

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and The Gillette Company

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and The Gillette Company (“Gillette”), with Brimer and Gillette 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. Gillette 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 Gillette has manufactured, distributed and/or sold flashlights which have straps that contain lead (hereinafter the “Listed Chemical”), without the requisite Proposition 65 warnings allegedly required by Proposition 65. The Listed Chemical is on the Proposition 65 list as a chemical known to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: flashlights with straps containing the Listed Chemical such as, but not limited to, *Garrity Value Lite, #V500GN (#0 74196 30050 3)*. All such flashlights with straps are referred to hereinafter as the “Covered Products”.

1.4 Notice of Violation

On or about September 30, 2009, Brimer served Gillette and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Gillette and public enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers that the Products that Gillette sold exposed users in California to the Listed Chemical. To the best of the parties’ knowledge, no public enforcer has

diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Gillette denies the material, factual and legal allegations contained in Brimer's Notice, expressly denies any wrong doing, and maintains that all Covered Products that it has manufactured, sold and/or distributed in California have been and are in compliance with all applicable laws. Nothing in this Settlement Agreement shall be construed as an admission by Gillette 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 Gillette of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Gillette. However, this section shall not diminish or otherwise affect Gillette's obligations, responsibilities and/or duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 1, 2010.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Gillette hereby commits that one hundred percent (100%) of the Covered Products that it manufactures, sells to retailers or ships after the Effective Date for sale in California, shall contain less than or equal to 100 parts per million ("ppm" or "mg/kg") of the Listed Chemical when analyzed pursuant to any method of detection and analysis authorized under 27 California Code of Regulations section 25900 ("digest test"). These are defined as "Reformulated Products."

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

3.1 Initial Civil Penalty. In settlement of all the claims referred to in this Settlement Agreement, Gillette shall pay an initial civil penalty of \$ 4,000. Said initial civil penalty shall 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 ("OEHHA") and the remaining 25% of the penalty remitted to Russell Brimer, as provided by

California Health & Safety Code § 25249.12(d). Gillette shall issue two separate checks for the penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount of \$3,000, representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose information shall be provided five (5) calendar days before the payment is due.

Payment shall be delivered to Brimer’s counsel on or before June 30, 2010, at the following address:

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

3.2 Final Civil Penalty. Gillette shall pay a final civil penalty of \$ 10,000 on or before May 31, 2011. However, the Final Civil Penalty shall be waived in its entirety if Gillette certifies in writing, via a signed declaration from an appropriate Gillette employee, that: (1) as of May 1, 2011, Gillette has sold, shipped and offered for sale in California only Covered Products that yield a result of no greater than one microgram of the Listed Chemical using the NIOSH 9100 wipe test (“wipe test”) as directly applied to each component being analyzed, net any lead present on a sample wipe in the same box or batch used; and (2) that Gillette will continue to sell to retailers, ship and offer for sale in California only those Covered Products that meet both the digest test and wipe test for the Listed Chemical. Such certification must be received by The Chanler Group on or before May 15, 2011.

The final civil penalty shall 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 (“OEHHA”) and the remaining 25% of the penalty

remitted to Russell Brimer, as provided by California Health & Safety Code § 25249.12(d). Gillette shall issue two separate checks for the penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount of \$7,500, representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$2,500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose information shall be provided five (5) calendar days before the payment is due.

Payment shall be delivered to Brimer’s counsel on or before June 30, 2011 at the following address:

The Chanler Group
Attn: Proposition 65 Coordinator
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, as codified at California Code of Civil Procedure (CCP) section 1021.5, and principles of contract law. Under these legal principles, Gillette shall reimburse Brimer’s counsel for fees and costs, incurred as a result of investigating, bringing this matter to Gillette’s attention, and negotiating a settlement in the public interest. Gillette shall pay Brimer and his counsel \$35,000 for attorneys’ fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to “The Chanler Group” and shall be delivered on or before June 30, 2010, at the following address:

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

Gillette shall issue a separate 1099 for attorney's fees and costs paid in the amount of \$35,000 to The Chanler Group, 2560 Ninth Street, Suite 214, Berkeley, CA 94710 (EIN: 94-3171522).

5. RELEASE OF ALL CLAIMS

5.1 Brimer's Release of Gillette

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 of this Agreement, 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 Gillette and each of its wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, successors, and assigns and their respective officers, directors, attorneys, representatives, insurers, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") that arise under Proposition 65, as such claims relate to Gillette's alleged failure to warn about exposures to the Listed Chemical contained in the Covered Products.

Brimer in his individual capacity and *not* his representative capacity hereby releases all claims which he now has or may have in the future against Releasees, irrespective of the subject matter, of all character, kind and nature, 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, or in the future may have, under California Civil Code § 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Gillette or the Releasees under Proposition 65 as covered under the release in Section 5 of this agreement. If requested in writing by Gillette, or its owners, parent companies, corporate affiliates, successors, or sister entities ("Gillette Entity") (within thirty-six months of the Effective Date), Brimer shall 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 § 25249.7, or as may be otherwise allowed by law, and Brimer shall reasonably cooperate with the Gillette, or the Gillette Entity, and 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 §§ 1021 and 1021.5, Gillette, or the Gillette Entity, 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 Gillette or a Gillette Entity to have Brimer file a complaint and seek a consent judgment. Gillette or the Gillette Entity will remit payment to The Chanler Group, at the address set forth below. Such additional fees shall be paid by Gillette within ten days after its receipt of monthly invoices from Brimer and/or his attorneys for work performed under this paragraph.

5.2 Gillette's Release of Brimer

Gillette, 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 claims or otherwise seeking

enforcement of Proposition 65 against Gillette 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically, then Gillette 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 Gillette:

Carolyn Collins, Esq.
Lauren M. Michals, Esq.
Nixon Peabody LLP
One Embarcadero Center
18th Floor
San Francisco, CA 94111-3600

And

Duracell Legal Counsel
Berkshire Corporate Park
14 Research Drive
Bethel, CT 06801

To 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.

9. COUNTERPARTS; FACSIMILE 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. 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: 6-4-10

By: 
Russell Brimer

AGREED TO:

Date: _____

By: _____
The Gillette Company

Berkeley, CA 94710-2565

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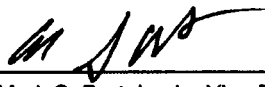
AGREED TO:

AGREED TO:

Date: _____

Date: June 7, 2010

By: _____
Russell Brimer

By: 

Mark S. Bertolami, Vice President
The Gillette Company