

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Dixon Ticonderoga Company (“Dixon”), with Brimer and Dixon each referred to individually 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 improve human health by reducing or eliminating hazardous substances contained in consumer products. Dixon 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 Dixon manufactures, distributes, and/or sells in the state of California, pen pouches containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning that Brimer asserts is required by Health & Safety Code § 25249.6. DEHP 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 pen pouches containing DEHP manufactured, imported, sold or distributed for sale in California by Dixon, including, but not limited to, the *Prang Metallic Brush Pens, #80002 (#0 72067 80002 2)* (collectively “Products”).

1.4 Notice of Violation

On or about March 8, 2012, Brimer served Dixon and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Brimer’s allegation that Dixon was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to 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

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

2. INJUNCTIVE RELIEF

Commencing on the Effective Date and continuing thereafter, Dixon shall only manufacture, import, sell, or distribute for sale in California, Products that contain a maximum DEHP content of 1,000 parts per million (0.1%) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies authorized under Title 27, California Code of Regulations, section 25900 et seq.

3. MONETARY PAYMENTS

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

Dixon shall pay \$3,500 in civil penalties. This amount reflects a penalty credit agreed to by Brimer in response to Dixon's commitment to Proposition 65 compliance, including only offering Products that comply with the DEHP content limits established by section 2 after the Effective Date.

The civil penalty payment 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%) of the penalty amount remitted to Brimer.

Dixon shall issue two checks for the following amounts made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$2,625; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$875. Two 1099 forms shall also be provided for 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 is fully executed by the Parties. Payment shall be delivered on or before the Effective Date at the Payment address provided in section 3.3.

3.2 Reimbursement of Fees and Costs

The Parties reached an accord on the compensation due 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, Dixon shall pay \$18,000 for all fees and costs incurred investigating, bringing this matter to the attention of Dixon, and negotiating a settlement in the public interest. Dixon shall provide its payment in the form of a 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 Payment Address provided in section 3.3

3.3 Payment Address

All payments and tax forms 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

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 CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Dixon may request in writing that Brimer draft and file a complaint incorporating the terms of this Settlement Agreement into a proposed consent judgment, and seek the court approval of the consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Brimer agrees to reasonably cooperate with Dixon and to use his best efforts and that of his 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 Dixon in writing, pursuant to Code of Civil Procedure §§ 1021 and 1021.5, then Dixon will reimburse Brimer and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting the Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$5,000, exclusive fees and costs incurred on appeal, if any. Dixon shall remit payment to The Chanler Group at the payment address provided in section 3.3 within ten business days of receiving a monthly invoice from Brimer's counsel for work performed under this section.

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 DEHP, upon written notice by Dixon to Brimer of such change in the law, Dixon 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 by this Settlement Agreement shall be 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 Dixon:

Tim Gomez, Chief Executive Officer
Dixon Ticonderoga Company
195 International Parkway, Suite 200
Heathrow, FL 32746

with a copy to:

Mark Passler, Esq.
Akerman Senterfitt LLP
222 Lakeview Ave., Suite 400
West Palm Beach, FL 33401

For Brimer:

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

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

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 Party and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.


AGREED TO:

Date: 8-20-12

By: 
Russell Brimer

AGREED TO:

Date: 8/3/2012

By: 
Tim Gomez, Chief Executive Officer
Dixon Ticonderoga Company