

## SETTLEMENT AGREEMENT

### **1. INTRODUCTION**

#### **1.1 Russell Brimer and Royal Consumer Information Products, Inc.**

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Royal Consumer Information Products, Inc. (“Royal Consumer”), with Brimer and Royal Consumer collectively referred to as the “Parties.” Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Royal Consumer 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 §§ 25249.5 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

Brimer alleges that Royal Consumer has manufactured, imported, distributed and/or sold in the State of California vinyl/PVC checkbook covers containing di(2-ethylhexyl)phthalate (“DEHP”) and calculators containing lead. 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 vinyl/PVC checkbook covers containing DEHP including, but not limited to, *Royal CBC2000 Checkbook Calculator, #16314Z-D (#0 22447 16314 8)* and calculators containing lead including, but not limited to, *Royal 8-Digit Calculator, Model: PS-8, PCUA: 29352X (#0 22447 29352 4)*, which are manufactured, imported, distributed, sold and/or offered for sale by Royal Consumer in the State of California, hereinafter the “Products.”

#### **1.4 Notices of Violation**

On July 11, 2012, Brimer served Royal Consumer and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the

recipients with notice that Royal Consumer was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that the Products exposed users in California to DEHP.

On April 3, 2013, Brimer served Royal Consumer and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that provided the recipients with notice that Royal Consumer was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that the Products exposed users in California to DEHP and lead. The Notice and Supplemental Notice shall collectively be referred to herein as the “Notices.” No public enforcer has diligently prosecuted the allegations set forth in the Notices.

**1.5 No Admission**

Royal Consumer denies the material, factual and legal allegations contained in Brimer’s Notices and maintains that all 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 Royal Consumer of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Royal Consumer of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the 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 22, 2013.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Standards**

“Reformulated Products” are defined as:

- (a) those Products that contain a total lead content of less than or equal to 100 parts per million (“ppm”) when analyzed pursuant to Environmental

Protection Agency testing methodologies 3050B and/or 6010B in each accessible component; and

- (b) those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

## **2.2 Reformulation Commitment**

As of the Effective Date, Royal Consumer shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above.

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

In settlement of all the claims referred to in this Settlement Agreement, Royal Consumer shall pay a total of \$18,000 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**

Royal Consumer shall pay an initial civil penalty in the amount of \$6,000 on or before July 22, 2013. Royal Consumer shall issue two separate checks to: (a) “OEHHA” in the amount of \$4,500; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,500. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

### **3.2 Final Civil Penalty**

Royal Consumer shall pay a final civil penalty of \$12,000 on or before December 15, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than December 1, 2013, an officer of Royal Consumer provides Brimer with written certification that, as of the date of such certification and continuing into the future, Royal Consumer 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 Royal Consumer are Reformulated Products. Brimer must receive any such certification on or before December 1, 2013. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Royal Consumer shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$9,000; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$3,000.

### **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, Royal Consumer 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 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. Royal Consumer shall pay \$28,500 for fees and costs incurred as a result of investigating, bringing this matter to Royal Consumer's attention, and negotiating a settlement in the public interest. Royal Consumer 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 July 22, 2013, to the address listed in Section 3.3.1(a) above.

**5. RELEASES**

**5.1 Brimer's Release of Royal Consumer**

This Settlement Agreement is a full, final and binding resolution between Brimer and Royal Consumer 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 Royal Consumer, its parents, subsidiaries, affiliated entities under

common ownership, directors, officers, employees, attorneys and each entity to whom Royal Consumer directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP and lead contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by Royal Consumer 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 of 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 DEHP and lead in the Products manufactured, imported distributed, sold and/or offered for sale by Royal Consumer before the Effective Date (collectively “claims”), against Royal Consumer and Releasees.

**5.2 Royal Consumer’s Release of Brimer**

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

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

Within twelve months of the execution of this Settlement Agreement, Royal Consumer may ask Brimer, in writing, to file a complaint in the public interest, to incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court’s approval of

the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Brimer agrees to reasonably cooperate with Royal Consumer and the Parties agree to use their best efforts, and that of their counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Royal Consumer 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 costs that may be incurred on appeal. Royal Consumer 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 Royal Consumer 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 of the provisions of this Settlement Agreement are deemed 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Royal Consumer 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. Nothing in this Settlement Agreement shall be interpreted to relieve Royal Consumer from any obligation to comply with any pertinent state or federal toxics control law.

9. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Royal Consumer:

Todd Althoff, Vice President  
Royal Consumer Information Products, Inc.  
2 Riverview Drive, Suite 1  
Somerset, NJ 08873

For Brimer:

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

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 AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

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

12. **MODIFICATION**

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

13. **AUTHORIZATION**

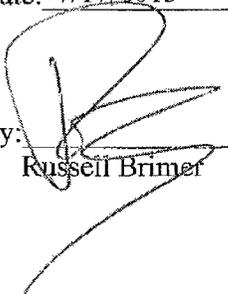
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

Date: 7/17/2013

By:

Russell Brimer



**AGREED TO:**

Date:

7/11/13

By:

J. Todd Althoff, Vice President  
Royal Consumer Information Products,  
Inc.

