

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and L.C. Industries, Inc.

This Settlement Agreement is entered into by and between Russell Brimer, (hereinafter “Brimer”), and L.C. Industries, Inc. (hereinafter, “L.C. Industries”), with Brimer and L.C. Industries 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. L.C. Industries 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 L.C. Industries has manufactured, distributed and/or sold in the State of California vinyl coated tape measures containing lead. 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 birth defects and other reproductive harm. Lead is referred to herein as the “Listed Chemical.”

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: vinyl coated tape measures containing the Listed Chemical including, but not limited to, the *Belle Hop Travel Sewing Kit*, #7690 (#0 29275 02245 6). All such items shall be referred to herein as the

“Products.”

1.4 Notice of Violation

On or about May 22, 2009, Brimer served L.C. Industries and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided L.C. Industries and such public enforcers with notice that alleged that L.C. Industries 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 the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

L.C. Industries denies the material factual and legal allegations contained in Brimer’s 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 L.C. Industries 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 L.C. Industries of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by L.C. Industries. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of L.C. Industries under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean September 15, 2009.

2. INJUNCTIVE RELIEF

2.1 Reformulation Commitment

As of the Effective Date, L.C. Industries shall only manufacture or cause to be manufactured Products for sale in California that are “Lead Free,” as set forth below. For purposes of this Settlement Agreement, “Lead Free” shall mean products containing less than or equal to 300 ppm of lead when analyzed pursuant to EPA testing methodologies, 3050B and 6010B, or any method allowed by any state or federal agency to assess the lead content by weight of a solid substance.

2.2 Product Warnings

After the Effective Date, L.C. Industries shall not sell, ship, or offer to be shipped for sale in California, Products containing the Listed Chemical unless such Products are shipped with the clear and reasonable warnings set out in Sections 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, for Products shipped directly to an individual in California, before use.

2.3 Warnings For Retail Store Sales

(a) **Product Labeling.** L.C. Industries 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 in retail outlets in California by L.C. Industries or its retail customers, that states:

WARNING: This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands thoroughly after handling.

(b) **Point-of-Sale Warnings.** L.C. Industries may perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the 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: This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands thoroughly after handling.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning, the following statement must be used:

WARNING: The following products contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands thoroughly after handling:

[list products for which warning is required]

2.4 Warnings For Mail Order Catalog and Internet Sales. L.C. Industries shall satisfy its warning obligations for Products sold via mail order catalog or the Internet to California residents by providing a warning: (i) in the mail order catalog; or (ii) on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the

warning applies as further specified in sub sections (a) and (b) below.

(a) Mail Order Catalog Warning. Any warning provided in a mail order catalog must be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as each display of the Product:

WARNING: This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands thoroughly after handling.

Where it is impracticable to provide the warning on the same page and in the same location as the display of the Product, L.C. Industries 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 and on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands thoroughly after handling.

The designated symbol must appear on the same page and in close proximity to the display or description of the Product on such page. On each page where the designated symbol appears, L.C. Industries must provide a reference directing the consumer to the warning language and definition of the designated symbol.

If L.C. Industries elects to sell the Products in a mail order catalog after the Effective

Date, then the warnings must be included in all catalogs offering to sell one or more Products printed after the Effective Date.

(b) Internet Website Warning. A warning may be given in conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the 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. The following warning statement shall be used 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:

WARNING: This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands thoroughly after handling.

Alternatively, the designated symbol 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: Products identified on this page with the following symbol ▼ contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm. Wash hands thoroughly after handling.

2.5 Exception To Warning Requirements

The warning requirements set forth in Sections 2.2 through 2.4 shall not apply to:

- (i) Any Products manufactured before the Effective Date; or

(ii) Lead Free Products (as defined in Section 2.1).

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

In settlement of all the claims referred to in this Settlement Agreement, L.C. Industries shall pay \$2,000 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). L.C.

Industries shall issue two separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of California's Office of Environmental Health Hazard Assessment ("Hirst & Chanler LLP in Trust for OEHHA") in the amount of \$1,500 representing 75% of the total penalty and (b) one check to "Hirst & Chanler LLP in Trust for R. Brimer" in the amount of \$500 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 \$1,500. The second 1099 shall be issued to Brimer in the amount of \$500, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before the Effective Date, at the following address:

Hirst & Chanler LLP
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 contract law. Under these legal principles, L.C. Industries shall reimburse Brimer's counsel for fees and costs incurred as a result of investigating, bringing this matter to L.C. Industries' attention, and negotiating a settlement in the public interest. L.C. Industries shall pay Brimer and his counsel \$16,500 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "Hirst & Chanler LLP" and shall be delivered on or before the Effective Date, at the following address:

Hirst & Chanler LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

L.C. Industries shall issue a separate 1099 for fees and cost paid in the amount of \$16,500 to Hirst & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN: 20-3929984).

5. RELEASE OF ALL CLAIMS

5.1 Release of L.C. Industries 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, including, without limitation, Hirst & Chanler, 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 L.C. Industries and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, 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 "L.C. Industries Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to L.C. Industries' alleged failure to warn about exposures to or identification of lead contained in the Products.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against L.C. Industries or the Releasees under Proposition 65 as covered under this release. If requested in writing by L.C. Industries within twelve months of the Effective Date, L.C. Industries may ask Brimer to file a complaint and seek approval of this Settlement Agreement through a court-approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law. If requested, Brimer agrees to reasonably cooperate with L.C. Industries and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for

approval by a superior court in California. Pursuant to CCP Sections 1021 and 1021.5, L.C. Industries will reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an amount not to exceed \$15,000. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by L.C. Industries to have Brimer file a complaint and seek a consent judgment. L.C. Industries will remit payment to Hirst & Chanler LLP, at the address set forth in Section 8 below. Such additional fees shall be paid by L.C. Industries within ten days after its receipt of an invoice from Brimer for work performed under this paragraph.

5.2 L.C. Industries' Release of Brimer

L.C. Industries 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 L.C. Industries 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:

For L.C. Industries:

Stephanie A. Sheridan, Esq.
Sedwick Detert Moran & Arnold LLP
One Market Plaza, Steuart Tower, 8th Floor
San Francisco, CA 94105

For Brimer:

Proposition 65 Coordinator
Hirst & Chanler, LLP
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)

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

11. MODIFICATION

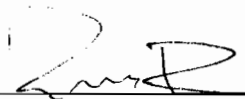
This Settlement Agreement may be modified only by a written agreement of the Parties.

12. 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: 9.17.09

By: 
Russell Brimer

AGREED TO:

Date: _____

By: _____
Michael Smerling, President
L.C. Industries, Inc.

the same document.

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AGREED TO:

Date: _____

By: _____
Russell Brimer

AGREED TO:

Date: September 15 2009

By:  _____
Michael Smerling, President
L.C. Industries, Inc.