

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer, John Moore, and Kikkerland Design, Inc.

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”), John Moore (“Moore”), and Kikkerland Design, Inc. (“Kikkerland”), with Brimer, Moore, and Kikkerland collectively referred to as the “Parties.” Moore and Brimer are individuals residing in California who seek to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Kikkerland employs ten or more persons and is a person in the course of doing business for purposes of California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Brimer alleges that Kikkerland has manufactured, distributed and/or offered for sale or use in California glassware with exterior decorations containing excessive amounts of lead without providing its customers and consumers in California with the requisite clear and reasonable Proposition 65 warnings.

Moore alleges that Kikkerland has manufactured, distributed and/or offered for sale or use in California books with soft covers and luggage tags containing excessive amounts of the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”) without first providing its customers and consumers in California with the requisite Proposition 65 warnings.

Lead and DEHP are listed pursuant to Proposition 65 as chemicals that are known to cause birth defects and other reproductive harm. Lead and DEHP shall, where appropriate, be referred to collectively as the “Listed Chemicals.”

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows:

- (a) glassware with exterior decorations containing lead, including, without limitation, *Drunk? Shot Glasses, GL 03 (#6 12615 03186 9)*;

- (b) books with soft covers containing DEHP, including, without limitation, *Writersblok Bamboo Mini Notebook WBB601 (#6 12615 04336 7)*; and
- (c) luggage tags containing DEHP, including, without limitation, *Tootsie Luggage Tag TT09-A (#6 12615 04491 3)*.

The glassware, books with soft covers, and luggage tags containing the Listed Chemicals shall, where appropriate, be referred to as “Products.”

1.4 Notices of Violation

On or about February 1, 2011, Brimer and Moore each served Kikkerland and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided Kikkerland and the public enforcers with notice of the alleged violations of California Health & Safety Code § 25249.6 for Kikkerland’s failure to warn consumers that the Products it sold exposed users in California to the Listed Chemicals. Brimer’s 60-day notice and Moore’s 60-day notice shall be referred to collectively as the “Notices.”

1.5 No Admission

Kikkerland denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products that it has manufactured, sold, and/or 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 Kikkerland 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 Kikkerland of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Kikkerland. However, this section shall not diminish or otherwise affect Kikkerland’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 September 15, 2011.

2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION

Commencing on the Effective Date, Kikkerland shall either: (a) cease all distribution, shipping, sales, and/or offering to ship the Products for sale or use in California; or (b) it shall only distribute, ship, sell, or offer to ship for sale in California “Reformulated Products.” For the purposes of this Settlement Agreement, Reformulated Products shall mean glassware that contains no more than 90 parts per million (“ppm”) lead content when analyzed pursuant to Environmental Protection Agency (“EPA”) testing methodologies 3050B and 6010B (Digest Test) and that yields no more than 1.0 microgram (“µg”) of lead when analyzed pursuant to NIOSH Test Method 9100 (Wipe Test) performed on the surface of the glassware or its exterior decorations.

With respect to books with soft covers and luggage tags that contain DEHP, “Reformulated Products” shall mean luggage tags and books with soft covers that contain no more than 1000 ppm DEHP content when analyzed pursuant to EPA testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining the presence of DEHP in a solid sample.

3. CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)

Pursuant to California Health & Safety Code §25249.7(b), Kikkerland shall pay civil penalties totaling \$6,000. The penalty shall be apportioned in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with seventy-five percent of the amount remitted to the state of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent divided between Brimer and Moore.

Kikkerland shall issue three checks for the penalty payments made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$4500; (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$750; and (c) “The Chanler Group in Trust for John Moore” in the amount of \$750.

Kikkerland agrees to provide three 1099 forms for the above-payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); (b) Russell Brimer; and (c) John Moore. Counsel for Brimer and Moore agrees to

provide tax information for these clients upon request five days before the payments are due. All payments made pursuant to this section shall be delivered to counsel for Brimer and Moore within five days of the Effective Date, at the following address:

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

4. REIMBURSEMENT OF FEES AND COSTS

The parties reached an accord on the compensation due to Brimer and Moore and their counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Kikkerland shall reimburse Brimer and Moore's counsel for fees and costs, incurred as a result of investigating, bringing these matters to Kikkerland's attention, and negotiating a settlement in the public interest. Kikkerland shall pay Brimer and Moore and their counsel \$30,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a separate check made payable to "The Chanler Group" and delivered within five days of the Effective Date, at the following address:

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

A separate 1099 form shall be issued for attorney's fees and costs paid to The Chanler Group (EIN: 94-3171522).

5. CLAIMS COVERED AND RELEASED

5.1 Full, Final, and Binding Resolution of Proposition 65 Allegations

This Settlement Agreement is a full, final and binding resolution between Moore and Brimer, each on his own behalf and on behalf of the general public of California, and Kikkerland, of any violation of Proposition 65 that was or could have been asserted by Moore and Brimer against Kikkerland, its parents, subsidiaries, affiliated entities that are under common ownership, directors,

officers, employees, attorneys, and each entity to whom Kikkerland directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to the Listed Chemicals contained in the Products sold by Kikkerland.

5.2 Public Release of Proposition 65 Claims by Moore and Brimer

In further consideration of the promises and agreements contained herein, Moore and Brimer, each on his own behalf, and their past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waive all rights to institute or participate in, directly or indirectly, any form of legal action, and release 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 (collectively “Claims”) – limited to and arising under Proposition 65 against Kikkerland and the Releasees with respect to the Listed Chemicals in the Products sold by Kikkerland.

5.3 Release of Claims by Moore and Brimer in their Individual Capacity

Moore and Brimer, each in his individual capacity only and *not* his representative capacity, also provide a release herein which shall be effective as a full and final accord and satisfaction, as a bar to Claims, liabilities or demands of any nature, character, or kind. However, this release is specifically limited to those Claims arising out of alleged or actual exposures to the Listed Chemicals contained in the Products manufactured, distributed or sold by Kikkerland as alleged in the Notices.

5.4 Kikkerland’s Release of Moore and Brimer

Kikkerland, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moore and/or Brimer and their attorneys and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Moore and/or Brimer and their attorneys and other

representatives whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it with respect to the 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 Products, then Kikkerland may provide written notice to Brimer and Moore 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.

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:

To Kikkerland:

Jan van der Lande, President
Kikkerland Design, Inc.
666 Broadway, 4th Floor
New York, NY 10012

with a copy to:

Charles H. Jew, Esq.
Cascio, Schmoyer & Zervas
236 West Portal Avenue # 533
San Francisco, CA 94127

To Brimer and Moore:

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 or PDF (portable document format) 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.

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

Brimer and his attorneys agree 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.

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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:

Date: 8-7-11

By: 
Russell Brimer

AGREED TO:

Date: _____

By: _____
Jan van der Lande, President
Kikkerland Design, Inc.

AGREED TO:

Date: _____

By: _____
John Moore

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: _____

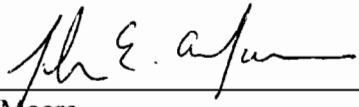
Date: _____

By: _____
Russell Brimer

By: _____
Jan van der Lande, President
Kikkerland Design, Inc.

AGREED TO:

Date: SEPTEMBER 7, 2011

By: 
John Moore

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.

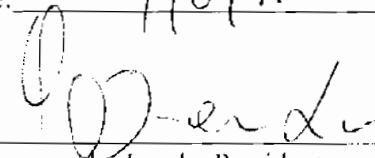
AGREED TO:

Date: _____

By: _____
Russell Brimer

AGREED TO:

Date: 7/6/11 _____

By:  _____
Jan van der Lande, President
Kikkerland Design, Inc.

AGREED TO:

Date: _____

By: _____
John Moore