**5.4 Sunny Designs’ Release of Brimer**

Sunny Designs 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 Sunny Designs or the Releasees under Proposition 65 as covered under this release. If requested in writing by Sunny Designs (within twelve months of the Effective Date), Sunny Designs 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 Sunny Designs 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, Sunny Designs 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 \$8,500. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Sunny Designs to have Brimer file a complaint and seek a consent judgment. Sunny Designs will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Sunny Designs 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 Sunny Designs 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. Nothing in this Settlement Agreement shall be interpreted to relieve Sunny Designs from any obligation to comply with any pertinent state or federal toxics control law.

**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 one party by the other party at the following addresses:

For Sunny Designs, Inc.:

Sunny Hwang, President  
Sunny Designs, Inc.  
23751 Eichler Street, Unit E  
Hayward, CA 94545

With a copy to:

Bruce Nye, esq.  
Adams Nye Becht LLP  
222 Kearney Street, 7<sup>th</sup> Floor  
San Francisco, CA 94108-4521

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.

**10. 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.

**11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**12. MODIFICATION**

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

**13. AUTHORIZATION**

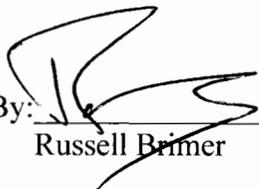
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: 12-12-2011

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

By:   
Russell Brimer

By: \_\_\_\_\_  
Sunny Hwang, President  
Sunny Designs, Inc.

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.

**10. 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.

**11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**12. MODIFICATION**

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

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

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

Date: 12/13/11

By: \_\_\_\_\_  
Russell Brimer

By: Chin Hee Hwang  
Sunny Hwang, President  
Sunny Designs, Inc.  
Chin Hee Hwang, Secretary