

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement is entered into by and between Russell Brimer (hereinafter “Brimer” or “Plaintiff”) and JJI International, Inc. (“JJJ” or “Defendant”), with Brimer and JJI 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 to improve human health by reducing or eliminating hazardous substances contained in consumer products. JJI 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 JJI has manufactured, distributed, and/or sold into the State of California, whether directly or indirectly, ceramic mugs with colored artwork or designs containing lead on the exterior, picture frames manufactured with components containing lead, as well as mobile phone cases and luggage tags containing di(2-ethylhexyl)phthalate (“DEHP”). Lead and DEHP are listed pursuant to the Proposition 65 list as chemicals known to be reproductive toxicants. Lead and DEHP shall be referred to herein as the “Listed Chemicals.”

1.3 Product Description

The products that are covered by this Settlement Agreement are ceramic mugs with colored artwork or designs containing lead on the exterior (“Ceramic Mugs”), mobile phone cases containing DEHP (“Phone Cases”), and luggage tags containing DEHP (“Luggage Tags”), each of which are manufactured, distributed, or sold, or caused to be manufactured, distributed, or sold by JJI in the State of California. Such products shall be referred to herein as the “Covered Products.” Covered Products exclude any products that would qualify as a Children’s Product as defined in the Consumer Product Safety Improvement Act, 15 U.S.C. § 2052(a)(2) and its implementing regulations.

1.4 Notice of Violation

On October 11, 2011, Brimer served JJI and various public enforcement agencies, with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided JJI and such public enforcers with notice that alleged that JJI was in violation of California Health & Safety Code § 25249.6 for allegedly failing to warn consumers and customers that Ceramic Mugs exposed users in California to lead and that Phone Cases and Luggage Tags exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

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

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean December 15, 2011.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Standards for Covered Products

(a) JJI shall not manufacture or cause to be manufactured Covered Products after the Effective Date unless they are Lead Free. “Lead Free” shall mean Ceramic Mugs, Phone Cases, and Luggage Tags with materials on any outer surface of the exterior or interior of the Covered Product that may be handled, touched, or mouthed by a consumer containing less than 300 parts per million (“ppm”) lead when such surface material is analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent utilized by federal or state agencies for the purpose of determining lead

content in a solid substance, or verification that the Covered Product achieves a result of 0.99 ppm or less for lead after correction for internal volume when tested under the ASTM C927-80 (2004) test method, modified for total immersion with results corrected for internal volume (i.e., the sample Covered Product shall be fully immersed in 4% acetic acid in a graduated cylinder that is large enough to accommodate submersion of the entire Covered Product in the solution).

(b) JJI shall not manufacture or cause to be manufactured Phone Cases and Luggage Tags after the Effective Date unless they are DEHP Free. “DEHP Free” Covered Products shall mean Phone Cases and Luggage Tags made with materials on any outer surface of the exterior or interior of the product that may be handled, touched, or mouthed by a consumer containing less than or equal to 1,000 ppm of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C or any testing methodology selected by JJI that is acceptable to state or federal government agencies in determining compliance with phthalate standards.

2.2 Product Warnings

All Covered Products manufactured or purchased by JJI before the Effective Date that do not meet the Reformulation Standard shall contain the following warnings, modified to reflect the presence of either lead or DEHP, either affixed on the packaging of the Covered Product, or, if no packaging exists, directly on each Covered Product sold in California that states:

WARNING: This product is made with materials containing [lead][DEHP], a chemical known to the State of California to cause birth defects or other reproductive harm.

For Covered Products sold by catalog or via the internet or by telephone, the preceding warning statement must be supplemented with written information advising the consumer, in a conspicuous manner, that he or she may return the Covered Product for a full refund (including shipping costs for both the receipt and the return of the product) within fifteen (15) days of his or her receipt of the Covered Product. JJI may also elect to provide the warning in the manner set forth in Section 2.3.

2.3 Warnings For Catalog or Internet Product Description

As of the Effective Date, in any description of any Covered Product that does not meet the Reformulation Standards in any catalog, Internet, or other written medium created, controlled, or authorized by JJI, JJI shall provide a warning statement along with the description or representation of the Covered Product. Warnings given in any catalog or on any Internet website shall identify the specific Covered Product to which the warning applies as further specified in subsections (a) and (b) below.

(a) Catalog Warning. Any warning provided in a catalog must be in the same type size or larger than the Covered Product description text within the catalog. The following warning, modified to reflect the presence of either lead or DEHP, shall be provided on the same page and in the same location as each display of the Covered Product(s):

WARNING: This product is made with materials containing [lead][DEHP], a chemical known to the State of California to cause birth defects or other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display of the Covered Product, JJI may utilize a designated symbol (▼) to cross reference the applicable warning and shall define the term “designated symbol” with the following language, modified to reflect the presence of either lead or DEHP, on the inside of the front cover of the catalog and on the same page as any order form for the Covered Product(s)

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain [lead][DEHP], a chemical known to the State of California to cause birth defects or other reproductive harm.

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

(b) Internet Website Warning. A warning may be given in conjunction with the sale or description of the Covered Product via the Internet, provided that the designated symbol (▼) appears adjacent to or immediately following the image, description, or price of any Covered Product for which a warning is being given, provided that the following warning statement modified to reflect the presence of either lead or DEHP, also appears elsewhere on the same web page, as follows:

WARNING: Warning: Products identified on this page with this symbol ▼ contain [lead][DEHP], a chemical known to the State of California to cause birth defects or other reproductive harm.

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

3.1 Penalty Assessment

As consideration for settlement of all the claims referred to in this Settlement Agreement, JJI shall pay \$3,500 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 ("OEHHA") and the remaining 25% of the penalty remitted to Russell Brimer as provided by California Health & Safety Code § 25249.12(d). JJI 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 \$2,625 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$875 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 \$2,625. The second 1099 shall be issued to Russell Brimer in the amount of \$875, whose address and tax number shall be provided, upon request, five calendar days before the payment is due.

Payment shall be delivered to Brimer's counsel on or before December 15, 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 ATTORNEY'S 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, JJI shall reimburse Brimer's counsel for fees and costs incurred as a result of investigating, bringing this matter to JJI's attention, and negotiating a settlement in the public interest. Except as to any attorney fees and costs expended pursuant to Section 3.1, JJI shall pay Brimer and his counsel \$36,500 for all attorneys' fees, expert and investigation fees, and related costs.

Defendants shall reimburse Brimer for fees and costs in the following installments: \$13,274 on the Effective Date, with equal payments of \$3,318 due every thirty (30) days thereafter (e.g., January 15, 2012, February 15, 2012) until the balance of attorney's fees and costs is paid to Brimer. If JJI fails to deliver any installment payment within ten (10) calendar days of the date provided above, JJI shall deliver the delinquent payment within fifteen (15) calendar days of the original due date, as well as the total remaining amount due under Section 4.

Each installment payment for reimbursement of fees and costs shall be made payable to "The Chanler Group" and shall be delivered on or before the installment payment date provided above. JJI shall deliver each payment to the following address:

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

Once the sum is paid in full, JJI shall issue a separate 1099 for fees and costs paid in the amount of \$36,500 to "The Chanler Group" (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, and excepting any claim, agreement, penalty, fee or cost to be agreed or assessed under Section 3.1, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, and for the matters solely arising out of Brimer's October 11, 2011, 60-Day Notice of Violation, 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, arising out of Brimer's October 11, 2011, 60-Day Notice of Violation or the allegations referenced in this Settlement Agreement (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, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

This release is expressly limited to those claims that arise under Proposition 65, as such claims relate to JJI's alleged failure to warn about exposures to or identification of the Listed Chemicals contained in the Covered Products and as such claims are identified in the Proposition 65 60-Day Notice of Violation to JJI and this Settlement Agreement. The Parties further understand and agree that this release shall not extend upstream to any entities, other than Defendants, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Defendants.

5.2 JJI's Release of Brimer

JJI 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 JJI in this matter, and/or with respect to the Covered 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 Covered Products, then JJI 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 Covered Products are so affected. The prevailing party in any action seeking to enforce this agreement shall be entitled to recover reasonable attorney's fees and costs.

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 JJI:

Dale Kincaid
JJI, International, Inc.
200 First Avenue
Cranston, RI 02910

For Brimer:

With a copy to:

William F. Tarantino
Morrison Foerster LLP
425 Market Street, Suite 3300
San Francisco, CA 94105-2482

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, 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 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:

AGREED TO:

Date: _____

Date: _____

By:  _____
Plaintiff, Russell Brimer

By: _____
Defendant, JJI International, Inc.

Proposition 65 Coordinator
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AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____
Plaintiff, Russell Brimer

By: 
Defendant, JJI International, Inc.