

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and Jay Import Company, Inc.

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer” or “Plaintiff”) and Jay Import Company, Inc. (“Jay Import” or “Defendant”), with Brimer and Jay Import collectively referred to as the “parties.”

1.2 Russell Brimer

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 and commercial products.

1.3 Jay Import Company, Inc.

Jay Import 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”).

1.4 General Allegations

Brimer alleges that Jay Import has manufactured, imported, distributed, sold, and/or offered for sale in the State of California, mugs with colored artwork or designs (containing lead) on the exterior, without the requisite Proposition 65 warnings. Lead is on the Proposition 65 list and is known to cause birth defects and other reproductive harm.

1.5 Product Description

The products that are covered by this Settlement Agreement are defined as mugs with colored artwork or designs (containing lead) on the exterior manufactured, imported, distributed, sold, and/or offered for sale in California by Jay Import, including, but not limited to, *American Atelier at Home Retro Collection “Coffee...the gasoline of life” Mug, Item No. 1180357 (#0 88235 05055 7)*, hereinafter the “Products.”

1.6 Notice of Violation

On October 11, 2011, Brimer served Jay Import and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice alleging that Jay Import 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 lead. Said 60-day period has passed and to the best of the parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

1.7 No Admission

Jay Import denies the material, factual and legal allegations contained in Brimer’s Notice and maintains that all products that it has sold, manufactured, imported, distributed, and/or offered for sale 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 Jay Import 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 Jay Import of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Jay Import’s obligations, responsibilities, and duties under this Settlement Agreement.

1.8 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 15, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

Reformulated Products are defined as follows:

- (a) those Products with exterior artwork decorations containing no detectable amount of lead in the lip-and-rim area of the mugs (the top 20 millimeters of the Products);
- (b) those Products with exterior artwork decorations containing a total lead content of less than or equal to 50 parts per million, exclusive of the lip-and-rim area, when

analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B; and

(c) those Products containing lead in concentrations less than 1.0 microgram of lead when using a wipe test, exclusive of the lip-and-rim area, when analyzed pursuant to NIOSH Test Method 9100.

2.2 Reformulation Commitment

As of the Effective Date, all future Products manufactured, imported, distributed, sold, or offered for sale in the State of California by Jay Import shall be Products that qualify as Reformulated Products as defined in section 2.1 above.

3. PAYMENT OF PENALTIES

Jay Import shall pay a civil penalty of \$2,500, to be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), 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. This penalty reflects a credit of \$4,000 based on Jay Import's commitment to reformulate the Products pursuant to Section 2.1 above. Jay Import 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 \$1,875 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$625, 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 calendar days before the payment is due.

Payment shall be delivered to Brimer's counsel on or before June 1, 2012, 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 acknowledge that Brimer and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Jay Import then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. Jay Import shall reimburse Brimer and his counsel \$17,000 for fees and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a settlement in the public interest. Jay Import shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before June 1, 2012, to the following address:

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

5. RELEASES

5.1 Brimer's Release of Jay Import

This Settlement Agreement is a full, final and binding resolution between Brimer, and Jay Import, of any violation of Proposition 65 that was or could have been asserted by Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Jay Import, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Jay Import directly or indirectly distributes or sells Products, including but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on their failure to warn about alleged exposures to lead contained in the Products that were manufactured,

imported, distributed, sold, and/or offered for sale by Jay Import in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all Brimer's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Brimer may have, 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, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to lead in the Products manufactured, imported, distributed, sold, and/or offered for sale by Jay Import before the Effective Date (collectively "claims"), against Jay Import and Releasees.

5.2 Jay Import's Release of Brimer

Jay Import on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Jay Import may ask Brimer, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Brimer agrees to reasonably cooperate with Jay Import and to use best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Jay Import will reimburse Brimer and his

counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of the consent judgment, in an amount not to exceed \$16,000, exclusive of fees and cost that may be incurred on appeal. Jay Import will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Jay Import within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

8. 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, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer require as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Jay Import 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. Nothing in this Settlement Agreement shall be interpreted to relieve Jay Import from an obligation to comply with any pertinent state or federal toxics control law.

9. 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 Jay Import:
Erna Jacobowitz, President
Jay Import Company, Inc.
41 Madison Avenue, Floor 12
New York, NY 10010

To Brimer:
Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

With a copy to:

Donald Burris, Esq.
Burris, Schoenberg & Walden, LLP
12121 Wilshire Blvd., Suite 800
Los Angeles, CA 90025

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.

10. COUNTERPARTS; FACSIMILE AND PDF 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.

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

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

12. MODIFICATION

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

13. AUTHORIZATION

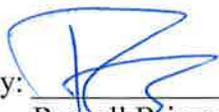
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 5-16-12

Date: _____

By: 
Russell Brimer

By: _____
Erna Jacobowitz, President
Jay Import Company, Inc.

To Jay Import:

Erna Jacobowitz, President
Jay Import Company, Inc.
41 Madison Avenue, Floor 12
New York, NY 10010

To Brimer:

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

With a copy to:

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13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

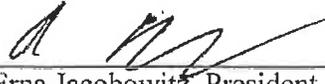
AGREED TO:

AGREED TO:

Date: _____

Date: 5/22/2012

By: _____
Russell Brimer

By: 
Erna Jacobowitz, President
Jay Import Company, Inc.