

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Merangue International Limited (“Merangue”), with Brimer and Merangue 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. Merangue 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 Merangue has manufactured, distributed and/or sold in the State of California erasers, pens with vinyl/PVC charm toppers, and vinyl/PVC clipboards containing excessive concentrations of di(2-ethylhexyl)phthalate (“DEHP”) and/or lead without the requisite Proposition 65 warning. DEHP and lead are listed pursuant to Proposition 65 as chemicals 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:

(a) “Covered Products” defined as (1) erasers containing DEHP that are manufactured, imported, distributed and/or sold in California by Merangue including, but not limited to, *Merangue Erasers*, #38Q1-0211-00-000 (#0 68488 05493 9); (2) pens with vinyl/PVC charm toppers containing DEHP that are manufactured, imported, distributed and/or sold in California by Merangue including, but not limited to, *Ladybug Pen*, #38Q1-0110-00-018 (#0 68488 05333 8); and (3) vinyl/PVC clipboards containing DEHP and lead that are manufactured, imported, distributed and/or sold in California by Merangue including, but not limited to, *Merangue Clipboard*, #1020-1631-00-000 (#0 68488 05539 4).

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(b) “Additional Products” defined as other vinyl/PVC products containing DEHP and/or lead that are manufactured, imported, distributed, and/or offered for sale in California by Merangue and listed in Exhibit A hereto. Covered Products and Additional Products are hereinafter collectively referred to as the “Products”.

#### **1.4 Notice of Violation**

On or about March 8, 2012, Brimer served Merangue and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of Brimer’s allegation that Merangue was in violation of Proposition 65 for failing to warn its customers and consumers in California that erasers expose users to DEHP. On August 16, 2012, Brimer served Merangue and various public enforcement agencies with a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that provided the recipients with notice of Brimer’s allegations that Merangue was in violation of Proposition 65 for failing to warn its customers and consumers in California that erasers and pens with vinyl/PVC charm toppers expose users to DEHP. On October 12, 2012, Brimer served Merangue and various public enforcement agencies with a “Second Supplemental 60-Day Notice of Violation” (“Second Supplemental Notice”) that provided the recipients with notice of Brimer’s allegations that Merangue was in violation of Proposition 65 for failing to warn its customers and consumers in California that erasers and pens with vinyl/PVC charm toppers expose users to DEHP, and that vinyl/PVC clipboards expose users to DEHP and lead. The Notice, Supplemental Notice and Second Supplemental Notice are referred to collectively herein as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

#### **1.5 No Admission**

Merangue denies the material, factual and legal allegations contained in Brimer’s Notices, 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 Merangue 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 Merangue of any fact, finding, conclusion of law, issue of law or violation of law, such being specifically denied by Merangue. This Section shall not, however, diminish or otherwise affect Merangue'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 17, 2012.

**2. INJUNCTIVE RELIEF: REFORMULATION COMMITMENT**

Commencing on the Effective Date and continuing thereafter, Merangue shall cease from manufacturing, distributing, shipping, selling or offering for sale in California any Products unless the Product(s) are Reformulated Products. Reformulated Products are defined as those Products which (a) contain DEHP in concentrations of less than or equal to 0.1 percent (1,000 parts per million) of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or any method allowed by any state or federal agency to determine DEHP content by weight in a solid substance, (b) contain lead in concentrations of less than 100 parts per million when 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, and (c) yield a result of no more than 1.0 microgram ("µg") of lead when analyzed pursuant to NIOSH Test Method 9100.

**3. MONETARY PAYMENTS**

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

Merangue shall pay a total civil penalty of \$9,500 as follows:

**3.1.1 Initial Civil Penalty.** Merangue shall pay an initial civil penalty of \$2,500 on or before the Effective Date. The initial civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) and (d), with seventy-five percent (75%) of the penalty amount to be remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent (25%) of the amount to be remitted to Brimer.

**3.1.2 Final Civil Penalty.** Merangue shall pay a final civil penalty of \$7,000 on or before April 15, 2013. The final civil penalty shall be waived in its entirety, however, if an officer of Merangue provides Brimer with written certification that, as of the Effective Date and continuing into the future, Merangue has met the reformulation standard specified in Section 2 above such that all Products manufactured, produced, assembled, imported, distributed, shipped, sold or offered for sale in California are Reformulated Products. Brimer must receive any such certification on or before April 1, 2013, and time is of the essence. The final civil penalty, if it must be paid, shall also be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) & (d), with seventy-five percent (75%) of the penalty amount to be remitted to OEHHA and the remaining twenty-five percent (25%) of the amount to be remitted to Brimer.

### **3.2 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Merangue expressed a desire to resolve the fee and cost issue. 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 § 1021.5 for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, Merangue shall pay \$28,000 for fees and costs incurred in investigating, litigating and negotiating a settlement of this matter.

### **3.3 Payment Procedures**

**3.3.1 Initial Payments.** All payments required by Section 3.1.1 shall be delivered to The Chanler Group by no later than the Effective Date in two checks made payable as follows:

- (a) one check to "The Chanler Group in Trust for OEHHA" in the amount of \$1,875; and

- (b) a second check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$625.

**3.3.2 Subsequent Payment Schedule.** The payments pursuant to Section 3.2 shall be delivered and made payable to “The Chanler Group” in three installments according to the following schedule:

- (a) \$10,000 by no later than December 17, 2012;
- (b) \$9,000 by no later than February 15, 2013; and
- (c) \$9,000 by no later than April 15, 2013.

**3.3.3 Final Civil Penalty Payments.** If the final civil penalty referenced in Section 3.1.2 above is not waived, payments shall be delivered in two checks made payable as follows:

- (a) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$5,250; and
- (b) One check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,750.

**3.3.4 Issuance of 1099 Forms.** After the settlement funds have been transmitted to Brimer’s counsel, Merangue shall issue separate 1099 forms, as follows:

- (a) one 1099 form to the “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,875;
- (b) a second 1099 form to “Russell Brimer” in the amount of \$625, whose address and tax identification number shall be furnished upon request;
- (c) a third 1099 to “The Chanler Group” (EIN: 94-3171522) in the amount of \$28,000;
- (d) If the penalty referenced in Section 3.1.2 above is paid, a fourth 1099 shall be issued to the “Office of Environmental Health Hazard

Assessment” in the amount of \$5,250; and

- (e) If the penalty referenced in Section 3.1.2 above is paid, a fifth 1099 shall be issued to “Russell Brimer” in the amount of \$1,750.

**3.3.5 Payment Address.** All payments and tax documents required by this Section 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. RELEASE OF ALL CLAIMS**

##### **4.1 Brimer’s Release of Merangue**

This Settlement Agreement is a full, final, and binding resolution between Brimer and Merangue 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 Merangue, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Merangue directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, internet purchasers, franchisees, cooperative members, licensees and retailers, *e.g.* Staples, Inc. (“Releasees”), based on the alleged failure to warn about exposures to DEHP and/or lead contained in the Products manufactured, distributed, sold and/or offered for sale by Merangue 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 rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Merangue and Releasees, including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, but not limited to, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 with respect to DEHP and/or lead in the

Products manufactured, distributed, sold and/or offered for sale by Merangue before the Effective Date.

**4.2 Merangue's Release of Brimer**

Merangue waives any and all claims against Brimer, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter and/or with respect to the Products.

**5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve (12) months of the complete execution of this Settlement Agreement by the Parties, Merangue may send Brimer a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek court approval of this Settlement Agreement in the form of a consent judgment pursuant to California Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Brimer agrees to reasonably cooperate with Merangue 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 California Code of Civil Procedure §§ 1021 and 1021.5, Merangue will reimburse Brimer and his counsel for the reasonable fees and costs incurred in 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 \$18,000, exclusive of fees and costs that may be incurred on any appeal. Within ten days after its receipt of monthly invoices from Brimer for work performed under this Section, Merangue will remit payment to The Chanler Group at the address set forth in Section 3.3.5 above.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable

provisions remaining shall not be adversely affected unless the Parties' mutual intent in entering into this Settlement Agreement shall have been materially compromised or mooted by the unenforceability of said provision(s).

**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 DEHP and/or lead, then Merangue 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 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 Merangue:

John Moreau, President  
Merangue International Limited  
248 Steelcase Road  
Markham, ON L3R 1G2  
CANADA

For Brimer:

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

with a copy to:

Kevin C. Mayer  
Crowell & Moring LLP  
515 S. Flower Street, 40th Floor  
Los Angeles, CA 90071

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.

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**9. COUNTERPARTS; FACSIMILE/PDF 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. 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 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:**

**AGREED TO:**

Date: 12.14.12

Date: \_\_\_\_\_

By:   
Russell Brimer

By: \_\_\_\_\_  
John Moreau, President  
Merangue International Limited

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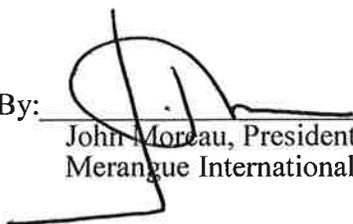
**AGREED TO:**

Date: \_\_\_\_\_

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

**AGREED TO:**

Date: December 14 / 2012

By:  \_\_\_\_\_  
John Moreau, President  
Merangue International Limited

## Exhibit A

### Additional Products

#### Novelty Erasers and Sharpeners:

38Q1-0211-00-000 – 2pk Sandal Erasers - 068488054939  
38Q1-0270-00-000 – 2pk Bling Erasers - 068488055042  
1016-0400-00-000 – Bendy Sharpener - 068488054472  
1016-1450-00-000 - Critter Sharpener with Erasers - 068488056407  
1017-9241-00-000 – 4pk Pencil Toppers - 068488050863  
38Q1-1491-00-000 – 4pk Hand Eraser/Pencil Toppers – 068488055851  
1016-2480-00-000 – Popeyed Sharpener – 068488056544  
1016-2471-00-000 – Mini Lenticular Sharpener - 068488056520  
1016-1460-00-000 – Lenticular Bendy Sharpener - 068488056438

#### Novelty:

##### NatureRiters/Popeyed/Other:

38Q1-0110-00-018 - 068488053338  
38Q1-1550-00-000 - 068488056148  
38Q1-0132-50-000 - 068488054632  
38Q1-1400-00-000 - 068488055769  
38Q1-1410-00-000 - 068488055776  
38Q1-1420-00-000 - 068488055783  
38Q1-1430-00-000 - 068488055790  
38Q1-0120-00-000 - 068488054458  
38Q1-0120-00-018 - 068488053345  
38Q1-1560-00-000 - 068488056155  
38Q1-0280-00-018 - 068488055011  
38Q1-1460-00-000 - 068488055820  
38Q1-1580-00-000 – 068488056278  
38Q1-1600-00-000 - 068488056292  
38Q1-1570-00-000 - 068488056162  
38Q1-1661-00-000 - 068488056421  
38Q1-1590-00-000 - 068488056285  
38Q1-1611-00-000 - 068488056308  
38Q1-1621-00-000 - 068488056315  
38Q1-2681-00-000 - 068488056537  
38Q1-1351-50-000 - 068488056742  
38Q1-1351-72-000 – 068488056759  
38Q1-1440-00-000 – 068488055806  
1015-0830-00-000 – 068488054687

#### Other Pens:

38N2-9131-00-000 – 068488049423  
38N2-7591-00-000 – 068488044237  
38N2-9121-00-000 – 068488049416

38H3-7181-20-000 – 068488044190

Pencil Cases:

1015-0860-00-000 – 068488054830

1015-1894-00-000 – 068488055981

1015-1904-00-000 – 068488055998

Clipboards:

1020-1591-00-000 - 068488055240

1020-1631-00-000 - 068488055394

1020-9460-00-000 – 068488049553

1020-1611-00-000 – 068488055264

1020-1631-00-000 – 068488055394

Calculators:

1080-6331-00-000 – 068488034900

1080-6341-00-000 – 068488034917

1080-6351-00-000 – 068488034924

Miscellaneous:

1013-7300-00-000 – 12”/30cm Flexible Ruler – 068488044312

1011-9193-00-012 – LED Booklight – 068488051945