

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and San Mar Corporation (“San Mar”), with Brimer and San Mar 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. San Mar maintains its headquarters in Issaquah, Washington, where it 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 San Mar manufactures, distributes, and/or sells in the state of California tote bags containing lead (sometimes referred to hereinafter as the “Listed Chemical”) without the requisite Proposition 65 warning. 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 follows: tote bags containing lead that are manufactured, imported, distributed, and/or sold in California by San Mar, including, but not limited to, the *Port and Company Essential Tote, B075, #861818082795* (hereinafter “Products”).

#### 1.4 Notice of Violation

On or about November 17, 2011, Brimer served San Mar and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients that San Mar was alleged to be in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical. To the best of the Parties’ knowledge, no public enforcer is diligently prosecuting the allegations

set forth in the Notice.

**1.5 No Admission**

San Mar denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold 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 San Mar 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 San Mar of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by San Mar. This section shall not, however, diminish or otherwise affect San Mar'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 November 30, 2012.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, San Mar shall not ship, sell or offer to ship for sale in California Products unless such Products are "Lead Free" as described in section 2.2, below. For purpose of this Settlement Agreement, "Lead Free" Products shall mean Products that meet the Reformulation Standards of section 2.2 below, and such Products are referred to herein as "Reformulated Products."

**2.2 Reformulation Standards**

Reformulated Products are defined as those Covered Products containing components that may be handled, touched or mouthed by a consumer, which yield a result of less than or equal to 100 parts per million ("ppm") of lead when analyzed pursuant to applicable U.S. Environmental Protection Agency (EPA) testing methodologies 3051 or 3050B (digest test), and which yield a result of less than 1.0 micrograms of lead when analyzed pursuant to NIOSH 9100

testing protocol (wipe test) performed on any surface of a Product.

### **3. MONETARY PAYMENTS**

#### **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

Pursuant to Health & Safety Code § 25249.7(b), San Mar shall pay \$15,000.00 in combined civil penalty payments and credits. As a result of San Mar's commitment to Proposition 65 compliance, including offering Lead Free Products pursuant to Section 2, Brimer will provide a penalty credit of \$7,500.00. Thereafter, San Mar shall pay the remaining sum of \$7,500.00. Civil penalties shall be allocated according to California Health & Safety Code §§ 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment and the remaining twenty-five percent (25%) remitted to Brimer.

San Mar shall issue two checks for the penalty payment as follows: (a) one check to "The Chanler Group in Trust for OEHHA" in the amount of \$5,625.00; and (b) a second check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,875.00.

Two 1099 forms shall also be issued for the penalty payments as follows: (a) one 1099 form to the "Office of Environmental Health Hazard Assessment," P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) a second 1099 form to "Russell Brimer," whose address and tax identification number shall be furnished, upon request, three days before payment is due. Payment shall be delivered on or before the Effective Date 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**

#### **4.1 Attorney 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 in this matter. Under these legal

principles, San Mar shall pay \$28,500.00 for all fees and costs incurred as a result of investigating, bringing this matter to the attention of San Mar, and negotiating a settlement in the public interest. San Mar shall provide its payment in the form of a third check payable to “The Chanler Group,” issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment on or before the Effective Date at the following address:

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

## **5. CLAIMS COVERED AND RELEASED**

### **5.1 Brimer’s Release of San Mar**

This Settlement Agreement is a full, final and binding resolution between Brimer, and San Mar, 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 San Mar, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, managers, employees, agents, successors, assigns, insurers, attorneys, and each entity to whom San Mar directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, re-sellers, customers, retailers, franchisees, cooperative members, licensors, and licensees, and all of their employees, officers, agents, or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, distribute, advertise, market or sell the Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers and representatives of each of them in this matter (“Releasees”), based on their alleged failure to warn about alleged exposures to the Listed Chemical contained in the Products that were manufactured, distributed, sold and/or offered for sale by San Mar 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 the Listed Chemical in the Products sold by San Mar before the Effective Date (collectively "claims"), against San Mar and Releasees. San Mar's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 for San Mar and the Releasees with respect to the Listed Chemical in the Covered Products.

Brimer also, on behalf of himself and his agents, attorneys, representatives, successors and assigns, in his respective individual capacity only and *not* in his representative capacity, provides a general release of San Mar and the Releasees 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 Brimer of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged violations of Proposition 65 with respect to the Products as set forth in the Notice. Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

## **5.2 San Mar's Release of Brimer**

San Mar 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.

San Mar also, on behalf of itself and its agents, attorneys, representatives, successors and assigns, provides a general release of Brimer 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 San Mar of any nature, character or kind, known or unknown, suspected or unsuspected, relating to alleged violations of Proposition 65 with respect to the Products as set forth in the Notice. San Mar acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

#### **6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement, San Mar 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 San Mar 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 San Mar in writing, pursuant to Code of Civil Procedure §§ 1021 and 1021.5, then San Mar 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 \$5,000.00, exclusive fees and costs incurred on appeal, if any. San Mar shall remit payment to The Chanler Group at the payment address provided in section 3.3 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 provision is 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 as to the Products and/or the Listed Chemical, then San Mar 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.

**9. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

For San Mar:

Martin Lott, President  
San Mar Corporation  
30500 SE 79<sup>th</sup> Street  
Issaquah, WA 98027

and

Merton A. Howard, Esq.  
Hanson Bridgett LLP  
425 Market Street, 26th Floor  
San Francisco, CA 94105

For Brimer:

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

Any party may, from time to time, 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.

**11. POST-EXECUTION ACTIVITIES**

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. AUTHORIZATION**

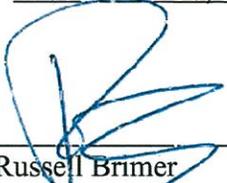
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: November 13, 2012

Date: Nov 14 2012

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

By:   
\_\_\_\_\_  
Martin Lott, President  
San Mar Corporation