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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA
14 UNLIMITED CIVIL JURISDICTION
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16 RUSSELL BRIMER,

17 Plaintiff,

18 v.

19 PACIFIC WORLD CORPORATION, *et al.*,

20 Defendants.

Case No. 115CV281924

**CODE OF CIVIL PROCEDURE SECTION
664.6 SETTLEMENT AGREEMENT AS
TO DEFENDANT PACIFIC WORLD
CORPORATION**

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Settlement Agreement Pursuant To C.C.P. Section 664.6 (the “Settlement
4 Agreement”) is entered into by and between Russell Brimer (“Brimer”) and Pacific World
5 Corporation (“Pacific World”), with Brimer and Pacific World each individually referred to as a
6 “Party” and collectively as the “Parties.” Brimer is an individual residing in the State of
7 California who seeks to promote awareness of exposures to toxic chemicals, and to improve
8 human health by reducing or eliminating hazardous substances used in consumer products.
9 Pacific World employs ten or more persons and is a person in the course of doing business for
10 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
11 Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

12 **1.2 General Allegations**

13 Brimer alleges that Pacific World manufactures, sells, and/or distributes for sale in
14 California, eyelash curlers with vinyl grips containing the phthalate chemical di(2-ethylhexyl)
15 phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause
16 birth defects or other reproductive harm. Brimer alleges Pacific World failed to provide the
17 health hazard warning required by Proposition 65 for consumer exposures to DEHP from the
18 grips of its eyelash curlers.

19 **1.3 Product Description**

20 The products covered by this Settlement Agreement are: (a) eyelash curlers with vinyl
21 grips or other components containing DEHP that are manufactured, sold, or distributed for sale
22 in California by Pacific World including, without limitation, the eyelash curler component of
23 Cover Girl Eye Care Kit, #09538, UPC #0 73750 09538 1 (“Covered Products”); and (b)
24 comparable eyelash, eye care, brow trim, brow tool, and nail care products and kits with vinyl
25 components containing DEHP (“Additional Products”). Covered Products and Additional
26 Products are referred to collectively herein as the “Products.”

1 **1.4 Notice of Violation**

2 On May 21, 2015, Brimer served Pacific World and the requisite public enforcement
3 agencies with a 60-Day Notice of Violation (the “Notice”), alleging that Pacific World violated
4 Proposition 65 when it failed to warn consumers in California of the health hazards associated
5 with exposures to DEHP from the Covered Products. No public enforcer has commenced and is
6 diligently prosecuting an action to enforce the alleged violations that are the subject of the
7 Notice.

8 **1.5 Complaint**

9 On June 16, 2015, Brimer commenced the instant action (the “Complaint”), naming
10 Pacific World as a defendant for the alleged violations that are the subject of the Notice.

11 **1.6 Jurisdiction**

12 For purposes of this Settlement Agreement only, the Parties stipulate that this Court has
13 jurisdiction over the Parties as to the allegations contained in the Complaint, that venue is proper
14 in the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions
15 of this Settlement Agreement pursuant to Code of Civil Procedure § 664.6.

16 **1.7 No Admission**

17 Pacific World denies that a consumer is exposed to DEHP from the Products or any of its
18 other products in an amount that mandates a warning of any type pursuant to Proposition 65.

19 Pacific World further denies the material, factual, and legal allegations contained in the
20 60-Day Notice and in the Complaint, and maintains that all of the products that Pacific World
21 has sold, imported, and/or distributed in California, and all products manufactured, imported,
22 sold, or distributed by those downstream customers or other entities in its chain of distribution,
23 including the Products, have been and are in compliance with all laws, including but not limited
24 to Proposition 65. Nothing herein shall be construed as an admission by Pacific World of any
25 fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement
26 Agreement constitute or be construed as an admission by Pacific World of any fact, finding,
27 conclusion, issue of law, or violation of law.

1 Except as expressly set forth herein, nothing in this Settlement Agreement shall
2 prejudice, waive, or impair any right, remedy, argument, complaint, or defense the Parties may
3 have in any other or future legal proceeding unrelated to this specific proceeding.

4 **1.8 Effective Date**

5 For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date
6 the Settlement Agreement is approved by the Court.

7 **2. INJUNCTIVE SETTLEMENT TERMS: REFORMULATED PRODUCTS**

8 Commencing on the Effective Date and continuing thereafter, Pacific World agrees to
9 only manufacture for sale or purchase for sale in or into California the "Reformulated Products."
10 For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products
11 containing less than or equal to 1,000 parts per million (0.1%) DEHP in each component when
12 analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C
13 or equivalent methodologies utilized by federal or state agencies for the purpose of determining
14 the DEHP content in a solid substance.

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty Payments**

17 Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims
18 alleged in the Notice or referred to in this Settlement Agreement, Pacific World agrees to pay
19 \$2,000 in civil penalties . The penalty payment will be allocated in accordance with California
20 Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to
21 the California Office of Environmental Health Hazard Assessment ("OEHHA") and the
22 remaining 25% of the penalty amount paid to Brimer. Pacific World shall tender its payment in
23 a single check made payable to "Russell Brimer, Client Trust Account." Brimer's counsel shall
24 undertake and be responsible for delivering OEHHA's portion of any civil penalty payment
25 made under this Settlement Agreement.

26 **3.2 Attorneys' Fees and Costs**

27 The Parties reached an accord on the compensation due to Brimer and his counsel under
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1 general contract principles and the private attorney general doctrine codified at Code of Civil
2 Procedure § 1021.5 for all work performed in this matter. Under these legal principles, Pacific
3 World agrees to pay \$18,000 in the form of a check made payable to “The Chanler Group” for
4 all fees and costs incurred investigating, bringing this matter to the attention of Pacific World’s
5 management, negotiating a settlement in the public interest, and obtaining the Court’s approval
6 of the same.

7 **3.3 Payment Address**

8 All payments under this Settlement Agreement shall be delivered to:

9 The Chanler Group
10 Attn: Proposition 65 Controller
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710-2565

14 **3.4 Payment Timing; Payments Held in Trust**

15 All payments due under this Settlement Agreement shall be delivered to Pacific World’s
16 counsel within fifteen (15) days of the date that this Settlement Agreement is fully executed by
17 the Parties, and held in trust until, and disbursed within five days after the Effective Date, or
18 within five days after Brimer gives notice to Pacific World of the Court’s approval of this
19 Settlement Agreement, whichever is later.

20 **4. RELEASE OF ALL CLAIMS**

21 **4.1 Public Interest Release of Proposition 65 Claims**

22 Brimer, acting on his own behalf and in the public interest, hereby releases Pacific World
23 and all of its divisions, successors, subsidiaries, parent corporations, related entities, affiliates,
24 agents, contractors, counsel, officers, directors, and employees (collectively, the Releasees), and
25 all of those downstream entities to whom Pacific World sells or distributes the Products, whether
26 directly or indirectly, including, without limitation, its customers (including, but not exclusively,
27 Big Lots Stores, Inc.), distributors, and retailers (collectively, Downstream Releasees) for any
28 and all claims or liability under Proposition 65, alleging a failure to warn about exposures to

1 DEHP from Covered Products manufactured, sold, or distributed for sale by Pacific World on or
2 before the Effective Date, as alleged in the Notice.

3 **4.2 Brimer's Individual Release of Claims**

4 Brimer, in his individual capacity only and not in any representative capacity, also
5 provides a release to Pacific World, Releasees, and Downstream Releasees which shall be
6 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
7 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
8 Brimer of any nature, character, or kind, whether known or unknown, suspected or unsuspected,
9 arising out of alleged or actual exposures to DEHP in Covered Products and/or Additional
10 Products sold or distributed for sale by Pacific World before the Effective Date.

11 **4.3 Pacific World's Release of Brimer**

12 Pacific World, on behalf of itself, and on behalf of its past and current officers, directors,
13 managers, agents, representatives, attorneys, successors, and/or assignees, hereby waives any
14 and all claims against Brimer, his attorneys and other representatives, for any and all actions
15 taken or statements made by Brimer and his attorneys and other representatives, whether in the
16 course of investigating claims, otherwise seeking to enforce Proposition 65 against them in this
17 matter, or with respect to the Products.

18 **4.4 Mutual Waiver of California Civil Code Section 1542**

19 The Parties each acknowledge he/it is familiar with Section 1542 of the Civil
20 Code, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
22 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
23 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.

24 The Parties, each on his/its own behalf, and on behalf of his/its past and current agents,
25 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any
26 and all rights and benefits which they may have under, or which may be conferred upon them
27 by the provisions of Civil Code section 1542 as well as under any other state or federal
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1 statute or common law principle of similar effect, to the fullest extent he/it may lawfully
2 waive such rights or benefits pertaining to the released matters, as specifically defined by
3 Sections 4.2 and 4.3, above.

4 **4.5 Compromise of Claims; No Admission by Either Party**

5 The Parties agree, understand, and acknowledge that this Settlement Agreement
6 represents a compromise of this action and the release of claims as set forth herein, and that
7 neither the fact nor the terms of this Settlement Agreement shall be construed as an admission of
8 liability or wrongdoing on the part of the Parties.

9 **5. APPLICATION AND SEVERABILITY**

10 5.1 This Settlement Agreement shall apply to, be binding upon, and benefit the
11 Parties and their respective officers, directors, shareholders, employees, agents, parent
12 companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, distributors,
13 wholesalers, retailers, predecessors, successors, and assigns. This Settlement Agreement shall
14 have no application to the Products which are distributed or sold outside the State of California
15 and which thereafter are not used by consumers in California.

16 5.2 If, subsequent to the execution of this Settlement Agreement, any provision of this
17 Settlement Agreement is held by a court to be unenforceable, the validity of the remaining
18 provisions shall not be adversely affected.

19 **6. GOVERNING LAW**

20 The terms of this Settlement Agreement shall be governed by the laws of the State of
21 California and apply within the State of California. Compliance with the terms of this Settlement
22 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to
23 alleged exposures to DEHP arising from the Products. In the event that Proposition 65 is
24 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
25 then Pacific World may provide written notice to Brimer of any asserted change in the law, and
26 shall have no further injunctive obligations pursuant to this Settlement Agreement with respect
27 to, and to the extent that, the Products are so affected.
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1 **7. NOTICE**

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

6 For Brimer:

7 Proposition 65 Coordinator
8 The Chanler Group
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710
12 Ph: (510) 848-8880
13 Fax: (510) 848-8118
14 Email: brian@chanler.com

15 For Pacific World:

16 Joseph Mallak, President
17 Pacific World Corporation
18 75 Enterprise, Suite 300
19 Aliso Viejo, CA 92656

20 with a copy to:

21 Thomas H. Clarke, Jr.
22 Attn: Roxana Riedell
23 Ropers, Majeski, Kohn & Bentley
24 1001 Marshall Street, Suite 500
25 Redwood City 94063-2052
26 Ph: 650-364-8200
27 Fax: 650-780-1701
28 Email: thomas.clarke@rmkb.com

For all notices and correspondence required to be provided pursuant to this Settlement Agreement in writing, the Parties shall also send a courtesy notice by electronic mail and/or facsimile to counsel with the correspondence or notice attached thereto. The provision of such courtesy notice shall not lessen, diminish, or void the requirement noted herein regarding how actual notices and correspondence are to be sent.

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.

1 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

8 **10. MODIFICATION**

9 This Settlement Agreement may be modified only by: (a) a written agreement of the
10 Parties and entry of an order by the Court thereon; or (b) a motion of application of any Party
11 and the entry of an order by the Court thereon.

12 **11. AUTHORIZATION**

13 11.1 Each of the Parties acknowledges that they had the right and ability to consult
14 with and seek the advice of counsel of their choice and each voluntarily has entered into this
15 Settlement Agreement.

16 11.2 Each of the undersigned affirmatively represent that they are authorized to
17 execute this Settlement on behalf of their respective Parties and have read, understood, and agree
18 to all of the terms and conditions of this document, and further certifies that he or she is fully
19 authorized by the Party he or she represents to execute the Settlement Agreement on behalf of
20 the Party represented and to legally bind that Party.

21 11.3. Except to the extent otherwise noted, each of the Parties shall bear its own costs
22 and fees.

23 **12. COURT APPROVAL**

24 12.1 Upon execution of this Settlement Agreement by the Parties, Brimer shall notice a
25 Motion for Court Approval of the Parties' settlement. The Parties shall use their best efforts to
26 support approval of this Settlement Agreement.

1 12.2 If the California Attorney General objects to any term in this Settlement
2 Agreement, the Parties shall use their best efforts to resolve the concern in a timely manner, and
3 if possible prior to the hearing on the motion.

4 12.3 If this Settlement Agreement is not approved by the Court, it shall be void and
5 have no force or effect.

6 **13. DRAFTING**

7 The terms of this Settlement Agreement have been reviewed by the respective counsel
8 for each Party prior to its signing, and each Party has had an opportunity to fully discuss the
9 terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation
10 and construction of this Settlement Agreement, no inference, assumption, or presumption shall
11 be drawn, and no provision of this Settlement Agreement shall be construed against any Party,
12 based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or
13 drafted all or any portion of the Settlement Agreement. It is conclusively presumed that all of
14 the Parties participated equally in the preparation and drafting of this Settlement Agreement.

15 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES AND ENFORCEMENT**

16 14.1 If a dispute arises with respect to either Party's compliance with the terms of this
17 Settlement Agreement, the Parties shall meet in person or by telephone and endeavor to resolve
18 the dispute in an amicable manner prior to filing of any motion related to the terms and
19 conditions of the Settlement Agreement.

20 14.2 For purposes of this Settlement Agreement only, the Parties stipulate that in the
21 event that enforcement of this Settlement Agreement is deemed necessary by one or both of the
22 Parties, or a dispute between the Parties arises regarding this Settlement Agreement, the Superior
23 Court of California, County of Alameda, has proper jurisdiction and venue over the Parties as to
24 the terms and conditions of this Settlement Agreement, that venue is proper in the County of
25 Alameda, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of
26 this Settlement Agreement.

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1 **AGREED TO:**

AGREED TO:

2 Date: 6/6/2016

Date: 6/3/2016

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4 By: 

RUSSELL BRIMER

By: 

Joseph Mallak, President
PACIFIC WORLD CORPORATION

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