

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This settlement agreement ("Agreement" or "Settlement Agreement") is entered into by and between Russell Brimer, ("Brimer") and Norcom, Inc. ("Norcom") with Brimer and Norcom collectively referred to as the "Parties."

1.2 Brimer

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.

1.3 Norcom

Norcom employs 10 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").

1.4 General Allegations

Brimer alleges that Norcom manufactured, distributed and/or sold, in the State of California, ledger/cash books with vinyl/PVC covers that exposed users to DEHP without first providing "clear and reasonable warning" under Proposition 65. DEHP is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the "Listed Chemical" or "DEHP"

1.5 Notice of Violation

On August 31, 2012, Brimer served Norcom and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided public enforcers and Norcom with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, a toxic chemical found in their ledger/cash books sold in California. Norcom received the 60-Day Notice of Violation. Norcom represents, as of the date it executes this Agreement, that it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP in its products, as identified in the 60-Day Notice.

1.6 No Admission

This Agreement resolves claims that are vigorously denied and disputed by Norcom. The

Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Norcom denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the Covered Products and otherwise contends that, to Norcom's actual knowledge, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Norcom of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Norcom of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Norcom. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Norcom's obligations, responsibilities, and duties under this Agreement.

1.7 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Norcom as to the allegations in the 60-Day Notice received from Brimer, and this Agreement, that venue is proper in County of Marin, and that the Marin County Superior Court has jurisdiction to enforce the provisions of this Agreement. As an express part of this Agreement, pursuant to C.C.P. §664.6 the Marin County Superior Court has jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

2. DEFINITIONS

2.1 The term "Covered Products" means any Ledger/Cash book with a vinyl /PVC cover manufactured, caused to be manufactured, distributed or caused to be distributed by Norcom.

2.2 The term "DEHP Free" Covered Products shall mean Covered Products containing materials or other components that may be handled, touched or mouthed by a consumer, and which materials or other components are confirmed to contain less than or equal to 1,000 parts per million ("ppm") of DEHP through Testing by a certified U.S. laboratory.

2.3 The term "Testing" shall mean Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.4 The term "DEHP Free Standard" shall mean the above-referenced standard that will cause a Covered Product to qualify as DEHP Free

2.5 "Effective Date" shall mean March 15, 2013.

3. INJUNCTIVE-TYPE RELIEF

3.1 Formulation Commitment

3.1.1 Norcom represents as part of this agreement that it has caused the Covered Products to be reformulated to meet the DEHP Free Standard prior to March 1, 2013. No later than the Effective Date, and to the extent it has not already done so, Norcom shall provide the DEHP Free Standards, to its then-current supplier(s) of Covered Products that will be sold or offered for sale to the United States consumers and shall instruct each supplier to use reasonable efforts to provide Covered Products that comply with such DEHP Free Standard. In addressing the obligation set forth in the preceding sentence, Norcom shall not employ statements that will encourage the supplier(s) of Covered Products to delay compliance with the DEHP Free Standard. Upon request, Norcom shall provide Brimer with copies of such supplier notification and Brimer shall regard such copies as confidential business information.

3.1.2 After the Effective Date, Norcom shall not manufacture, cause to be manufactured, purchase or otherwise obtain any Covered Product for distribution or sale in the United States, or for distribution to or sale to any retailer that Norcom reasonably understand maintains retail outlets in the United States, that is not DEHP Free.

3.2 Previously Obtained or Distributed Covered Products.

3.2.1 Product Warnings

Commencing on the Effective Date, Norcom shall not sell or ship any Covered Products to a United States vendor or retailer, or sell or ship any Covered Product to a vendor or retailer that Norcom reasonably understands maintains retail outlets in the United States, unless such Covered Products are DEHP Free under Section 2.2 or are sold or shipped with one of the clear and reasonable warnings set forth hereafter.

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* Covered Product the warning applies, so as to minimize the risk of consumer confusion.

(a) **Retail Store Sales.**

(i) **Product Labeling.** Norcom may affix a warning to the packaging, labeling, or directly on any Covered Products sold to any entity that Norcom reasonably understands maintains retail outlets in the United States that states:

WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

(ii) **Point-of-Sale Warnings.** Alternatively, Norcom may provide warning signs in the form below to retail outlets in the United States, which stores it is reasonably aware of having sold the Covered Products or having inventory or orders of the Covered Products, with instructions to post the signs *in immediate proximity* to the point of display of any and all such Covered Products for the benefit of its customers.

WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

(b) **Mail Order Catalog and Internet Sales.** In the event that Norcom sells any Covered Products via mail order catalog or the Internet to customers located in the United States any such catalog or Internet site offering any Covered Product for sale shall include a warning in the catalog or within the website, identifying the specific Covered Product to which the warning applies, as specified in Sections 3.2.2(b)(i) and (ii) below.

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than the Covered Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Covered Product:

WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Covered Product, Norcom may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front or back cover of the catalog or on the same page as any order form for the Covered Product(s):

WARNING: Certain products identified with this symbol ▼ contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Covered Product. On each page where the designated symbol appears, Norcom must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If Norcom elects to provide warnings in any mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Covered Products printed after the Effective Date.

(ii) **Internet Website Warning.** A warning must be given in conjunction with the sale of any Covered Products by Norcom via the Internet, provided it appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Covered Product for which it is given in the same type size or larger than the Covered Product description text:

WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Covered Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol ▼ contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

3.2.2 After April 30, 2013, Norcom shall discontinue all sales of any Covered Products that are not DEHP Free, regardless of compliance with Section 3.2.1. Further, Norcom shall take all reasonable efforts to ensure that, after March 31, 2013, no Covered Product labeled with a Section 3.2.1 warning is sold by any retail customer of Norcom in California.

4. MONETARY PAYMENTS

In settlement of all the claims referred to in this settlement agreement, Norcom shall pay a total of \$10,000.00 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:

4.1 Initial Civil Penalty

Norcom shall pay an initial civil penalty in the amount of \$6,000.00 on or before the Effective Date. Norcom shall issue two separate checks to: (a) “OEHHA” in the amount of \$4,500.00; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,500.00. All penalty payments shall be delivered to the addresses listed in Section 4.3 below.

4.2 Final Civil Penalty

Norcom shall pay a final civil penalty of \$4,000.00 on or before March 31, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than the Effective Date, an officer of Norcom provides Brimer with written certification that, as of the date of such certification and continuing into the future, Norcom has met the DEHP Free standard specified above, such that all new Covered Products manufactured, imported, distributed, sold and offered for sale in the United States by Norcom after Effective Date are DEHP Free. 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. Absent waiver of the final civil penalty, Norcom shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$3,000.00; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,000.00.

4.3 Payment Procedures

4.3.1. Issuance of Payments. Payments shall be delivered as follows:

- (a) All payments owed to Brimer, pursuant to Sections 4.1 through 4.2, 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 4.1 through 4.2, 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 4.3.1(a), as proof of payment to OEHHA.

4.3.2 Issuance of 1099 Forms. After each penalty payment, Norcom 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 4.3.1 above.

4.4 Augmentation Of Penalty Payments

For purposes of the penalty assessment under this Agreement, Brimer is relying entirely upon Norcom and its counsel for accurate, good faith reporting to Brimer of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Brimer discovers and presents to Norcom evidence that the Covered Products have been distributed by Norcom in sales volumes materially different than those identified by Norcom prior to execution of this Agreement, then Norcom shall be liable for an additional penalty amount of \$10,000.00. Norcom shall also be liable for any reasonable, additional attorney fees expended by Brimer in discovering such additional retailers or sales. Brimer agrees to provide Norcom with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Norcom shall have thirty (30) days to agree to the amount of fees and penalties owing by Norcom and submit such payment to Brimer in accordance with the method of payment of penalties and fees identified in Sections 4.3. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Brimer shall be entitled to file a formal legal claim for damages for breach of this contract and shall be entitled to all reasonable attorney fees and costs relating to such claim.

4.5 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. Norcom shall pay \$25,000.00 for fees and costs incurred as a result of investigating, bringing this matter to Norcom's attention, and negotiating a settlement in the public interest. Norcom 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 4.3.1 above.

Any failure by Norcom to deliver any of the above-referenced payments to The Chanler

Group within five business days of the date of the Effective Date shall result in imposition of a 10% simple interest assessment on the undelivered payment(s) until delivery.

5. RELEASES

5.1 BRIMER'S RELEASE OF NORCOM

5.1.1 This Settlement Agreement is a full, final and binding resolution between Brimer, and Norcom, 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 Norcom, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Norcom directly or indirectly distributes or sells Covered 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 contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by Norcom 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 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, 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 DEHP in the Covered Products manufactured, distributed, sold and/or offered for sale by Norcom before the Effective Date (collectively "claims"), against Norcom and Releasees.

5.1.2 Brimer also, in his individual capacity only and *not* in his representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Brimer, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by Norcom Releasees. Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Brimer, in his individual capacity only and *not* in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, excepting Section 4.4, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.1.3 This Section 5.1 release is expressly limited to those claims that arise under Proposition 65, as such claims relate to Norcom's alleged failure to warn about exposures to or identification of the DEHP contained in the Covered Products and as such claims are identified in the Proposition 65 60-Day Notice to Norcom.

5.1.4 This Section 5.1 release is expressly limited to any alleged violations that occur prior to thirty (30) days after the Effective Date and does not release any entity or individual besides Releasees from any liability for any violation of Proposition 65 regarding the Covered Products that occurs more than thirty (30) days after the Effective Date.

5.1.5 Nothing in this Section affects Brimer's right to commence or prosecute an action under Proposition 65 against any person other than Releasees. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Norcom, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Norcom.

5.2 Norcom's Release of Brimer

The Release by Brimer is mutual. Norcom, 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 Norcom may ask Brimer, in writing, to file a complaint, 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 Norcom and to use his best efforts, and that of his 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, Norcom 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 \$10,000.00, exclusive of fees and cost that may be incurred on appeal. Norcom will remit payment to The Chanler Group, at the address set forth in Section 9 below. Such additional fees shall be paid by Norcom within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph. Any failure by Norcom to timely pay Brimer invoices under this Section shall result in the assessment of ten percent (10%) interest on any outstanding balance.

7. SEVERABILITY

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

8. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

9. NOTICES

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by certified mail and electronic mail to the following:

For Norcom, to:

Harold Rahn, President
Norcom, Inc.
200 Wilson Road
Griffin, GA 30223

With copy to their counsel at

William K. Koska
William K. Koska & Associates
5720 Oberlin Drive
San Diego, CA 92121

For Brimer to:

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

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

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

11. MODIFICATION

This Agreement may be modified only by written agreement of the Parties or court order.

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding 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. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

13. ATTORNEY'S FEES

13.1 Should Brimer prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Brimer shall be entitled to his reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5. Should Norcom prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Norcom may be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application upon a finding that Brimer's prosecution of the motion or application lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

13.2 Except as specifically provided hereinabove, each Party shall bear its own costs and attorney's fees in connection with the Notice.

13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

14. NEUTRAL CONSTRUCTION

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

15. COUNTERPARTS, FACSIMILE SIGNATURES

This Agreement may be executed in counterparts and by facsimile or portable document format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

///

16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: March <u>12</u>, 2013</p>  <p>_____ Russell Brimer</p>	<p>Dated: March <u>11</u>, 2013</p>  <p>_____ Harold Rahn, President Norcom Inc.</p>
---	--