

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and Turn On Products Inc.

This Settlement Agreement is entered into by and between Russell Brimer and Turn On Products Inc., (“Turn On”), with Russell Brimer and Turn On collectively referred to as the “Parties.” Russell Brimer is an individual residing in the State of California who asserts that he seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Turn On 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

Russell Brimer alleges that Turn On has manufactured, distributed, and/or offered for sale in California belts containing lead without the requisite Proposition 65 warnings. Lead (hereinafter “Listed Chemical”) is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Turn On asserts that it has conducted an independent investigation of the Products (as defined in Section 1.3) identified on the Notice (as defined in Section 1.4), and based thereon, denies that the subject product contained the Listed Chemical, or if it did, that the amount present was such that Turn On was not required to provide a warning under the “Safe Harbor” provisions of Proposition 65.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: belts containing the Listed Chemical such as, but not limited to, *Almost Famous Shirt Dress and Belt Set, Style #TF6174-0723; Beach Splatter pattern, Style #TF6171-0914 and Almost Famous NK Peasant top with Brown Belt, Woven Top Cap Sleeve*

Scoop, Style # 02090283-9, M25917. All such belts containing the Listed Chemical are referred to hereinafter as the “Products.”

1.4 Notice of Violation

On or about October 29, 2010, Russell Brimer served Turn On and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Turn On and public enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 by Turn On for failing to warn its customers and consumers in California that the Products it sold exposed users to the Listed Chemical. 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

As detailed above, Turn On 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 Turn On 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 Turn On of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Turn On. However, this section shall not diminish or otherwise affect Turn On’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 30, 2011.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Turn On shall only manufacture or cause to be

manufactured for sale in California Products that are Lead Free. For purposes of this Settlement Agreement, "Lead Free" Products shall mean Products containing components that may be handled, touched, or mouthed by a consumer, and which components yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH test method 9100, and yield less than 100 parts per million ("ppm") lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance..

Turn On further commits that 100% of the Products that it offers for sale in California after the Effective Date shall be Lead Free.

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

Pursuant to California Health & Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice and Complaint and referred to in this Settlement Agreement, Turn On shall pay \$5,000 in combined penalty payments and credits.

For its cooperation in the settlement process and its commitment to reformulate the Products to be Lead Free pursuant to Section 2.1 above, Russell Brimer shall provide Turn On with a penalty credit of \$3,000. Thereafter, the remaining penalty amount of \$2,000 will be paid by Turn On and apportioned according to Health & Safety Code §§ 25249.12 (c)(1) & (d), with seventy-five percent of the penalty amount remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent of the penalty paid to Russell Brimer.

Turn On shall issue two checks for the penalty payment: (a) one check payable to "The Chanler Group in Trust for OEHHA" in the amount of \$1,500, and (b) one to "The Chanler Group in Trust for Russell Brimer" in the amount of \$500. Two 1099 forms shall be provided for the above payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose address and tax identification number shall be furnished,

upon request, at least five (5) calendar days before payment is due. Payment shall be delivered on or before the September 30, 2011 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 Russell Brimer and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Turn On shall reimburse Russell Brimer's counsel for fees and costs incurred as a result of investigating, bringing this matter to Turn On's attention, and negotiating a settlement in the public interest. Turn On shall pay Russell Brimer's counsel \$23,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third check made payable to "The Chanler Group" and shall be delivered on or before September 30, 2011 at the following address:

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

Turn On shall issue a separate 1099 for attorneys' 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 Russell Brimer, on behalf of himself and the public, and Turn On, of any violation of Proposition 65 that was or could have been asserted by Russell Brimer against Turn On, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Turn On directly or indirectly

distributes or sells 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 Lead contained in the Products that were sold by Turn On.

5.2 Russell Brimer’s Public Release of Proposition 65 Claims.

In further consideration of the promises and agreements herein contained, Russell Brimer on behalf of himself, 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 attorneys’ fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to Lead in the Products sold by Turn On (collectively “claims”), against Turn On and Releasees.

5.3 Russell Brimer’s Individual Release of Claims.

Russell Brimer also, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to Lead in the Products manufactured, distributed or sold by Turn On.

5.4 Turn On’s Release of Russell Brimer.

Turn On on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Russell Brimer, his attorneys and other representatives, for any and all actions taken or

statements made (or those that could have been taken or made) by Russell Brimer and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

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 Turn On may provide written notice to Russell 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.

7. 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: (a) first-class, registered or certified mail, return receipt requested; or (b) overnight courier on any party by the other party at the following addresses:

To Turn On:

Peter Kossoy, President
Turn On Products Inc.
263 West 38th Street, 8th Floor
New York, NY 10018

With copy to:

Kenneth R. Schachter
Sills, Cummis & Gross, P.C.
One Rockefeller Plaza
New York, NY 10020

To Russell 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.

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. A facsimile or PDF signature shall be as valid as the original.

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

Turn On and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 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: 9-13-11

Date: _____

By:  _____
Russell Brimer

By: _____
Peter Kossoy, President
Turn On Products Inc.

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.

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. A facsimile or PDF signature shall be as valid as the original.

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

Turn On and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 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:

Date: _____

By: _____
Russell Brimer

AGREED TO:

Date: _____ 09/20/11

By: _____
Peter Kossoy, President
Turn On Products Inc.