

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and Inventory Liquidators Corp.

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer” or “Plaintiff”) and Inventory Liquidators Corp. (“Inventory” or “Defendant”), with Brimer and Inventory 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. Inventory employs ten or more persons and are persons 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 Inventory has manufactured, imported, distributed, sold and/or offered for sale in the State of California, flashlights containing lead. Lead is listed pursuant to 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 flashlights containing lead including, but not limited to, *Good Old Values Flashlight, G09253 (#7 21003 092532)*, manufactured, imported, distributed, sold and/or offered for sale by Inventory, hereinafter “Products”.

1.4 Notice of Violation

On September 20, 2011, Brimer served Inventory and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided the recipients with notice that Inventory was in violation of California Health & Safety Code § 25249.6 for failing

to warn consumers that its Products exposed users in California to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Inventory 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 Inventory 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 Inventory of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Inventory under this Settlement Agreement

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 15, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products: (a) containing less than or equal to 100 parts per million ("ppm") of lead when using a method of detection and analysis authorized under 27 C.C.R. § 25900; *and* (b) which yield not more than 1.0 micrograms of lead when using a wipe test pursuant to NIOSH Test Method 9100.

2.2 Reformulation Commitment

As of the Effective Date all Products manufactured, imported, distributed, sold or offered for sale in the state of California by Inventory shall be Products that qualify as Reformulated Products as defined in Section 2.1 above or shall carry appropriate Proposition 65 warnings as defined in section 2.3 below.

2.3 Product Warnings

Commencing on the Effective Date, for all Products other than Reformulated Products, Inventory shall provide clear and reasonable warnings as set forth in subsections 2.3(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.** Inventory shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Inventory 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, Inventory 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 Inventory'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

¹For 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.

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 Inventory sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Inventory 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 2.3(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, Inventory 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 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, Inventory 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

In settlement of all the claims referred to in this Settlement Agreement, Inventory shall pay an initial civil penalty of \$1,500. 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. Inventory 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 \$1,125, representing 75% of the total penalty and (b) one check to "The Chanler Group in Trust for Brimer" in the amount of \$375, 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 31, 2012, 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

Inventory shall pay a second and final civil penalty of \$3,000 on May 31, 2012. As incentive for Inventory to reformulate its Products, however, the final civil penalty shall be waived in its entirety if an Officer of Inventory certifies in writing that it, as of May 15, 2012, will sell, ship and offer for sale in California only Reformulated Products. Such certification must be received by The Chanler Group on or before May 15, 2012. 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 Brimer. Inventory 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 \$2,250, representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Brimer” in the amount of \$750, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Brimer, whose information shall be provided five calendar days before the payment is due (if different than the information already provided to Inventory 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. Brimer 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. Inventory shall pay \$20,000 for fees and costs incurred as a result of investigating, bringing this matter to Inventory's attention, and negotiating a settlement in the public interest. Inventory 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 31, 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 Inventory

This Settlement Agreement is a full, final and binding resolution between Brimer, and Inventory, 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 Inventory, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Inventory 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 lead contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by Inventory 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 lead in the Products manufactured, imported, distributed, sold and/or offered for sale by Inventory before the Effective Date (collectively “claims”), against Inventory and Releasees.

5.2 Inventory’s Release of Brimer

Inventory, 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 Inventory 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 Inventory 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, Inventory 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. Inventory will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Inventory 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 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Inventory 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 Inventory 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 Inventory Liquidators Corp.:

Michael DePaul, President
Inventory Liquidators Corp.
8999 Palmer Street
River Grove, IL 60171

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 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 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: 3-27-12

Date: _____

By:  _____
Russell Brimer

By: _____
Ray Batkiewicz, Vice President
Inventory Liquidators Corp.

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.

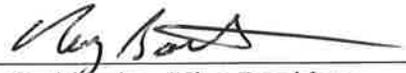
AGREED TO:

AGREED TO:

Date: _____

Date: MARCH 29, 2012

By: _____
Russell Brimer

By: 
Ray Batkiewicz, Vice President
Inventory Liquidators Corp.