

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Revenue Creations LLC (“Revenue Creations”), with Brimer and Revenue Creations each individually referred to as a “Party” and collectively as the “Parties.” Brimer is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Brimer alleges, and Revenue Creations disputes, that Revenue Creations 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 Revenue Creations manufactures, sells, and/or distributes for sale in California, vinyl/PVC-coated laptop security cables containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Brimer alleges that Revenue Creations failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its vinyl/PVC-coated laptop security cables.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC-coated laptop security cables containing DEHP that are manufactured, sold or distributed for sale in California by Revenue Creations, including, but not limited to, the *Tech Universe Laptop Security Lock 6.5ft Steel Cable, Item No.: TU1508, UPC #8 55416 00232 8* (“Products”).

1.4 Notice of Violation

On March 31, 2015, Brimer served Revenue Creations and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Revenue Creations violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP in its vinyl/PVC-coated laptop security cables. 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

Revenue Creations denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed 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 Revenue Creations of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Revenue Creations of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Revenue Creations. This Section shall not, however, diminish or otherwise affect Revenue Creations’ obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” means November 30, 2015.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on September 30, 2015 and continuing thereafter, Revenue Creations agrees to only manufacture for sale or purchase for sale in or into California, “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” shall mean Products containing no more than 1,000 parts per million (0.1%)

DEHP in each accessible component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Revenue Creations agrees to pay \$8,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Brimer. Brimer’s counsel shall be responsible for delivering OEHHA’s portion of any civil penalty payment(s) made under this Settlement Agreement to OEHHA.

3.1.1 Initial Civil Penalty Payment

Within five days of the Effective Date, Revenue Creations shall make an initial civil penalty payment of \$2,000. It shall deliver its payment in a single check made payable to “Russell Brimer, Client Trust Account.”

3.1.2 Final Civil Penalty Payment; Waiver for Early Reformulation

On February 1, 2016, Revenue Creations shall make a final civil penalty payment in the amount of \$6,000. Pursuant to Title 11 California Code of Regulations section 3203(c), Brimer agrees that the final civil penalty will be waived in its entirety if, no later than January 15, 2016, Revenue Creations provides Brimer’s counsel with a signed declaration certifying that all of the Products it is shipping for sale or distributing for sale in California are Reformulated Products as defined by Section 2.1, and that Revenue Creations will continue to only offer Reformulated Products in California in the future. The option to provide a declaration certifying early completion of reformulation in lieu of

making the final civil penalty payment is a material term of this Settlement Agreement, and time is of the essence.

3.2 Attorneys' Fees and Costs

The Parties reached an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within fifteen days of the Effective Date Revenue Creations agrees to pay \$12,000 in six installments, each in the form of a check made payable to "The Chanler Group" for \$2,000, the total sum of which will cover all fees and costs incurred investigating, bringing this matter to the attention of Revenue Creations' management, and negotiating a settlement in the public interest. Revenue Creations payments under this Section shall be due on the 15th of each month December 15, 2015 through May 15, 2016. In the event any of the required payments is untimely (i.e. not received within five days of the payment due date), all unpaid amounts shall become immediately due.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to:

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

4. CLAIMS COVERED AND RELEASED

4.1 Brimer's Release of Revenue Creations

This Settlement Agreement is a full, final and binding resolution between Brimer and Revenue Creations, of any violation of Proposition 65 that was or could have been asserted by Brimer on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, against Revenue Creations, its parents, subsidiaries, affiliated entities under common ownership, directors, officers,

employees, attorneys, and each entity to whom Revenue Creations directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees including but not limited to Rite Aid Corporation (“Releasees”), based on the alleged failure to warn about exposures to DEHP from Products manufactured, distributed, sold or offered for sale by Revenue Creations in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Brimer, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 with respect to exposures to DEHP from Products manufactured, distributed, sold and/or offered for sale by Revenue Creations before the Effective Date.

4.2 Revenue Creations’ Release of Brimer

Revenue Creations, on its own behalf, and on behalf of 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 by Brimer and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. 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.

6. 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 Products, then Revenue Creations may provide written notice to Brimer of any asserted change in the law, and shall have no injunctive further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Revenue Creations:

Joel Yoffee, President
Revenue Creations LLC
75 Montebello Road, Suite 201
Suffern, NY 10901

with copy to Revenue Creations' counsel:

Elizabeth V. McNulty, Esq.
Archer Norris, PLC
4695 MacArthur Court, Suite 350
Newport Beach, CA 92660

For Brimer:

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

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

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

10. **MODIFICATION**

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

11. **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: 12/3/2015

Date: 11/23/15

By:

RUSSELL BRIMER

By:

Joel Yoffee, President
REVENUE CREATIONS LLC