

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Half Price Books, Records, Magazines, Inc. (“Half Price Books”), with Brimer and Half Price Books 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. Half Price Books 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 Half Price Books distributes, and/or sells in California notebooks containing di(2-ethylhexyl) phthalate (“DEHP”) in violation of Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical 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, and to which this Settlement Agreement is specifically limited, are SpiceBox Notebooks (Notables); including SpiceBox Notebooks (Notable), #9781896639246; which contain DEHP and were distributed, and/or sold in California by Half Price Books (collectively “Products”).

1.4 Notice of Violation

On or about October 26, 2012, Brimer served Half Price Books and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Half Price Books was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to DEHP. 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

Half Price Books denies the material, factual, and legal allegations contained in Brimer's Notice and maintains that all of the products it 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 Half Price Books 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 Half Price Books of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Half Price Books. This Section shall not, however, diminish or otherwise affect Half Price Books' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 8, 2013.

2. WARNINGS AND REFORMULATION

2.1 Product Warnings

After the Effective Date, Half Price Books shall not sell, ship, or offer to ship for sale in California any Products containing DEHP unless: such Products are sold or shipped with one of the clear and reasonable warnings set forth in subSections 2.1(a) and (b), or comply with the reformulation standard set forth in Section 2.3.

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 if not eliminate the chance that an overwarning situation will arise.

2.1(a) Retail Store Sales

(i) **Product Labeling.** Half Price Books may perform its warning obligation by ensuring that a warning is affixed to the packaging, labeling, or directly on each

Product sold in retail outlets in the State of California by Half Price Books or its agents, that states:

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

(ii) **Point-of-Sale Warnings.** Half Price Books may, alternatively, perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the Products are sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the Products that states:

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.3), the following statement must be used:

WARNING: The following products contain DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

[*List Products*]

2.1(b) Mail Order Catalog and Internet Sales

In the event that Half Price Books sells its Products via catalog or internet to customers located in California after the Effective Date, Half Price Books shall provide a warning: (i) in the mail order catalog; or (ii) on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than the 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 Product:

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause 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 Product, Half Price Books 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 cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a phthalate chemical known to the State of California to cause 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 Product. On each page where the designated symbol appears, Half Price Books must provide a header or footer directing the reseller to the warning language and definition of the designated symbol.

If Half Price Books elects to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Products printed after the date of entry of this consent judgment.

(ii) **Internet Website Warning.** A warning may be given in conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for any 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 Product for which it is given in the same type size or larger than the Product description text:

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the 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 phthalate chemical known to the State of California to cause birth defects or other reproductive harm: ▼

2.2 Exceptions To Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Standards

Reformulated Products are defined as Products containing a maximum of 1,000 parts per million (0.1%) of DEHP in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, equivalent methodologies utilized by state or federal agencies to determine DEHP content in a solid substance, or as authorized under Tit. 27 Cal. Code Regs. § 25900.

3. MONETARY PAYMENTS

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

Pursuant to Health & Safety Code § 25249.7(b), Half Price Books shall pay a total of \$10,000 in Civil Penalties. Each civil penalty payment shall be allocated according to California Health & Safety Code § 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) remitted to Brimer.

Within ten (10) days of the Effective Date, Half Price Books will make an initial civil penalty payment of \$2,000. Half Price Books shall issue two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$500. Thereafter, on October 1, 2013, Half Price Books shall make a final civil penalty payment of \$8,000. Pursuant to tit. 11 Cal. Code Regs. § 3203(c), the final civil penalty payment will be waived in its entirety if, no later than July 1, 2013, an officer of Half Price Books certifies in writing to Brimer's counsel that, as of such date, one-hundred percent of the Products Half Price Books sells or distributes for sale in California are "Reformulated Products" as defined by Section 2.3, and that Half Price Books will continue to only offer Reformulated Products in California in the future. Alternatively, Half Price Books may certify that it no longer offers the Products for sale within the California market, and that it will only recommence sales of Reformulated Products in California.

3.2 Reimbursement of Fees and Costs

The Parties reached 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 in this matter. Under these legal principles, Half Price Books shall pay \$18,000 for fees and costs incurred as a result of investigating, bringing this matter to the attention of Half Price Books' management, and negotiating a settlement in the public interest. Half Price Books shall provide its payment in the form of a check payable to "The Chanler Group," and issue a third 1099 form to "The Chanler Group" (EIN: 94-3171522). Payment shall be delivered within ten (10) days of the Effective Date at the address provided in Section 3.3.

3.3 Payment Addresses

Payments shall be delivered as follows:

3.3(a) All payments owed to Russell Brimer, pursuant to Section 3.1, 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

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

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.

4. CLAIMS COVERED AND RELEASED

4.1 Brimer's Release of Half Price Books

This Settlement Agreement is a full, final, and binding resolution between Brimer and Half Price Books 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 Half Price Books, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensees, and SpiceBox Product Development Ltd. ("Releasees"), based on the alleged failure to warn about exposures to DEHP contained in Products imported, manufactured, sold or distributed for sale in California by Half Price Books 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 against Half Price Books and Releasees, including, without limitation, all actions, 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, if any) arising under Proposition 65 for unwarned exposures to DEHP in

Products imported, manufactured, sold, or distributed for sale in California by Half Price Books before the Effective Date.

Brimer also 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 alleged or actual unwarned exposures to DEHP from the Products. 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 SETTLEMENT WITH THE DEBTOR

Brimer hereby 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 unwarned exposures to DEHP from the Products as alleged in the Notice. In furtherance of such intention, 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 exposures to DEHP from the Products.

5.4 Half Price Books' Release of Brimer

Half Price Books 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

Half Price Books also acknowledges that it 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 SETTLEMENT WITH THE DEBTOR

Half Price Books hereby expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it 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 it may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, 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. POST-EXECUTION CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Half Price Books may send Brimer a written request to 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 to seek court approval of the settlement pursuant to Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Brimer and Half Price Books agree to reasonably cooperate, and to use their best efforts, and that of their counsel, to obtain approval of their settlement by a superior court in California, and an entry of judgment in accordance with the terms set forth herein in a timely manner.

Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, Half Price Books will 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 \$15,000. Within ten days after its receipt of a monthly invoice from Brimer's counsel for work performed under this Section, Half Price Books will remit payment to The Chanler Group, at the address set forth in Section 3.3.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of its provisions are held by a court to be unenforceable, the validity of the provisions remaining 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 Half Price Books 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.

8. 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 to the following addresses:

For Brimer:

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

For Half Price Books:

Susan Albach, Associate General Counsel
Half Price Books, Records, Magazines, Inc.
5803 East Northwest Highway
Dallas, TX 75231

and

Daniel Fox, Esq.
K&L Gates LLP
4 Embarcadero Center, Suite 1200
San Francisco, CA 94111

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 with facsimile or portable document format (PDF) signatures, 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: 4-9-13

Date: 4-4-13

By: 
Russell Brimer

By: 
Sharon Anderson, President and CEO
Half Price Books, Records, Magazines, Inc.