

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and Wilson Sporting Goods Co.

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Wilson Sporting Goods Co (“Wilson”), with Brimer and Wilson 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 and commercial products. Brimer alleges that Wilson 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 Wilson has manufactured, imported, distributed, sold, and/or offered for sale in the State of California folders with synthetic leather covers containing di (2-ethylhexyl) phthalate (“DEHP”), without the requisite Proposition 65 health hazard warnings. DEHP is known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as folders with synthetic leather covers, including but not limited to, the *Wilson NCAA Basketball Folder WTB 182* manufactured, imported, distributed, shipped, sold, and/or offered for sale or shipment by Wilson in the State of California, hereinafter “Products.”

1.4 Notice of Violation

On December 21, 2012, Brimer served Wilson and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided

the recipients with notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. To the best of the parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Wilson 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 Wilson 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 Wilson of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Wilson's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 1, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulated Products

Commencing on the Effective Date and continuing thereafter, Wilson agrees that the Products it manufactures, imports, distributes, ships, sells or offers to ship for sale in California, will be "Reformulated Products." For purposes of this Settlement Agreement, Reformulated Products comply with the following content limits: DEHP in concentrations equal to or less than 1,000 parts per million ("ppm") DEHP content when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

3. PAYMENT OF PENALTIES

3.1 Initial Civil Penalty

In settlement of all the claims referred to in this Settlement Agreement, Wilson shall pay an initial civil penalty in the amount of \$1,000. The civil penalty shall 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. Wilson 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 \$750 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$250, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered on or before July 8, 2013, to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Pursuant to Health & Safety Code § 25249.7(b), on December 31, 2013, Wilson shall pay a final civil penalty in the amount \$1,000. The final civil penalty shall be waived in its entirety, if, on or before December 31, 2013, an officer of Wilson certifies to Brimer's counsel, in writing, that any Products sold or offered for sale by Wilson in California after December 1, 2013, are Reformulated Products, and that Wilson will continue to do so after the date of certification.

Unless waived, the final civil penalty shall be allocated according to Health & Safety Code § 25249.7(c)(1) and (d), with 75% of the penalty payment earmarked for OEHHA, and the remaining 25% of the penalty earmarked for Brimer. Wilson shall issue two separate checks for the final penalty payment: (a) one check made payable to "OEHHA" in the amount of \$750 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$250,

representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 3.3 below.

3.3 Payment Procedures

3.3.1. Issuance of Payments. Payments shall be delivered as follows:

- (a) All payments owed to Brimer, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

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

- (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, Wilson shall issue separate 1099 forms for each payment to Brimer, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

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 issue to be resolved after the material terms of the agreement had been settled. Wilson 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. Wilson shall reimburse Brimer and his counsel \$24,000 for fees and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a settlement. Wilson 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 July 8, 2013, 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 Wilson

This Settlement Agreement is a full, final and binding resolution between Brimer and Wilson, 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 (including The Chanler Group), successors, and/or assignees against Wilson, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Wilson directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), based on their alleged failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, shipped, sold and/or offered for sale or shipment by Wilson in California prior to 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 (including The Chanler Group), successors, and/or assignees, hereby waives all 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 DEHP in the Products manufactured, distributed, shipped, sold and/or offered for sale or shipment by Wilson prior to the Effective Date (collectively "Claims"), against Wilson and Releasees.

In addition, Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Brimer, in his individual capacity only and *not* in his representative capacity, on behalf of himself and his agents, attorneys, representatives, successors and assigns,

expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the Notice and/or the alleged failure to warn about exposures to lead in the Products.

5.2 Wilson's Release of Brimer

Wilson on behalf of itself, its past and current agents, representatives, attorneys (including The Chanler Group), 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, Wilson may ask Brimer, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a consent judgment, and seek the court's approval of the consent judgment pursuant to Health and Safety Code § 25249.7, or as may otherwise be allowed by law. If so requested, Brimer agrees to reasonably cooperate with Wilson, and the Parties and their respective counsel agree to mutually employ their best efforts 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, Wilson will reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of

the consent judgment, in an amount not to exceed \$15,000.00 exclusive of fees and costs that may be incurred on appeal. Wilson will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Wilson within ten days (10) after its receipt of monthly invoices from Brimer for work performed under this paragraph. Wilson, in its sole discretion, may seek conversion of this Settlement Agreement into a consent judgment pursuant to the procedure and terms described in this provision. Nothing in this provision shall be construed to obligate Wilson to convert the Settlement Agreement into a consent judgment.

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 Wilson 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 Wilson from an obligation to comply with any pertinent state or federal toxic control laws.

9. ENTIRE AGREEMENT

This Settlement 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 and understandings related hereto. No

representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

10. 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 Wilson:

Terence P. O'Brien, Esq.
Counsel
Wilson Sporting Goods Co.
8750 West Bryn Mawr Ave.
Chicago, IL 60631

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.

11. 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.

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

Brimer and his attorneys agree to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

13. MODIFICATION

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

14. 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: June 26, 2013 _____

Date: 24 June 2013 _____

By:  _____
Russell Brimer

By:  _____
Terence P. O'Brien, Counsel,
WILSON SPORTING GOODS CO.