

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and The Gerson Company (“Gerson”), with Brimer and Gerson each 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 in consumer products. Gerson 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 Gerson sells or distributes for sale in California, LED light cords and strings containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are LED and incandescent light cords and strings containing DEHP that are manufactured, sold and/or distributed for sale in California by Gerson including, but not limited to, the *Everlasting Glow* brand LED light strings models Item Nos. #36903BB, 36900, 3690, 10946147, 10947613; the *Indoor/Outdoor* brand LED light strings Item Nos. 92922BB; and the *Patio Lights Indoor/Outdoor* light set Item No. 2050060. All such LED and incandescent light cords and strings containing DEHP are referred to collectively hereinafter as the “Products.”

### 1.4 Notice of Violation

On March 31, 2015, Brimer served Gerson and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Gerson violated Proposition 65 when

it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Products. 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**

Gerson denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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 Gerson of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Gerson of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Gerson. This Section shall not, however, diminish or otherwise affect Gerson'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 November 2, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS**

### **2.1 Reformulated Products**

Commencing on October 1, 2015, and continuing thereafter, Gerson shall only purchase for sale or manufacture for sale in California, (a) "Reformulated Products", or (b) Products that are sold with a clear and reasonable warning pursuant to Section 2.2, below. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain a maximum DEHP concentration of 1,000 parts per million (0.1%) in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state and federal agencies to measure DEHP content in a solid substance.

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## 2.2 Clear and Reasonable Warnings

Gerson agrees that as of the Effective Date and continuing thereafter, all Products it sells and/or distributes in California which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Gerson further agrees that the warning will be prominently placed with such conspicuousness when 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 of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Product shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and containing one of the following statements:

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

or

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

## 3. MONETARY SETTLEMENT TERMS

### 3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Gerson agrees to pay \$2,000 in civil penalties. Gerson agrees to provide its payment in a single check made payable to: "Russell Brimer, Client Trust Account" delivered within five days of the Effective Date.

The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% paid to Brimer. Gerson shall deliver its penalty payment in a single check made payable to "Russell Brimer, Client Trust Account." Brimer's counsel shall be responsible for delivering OEHHA's portion of the civil penalty to OEHHA.

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### **3.2 Attorneys' 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 Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, Gerson agrees to pay \$14,000 in the form of a check payable to "The Chanler Group" for all fees and costs incurred by Brimer investigating, bringing this matter to the attention of Gerson's management, and negotiating a settlement in the public interest.

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Brimer's Release of Gerson**

This Settlement Agreement is a full, final, and binding resolution between Brimer and Gerson, of any violation of Proposition 65 that was or could have been asserted by Brimer, on his own behalf and not in any representative capacity, and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Gerson and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Gerson directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), alleging a failure to warn about exposures to DEHP in Products that Gerson sold or distributed for sale prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Brimer, on his own behalf and not in any representative capacity, and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by Gerson before the Effective Date. The releases provided by Brimer under this Settlement Agreement are provided solely on Brimer's behalf and are not releases on behalf of the public.

#### **4.2 Gerson's Release of Brimer**

Gerson, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims 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 Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

#### **6. 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 Gerson may provide written notice to Brimer of the 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.

#### **7. NOTICE**

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Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Gerson:

John Hjalmarson, CEO  
The Gerson Company  
1450 South Lone Elm Road  
Olathe, KS 66061

with a copy to Gerson's counsel:

Stuart E. Bodker, Esq.  
McDowell Rice Smith & Buchanan LLP  
605 W. 47<sup>th</sup> Street, Suite 350  
Kansas City, MO 64112

For Brimer:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St. Olathe,  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

**8. 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.

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

Brimer and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

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

**11. 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.

*DLH*  
11/8/2015

**AGREED TO:**

Date: 12/3/2015

By:  \_\_\_\_\_

RUSSELL BRIMER

**AGREED TO:**

Date: 11/8/2015

By:  \_\_\_\_\_

John Hjalmarson, CEO  
THE GERSON COMPANY