

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer, Rocking P, Inc. and River's Edge Products

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) on one hand, and Rocking P, Inc. and River’s Edge Products on the other hand, with Brimer, Rocking P, Inc. and River’s Edge Products 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. Rocking P, Inc. and River’s Edge Products, hereinafter collectively referred to as the “Companies,” are persons in the course of doing business as defined by the 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 the Companies have manufactured, imported, distributed, sold and/or offered for sale in the State of California, light sets with cords 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 is the *Rivers Edge Ten Bear Light Set, Stock No. 387 (#6 43323 38700 9)* manufactured, imported, distributed, sold and/or offered for sale by the Defendants, hereinafter the “Products.”

1.4 Notice of Violation

On September 20, 2011, Brimer served the Defendants and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided the recipients with notice that the Companies were 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 prosecuted the allegations set forth in the September 20, 2011, Notice.

1.5 No Admission

The Companies deny the material, factual and legal allegations contained in Brimer's Notice and maintain that all products that they have 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 the Companies 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 the Companies 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 the Defendants under this Settlement Agreement

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 1, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products: (a) containing less than or equal to 50 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 the Companies shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.

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

In settlement of all the claims referred to in this Settlement Agreement, the Defendants shall pay \$2,000 in civil penalties. This civil penalty reflects a credit of \$4,000 due to the

Companies' commitment to reformulate the Products pursuant to Section 2.1 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. The Companies, collectively, 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 \$1,500, representing 75% of the total penalty and (b) one check to "The Chanler Group in Trust for Brimer" in the amount of \$500, 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 October 7, 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 reached 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. The Defendants shall pay \$10,000 for fees and costs incurred as a result of investigating, bringing this matter to the Companies' attention, and negotiating a settlement in the public interest. The Defendants 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 October 7, 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 Companies

This Settlement Agreement is a full, final and binding resolution between Brimer, and the Companies, 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 the Companies, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom the Companies directly or indirectly distribute or sell 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, distributed, sold and/or offered for sale by the Companies 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, distributed, sold and/or offered for sale by the Companies before the Effective Date (collectively "claims"), against the Companies and Releasees.

5.2 Companies' Release of Brimer

Defendants, on behalf of themselves, their past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive 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 them in this matter, or with respect to the Products.

6. 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.

7. 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.

8. 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 Rocking P, Inc.:

Pat Wrob, President
Rocking P, Inc.
1 Riversedge Court
Saint Clair, MO 63077

For River's Edge Products:

Pat Wrob, President
River's Edge Products
1 Riversedge Court
Saint Clair, MO 63077

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.

9. COUNTERPARTS; FACSIMILE AND PDF 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.

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

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

11. MODIFICATION

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

12. 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: October 4, 2012

Date: _____

By: 

Russell Brimer

By: _____
Pat Wrob, President
Rocking P, Inc.
River's Edge Products

For Brimer:

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

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AGREED TO:

AGREED TO:

Date: _____

Date: 10/3/12

By: _____
Russell Brimer

By: Mark Mangjello VP
Pat Wrob, President
Rocking P, Inc.
River's Edge Products