

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Alvin and Company, Inc. (“Alvin”), with Brimer and Alvin 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. Alvin 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 Brimer’s Allegations

Brimer has alleged that Alvin manufactures, distributes, and/or sells in the state of California, pencil sharpeners containing lead without the warnings or labeling required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical that is 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 brass pencil sharpeners sold or distributed in the State of California by Alvin that contain lead, including, but not limited to, *Alvin Brass Double-Hold Pencil Sharpener, #9867 (#0 88354 25940 4)*, *Alvin Brass Bullet Sharpener, #9866*, and *Alvin Brass Wedge Sharpener, #9868* (collectively “Products”).

### 1.4 Notice of Violation

On or about March 29, 2012, Brimer served Alvin, and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Brimer’s allegation that Alvin was in violation of Proposition 65 for failing to warn its customers (who are not end-user consumers) and their customers (who may be end-user consumers) in California that the Products expose users to lead. 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**

Alvin does not itself manufacture any products, including the Products; rather it is a reseller of products manufactured by other companies. Alvin categorically denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement, including any payments by Alvin hereunder, nor Alvin's voluntary reformulation or labeling of the Products in inventory, or provision of Proposition 65 warnings to its wholesale customers with existing inventory of Products received before the Effective Date, shall be construed as an admission by Alvin 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 Alvin of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Alvin. This section shall not, however, diminish or otherwise affect Alvin'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 August 15, 2012.

## **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

### **2.1 Reformulated Products**

Commencing on the Effective Date and continuing thereafter, Alvin shall only sell, or distribute for sale in California, Reformulated Products or Products that are sold with a clear and reasonable warning pursuant to section 2.2. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain a maximum concentration of 100 parts per million ("ppm") lead in any accessible component (i.e. any component that may be touched by a user during a reasonably foreseeable use) when analyzed pursuant to Environmental Protection

Agency testing methodologies 3050B and/or 6010B, and 1.0 micrograms of lead when analyzed pursuant to the NIOSH 9100 testing protocol.

## **2.2 Product Warnings**

Commencing on the Effective Date and continuing thereafter, for all Products sold in California that are not Reformulated Products, Alvin shall provide a clear and reasonable warning in accordance with this section. 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 also be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion. The Product warnings set forth in this Section 2.2 shall not apply to: Products shipped by Alvin to its California customers before the Effective Date

Alvin shall affix the warning to the Product packaging, labeling, or, if no packaging or labeling exists, directly on each Product sold in California that states:

**WARNING:** This product contains lead, a chemical known to the State of California to cause cancer, birth defects or other reproductive harm. Wash hands frequently.

## **3. MONETARY PAYMENTS**

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

Pursuant to Health & Safety Code § 25249.7(b), Alvin shall pay \$2,000 in civil penalties. The civil penalty payment shall be allocated according to California Health & Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty amount earmarked for California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) earmarked for Brimer.

Alvin shall issue two checks for the following amounts made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$1,500; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$500.

Two 1099 forms shall also be provided for the payments to: (a) “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 to the Payment Address provided in section 3.3 on or before the Effective Date.

### **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, Alvin shall pay \$18,500 for all fees and costs incurred investigating, bringing this matter to the attention of Alvin, and negotiating a settlement in the public interest. Alvin 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 to the Payment Address provided in section 3.3 on or before the Effective Date.

### **3.3 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. CLAIMS COVERED AND RELEASED**

### **4.1 Brimer’s Release of Alvin**

This Settlement Agreement is a full, final, and binding resolution between Brimer and Alvin 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, or heirs and personal representatives (the “Brimer Parties”), against Alvin, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, shareholders, employees, attorneys, and each entity to whom Alvin directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), based on the manufacture, distribution and/or sale of the Products in the California, and the alleged failure to warn about exposures to lead contained in Products imported, manufactured, sold or distributed for sale in California by Alvin before the Effective Date.

In further consideration of the promises and agreements herein contained, the Brimer Parties, hereby irrevocably waive all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Alvin and Releasees, arising under Proposition 65 for unwarned exposures to lead in Products imported, manufactured, sold, or distributed for sale in California by Alvin before the Effective Date, 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 and expenses, and court costs , whether known or unknown, or fixed or contingent (but exclusive of fees and costs on appeal, if any)

#### **4.2 Alvin’s Release of Brimer**

Alvin 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

### 4.3 Waiver of Section 1542 to this Agreement

Except for the specific agreements of the Parties contained in this Settlement Agreement, the Parties understand and agree that there is a risk that subsequent to the execution of the releases contained in this Settlement Agreement, a Party might incur or suffer loss, damage or injury, or have additional rights and remedies which are in some way related to, or caused by, matters, or transactions which are the subject of this Settlement Agreement and the Notice, but which were unknown or unanticipated at the time this Agreement is signed. Nevertheless, as part of the consideration and as inducement for the execution of this Settlement Agreement, the Parties, with full knowledge and with a specific intent to release all claims, both known and unknown, suspected or unsuspected, do hereby specifically waive the provisions of Section 1542 of the California Civil Code which reads:

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

Notwithstanding the provisions of Civil Code section 1542, and for the purpose of implementing full and complete releases, the Parties expressly acknowledge that, except for those claims specifically reserved herein, this Agreement is intended to include in its effect all claims arising under Proposition 65 for unwarned exposures to lead in Products, or arising out of Brimer's enforcement efforts related to the Notice, including, without limitation, all claims, known or unknown, suspected or unsuspected, that any Party may have, and this Settlement Agreement further contemplates the extinction of any and all such claims. The Parties have sought the advice of counsel prior to signing this release and do so voluntarily with full knowledge of its significance, and with the express intention of effecting and avoiding the legal consequences provided by Civil Code section 1542. Except for the rights specifically reserved herein, the Parties expressly waive any right hereafter to assert that any claim, whether known or unknown, based upon this Proposition 65 enforcement action or unwarned exposures to lead in the Products manufactured, imported, sold, or distributed for sale by Alvin before the Effective

Date, which, through ignorance or oversight, has been omitted from this Agreement. Each of the Parties assumes full responsibility for any injury, damage, loss, or liability of any kind or nature whatsoever from the above-referenced waiver.

**5. 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.

**6. 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, then Alvin 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.

**7. NOTICES**

Unless specified herein, all correspondence and notice required by 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 Alvin:

Diane Gale, Chief Financial Officer/Vice President  
Alvin and Company, Inc.  
13335 Blue Hills Avenue  
Bloomfield, CT 06002

with a copy to:

Martin M. Fleisher, Esq.  
The Fleisher Law Firm  
3001 Bridgeway Blvd., Ste. K331  
Sausalito, CA 94965

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.

**8. 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.

**9. POST-EXECUTION ACTIVITIES**

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

**10. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**11. 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: 8-15-12

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

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

By: \_\_\_\_\_  
Diane Gale, Chief Financial Officer and  
Vice President  
Alvin and Company, Inc.



For Brimer:

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

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**AGREED TO:**

**AGREED TO:**

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

Date: 8/14/12

By: \_\_\_\_\_

Russell Brimer

By: 

Diane Gale, Chief Financial Officer and  
Vice President  
Alvin and Company, Inc.