

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Russell Brimer and Nordic Group of Companies, Ltd.

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Nordic Group of Companies, Ltd. (“Nordic”), with Brimer and Nordic each individually referred to as a “Party” and collectively referred to as the “Parties.” Brimer is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Nordic 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 Nordic has sold portfolio cases containing di(2-ethylhexyl)phthalate (“DEHP”) and di-n-butyl phthalate (“DBP”) and messenger bags containing DEHP and lead without first providing the clear and reasonable warning required by Proposition 65. DEHP, DBP, and lead are each listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm (collectively “Listed Chemicals”).

### 1.3 Product Description

The products that are covered by this Settlement Agreement are: 1) portfolio cases containing DEHP and DBP, that are imported, manufactured, sold, or distributed for sale by Nordic in California including, but not limited to, the *ArtBin ToteFolio, #8000SA (#0 71617 08001 3)*; and 2) messenger bags containing DEHP and lead, that are imported, manufactured, sold, or distributed for sale by Nordic in California including, but not limited to, the *ArtBin Messenger Bag, #6904SA (#0 71617 94022 5)* (collectively “Products”).

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

On or about April 5, 2012, Brimer served Nordic and certain public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Brimer’s allegations that Nordic was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to the Listed Chemicals. 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**

Nordic denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed 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 Nordic 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 Nordic of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Nordic. This Section shall not, however, diminish or otherwise affect Nordic’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 July 31, 2013.

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

#### **2.1 Reformulation Standards**

Commencing on the Effective Date and continuing thereafter, Nordic shall only manufacture or purchase “Reformulated Products” for sale or distribution in California. For purposes of this Settlement Agreement, Reformulated Products are products that contain a maximum concentration by weight of DEHP and DBP, each, of 1,000 parts per million (0.1%) or less in any accessible component (i.e., any component that may be

touched or handled during a reasonably foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining phthalate content in a solid substance; and, with regard to lead, a maximum of 100 parts per million lead content when analyzed pursuant to Environmental Protection Agency testing methodologies 6010B and 3050B or equivalent methods and which yield no more than 1.0 microgram of residual lead when analyzed pursuant to NIOSH Test Method 9100 performed on any accessible component.

## **2.2 Interim Product Warnings**

**2.2.1 Nordic's Interim Warnings.** Nordic represents that warnings have been placed on all Products sold in California since May 5, 2011 and that the warning reads as follows:

WARNING: This Product Contains Chemicals Known To The State of California To Cause Cancer, Or Birth Defects Or Other Reproductive Harm.

**2.2.2 Future Warnings.** Commencing on the Effective Date, Nordic shall, for all Products manufactured or purchased for sale or distribution in California before the Effective Date, that are not Reformulated Products, provide clear and reasonable warnings as set forth below. 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 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.

For Products containing DEHP and lead, Nordic shall use the following warning language:

**WARNING: This product contains DEHP and lead, chemicals known to the state of California to cause birth defects and other reproductive harm.**

For Products containing DEHP and DBP, Nordic shall use the following warning language:

**WARNING: This product contains DEHP and DBP, phthalate chemicals known to the state of California to cause birth defects and other reproductive harm.**

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

In settlement of all the claims referred to in this Settlement Agreement, Nordic shall pay a total of \$11,500 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer, as follows:

**3.1 Initial Civil Penalty**

Nordic shall pay an initial civil penalty in the amount of \$3,500 on or before the Effective Date. Nordic shall issue two separate checks to: (a) “Office of Environmental Health Hazard Assessment” in the amount of \$2,625; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$875. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

**3.2 Final Civil Penalty**

Nordic shall pay a final civil penalty of \$8,000 within 10 days of the Effective Date. The final civil penalty shall be waived in its entirety, however, if, on or before the

Effective Date, an officer of Nordic provides Brimer with written certification that, as of the date of such certification and continuing into the future, Nordic has met the reformulation standard specified in Section 2 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Nordic are Reformulated Products. Brimer must receive any such certification on or before the Effective Date. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Nordic shall issue two separate checks for its final civil penalty payments to: (a) "Office of Environmental Health Hazard Assessment" in the amount of \$6,000 and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$2,000.

**3.3 Payment Procedures**

**3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

(a) All payments owed to Brimer, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyrics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

**3.3.2 Issuance of 1099 Forms.** After each penalty payment, Nordic shall issue separate 1099 forms for each payment to Brimer, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1(b) above.

**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 this fee issue to be resolved after the material terms of the agreement had been settled. Brimer then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. 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 through the mutual execution of this agreement. Nordic shall pay \$26,000 for fees and costs incurred as a result of investigating, bringing this matter to Nordic's attention, and negotiating a settlement in the public interest. Nordic shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before the Effective Date, to the address listed in Section 3.3.1(a) above.

**5. CLAIMS COVERED AND RELEASED**

**5.1 Release**

This Settlement Agreement is a full, final and binding resolution between Brimer and Nordic, 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 Nordic, its parents, subsidiaries, including but not limited to Flambeau, Inc., affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Nordic directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to the Listed Chemicals contained in the Products that were manufactured, distributed, sold and/or offered for sale by Nordic 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, 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 -- limited to and arising under Proposition 65 with respect to the Listed Chemicals in the Products manufactured, distributed, sold and/or offered for sale by Nordic before the Effective Date (collectively “claims”), against Nordic and Releasees.

## **5.2 Nordic's Release of Brimer**

Nordic 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 to enforce Proposition 65 against it in this matter with respect to the Products.

## **6. POST EXECUTION ACTIVITIES**

On or before December 31, 2014, Nordic may ask Brimer, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment and seek the court's approval of the consent judgment pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Brimer agrees to reasonably cooperate with Nordic and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, Nordic will reimburse Brimer and his counsel for their reasonable fees and costs incurred in 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 \$16,000, exclusive of fees and cost that may be incurred on appeal. Nordic will remit payment to The Chanler Group, at the address set forth in Section 3.3.1(a) above. Such additional fees shall be paid by Nordic within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

## **7. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Nordic may 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. Nothing in this Settlement Agreement shall be interpreted to relieve Nordic from any obligation to comply with any pertinent state or federal toxic control laws.

**9. NOTICES**

Unless specified herein, all correspondence and notices 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 the following addresses:

For Nordic:

*Dan Roberts, General Counsel*  
~~Jason Saucy, President~~  
Nordic Group of Companies, Ltd.  
~~414 Broadway Street, Suite 200~~  
Baraboo, WI 53913  
*715 Lynn Avenue, Suite 100*

For Brimer:

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

With Copy to:

Eugene Kim, Esq.  
Gresham Savage Nolan & Tilden, PC  
3750 University Avenue, Suite 250  
Riverside, CA 92501

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.

**10. 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. A

facsimile or .pdf signature shall be as valid as the original.

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

Brimer and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**12. MODIFICATION**

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

**13. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understating of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

**14. 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:

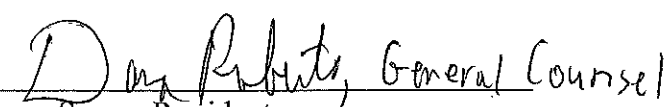
Date: July 25, 2012

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

Russell Brimer

AGREED TO:

Date: 9/20/13

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

Jason Sauey, President  
Nordic Group of Companies, Ltd.