

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and Coastal Cocktails, Inc.

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Russell Brimer (“Brimer”) and Coastal Cocktails, Inc. (“Coastal Cocktails”). Brimer and Coastal Cocktails shall hereinafter collectively be 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. Coastal Cocktails employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

1.2 General Allegations

Brimer alleges that Coastal Cocktails manufactured, distributed, offered for sale and/or sold, in the State of California, mugs with colored artwork or designs (containing lead) on the exterior that exposed users to lead, without first providing “clear and reasonable warning” under Proposition 65. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical 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 mugs with colored artwork or designs (containing lead) on the exterior including, but not limited to, *Indulge Hot Cocoa Set, INA1080211*, manufactured, imported, distributed, offered for sale and/or sold in the State of California by Coastal Cocktails, hereinafter the “Products.”

1.4 Notice of Violation

On September 19, 2011, Brimer served Coastal and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients

with notice that Coastal Cocktails was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Coastal Cocktails 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 Coastal Cocktails 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 Coastal Cocktails of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Coastal Cocktails. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Coastal Cocktails under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean March 30, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Coastal Cocktails shall only manufacture, distribute, and/or sell, in California, Reformulated Products as defined in subsection 2.2 below.

2.2 Reformulation Standards

"Reformulated Products" are Products that:

(a) contain no detectable amount of lead in the lip-and rim area of the Product (the top 20 millimeters of the Products);

(b) contain a total lead content of less than or equal to 50 ppm, exclusive of the lip-and-rim area, when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B; *and*

(c) contain residual surface lead in an amount that does not exceed 1.0 microgram (μg) when analyzed pursuant to the NIOSH 9100 testing protocol.

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

In settlement of all the claims referred to in this Settlement Agreement, Coastal Cocktails shall pay \$4,000 in civil penalties. This civil penalty reflects a credit of \$8,000 due to Coastal Cocktails' commitment to reformulate the Products pursuant to Section 2 above. Civil penalties are 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.

Coastal Cocktails shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("The Chanler Group in Trust for OEHHA") in the amount of \$3,000, representing 75% of the total penalty and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to 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 March 30, 2012, 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. Coastal Cocktails 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 general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. Coastal Cocktails shall pay the total amount of \$21,000 for fees and costs incurred as a result of investigating, bringing this matter to Coastal Cocktails' attention, and negotiating a settlement in the public interest. Coastal Cocktails shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before March 30, 2012, to the following address:

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

5. RELEASES

5.1 Brimer's Release of Coastal Cocktails

This Settlement Agreement is a full, final and binding resolution between Brimer, and Coastal Cocktails, 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 Coastal Cocktails, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Coastal Cocktails directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on their failure to warn about alleged exposures to the lead contained in the Products that were manufactured, distributed, offered for sale and/or sold by Coastal Cocktails 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 Brimer’s rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Brimer 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 the lead in the Products manufactured, distributed, sold and/or offered for sale by Coastal Cocktails before the Effective Date (collectively “claims”), against Coastal Cocktails and Releasees.

5.2 Coastal Cocktails’ Release of Brimer

Coastal Cocktails on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Brimer and 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Coastal Cocktails may ask Brimer, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Brimer agrees to reasonably cooperate with Coastal Cocktails and to use his best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Coastal Cocktails will reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$16,000, exclusive of fees and cost that may be incurred on appeal. Coastal Cocktails will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Coastal Cocktails within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer require as a result of any such repeal

or preemption or rendered inapplicable by reason of law generally as to the Products, then Coastal Cocktails 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 Product is 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: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Coastal to:

Ofer Amram, CFO
Coastal Cocktails, Inc.
18242 McDormott Street # B
Irvine, CA 92614

For Brimer to:

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 pdf signature, 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 form requirements referenced in Health & Safety Code §25249.7(f).

12. MODIFICATION

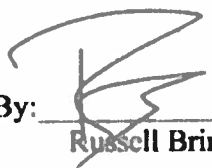
This Settlement Agreement may be modified only by a written agreement of the parties.

13. ATTORNEY'S FEES

In the event a dispute arises with respect to any provision of this Settlement Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees incurred in connection with such dispute.

14. 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: <u>3-22-13</u>	Date: _____
By:  Russell Brimer	By: _____ Breanna Bartels, Principal Coastal Cocktails, Inc.

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

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In the event a dispute arises with respect to any provision of this Settlement Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees incurred in connection with such dispute.

14. 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: _____	Date: <u>3/20/2012</u>
By: _____ Russell Brimer	By: <u>Breanna Bartels</u> Breanna Bartels, Principal Coastal Cocktails, Inc.