

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and World of Jeans & Tops dba MJC

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and M.J. Carlyle & Co. (“MJC”), with Brimer and MJC 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 improve human health by reducing or eliminating hazardous substances contained in consumer products. MJC 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 MJC has manufactured, distributed and/or sold belts which contain lead (hereinafter the “Listed Chemical”), without the requisite Proposition 65 warnings. The Listed Chemical is on the Proposition 65 list as a chemical known to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: belts made of any fabric or material that are worn as fashion accessories on garments either for functional use or as decorative elements and that are offered for sale in California either separately or as part of the garment itself, such as, but not limited to, *2Pk Teal Pln & Brn Braid Skny Belt, #TBLU/#MJ802/#15391724603*. All such belts are referred to hereinafter as the “Products”.

1.4 Notice of Violation

On or about November 12, 2010, Brimer served MJC and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided MJC and public enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers that the Products that MJC sold exposed users in California to the Listed Chemical.

1.5 No Admission

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

1.6 Execution Date

For purposes of this Settlement Agreement, the term "Execution Date" shall mean the date on which this Consent Judgment is signed by all Parties.

1.7 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 15, 2011.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

Reformulated Products are defined as those Products containing less than or equal to:

- (a) 90 parts per million ("ppm" or "mg/kg") of the Listed Chemical for Paint or other Surface Coatings on Accessible Components: 90 parts per million ("ppm");
- (b) 300 ppm for leather (including composited leather) Accessible Components;
- (c) 200 ppm for polyvinyl chloride ("PVC") Accessible Components; and
- (d) 300 ppm for all other Accessible Components other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or reinstein.

For purposes of this section, "Accessible Components" means a functional or decorative part of a Covered Product that could be touched by a person during normal and reasonably foreseeable use and "Paint or Surface Coatings" has the meaning defined in 16 C.F.R. § 1303.2(b), as amended from time to time.

2.2 Reformulation Commitment

As of the Effective Date, MJC shall not: (a) place any order for the manufacture and delivery of any Products for retail sale in its California retail stores unless such Products constitute Reformulated Products pursuant to section 2.1 above, (b) receive into or hold in inventory any Product for retail sale in California unless such Products constitute Reformulated Products pursuant to section 2.1 above, and (c) shall not sell or offer for sale in California any Product unless such Product constitutes a Reformulated Products pursuant to section 2.1 above. For purposes of this Section 2.1, when MJC direct customer sells or offers for sale to California consumers a Product after the Compliance Date, MJC is deemed to “offer for sale in California” that Product. As such, MJC hereby commits that one hundred percent (100%) of the Products that it manufactures, sells or ships after the Effective Date for sale in California, shall qualify as Reformulated Products.

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

In settlement of all claims related to the Products and Listed Chemical referred to in the Notice and this Settlement Agreement pursuant to Health & Safety Code § 25249.7(b), MJC shall pay civil penalties as follows:

3.1 Initial Civil Penalty. MJC shall pay an initial civil penalty of \$8,000 no later than ten (10) days after the Execution Date. MJC shall issue two separate checks for the Initial Civil Penalty payment pursuant to Health & Safety Code § 25192: (a) one check made payable to The Chanler Group in Trust for the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of \$6,000, representing 75% of the total; and (b) one check to The Chanler Group in Trust for Russell Brimer in the amount of \$2,000, representing 25% of the total. Two separate 1099s shall be issued for the above payments. The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$6,000. The second 1099 shall be issued in the amount of \$2,000 to Russell Brimer, whose address and tax identification number shall be furnished, upon the execution of this Agreement.

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3.2 Final Civil Penalty. MJC shall pay a final civil penalty of \$6,000 on or before July 31, 2011. MJC shall issue two separate checks pursuant to Health & Safety Code § 25192: (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$4,500, representing 75% of the total; and (b) one check to The Chanler Group in Trust for Russell Brimer in the amount of \$1,500, representing 25% of the total. As an incentive for achievement of further reformulation of the Products however, the Final Civil Penalty shall be waived in its entirety for MJC if its Officer certifies in Writing that MJC has, as of July 1, 2011, has not purchased, imported, manufactured, or supplied to an unaffiliated third party any Product that will be sold or offered for sale to California consumers that exceeds the Additional Lead Limits of 100 ppm in all Accessible Components of the Products and that MJC will continue to not purchase, import, manufacture, or supply to an unaffiliated third party any Product that will be sold or offered for sale to California consumers that exceeds the Additional Lead Limits. In order for this waiver of the Final Civil Penalty to take effect, such certification must be received by The Chanler Group on or before July 15, 2011.

4. REIMBURSEMENT OF 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, MJC shall reimburse Brimer's counsel for fees and costs, incurred as a result of investigating, bringing this matter to MJC attention, and negotiating a settlement in the public interest. MJC shall pay Brimer and his counsel \$32,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "The Chanler Group" and shall be delivered no later than (10) days after the Execution Date, at the following address:

THE CHANLER GROUP
Attn: Proposition 65 Controller
2560 Ninth Street, Suite 214
Berkeley, CA 94710

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MJC shall issue a separate 1099 for attorney's fees and costs paid in the amount of \$32,000 to The Chanler Group, 2560 Ninth Street, Suite 214, Berkeley, CA 94710 (EIN: 94-3171522).

5. RELEASE OF ALL CLAIMS

5.1 Brimer's Release of MJC

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Brimer on behalf of himself and in his representative capacity, his past and current agents, representatives, attorneys, successors, and/or assignees, and 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 attorney's fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against MJC and each of its wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, cooperative members, 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") that arise under Proposition 65, as such claims relate to MJC alleged failure to warn about exposures to the Listed Chemical contained in the Products.

5.2 MJC's Release of Brimer

MJC, on behalf of itself and its Releasees, waives any and all claims against Brimer, his attorneys, and other representatives for any and all actions taken by Brimer and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or 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 MJC may 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.

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 MJC:

Scott Hatch, Esq.
CALL & JENSEN
610 Newport Center Drive, Suite 700
Newport Beach, California 92660

To Brimer:

Proposition 65 Coordinator
HIRST & CHANLER LLP
2560 Ninth Street, 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 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.

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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.

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: 1-18-11

By:  _____
Russell Brimer

AGREED TO:

Date: 1/21/11

By:  _____
CARL WATSON President
M.J. Carlyle & Co.