

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Russell Brimer and LC3S, Inc.

This Settlement Agreement is entered into by and between Russell Brimer, (hereinafter "Brimer" or "Plaintiff"), and LC3S, Inc. (hereinafter "LC3S" or "Defendant") with Plaintiff and Defendant 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. The Defendant employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

### 1.2 General Allegations

Brimer alleges that Defendant has distributed, sold and/or used in its restaurant in the State of California mugs with colored artwork or designs on the exterior containing lead, including, but not limited to Grande Mug (Brookfields). Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.* ("Proposition 65"), as a chemical known to the State of California to cause cancer, birth defects and other reproductive harm. Lead shall be referred to herein as the "Listed Chemical."

### 1.3 Product Descriptions

The products that are covered by this Settlement Agreement are defined, as follows: mugs with colored artwork or designs on the exterior containing lead, referred to herein as the

"Products".

**1.4 Notices of Violation**

On or about February 24, 2009, Brimer served Defendant and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") which provided Defendant and such public enforcers with notice that alleged that Defendant was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to Lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Defendant denies the material factual and legal allegations contained in Plaintiff's Notice. Defendant maintains that all products that it has sold, distributed or offered for use 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 Defendant 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 Defendant of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Defendant. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Defendant under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 12, 2010.

## 2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

### 2.1 Reformulation Commitment

1. As of the Effective Date, Defendant shall only distribute, sell or use, or cause to be distributed, sold or used Products in California that are Lead Free, as set forth below. For purposes of this Settlement Agreement, "Lead Free" Mug Products shall mean the materials for all colored artwork, designs or markings on the exterior must contain by weight no more than three one-hundredths of one percent (0.03%) lead as measured at Defendant's option, either before or after the material is fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050b or an equivalent test method of sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less than 300 ppm<sup>1</sup>. In addition, Products sold in California containing colored artwork, designs or markings on the exterior that extend into the Lip and Rim Area must only utilize decorating materials that contain No Detectable lead.<sup>2</sup>

Defendant further commits that 100% of the Products that they offer for sale or use in California after February 12, 2010, shall be Lead Free.

### 2.2 Product Warnings

After the Effective Date, Defendant shall not sell, ship, use or offer to be used or shipped for sale in California, Products containing the Listed Chemical unless such Products are used or

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<sup>1</sup> If Defendant tests, or causes to be tested, the decoration after it is affixed to the Product, the percentage of lead or cadmium by weight must relate only to the other portions of the decorating material and not include any calculation of non-decorating material.

<sup>2</sup> "Lip and Rim Area" is defined as the exterior top 20 millimeters of a hollowware Food/Beverage Product, as defined by American Society of Testing and Materials Standard Test Method C927-99). "No Detectable lead" shall mean that lead is not detected at a level above one one-hundredths of one percent (0.01%) of lead by weight, respectively, using a sample size of the materials in question measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation of less than 200 ppm.

shipped with the clear and reasonable warnings set out in Section 2.3 and 2.4 or comply with the reformulation requirements of Lead Free Products set out in Section 2.1.

Any warning issued for Products pursuant to Section 2.3 and 2.4, below, 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.

**2.3 Warnings For Retail Store Sales**

(a) **Product Labeling.** Defendant may perform its warning obligation by affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product sold or used in restaurants in California by Defendant for the Products, that states:<sup>3</sup>

**WARNING: The materials used as colored decorations on the exterior of this product contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.**

or

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

(b) **Point-of-Sale Warnings.** Defendant may perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the

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<sup>3</sup> For purposes of this Settlement Agreement, “sold in proximity to other like items” shall mean that the Product and another product are offered for sale close enough to each other so that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

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: The following products will expose consumers to lead a chemical known to the state of California to cause birth defects or other reproductive harm:**

*[List each Product by brand name and description.]*

or

**WARNING: These products contain lead a chemical known to the state of California to cause birth defects or other reproductive harm.**

*[List each Product by brand name and description.]*

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

In settlement of all the claims referred to in this Settlement Agreement against it, Defendant shall pay \$500.00 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies remitted to Brimer as provided by California Health & Safety Code §25249.12(d). Defendant shall issue two separate checks for the penalty payment: (a) one check made payable to Chanler Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$375.00, representing 75% of the total penalty and (b) one check to Chanler Law Group in Trust for Brimer in the amount of \$125.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814

(EIN: 68-0284486) in the amount of \$375.00. The second 1099 shall be issued to Brimer in the amount of \$125.00, whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due.

Defendant's penalty payment shall be delivered on or before February 12, 2010, at the following address:

CHANLER LAW GROUP  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

**4. REIMBURSEMENT OF FEES AND COSTS**

The parties reached an accord on the compensation due to Brimer and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Defendant shall reimburse Brimer's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Defendant's attention, and negotiating a settlement in the public interest. Defendant shall pay Brimer and his counsel \$18,000.00 for all attorneys' fees, expert and investigation fees, and related costs. The fee and cost payments shall be made payable to Chanler Law Group and shall be made as follows:

\$3,000 payable on or before February 12, 2010;  
\$3,000 payable on or before March 1, 2010;  
\$3,000 payable on or before April 1, 2010;  
\$3,000 payable on or before May 1, 2010;  
\$3,000 payable on or before June 1, 2010;  
\$3,000 payable on or before July 1, 2010

All payments shall be delivered to the following address:

CHANLER LAW GROUP  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

Defendant shall issue a separate 1099 for fees and cost paid in the amount of \$18,000.00 to Chanler Law Group 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN 94-3171522).

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Defendant and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Defendant and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries (including but not limited to Brookfield's Restaurants), and their respective officers, directors, attorneys, representatives,

shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Defendant's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Products.

The Parties further understand and agree that this release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Defendant.

#### **5.2 Defendant's Release of Brimer**

Defendant 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. 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.

#### **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

Defendant 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 in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

To Defendant:

Peg Carew Toledo  
Mennemeier, Glassman & Stroud LLP  
980 9<sup>th</sup> Street, Suite 1700  
Sacramento, CA 95814

With a copy to:

Sam Manolakas, President  
LC3S, Inc.  
1135 Folsom Boulevard  
Rancho Cordova, CA 95670

To Brimer:  
Proposition 65 Coordinator  
Chanler Law 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.

9. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile, 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)**

Plaintiff agrees to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f).

11. **MODIFICATION**

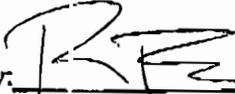
This Settlement Agreement may be modified only by a written agreement of the Parties.

12. **ATTORNEY'S FEES**

In the event a dispute arises with respect to any provision of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees incurred in connection with such dispute.

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.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>2-11-10</u></p> <p>By: <u></u> Russell Brimer</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>8 Jan 2010</u></p> <p>By: <u></u> Sam Manolakas, President LC3S, Inc.</p>
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