

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Amcor Industries, Inc. (“Amcor”), with Brimer and Amcor 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. Amcor 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 Amcor has manufactured, distributed, and/or sold in the State of California hand tools with grips containing di(2-ethylhexyl)phthalate (“DEHP”) and 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 defined as hand tools with grips containing DEHP and lead manufactured, imported, distributed, sold and/or offered for sale in the State of California by Amcor, including, but not limited to, *Gorilla Power Wrench 21” Telescoping Lug Wrench*, Part Nos. 1721 and 1321, (#0 12619 01721 8). All such hand tools with grips are referred to herein as the “Products.”

1.4 Notices of Violation

On April 5, 2012, Brimer served Amcor and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided the recipients with notice that Amcor was in violation of Proposition 65 for failing to warn its customers and consumers in California that its Products exposed users to DEHP and lead (“Notice”). No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Amcor denies the material factual and legal allegations contained in Brimer's Notice 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 Amcor 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 Amcor of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Amcor. This section shall not, however, diminish or otherwise affect Amcor'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 31, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION COMMITMENT

Commencing on the Effective Date and continuing thereafter, Amcor shall only manufacture for sale in California, or caused to be manufactured for sale in California, Products that are Lead Free and Phthalate Free. For purposes of this Settlement Agreement, "Lead Free" shall mean Products containing less than 100 parts per million ("ppm") lead 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. Additionally, for purposes of this Settlement Agreement, "Phthalate Free" shall mean Products containing less than or equal to 1,000 ppm 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.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Amcor shall pay \$12,000, in civil penalties as follows:

3.1 Initial Civil Penalty

Amcor shall pay an initial civil penalty of \$4,000, to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Brimer. Amcor shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("The Chanler Group in Trust for OEHHA") in the amount of \$3,000, representing 75% of the initial civil penalty and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,000, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to Brimer, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before August 31, 2012, to the following address:

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

3.2 Final Civil Penalty

Amcor shall pay a final civil penalty in the amount of \$8,000 on December 31, 2012. However, this final civil penalty shall be waived in its entirety if an officer of Amcor certifies in writing that, as of December 1, 2012, and continuing thereafter, Amcor shall distribute, sell, ship and offer for sale, in the state of California, only Reformulated Products. Such certification must be received by The Chanler Group on or before December 14, 2012.

The final civil penalty payment shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Russell Brimer. Amcor shall issue two separate checks for the final civil penalty payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of \$6,000, representing 75% of the total final penalty; and (b) one

check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$2,000, representing 25% of the total final penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose information shall be provided five calendar days before the payment is due (if different than the information already provided to Amcor under Section 3.1 above).

Payment 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. REIMBURSEMENT OF 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, Amcor 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 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, Amcor shall pay \$21,500 for fees and costs incurred investigating, litigating, and negotiating a settlement of this matter.

5. RELEASE OF ALL CLAIMS

5.1 Brimer’s Release of Amcor

This Settlement Agreement is a full, final, and binding resolution between Brimer and Amcor 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 Amcor, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Amcor directly or indirectly

distributes or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on the alleged failure to warn about exposures to DEHP and lead contained in the Products manufactured, distributed, sold and/or offered for sale by Amcor in California before or on 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 of 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, 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 (but exclusive of fees and costs on appeal, if any) limited to and arising under Proposition 65 with respect to DEHP and lead in the Products manufactured, distributed, sold and/or offered for sale by Amcor before or on the Effective Date, against Amcor.

5.2 Amcor’s Release of Brimer

Amcor on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby 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.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

On or before December 31, 2014, Amcor may send Brimer a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment that provides a release in the public interest for the released Products, and to seek court approval of the consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Brimer and Amcor agree to mutually employ their

best efforts, and that of their 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. Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, Amcor 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 consent judgment, in an amount not to exceed \$16,000, exclusive of fees and costs that may be incurred on appeal. Within ten days after its receipt of monthly invoices from Brimer's counsel for work performed under this section, Amcor will remit payment to The Chanler Group, at the address set forth in Section 3.3.3.

7. 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.

8. 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, DEHP and/or lead, then Amcor 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.

9. 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 Amcor:

For Brimer:

Peter Schermer, President
Amcor Industries, Inc.
2011 East 49th Street
Vernon, CA 90058

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

with a copy to:

Barbara R. Adams
Adams | Nye | Becht LLP
222 Kearny St., 7th Floor
San Francisco, CA 94108

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.

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

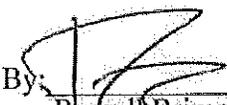
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 8-24-12

Date: 8/27/12

By: 

Russell Brimer

By: 

Peter Schermer, President
Amcor Industries, Inc.