

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Dick’s Sporting Goods, Inc. (“Dick’s Sporting Goods”), with Brimer and Dick’s Sporting Goods 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 contained in consumer products. Dick’s Sporting Goods employs ten or more individuals 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 and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Brimer alleges that Dick’s Sporting Goods manufactured, imported, distributed, and/or sold in the State of California, vinyl/PVC golf bag rain hoods that contain di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Brimer alleges that Dick’s Sporting Goods failed to provide consumers and other individuals exposed to DEHP from the vinyl/PVC golf bag rain hoods it sold in California with a clear and reasonable health hazard warning regarding the reproductive toxicity of DEHP, as required by Proposition 65.

1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as vinyl/PVC golf bag rain hoods containing DEHP that are manufactured, sold, or distributed for sale in California by Dick’s Sporting Goods including, but not limited to, the *Maxfli Golf Bag Rain Hood, MX390, UPC # 0 22275 80390 2*.

1.4 Notice of Violation

On January 17, 2018, Brimer served Dick's Sporting Goods, the California Attorney General, and all other requisite public enforcers with a document titled, "60-Day Notice of Violation" ("Notice"), alleging that Dick's Sporting Goods violated Proposition 65 by failing to provide DEHP exposure warnings for the Products to its customers and consumers in California. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Dick's Sporting Goods denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, imported, stored, distributed, shipped, sold 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 Dick's Sporting Goods of any allegation, 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 Dick's Sporting Goods of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Dick's Sporting Goods. This Section shall not, however, diminish or otherwise affect Dick's Sporting Goods' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 24, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Warn


Commencing on the Effective Date and continuing thereafter, Dick's Sporting Goods shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are either: (a) Reformulated Products as defined by Section 2.2, below; or (b) Products that are offered by Dick's Sporting Goods with a clear and reasonable warning pursuant to Section 2.3.

2.2 Reformulation Standard

For the purposes of this Settlement Agreement, "Reformulated Products" are defined as Products that contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.3 Clear and Reasonable Warning

Commencing on the Effective Date and continuing thereafter, for any Products offered for sale in California by Dick's Sporting Goods or its authorized retailers which Dick's Sporting Goods knows to have retail stores in California or to conduct online sales via the internet into California, that are not Reformulated Products, Dick's Sporting Goods agrees to only offer such Products for sale with a clear and reasonable warning in accordance with this Section, or Title 27 California Code of Regulations section 25601 *et seq.* Dick's Sporting Goods further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. For purposes of this Settlement Agreement, a warning for the Products manufactured after August 30, 2018 satisfying the above criteria and containing one of the following statements shall be deemed clear and reasonable:

 **WARNING:** This product can expose you to chemicals including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

 **WARNING:** Reproductive Harm -www.P65Warnings.ca.gov.

The warning requirements set forth in this Section shall not apply to Products manufactured, caused to be manufactured, imported, distributed, or sold by Dick's Sporting Goods before the "Effective Date".

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, Dick's Sporting Goods agrees to pay a total of \$2,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by Brimer. Dick's Sporting Goods will deliver its payment within five business days of the Effective Date in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) Russell Brimer, Client Trust Account" in the amount of \$500. Brimer's counsel shall be responsible for delivering OEHHA's portion of the penalties paid under this Settlement Agreement.

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 five business days of the Effective Date, Dick's Sporting Goods agrees to pay \$16,000 to Brimer and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Dick's Sporting Goods' management, and negotiating a settlement that provides a significant public benefit. Dick's Sporting Goods' payment shall be delivered in the form of a check payable to "The Chanler Group."

3.3 Payment Address

Within five business days of the Effective Date, all payments required by 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 Dick's Sporting Goods

This Settlement Agreement is a full, final, and binding resolution between Brimer and Dick's Sporting Goods, 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, principals, employees, representatives, attorneys, predecessors, successors, assignees and heirs, against Dick's Sporting Goods, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and each entity to whom Dick's Sporting Goods directly or indirectly distributes, ships or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, representatives, attorneys, predecessors, successors, and assignees (collectively, "Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed

for sale before the Effective Date in California by Dick's Sporting Goods, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Brimer, on his own behalf, and on behalf of his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Dick's Sporting Goods and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees for any and all claims of a violation of Proposition 65 that was or could have been asserted based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date by Dick's Sporting Goods. The releases provided by Brimer under this Settlement Agreement are provided solely on Brimer's behalf and are not releases on behalf of the public in California.

4.2 Dick's Sporting Goods' Release of Brimer

Dick's Sporting Goods, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Brimer, Brimer's attorneys, and other representatives, for any and all actions taken or statements made, whether in the course of investigating claims, seeking to enforce Proposition 65 against Dick's Sporting Goods in this matter, or with respect to the Products.

5. 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, or understandings related thereto, if any,

are hereby merged herein and therein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party hereto. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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 otherwise rendered inapplicable by reason of law generally, or as applied to the Products, then Dick's Sporting Goods shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to the Products, to the extent that the Products are so affected.

8. NOTICE

Unless specified herein, all correspondence and notice required by 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 Dick's Sporting Goods:

Maureen F. Gorsen, Esq.
Alston & Bird
1121 L Street, Suite 700
Los Angeles, CA 95814

For Brimer:

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

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.

9. 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.

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 and Safety Code section 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, understand, and agree to all of the terms and conditions of this Settlement Agreement.

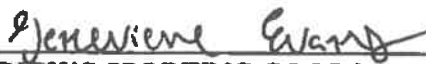
AGREED TO:

AGREED TO:

Date: 8/31/2018

Date: 8/27/18

By: 
RUSSELL BRIMER

By: 
DICK'S SPORTING GOODS, INC.
Genevieve Evans
Corporate Counsel