

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Tablecraft Products Company, Inc. (“Tablecraft”), with Brimer and Tablecraft each referred to as a “Party” and collectively as the “Parties.” Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Tablecraft 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 Tablecraft manufactures, distributes, and/or sells in the state of California kitchen tools with grips containing lead and di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure warning required by Proposition 65. Lead and DEHP are each listed pursuant to Proposition 65 among those chemicals that are known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are kitchen tools with grips containing lead and/or DEHP that are imported, manufactured, sold, or distributed for sale in California by Tablecraft, including, but not limited to, the *Tablecraft Products 19” Round Potato Masher*, #7319 (#7 27875 07866 7) (collectively “Products”).

1.4 Notice of Violation

On or about December 13, 2011, Brimer served Tablecraft and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Brimer’s allegation that Tablecraft was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to lead and

DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Tablecraft denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has imported, manufactured, sold or distributed for sale 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 Tablecraft of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Tablecraft of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Tablecraft. This section shall not, however, diminish or otherwise affect Tablecraft'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 December 31, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION, WARNINGS

2.1 Reformulation

Commencing on the Effective Date and continuing thereafter, Tablecraft shall only import, manufacture, offer or distribute for sale in California, Products containing a maximum of 1,000 parts per million ("ppm") (0.1%) each of DEHP, dibutyl phthalate ("DBP"), or benzyl butyl phthalate ("BBP") content by weight in any accessible component (i.e., any component that may be touched or handled during reasonably foreseeable use) analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance; and a maximum of 100 parts per million of lead when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B or equivalent test methodologies, or that yields a result of no more than 1.0 microgram of lead when analyzed pursuant to the NIOSH 9100 testing

protocol, unless such Products are labeled with a clear and reasonable warning pursuant to section 2.2 below.

2.2 Warnings

Commencing on the Effective Date and continuing thereafter, for all Products that do not comply with the 1,000 ppm maximum content level for DEHP, DBP and BBP, or the 100 ppm maximum lead content level required by section 2.1, Tablecraft shall affix or cause to be affixed, a warning to the packaging of, labeling to, or, if no package or label exists, directly on each Product sold in in California by Tablecraft or its agents, that substantially states:

WARNING: This product contains lead and/or phthalate chemicals that are known to the state of California to cause cancer and/or birth defects and other reproductive harm. Wash hands after handling.

Tablecraft shall, during the sell through period from the date of execution of this Agreement until the Effective Date, affix or cause to be affixed to the Products for sale in California, a Proposition 65 safe harbor warning that substantially states:

WARNING: This product contains chemicals known to the state of California to cause cancer and/or birth defects and other reproductive harm. Wash hands after handling.

Any warning issued for Products pursuant to this section 2.2, 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 of purchase.

3. MONETARY PAYMENTS

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

3.1.1 Initial Civil Penalty

Pursuant to Health & Safety Code § 25249.7(b), Tablecraft shall pay \$4,000 in civil penalties. 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 (“OEHHA”) and the remaining twenty-five percent (25%) remitted to Brimer.

Tablecraft shall issue two checks for the following amounts made payable as follows: (a) to “The Chanler Group in Trust for OEHHA” in the amount of \$3,000; and (b) to “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,000.

Two 1099 forms shall also be provided for Tablecraft’s payments to: (a) the “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) “Russell Brimer”, whose address and tax identification number shall be furnished, upon request, after this Settlement Agreement has been fully executed by the Parties. Payment shall be delivered on or before June 1, 2012 to the Payment Address provided in section 3.3.

3.1.2 Final Civil Penalty; Waiver Upon Certification

On or before December 31, 2012, Tablecraft shall pay a second, Final Civil Penalty of \$10,000. The Final Civil Penalty shall be allocated according to Health & Safety Code § 25249.12(c)(1) & (d) with seventy-five percent (75%) of the penalty paid to OEHHA and twenty-five percent (25%) of the penalty paid to Brimer.

As an incentive to reduce the lead and DEHP levels in 100% of the Products sold in California prior to that time, Brimer agrees to waive the Final Civil Penalty payment in its entirety provided that, on or before December 15, 2012, an officer of Tablecraft certifies to Brimer’s counsel in writing that, as of December 31, 2012, all of the Products manufactured or distributed by Tablecraft for sale into California will comply with the 1,000 ppm DEHP content maximum and the 100 ppm lead content maximum established by Section 2.1, and that Tablecraft no longer manufactures or distributes for sale into California any Products with a clear and reasonable warning pursuant to Section 2.2.

Unless waived, Tablecraft shall provide the Final Civil Penalty payment in two checks made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$7,500; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$2,500. Tablecraft

shall deliver payment to Brimer's counsel on or before December 31, 2012 at the payment address provided in Section 3.3. Unless waived, on or before February 1, 2013, Tablecraft shall provide Brimer's counsel with two additional 1099 forms for the Final Civil Penalty payments to Brimer and OEHHA.

3.2 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, Tablecraft shall pay \$19,500 for all fees and costs incurred investigating, bringing this matter to the attention of Tablecraft, and negotiating a settlement in the public interest. Tablecraft shall provide its payment in the form of a third check payable to "The Chanler Group", issue a separate form 1099 for fees and costs (EIN: 94-3171522), and deliver payment on or before June 1, 2012 to Brimer's counsel at the Payment Address provided in section 3.3.

3.3 Payment Address

All payments and tax documentation required by this section shall be delivered to the following address:

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

4. CLAIMS COVERED AND RELEASED

4.1 Brimer's Release of Tablecraft

This Settlement Agreement is a full, final, and binding resolution between Brimer and Tablecraft 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 Tablecraft, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Tablecraft 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 the alleged failure to warn about exposures to lead and/or DEHP, DBP, or BBP contained in Products imported, manufactured, sold or distributed for sale by Tablecraft 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 against Tablecraft and Releasees, 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, if any) arising under Proposition 65 for unwarned exposures to lead and/or DEHP, DBP, or BBP in Products imported, manufactured, sold, or distributed for sale in California by Tablecraft before the Effective Date.

4.2 Tablecraft’s Release of Brimer

Tablecraft 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.

5. POST-EXECUTION CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Tablecraft may send Brimer a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement (as to lead and DEHP only, excluding terms related to DBP and BBP) into a proposed consent judgment, and to seek court approval of the settlement pursuant to Health and

Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Brimer agrees to reasonably cooperate with Tablecraft and to use his best efforts and that of his counsel to obtain approval of the Parties' settlement by a superior court in California and an entry of judgment in accordance with the terms set forth herein.

Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, Tablecraft will reimburse Brimer and his counsel for the reasonable fees and costs incurred 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 \$10,000 exclusive of fees and cost that may be incurred on appeal. Within ten days after its receipt of a monthly invoice from Brimer's counsel for work performed under this section, Tablecraft will remit payment to The Chanler Group, at the address set forth in section 3.3. Such additional fees shall be paid by Tablecraft.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the remaining provisions 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. 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 lead and/or DEHP, then Tablecraft 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.

8. NOTICES

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

For Tablecraft:

Marian Krupa, Chief Financial Officer
Tablecraft Products Company, Inc.
801 Lakeside Drive
Gurnee, IL, 60031

with a copy to:

Renee D. Wasserman, Esq.
Rogers Joseph O'Donnell
311 California St., 10th Floor
San Francisco, CA 94104

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.

9. 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.

10. POST-EXECUTION ACTIVITIES

Brimer agrees to comply with the reporting form 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 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:

Date: 5-7-12

By: 
Russell Brimer

AGREED TO:

Date: 5/15/2012

By: 
Marian Krupa, Chief Financial Officer
Tablecraft Products Company, Inc.