

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Russell Brimer and Four Seasons Design, Inc.

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Four Seasons Design, Inc. (“Four Seasons”), with Brimer and Four Seasons collectively referred to as the “Parties.” Brimer is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Four Seasons 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 Four Seasons has manufactured, distributed, and/or sold without a clear and reasonable Proposition 65 warning in-ear stereo headphones, commonly referred to as ear buds, which contain lead on the surface of accessible components including the wires. Lead is listed pursuant to Proposition 65 as a chemical known to the state to cause birth defects and other reproductive harm. Lead shall be referred to hereinafter as the “Listed Chemical.”

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: in-ear stereo headphones commonly referred to as ear buds that contain lead and that are sold or offered for sale in California by Four Seasons including, without limitation, *2 Pairs Audio Buds (#6 88936 23401 2)*. The in-ear stereo headphones known as ear buds are referred to hereinafter as “Products.”

#### **1.4 Notice of Violation**

On or about October 29, 2010, Brimer served Four Seasons and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Four Seasons and the public enforcers with notice that Four Seasons had allegedly violated Health & Safety Code § 25249.6 by failing to warn its customers and consumers in California that the Products exposed users to the Listed Chemical.

#### **1.5 No Admission**

Four Seasons denies the material, factual, and legal allegations contained in Brimer’s Notice and maintains that all of the products that it has manufactured, sold, and/or 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 Four Seasons 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 Four Seasons of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Four Seasons. However, this section shall not diminish or otherwise affect Four Seasons’ 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 15, 2011.

### **2. INJUNCTIVE RELIEF**

#### **2.1 Product Reformulation**

Commencing on the Effective Date, Four Seasons shall either: (a) cease all distribution, shipping, sales, and/or offering to ship the Products for sale or use in California; or (b) it shall only distribute, ship, sell, or offer to ship for sale in California, Products that are Lead Free. For the purposes of the settlement agreement “Lead Free” shall mean Products that contain no more than 100 parts per million (“ppm”) lead content when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and 6010B

(Digest Test) performed on any accessible component (i.e. any portion of the Product that may be handled, touched or mouthed by a user during reasonably foreseeable use), specifically excluding the metal portion of the jack. In the event that the metal portion of the jack does not satisfy the 100 ppm standard set forth above, Four Seasons shall apply a warning to the Product pursuant to section 2.2 below.

**2.2 Warnings for Components with 100 ppm or Greater Lead Content**

In the event that Four Seasons offers the Products for sale or use in California, for each Product with a metal jack component containing greater than 100 ppm lead content, the following warning shall be applied to the Product packaging or directly on the Product:

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

Each warning shall 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 before purchase or use.

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

Pursuant to California Health & Safety Code §25249.7(b), Four Seasons shall pay civil penalties totaling \$8,000 in combined penalty payments and credits. Because of Four Seasons' cooperation in the resolution of this action, its representation that it has a program in place requiring supplier certifications and, at times, independent internal testing for Proposition 65-listed chemicals in the products it offers for sale or use in California, and its commitment to only offer Reformulated Products pursuant to Section 2.1 above, Brimer agrees to apply an automatic credit of \$5,500 toward the penalty amount. Thereafter, Four Seasons agrees to pay the remaining \$2,500. The penalty payment shall be apportioned in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with seventy-five percent of the amount remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent paid to Brimer.

Four Seasons shall issue two checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust for OEHHA" in the amount of \$1,875; and (b) one check to payable to "The Chanler Group in Trust for Russell Brimer" in the amount of \$625. Four Seasons agrees to provide two 1099 forms for the above-payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose address information shall be provided five days before the payment is due.

Payments made pursuant to this section shall be delivered to Brimer's counsel on or before May 1, 2011 at the following address:

The Chanler 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, Four Seasons shall reimburse Brimer's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Four Seasons attention, and negotiating a settlement in the public interest. Four Seasons shall pay Brimer and his counsel \$22,500 for all attorneys' fees, expert and investigation fees, and related costs.

The reimbursement of Brimer's fees and costs shall be paid in five monthly installments according to the following schedule: (a) \$2,500 due on or before May 1, 2011; \$5,000 due on or before June 1, 2011; (c) \$5,000; due on or before July 1, 2011; (d) \$5,000 due on or before August 1, 2011; and (e) \$5,000 due on or before September 1, 2011. Each of the above payments shall be issued in a check made payable to "The Chanler Group" and delivered to the following address:

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

A single form 1099 shall be issued for all payments made pursuant to this Section to The Chanler Group (EIN: 94-3171522).

**5. RELEASE OF ALL CLAIMS**

**5.1 Brimer's Release of Four Seasons**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Brimer on behalf of himself and in his representative capacity, 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 attorney's fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Four Seasons and each of its downstream wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, cooperative members, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") that arise under Proposition 65, as such Claims relate to Four Seasons' alleged failure to warn about exposures to the Listed Chemical contained in the Products.

Brimer in his individual capacity and not in his representative capacity hereby releases all claims against Four Seasons arising under Proposition 65, as such claims relate to Four Seasons' alleged failure to warn about exposures to the Listed Chemical contained in the Products, whether said claims are known or unknown or are suspected or unsuspected

and Brimer expressly waives any and all rights and benefits which he now has under California Civil Code section 1542, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or 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.**

The Parties intend and agree that this Agreement shall be given full effect for purposes of precluding claims regarding the Products against Four Seasons or the Four Season Releasees under Proposition 65 as covered by this release. If requested in writing by Four Seasons, Brimer shall file a complaint and seek approval of this Agreement through a court approved consent judgment incorporating the terms of this Agreement pursuant to California Health and Safety Code section 25249.7, or as may be otherwise allowed by law, and Brimer shall reasonably cooperate with Four Seasons to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Agreement for approval by a superior court in California. Pursuant to California Civil Procedure Code §§1021 and 1021.5, Four Seasons will reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Agreement, in an amount not to exceed Ten Thousand Dollars (\$10,000) and Brimer and his counsel will use their reasonable best efforts to limit such fees and costs. No fees or costs under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Four Seasons to have Brimer file a complaint and seek a consent judgment. In such a case, Four Seasons will remit payment to The Chanler Group at the address set forth in Section 8 below. Such additional fees and costs shall be paid by Four Seasons within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

**5.2 Four Seasons' Release of Brimer**

Four Seasons, on behalf of itself and its Releasees, waives any and all claims against Brimer, his attorneys, and other representatives for any and all actions taken by Brimer and

his attorneys and other representatives, whether in the course of investigating or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.

Four Seasons also provides a general 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, attorney fees, damages, losses, claims, liabilities and demands of Four Seasons of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of this matter. Four Seasons acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.**

Four Seasons expressly waives and relinquishes any and all rights and benefits that it may have under, or that may be conferred on it by, the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

**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 Four Seasons may 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 Four Seasons:

Louise Paskovskis, Esq.  
General Counsel  
Four Seasons Design, Inc.  
22522 29<sup>th</sup> Drive SE, Suite 101  
Bothell, WA 98021

With a copy to:

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

To Brimer:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street, 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 or PDF (portable document format) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or PDF signature shall be as valid as the original.

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

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

11. MODIFICATION

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

12. 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:

Date: 4-8-11

By:   
Russell Brimer

AGREED TO:

Date: 4/6/11

By:   
John Borsini, President  
Four Seasons Design, Inc.