

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 This Settlement Agreement (“Agreement”) is entered into by, on the one hand, Russell Brimer (“Brimer”) and I Apparel Group LLC (“I Apparel”), on the other hand. Brimer and I Apparel are referred to herein collectively as the “Parties” and individually as a “Party.”

1.2 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.

1.3 On February 24, 2011, Brimer issued a 60-Day Notice of Violation (“Notice”) regarding alleged violations by I Apparel and Intertex Apparel, Ltd. (“Intertex”) with respect to alleged exposures to lead in belts. Brimer served the Office of the California Attorney General of the State of California, all California counties’ District Attorneys, and all City Attorneys of California cities with populations exceeding 750,000, (collectively, “Public Enforcers”) with the Notice. The Notice specifically identified the “KIKIT Knitwear Sweater with Scarf and Belt, Style GO-K7696,” and the general category of “Belts containing Lead.”

On or about September 21, 2011, Brimer issued a Supplemental 60-Day Notice of Violation (“Supplemental Notice”) regarding alleged violations by I Apparel and Intertex Apparel, Ltd. with respect to alleged exposures to di(2-ethylhexyl)phthalate (“DEHP”) and di-n-butyl phthalate (“DBP”) in belts. Brimer served all Public Enforcers with the Supplemental Notice. The Supplemental Notice specifically identified the “KIKIT Knitwear Sweater with Scarf and Belt, Style GO-K7696,” and the general categories of “Belts containing DEHP” and “Belts containing DBP.” The Notice and Supplemental Notice are referred to collectively herein as the “Notices.” Lead, DEHP and DBP are collectively referred to herein as the “Covered Chemicals.”

1.4 The products that are covered by this Settlement Agreement (collectively, the “Products”) are as follows:

(a) Belts manufactured, distributed, or sold by I Apparel that contain lead and that are made of any fabric or material that are worn as fashion accessories on garments either for functional use or as decorative elements, which are offered for sale in California either separately or as part of the garment itself (including but not limited to the *KIKIT Knitwear Sweater with Scarf and Belt, Style GO-K7696*); and

(b) Belts manufactured, distributed, or sold by I Apparel that contain DEHP and/or DBP and that are made of any fabric or material that are worn as fashion accessories on garments either for functional use or as decorative elements, which are offered for sale in California either separately or as part of the garment itself (including but not limited to the *KIKIT Knitwear Sweater with Scarf and Belt, Style GO-K7696*); provided however, that no Public Enforcer files an enforcement action based on the Supplemental Notice at any time before the notice period expires. If no Public Enforcer files an enforcement action within the notice period, then the products described in this Section 1.4(b) shall be covered by this Settlement Agreement.

1.5 I Apparel denies that any products that it has manufactured, sold, or distributed in California fail to comply with Proposition 65 or any other law. I Apparel denies the material factual and legal allegations contained in the Notices. I Apparel asserted that Intertex is not a properly named party in the Notices because it has not sold any products at issue during the relevant period.

1.6 The Parties enter into this Agreement as a full and final settlement of all claims that were raised in the Notices, or which could have been raised in the Notices, arising out of the facts or conduct alleged therein. The Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law or equitable requirements relating to the Covered Chemicals in Products.

Nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings. This Agreement is the product of negotiation and compromise and is accepted by the Parties for purposes of settling, compromising and resolving issues disputed by the Parties.

2. DEFINITIONS

2.1 “Accessible Component” means a functional or decorative part of a Product that could be touched by a person during normal and reasonably foreseeable use.

2.2 “Phthalate Limits” means the maximum concentration by weight of DEHP, BBP, and DBP, each, as specified in Section 3.1, when analyzed pursuant to Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C, or CPSC-CH-C1001-09.3, or any other methodology that is acceptable to state or federal governmental agencies for purposes of determining phthalate content by weight in a consumer product.

2.3 “Lead Limits” means the maximum concentrations of lead by weight specified in Section 3.1, when analyzed pursuant to EPA testing methodologies 3050B (or 3051A) and 6010B (or 6020A), or any other methodology that is acceptable to state or federal governmental agencies for purposes of determining lead content by weight in a consumer product.

2.4 “Paint or Surface Coatings” has the meaning defined in 16 C.F.R. § 1303.2(b),¹ as amended from time to time.

¹ “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include printing inks or those materials which actually become a part of the substrate,

2.5 “Effective Date” means the date on which this Agreement is signed by all the Parties.

3. INJUNCTIVE RELIEF

3.1 **Lead Limits and Phthalate Limits:** Commencing sixty days after the Effective Date (the “Compliance Date”), I Apparel shall not purchase, import, manufacture, assemble or supply any Product that will be sold or offered for sale to California consumers that exceeds the Lead Limits or Phthalate Limits, as set forth below.

3.1.1 Paint or other Surface Coatings on Accessible Components: 90 parts per million (“ppm”) lead;

3.1.2 For all other Accessible Components such as leather (including composited leather) and polyvinyl chloride (“PVC”) other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or rhinestones:

- a) 100 ppm lead; and
- b) 1,000 ppm DEHP, BBP, and DBP, each

3.2 Any Products that have been manufactured, distributed, shipped, or sold, or that are otherwise in the stream of commerce prior to the Compliance Date shall be released from all claims that were brought or that could be brought by Brimer as to matters alleged in the Notices in accordance with Section 7. As to such Products, the obligations of this Section 3 do not apply to such Products.

4. ENFORCEMENT

4.1 Any Party may, after first meeting and conferring in good faith, institute a proceeding including the filing of a Proposition 65 enforcement action to enforce the terms and conditions contained in this Agreement and Proposition 65.

such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing.

4.2 In the event, after the Compliance Date, Brimer identifies one or more Products that he believes in good faith do not meet the Lead Limits and/or Phthalate Limits, and are not otherwise exempt from the Lead Limits or Phthalate Limits under Section 3, Brimer may issue a Notice of Violation to enforce those limits. The Notice of Violation shall be served on I Apparel and on the supplier of each noticed Product that Brimer knows has offered the noticed Product for sale in California. The Notice of Violation shall identify the specific Product.

4.3 Any Notice of Violation shall be sent to the person(s) identified in Section 8 to receive notices for I Apparel and must be served within forty-five (45) days of the date the alleged violation is observed.

4.4 I Apparel shall provide written notice to Brimer within forty-five (45) days of receipt of the Notice of Violation, whether I Apparel elects to contest the allegations contained in such Notice of Violation (“Notice of Election”).

4.5 If a Notice of Violation is contested, the Notice of Election shall include all then-available documentary evidence regarding the alleged violation, including all test data, if any. Any Party may file a motion or application pursuant to Section 4.1 above should the contested Notice of Violation not be resolved through the meet and confer process.

If a Notice of Violation is not contested, the Notice of Election delivered by I Apparel shall include a detailed description of the corrective action that I Apparel has taken or proposes to undertake to address the alleged violation with respect to the Product. Any such corrective action shall, at a minimum, provide that the Product will no longer be offered by I Apparel for sale in California and such corrective action shall be initiated within thirty (30) days after serving its Notice of Election. In addition to the corrective action, I Apparel shall reimburse Brimer, as applicable, for his attorneys’ fees and costs in the amount of \$10,000 unless I Apparel, prior to shipping for sale, or distributing for sale, the Product identified in the Notice of Violation, obtained test results demonstrating

that all of the Accessible Components in the Product identified in the Notice of Violation complied with the applicable Lead Limits (in the case of a Notice of Violation regarding the Lead Limits) or the applicable Phthalate Limits (in the case of a Notice of Violation regarding the Phthalate Limits).

4.6 If there is a dispute over the corrective action, the Parties shall meet and confer before seeking any remedy in Court for a period of no more than thirty (30) days, unless the Parties mutually agree in writing to an extension.

5. PAYMENTS

5.1 Payments Pursuant to Health & Safety Code § 25249.7(b). In full and final settlement of all claims related to the Products and Covered Chemicals referred to in the Notices and this Agreement pursuant to Health & Safety Code § 25249.7(b), I Apparel shall pay civil penalties as follows:

5.1.1 Civil Penalty Payment. Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all the claims referred to in this Agreement, I Apparel shall pay a total of \$6,000 in civil penalties. This penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12(c) and (d), 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. I Apparel shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust for California's Office of Environmental Health Hazard Assessment" in the amount of \$4,500, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Russell Brimer" in an amount representing 25% of the penalty. Two separate 1099 forms shall be issued for the above payments, and Brimer shall furnish the address and tax identification numbers upon the Effective Date. The payment shall be delivered within ten days after the Effective Date.

5.2 Reimbursement of Attorneys' Fees and Costs.

5.2.1 I Apparel shall pay a total of \$21,000 to Brimer in reimbursement of his attorneys' fees and costs, expert and investigation fees, and related costs. Such payment shall be made payable to The Chanler Group. The payment shall be delivered within ten days after the Effective Date. I Apparel shall issue a separate 1099 for fees and costs paid in the amount of \$21,000 to The Chanler Group, 2560 Ninth Street, Suite 214, Berkeley, CA 94710-2565 (EIN: 94-3171522).

5.2.2 The payments made pursuant to this Section 5 shall be delivered to The Chanler Group at the following address:

The Chanler Group
Attn : Proposition 65 Controller
Re: *Russell Brimer v. Intertex Apparel Ltd. et al.* Matter
2560 Ninth Street, Suite 214
Berkeley, CA 94710

6. MODIFICATION AND DISPUTE RESOLUTION

6.1 This Agreement may be modified from time to time by express written agreement of the Parties.

7. CLAIMS COVERED AND RELEASED

7.1 This Agreement is a full, final, and binding resolution among, on the one hand, Brimer, acting on his own behalf and in the public interest and on behalf of the general public, and, on the other hand, I Apparel, of any violation of Proposition 65, or any other statutory or common law claims that were or could have been asserted in the Notices against any Releasees (as defined in Section 7.2) regarding the alleged failure to warn about exposures to any and all of the Covered Chemicals arising in connection with Products manufactured, distributed, or sold by I Apparel prior to the Compliance Date, or any claim based on the facts or conduct alleged in any and all of the Notices, whether based on actions committed by I Apparel or any Releasees prior to the Compliance Date.

7.2 In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 5, Brimer on behalf of himself, his respective past and current agents, representatives, attorneys, successors and/or assignees, and on behalf of the public interest pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases, waives, and forever discharges any and 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), whether fixed or contingent (collectively, "Claims"), against (a) I Apparel, (b) Intertex, and (c) the past, present, and future parents, subsidiaries, sister or other related companies, affiliates, divisions, successors, and assigns of I Apparel and Intertex, and (d) the officers, directors, attorneys, representatives, shareholders, agents, employees, licensors, licensees, franchisors, franchisees, downstream distributors, wholesalers, auctioneers, retailers, dealers, customers, owners, purchasers, and users of any of the persons or entities identified in (a), (b), or (c) of this Section 7.2 (the persons and entities identified in (a), (b), and (c) of this Section 7.2 are collectively referred to as the "Releasees"), arising from any violation of Proposition 65 that have been or could have been asserted against any Releasee, regarding the failure to warn about exposure to the Covered Chemicals arising in connection with Products manufactured, distributed, or sold by I Apparel prior to or after the Compliance Date.

7.3 In addition to the foregoing, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and release all Claims against Releasees as such Claims related to I Apparel's alleged failure to warn about exposures to or identification of the Covered Chemicals and BBP contained in the Products.

7.4 I Apparel 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 enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

7.5 The Parties agree that compliance with the terms of this Agreement by I Apparel constitutes Compliance with Proposition 65 by any Releasee with respect to the Covered Chemicals in the Products manufactured, sold, or distributed by I Apparel.

7.6 Nothing in Section 7 shall affect or limit any rights to enforce, modify, or interpret the terms of this Agreement.

8. NOTICE

8.1 Unless otherwise specified herein, all correspondence and notices required by this 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 I Apparel:

Trent H. Norris, Esq.
Arnold Porter LLP
1 Embarcadero Center, 22nd Floor
San Francisco, CA 94111

To Brimer:

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

9. ATTORNEYS FEES

9.1 Should Brimer prevail in any proceeding to enforce a violation of this Agreement, he shall be entitled to his reasonable attorneys' fees and costs incurred as

result of such proceeding. Should I Apparel prevail in any proceeding, it may be awarded its reasonable attorneys' fees and costs as a result of such proceeding upon a finding by a court that Brimer's proceeding to enforce this Agreement lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act, California Code of Civil Procedure § 2016 *et seq.*

9.2 Except as otherwise provided in this Agreement, each Party shall bear its own attorney's fees and costs.

9.3 Nothing in this Section 9 shall preclude a Party from seeking an award of sanctions pursuant to law.

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

Brimer is responsible for complying with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. OTHER TERMS

11.1 The terms of this Agreement shall be governed by the laws of the State of California.

11.2 This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute

a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

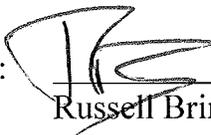
11.3 The signatures to this Agreement may be executed in counterparts and by means of facsimile or portable digital file (.pdf), which taken together shall be deemed to constitute one document.

11.4 Each signatory to this Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the Party represented and legally to bind that Party.

11.5 The Parties, including their counsel, have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

AGREED TO:

DATED: September 22, 2011

By:  _____
Russell Brimer

DATED: September ____, 2011

By: _____
I APPAREL GROUP, LLC

Title

a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

11.3 The signatures to this Agreement may be executed in counterparts and by means of facsimile or portable digital file (.pdf), which taken together shall be deemed to constitute one document.

11.4 Each signatory to this Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the Party represented and legally to bind that Party.

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AGREED TO:

DATED: September ____, 2011

By: _____
Russell Brimer

DATED: September ^{22^{am}} 2011

By: _____
I APPAREL GROUP, LLC
JACK SETTON
PRESIDENT AND COO
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