

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Bank-A-Count Corporation (“Bank-A-Count”), with Brimer and Bank-A-Count collectively referred to as the “Parties.” Brimer is an individual residing in the State of 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. Brimer alleges that Bank-A-Count 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 Bank-A-Count has manufactured, distributed and/or sold in the State of California vinyl/PVC checkbook cover that causes an exposure to di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or 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 that are manufactured, imported, distributed and/or sold in the State of California by Bank-A-Count including, but not limited to, “*Green Vinyl Checkbook Cover.*” All such Products are referred to collectively herein as the “Products.”

1.4 Notice of Violation

On or about December 20, 2012, Brimer served Bank-A-Count and various public enforcement agencies with a “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice of Brimer’s allegation that Bank-A-Count was in violation of Proposition 65 for failing to warn customers in the State of California that vinyl/PVC checkbook covers sold

by Bank-A-Count 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

This Settlement Agreement resolves claims that are denied and disputed by Bank-A-Count, and is entered into by Bank-A-Count solely for the purposes of avoiding the expense and uncertainty of litigation. Bank-A-Count denies the material, factual and legal allegations contained in Brimer's Notice, and maintains that all of the products it has manufactured, imported, distributed and/or sold in the State of California, including the Products, have been, and are, in compliance with all laws including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Bank-A-Count 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 Bank-A-Count of any fact, finding, conclusion of law, issue of law or violation of law, such being specifically denied by Bank-A-Count. This Section shall not, however, diminish or otherwise affect Bank-A-Count'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 April 30, 2013.

2. INJUNCTIVE RELIEF: WARNINGS AND PRODUCT REFORMULATION

2.1 Warnings Required for the Products

Commencing on the Effective Date, Bank-A-Count shall only sell, ship or offer for sale in California Products that are: (1) sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1.1 and 2.1.2; or (2) exempt pursuant to Section 2.2 as Reformulated Products defined in Section 2.3.

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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(s) the warning applies, so as to minimize the risk of consumer confusion.

2.1.1 Retail Store Sales.

(i) **Product Labeling.** Bank-A-Count may affix a warning to the packaging, labeling or directly on any Products that are not Reformulated Products sold in retail outlets in California that states:

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

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2.2 No Requirement to Warn for Reformulated Products

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 which contain less than or equal to 1000 ppm of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance. By entering into this Settlement Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Bank-A-Count by laws other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to Bank-A-Count under laws other than Proposition 65.

2.4 Vendor Notification Requirement

To the extent is has not already done so, no more than five (5) business days after the Effective Date, Bank-A-Count shall provide the reformulation standards specified in section 2.3 for Reformulated Products to any and all of its vendors of Products or their component parts that will be sold or offered for sale to California consumers, and shall instruct each vendor to use its

best efforts to provide only Reformulated Products or component parts that meet the reformulation standards for Reformulated Products in Section 2.3 above.

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

In settlement of all the claims referred to in this Consent Judgment, Bank-A-Count shall pay a total of \$6,000 in civil penalties in accordance with this Section, which, based on a review of the circumstances and facts exchanged, Brimer agrees reflects a fair and reasonable penalty assessment pursuant to the criteria applicable under Proposition 65. . 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 Russell Brimer, as follows:

3.1 Initial Civil Penalty

Bank-A-Count shall pay an initial civil penalty in the amount of \$2,000 within five days of the Effective Date. Bank-A-Count shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,500; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$500. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Bank-A-Count shall pay a final civil penalty of \$4,000 on or before July 31, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than July 15, 2013, an officer Bank-A-Count provides Brimer with written certification that, as of the date of asserted in the certification Bank-A-Count no longer sells or distributes the Product in California, and that continuing into the future, if Bank-A-Count does resume sales or distribution of the Products in California, Bank-A-Count will meet the reformulation standard specified in Section 2.3 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Bank-A-Count are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Should Bank-A-Count fail to provide the certification described above that operates to waive the final civil penalty, Bank-A-Count shall issue two separate checks for its final civil penalty payments to: (a)

“OEHHA” in the amount of \$3,000; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,000.

3.3 Payment Procedures

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

(a) All payments owed to Bank-A-Count, 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

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(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

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, Bank-A-Count shall issue separate 1099 forms for each payment to Brimer, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1(a) 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. Bank-A-Count 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. Bank-A-Count shall pay an all-inclusive total of \$22,000 for any and all fees and costs incurred by Brimer as a result of investigating, bringing this matter to Bank-A-Count's attention, and negotiating a settlement in the public interest. Bank-A-Count 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 within 5 days of the Effective Date, to the address listed in Section 3.3.1(a) above.

5. RELEASE OF ALL CLAIMS

5.1 Brimer's Release of Bank-A-Count

This Settlement Agreement is a full, final, and binding resolution between Brimer and Bank-A-Count 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 Bank-A-Count, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Bank-A-Count directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers ("Releasees"), based on the alleged failure to warn about exposures to DEHP contained in the Products manufactured, distributed, sold and/or offered for sale by Bank-A-Count in the State of California before the Effective Date. Brimer agrees that Bank-A-Count's compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to any actual or alleged exposures to DEHP in the Products.

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 rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Bank-A-Count and Releasees,

including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not limited to, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the Products manufactured, distributed, sold and/or offered for sale by Bank-A-Count before the Effective Date.

5.2 Bank-A-Count's Release of Brimer

Bank-A-Count 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 enforcement of Proposition 65 against it in this matter and/or with respect to the Products.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the complete execution of this Settlement Agreement by the Parties, Bank-A-Count may send Brimer a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek court approval of this Settlement Agreement in the form of a consent judgment pursuant to California Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Brimer agrees to reasonably cooperate with Bank-A-Count and to use his best efforts, and that of his counsel, to obtain approval of the Parties' settlement by a Superior Court in California and an entry of judgment in accordance with the terms set forth herein. Pursuant to California Code of Civil Procedure §§ 1021 and 1021.5, Bank-A-Count will reimburse Brimer and his counsel for the reasonable fees and costs incurred in drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement, in an amount not to exceed \$15,000, exclusive of fees and costs that may be incurred on any appeal. Within twenty (20) days after its receipt of monthly invoices from Brimer for work performed under this Section, Bank-A-Count will remit payment to The Chanler Group at the address set forth in Section 3.3.4.2 above.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held 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 as to the Products and/or DEHP, then Bank-A-Count 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.

9. NOTICES

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

For Bank-A-Count:

Scott Blanke, President
Bank-A-Count Corporation
1666 Main Street
Rudolph, WI 54475

For Brimer:

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

with a copy to:

Patrick Arendt
Attorney at Law
130 1st St North
Wisconsin Rapids, WI 54494

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.

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9. COUNTERPARTS; FACSIMILE/PDF 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. ENTIRE AGREEMENT

This Settlement 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.

11. 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).

12. MODIFICATION

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

13. AUTHORIZATION

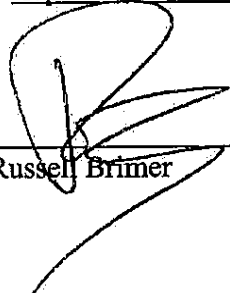
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:


AGREED TO:

Date: April 12, 2013

Date: April 15, 2013

By: 

Russell Brimer

By: 

Scott Blanke, President
Bank-A-Count Corporation