

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement”) is entered into by and between Russell Brimer, (“Brimer”) and Charles Amash Imports, Inc. (“Amash”) with Brimer and Amash collectively referred to as the “Parties.”

1.2 Brimer

Brimer is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Amash

Amash employs 10 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”).

1.4 General Allegations

Brimer alleges that Amash manufactured, distributed and/or sold, in the State of California, certain types of hand tools and tool bags with grips containing DEHP or Lead, including, but not limited to, the hand tools, tape measure and tool bag contained in the GRIP 9-piece Children’s Tool set, Item #96009, that exposed users to DEHP and Lead without first providing “clear and reasonable warning” under Proposition 65. DEHP and Lead are listed as a reproductive and developmental toxicant pursuant to Proposition 65 and are collectively referred to hereinafter as the “Listed Chemical.”

1.5 Notice of Violation

On December 13, 2011, Brimer served Amash and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public enforcers and Amash with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP in hand tool grips and Lead in and on tape

measures and tool bags sold in California. Amash received the 60-Day Notice of Violation. Amash represents that, as of the date it executes this Consent Judgment, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP and/or Lead in its products, as identified in the 60-Day Notice.

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Amash. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Amash denies the material factual and legal allegations contained in the Notice and Action, maintains that it did not knowingly or intentionally expose California consumers to DEHP and Lead through the reasonably foreseeable use of the Covered Products and otherwise contends that all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Amash of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by the Amash of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Amash. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Amash's obligations, responsibilities, and duties under this Agreement.

1.7 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over Amash to enter and enforce the provisions of this Agreement pursuant to C.C.P. §664.6.

2. DEFINITIONS

2.1 The term "Covered Products" means any hand tools with grips or other Accessible Components containing any amount of DEHP and tape measures and tool bags made with Accesible Components containing any amount of Lead, including, but not limited to, the GRIP 9-piece Children's Tool set, Item #96009.

2.2 “Accessible Component” means a metal, poly vinyl chloride, soft plastic, vinyl, foam, synthetic leather or other grip-related component or material of a Covered Product that could be touched by a person during reasonably foreseeable use.

2.3 The term “DEHP Free” Covered Products shall mean Covered Products containing Accessible Components, materials or other components that may be handled, touched or mouthed by a consumer, and which components contain less than or equal to 1,000 parts per million (“ppm”) of DEHP as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C. The term “DEHP Free Standard” shall mean the above-referenced standard that will cause a Covered Product to qualify as DEHP Free

2.4 The term “LEAD Free” Covered Products shall mean Covered Products and Noticed Products containing Accessible Components, materials or other components that may be handled, touched or mouthed by a consumer, and which components each yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100 and each yield less than 100 parts per million (“ppm”) lead when each such component material is 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. The term “LEAD Free Standard” shall mean the above-referenced standard that will cause a Covered Product to qualify as LEAD Free.

2.5 “Effective Date” shall mean July 30, 2012.

2.6 “Manufacture”, “manufactured” and “manufactures” have the meaning defined in Section 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended from time to time.

3. INJUNCTIVE RELIEF

3.1 Formulation Commitment

3.1.1 No later than the Effective Date, Amash shall provide the DEHP Free and LEAD Free Standards, to its then-current Vendors of Covered Products that will be sold or offered for sale to California consumers and shall instruct each Vendor to use reasonable efforts to provide

Covered Products that comply with such DEHP Free and LEAD Free Standards expeditiously. In addressing the obligation set forth in the preceding sentence, Amash shall not employ statements that will encourage a Vendor to delay compliance with the DEHP Free and LEAD Free Standard. Upon request, Amash shall provide Brimer with copies of such Vendor notification and Brimer shall regard such copies as confidential business information.

3.1.2 After December 31, 2012, Amash shall not distribute, cause to be distributed, sell or cause to be sold, in California or for distribution to or sale to any retailer that Amash reasonably understand maintains retail outlets in California, any Covered Product that is not DEHP Free and LEAD Free.

3.2 Previously Obtained or Distributed Covered Products.

3.2.1 Recall Certification

Amash certifies that as of March 1, 2012, in an effort to bring itself into compliance with Proposition 65, it has undertaken good faith efforts to recall all outstanding inventory apply warning labels indicating the presence of reproductive toxins in the Covered Products.

3.2.2 Product Warnings

Commencing on August 1, 2012, and until such date six (6) months thereafter, Amash shall not sell or ship any Covered Products that will be offered for sale in California unless such Covered Products are DEHP and LEAD Free under Sections 2.4 and 2.5 or are sold or shipped with one of the clear and reasonable warnings set forth hereafter.

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* Covered Product the warning applies, so as to minimize the risk of consumer confusion.

(a) **Retail Store Sales.**

(i) **Product Labeling.** Amash may affix a warning to the packaging, labeling, or directly on any Covered Products sold at a retail outlet of Amash in California that states:

WARNING: This product contains DEHP and/or Lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

(ii) **Point-of-Sale Warnings.** Alternatively, Amash may provide warning signs in the form below to retail outlets in California, which stores it is reasonably aware of having sold the Covered Products or having inventory or orders of the Covered Products, with instructions to post the signs *in immediate proximity* to the point of display of any and all such Covered Products for the benefit of its customers.

WARNING: This product contains DEHP and/or Lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

(b) **Mail Order Catalog and Internet Sales.** In the event that Amash sells any Covered Products via mail order catalog or the Internet to customers located in California any such catalog or Internet site offering any Covered Product for sale shall include a warning in the catalog or within the website, identifying the specific Covered Product to which the warning applies, as specified in Sections 3.2.2(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than the Covered 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 Covered Product:

WARNING: This product contains DEHP and/or 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 Covered Product, Amash 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 or back cover of the catalog or on the same page as any order form for the Covered Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP and/or 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 Covered Product. On each page where the designated symbol appears, Amash must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If Amash elects to provide warnings in any mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Covered Products printed after the Effective Date.

(ii) **Internet Website Warning.** A warning must be given in conjunction with the sale of any Covered Products by Amash via the Internet, provided it appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered 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 Covered Product for which it is given in the same type size or larger than the Covered Product description text:

WARNING: This product contains DEHP and/or 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 Covered 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 DEHP and/or Lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

3.2.3 Commencing on July 1, 2013, Amash shall discontinue all sales of any Covered Products that are not DEHP Free and Lead Free in California, regardless of compliance with Section 3.2.1.

4. MONETARY PAYMENTS

4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)

Amash shall make a payment of \$7,000.00 to be apportioned in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of these penalty monies earmarked for Brimer. The civil penalty Amash is required to pay under this Section is substantially reduced credited in light of Amash's commitment to reformulate its Covered Products to essentially remove the presence of the listed chemicals from those products. *The initial assessment contemplated civil penalties in the amount of \$40,000. An amount of \$25,000 was automatically credited in light of settling Amash's commitment to reformulate its product lines to essentially remove the presence of the listed chemicals. An additional civil penalty amount of \$8,000 was automatically credited in light of Amash's agreement to the certification obligation under Section 3.2.1.*

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, Brimer is relying entirely upon Amash and its counsel for accurate, good faith reporting to Brimer of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Brimer

discovers and presents to Amash evidence that the Noticed Product has been distributed by Amash in sales volumes materially different than those identified by Amash prior to execution of this Agreement, then Amash shall be liable for an additional penalty amount of \$10,000. Amash shall also be liable for any reasonable, additional attorney fees expended by Brimer in discovering such additional retailers or sales. Brimer agrees to provide Amash with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Amash shall have thirty (30) days to meet and confer regarding the demand and submit such payment to Brimer in accordance with the method of payment of penalties and fees identified in Sections 4.5. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Brimer shall be entitled to file a formal legal claim for damages for breach of this contract and the prevailing party in a breach of contract action shall be entitled to all reasonable attorney fees and costs relating to that action.

4.3 Reimbursement of Brimer's 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. Amash 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 section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, Amash shall pay the amount of \$25,000.00 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating and drafting this Agreement in the public interest.

4.4 Payment Procedures

4.4.1 All payments required by Sections 4.1 and 4.3 shall be delivered on or before August 24, 2012, to The Chanler Group as follows:

- (a) One check made payable to "The Chanler Group in Trust for OEHHA" in the amount of \$5,250.00;
- (b) One check made payable to "The Chanler Group in Trust for Brimer" in the amount of \$1,750.00; and
- (c) One check made payable to "The Chanler Group in Trust" in the amount of \$25,000.00.

4.4.2 Issuance of 1099 Forms. Amash shall issue three separate 1099 forms, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$5,250.00;
- (b) The second 1099 shall be issued to Brimer in the amount of \$1,750.00, whose address and tax identification number shall be furnished upon request; and
- (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of \$25,000.00

4.4.3 Payment Address: All payments to the Chanler Group shall be delivered to the following payment address:

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

5. CLAIMS COVERED AND RELEASE

5.1 Brimer's Releases of Amash

5.1.1 This Settlement Agreement is a full, final and binding resolution between Brimer and Amash, 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 Amash, its parents, subsidiaries, affiliated entities under common

ownership, directors, officers, employees, attorneys, and each entity to whom Amash 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 Listed Chemical contained in the Products that were manufactured, distributed, sold and/or offered for sale by Amash in California before the Effective Date.

5.1.2 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 Listed Chemical in the Products manufactured, distributed, sold and/or offered for sale by Amash before the Effective Date (collectively "claims"), against Amash and Releasees.

This Section 5.1 release is expressly limited to those claims that arise under Proposition 65, as such claims relate to Amash's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Covered Products and as such claims are identified in the Proposition 65 60-Day Notice to Amash.

Nothing in this Section affects Brimer's right to commence or prosecute an action under Proposition 65 against any person other than Releasees.

The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Amash, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Amash.

5.2 Amash's Release of Brimer

5.2.1 Amash 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 Amash 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 Amash 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, Amash 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 of \$10,000.00, exclusive of fees and cost that may be incurred on appeal. Amash will remit payment to The Chanler Group, at the address set forth in Section 4.5.3 within two days after entry of Judgment.

7. SEVERABILITY

If any of the provisions of this Agreement are Brimer by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

8. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

9. NOTICES

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by certified mail and electronic mail to the following:

For Amash, to:

Charles Amash, President
Charles Amash Imports, Inc.
4628 Amash Drive
Wayland, MI 49348

With copy to their counsel at

Mr. Kenneth E. Chyten, Esq.
Law Offices Of Kenneth E. Chyten
300 East Esplanade Drive, Suite 900
Oxnard, CA 93036

For Brimer to:

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

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

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

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

11. MODIFICATION

This Agreement may be modified only: (1) by written agreement of the Parties; or (2) upon a successful motion of any party and entry of a modified Agreement by the Court.

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other

agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

13. ATTORNEY'S FEES

13.1 Should Brimer prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Brimer shall be entitled to his reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5. Should Amash prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Amash may be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application upon a finding that Brimer's prosecution of the motion or application lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

13.2 Except as specifically provided in the above paragraph and in Section 5.1, each Party shall bear its own costs and attorney's fees in connection with this action.

13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

14. NEUTRAL CONSTRUCTION

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not

be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.


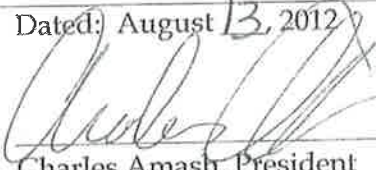
15. COUNTERPARTS, FACSIMILE SIGNATURES

This Agreement may be executed in counterparts and by facsimile or portable document format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: August <u>14</u>, 2012</p>  <p>_____ Brimer Russell Brimer</p>	<p>Dated: August <u>13</u>, 2012</p>  <p>_____ Charles Amash, President Charles Amash Imports, Inc.</p>
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