

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Russell Brimer (“Brimer”) and Leslie’s Poolmart, Inc., (“Leslie’s”) with Brimer and Leslie’s collectively referred to 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. Leslie’s 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 §§ 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Brimer alleges that Leslie’s manufactures, imports, sells and/or distributes for sale in California, the Products, as defined in Section 1.3 below, containing di(2-ethylhexyl)phthalate (“DEHP”), and that it did so without providing the health hazard warning that Brimer alleges is required by 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 are vinyl/PVC hoses containing DEHP and which are manufactured by Westbay LLC, including, but not limited to, the *Leslie’s Swimming Pool Supplies Backwash Hose, UPC #8 18775 01427 2* that are manufactured, imported, distributed, sold and/or offered for sale by Leslie’s in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about June 30, 2016, Brimer served on certain requisite public enforcement agencies a 60-Day Notice of Violation (“Notice”), alleging that Leslie’s violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. Leslie's received a copy of the Notice and accepted service as of that date as well. 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

Leslie’s denies the material, factual and legal allegations contained in the Notice and maintains that all 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 Leslie’s of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Leslie’s of any fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish or otherwise affect the 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 6, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other

methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment


As of the Effective Date, Leslie's shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above, or shall carry appropriate health hazard warnings per section 2.3, below.

2.3 Product Warnings

Commencing on or before the Effective Date, Leslie's shall provide clear and reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) for all products that do not qualify as Reformulated Products. 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.

(a) Product Labeling. Leslie's shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states either:

For all Products:

 **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

OR For Products manufactured prior to August 30, 2018:


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

(b) Mail Order Catalog and Internet Sales. In the event that Leslie's sells the Products via mail order catalog and/or the internet, to customers located in California, after the

Effective Date, that are not Reformulated Products, Leslie's shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. Either of the following warnings shall be provided, as appropriate, on the same page and in the same location as the display and/or description of the Product:


For all Products:

 **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

OR For Products manufactured prior to August 30, 2018:

WARNING: This product contains a chemical known to the State of California to cause cancer and 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, Leslie's 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 ▼ can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The designated symbol must appear on the same page and near the display and/or description of the Product. On each page where the designated symbol appears, Leslie's must

provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) Internet Website Warning. A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a 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. Either of the following warning statements shall be used, as appropriate, 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:


For all Products:

 **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

OR For Products manufactured prior to August 30, 2018:

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

Alternatively, 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, Leslie's may utilize a designated symbol to cross reference the applicable warning with a "designated symbol" which 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:** Certain products identified with this symbol ▼ can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

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, Leslie's shall direct payment from the Products manufacturer of a total of \$3,000 in civil penalties in accordance with this Section. The 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 Brimer, as follows: Leslie's as of the Effective Date shall direct from the Products manufacturer the issuance of two checks: (1) to "Russell Brimer, Client Trust Account" totaling \$750; and (2) to the "Office of Environmental Health Hazard Assessment" totaling \$2,250. Upon receipt, Brimer and his counsel will then ensure payment to OEHHA. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Reimbursement of Attorneys' 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, Leslie's expressed a desire to resolve Brimer's fees and costs. The Parties then negotiated a resolution of 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, Leslie's shall direct from the Products' manufacturer the reimbursement of Brimer and his counsel \$22,000. Leslie's payment shall be delivered to the address in Section 3.3, on or before the Effective Date, in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by

Brimer investigating, bringing this matter to Leslie's attention and negotiating a settlement of the matter.

3.3 Payment Address

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

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 Proposition 65 Claims

Brimer acting on his own behalf, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, and *not* on behalf of the public, releases Leslie's, its parents, subsidiaries, affiliated entities under common ownership, including but not limited to Leslie's Holdings, Inc., directors, officers, agents employees, attorneys, and each entity to whom Leslie's directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively "Releasees"), as well as those upstream manufacturers, distributors, and/or suppliers who sell the Products to Leslie's (collectively "Upstream Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice. The Parties agree and understand that the Upstream Releasees are only released for Products sold in California by Leslie's before the Effective Date.

4.2 Brimer's Individual Releases of Claims

Brimer, in his individual capacity only and *not* in his representative capacity, provides a 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, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Leslie's prior to the Effective Date.

4.3 Leslie's Release of Brimer

Leslie's, on behalf of itself, 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 (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 to enforce Proposition 65 against it in this matter with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Leslie's shall provide written notice to Brimer of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to

the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Leslie's from any obligation to comply with any pertinent state or federal toxics control law.

7. **NOTICE**

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

For Leslie's:

Legal Dept.
Leslie's Poolmart, Inc.
2005 E. Indian School Rd.
Phoenix, AZ 85016

With a Copy to:

Benjamin J. Lindquist
Leslie's Poolmart, Inc.
2005 E. Indian School Rd.
Phoenix, AZ 85016

Shannon M. Nessier
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
(415) 995-5812

For Brimer:

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

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.

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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 agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. MODIFICATION

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

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

[SIGNATURES ON FOLLOWING PAGE]

AGREED TO:

Date: 3/26/2018 _____

By:  _____
Russell Brimer

AGREED TO:

Date: _____

By: _____
[Leslie's Poolmart, Inc.]

AGREED TO:

Date: _____

By: _____
Russell Brimer

AGREED TO:

Date: March 28, 2018

By: *St Weddell*
[Steva Weddell, EVP + CFO]
Leslie's Poolmart, Inc.