

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Neil International, Inc. (“Neil International”), with Brimer and Neil International individually referred to 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 to improve human health by reducing or eliminating hazardous substances contained in consumer products. Neil International 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Brimer alleges that Neil International manufactures, imports, sells, or distributes for sale in the State of California, business card holders with vinyl/PVC components that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP 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 product covered by this Settlement Agreement is a business card holder with vinyl/PVC components containing DEHP that is manufactured, sold, or distributed for sale in California by Neil International in connection with the *Executive Pen Set (#0 50122 47650 4)*. The business card holder with vinyl/PVC components containing DEHP shall, where appropriate, be referred to as the “Product.”

1.4 Notice of Violation

On or about September 21, 2012, Brimer served Neil International and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Neil International violated Proposition 65 by failing to warn its customers and consumers in

California that the Product exposes users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced nor is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Neil International denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Neil International 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 Neil International of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Neil International. This Section shall not, however, diminish or otherwise affect Neil International'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 March 1, 2013.

2. INJUNCTIVE RELIEF

2.1 Reformulated Products

Commencing on the Effective Date and continuing thereafter, Neil International shall only manufacture for sale or purchase 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, a "Reformulated Product" means a Product that contains a maximum of 1,000 parts per million DEHP content when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.2 Product Warnings

Commencing on the Effective Date, for the sale of the Product other than Reformulated Products, Neil International shall provide a clear and reasonable warning. 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. The warning shall read as follows:

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

3. MONETARY PAYMENTS

3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Neil International shall pay \$10,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated according to California Health & Safety Code section 25249.12(c)(1) and (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. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.1.1 Initial Civil Penalty

Within ten (10) business days of receiving a fully executed copy of the Agreement, Neil International shall pay an initial civil penalty in the amount of \$2,500. Neil International shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,875; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$625.

3.1.2 Final Civil Penalty

Neil International shall pay a final civil penalty of \$7,500 on or before December 31, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than

December 31, 2013, an officer of Neil International provides Brimer with written certification that Neil International, as of the date of certification, only offers Reformulated Products for sale in California. Alternatively, Neil International may provide written certification that it no longer offers the Products for sale in the California market. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Neil International shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$5,625; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,875.

3.2 Attorney 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, Neil International 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 California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this agreement. Neil International shall pay \$21,500 for fees and costs incurred as a result of investigating, bringing this matter to Neil International’s attention, and negotiating a settlement in the public interest. Neil International 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 ten (10) business days after receipt of a fully executed copy of the Agreement, to the address listed in Section 3.3.1(a) below.

3.3 Payment Procedures

3.3.1 Issuance of Payments

Payments shall be delivered as follows:

- (a) All payments owed to Russell Brimer, pursuant to Sections 3.1.1 through 3.1.2, 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 3.1.1 through 3.1.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

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

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

3.3.2 Issuance of 1099 Forms

After each penalty payment, Neil International shall issue separate 1099 forms for each payment to Brimer, whose address and tax identification number will be provided upon request after this Settlement Agreement is fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1(b) above.

4. CLAIMS COVERED AND RELEASED

4.1 Brimer’s Release of Neil International

This Settlement Agreement is a full, final, and binding resolution between Brimer and Neil International of any violation of Proposition 65 that was or could have been asserted by Brimer, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Neil International, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Neil International directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative

members, and licensees (“Releasees”), based on unwarned exposures to DEHP contained in the Product sold or distributed for sale by Neil International in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Brimer, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Neil International and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP in the Product manufactured, sold, or distributed for sale in California by Neil International prior to the Effective Date.

4.2 Neil International’s Release of Brimer

Neil International, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Brimer and his attorneys and other representatives, for any and all actions taken or statements 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 Product.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Neil International may request in writing that Brimer draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Brimer and Neil International agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Neil International agrees to reimburse Brimer and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$10,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from Brimer's counsel for work performed under this section, Neil International will remit payment to the address provided in Section 3.3.1(a).

6. 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.

7. 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 Neil International may provide written notice to Brimer of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to 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 on any party by the other party at the following addresses:

For Neil International, Inc.:

Neil Fine, President
Neil International, Inc.
450 East Bunker Court
Vernon Hills, IL 60061

With a copy to:

Laura K. Kim, Esq.
Musick, Peeler & Garrett LLP
One Wilshire Boulevard, Suite 2000
Los Angeles, CA 90017

For Russell Brimer:

The Chanler Group
Attn: Proposition 65 Coordinator
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.

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. POST-EXECUTION ACTIVITIES

Brimer agrees to comply with the reporting form requirements referenced in Health and Safety Code section 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: 3-12-13
By: [Signature]
Russell Brimer

Date: 3/7/13
By: [Signature]
Neil Fine, President
Neil International, Inc.