

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

\_\_\_\_\_  
In the Matter of )  
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 )  
Vacation Clothing Exchange, Inc. )  
d/b/a Basix USA )  
\_\_\_\_\_ )

CPSC Docket No. 08-C0020

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Vacation Clothing Exchange, Inc., d/b/a Basix USA (“Vacation Clothing”) and the staff (“Staff”) of the United States Consumer Product Safety Commission (“Commission”) enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order (“Order”) settle the Staff’s allegations set forth below.

PARTIES

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. §§ 2051 – 2084 (“CPSA”).

3. Vacation Clothing is a corporation organized and existing under the laws of Florida, with its principal offices located in Lauderdale Lakes, FL. At all times relevant hereto, Vacation Clothing imported and sold apparel.

STAFF ALLEGATIONS

4. Between May 2003 and December 2006, Vacation Clothing imported and/or sold to retailers at least 22,420 children’s sweatshirts and windbreakers with drawstrings in the hoods (“Drawstring Sweatshirts and Windbreakers”).

5. Retailers sold the Drawstring Sweatshirts and Windbreakers to consumers.

6. The Drawstring Sweatshirts and Windbreakers are “consumer product[s],” and, at all times relevant hereto, Vacation Clothing was a “manufacturer” of those consumer products, which were “distributed in commerce,” as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. § 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children’s Upper Outerwear (“Guidelines”) to help prevent children from strangling or entangling on drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children’s upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816-97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its website a letter from the Commission’s Director of the Office of Compliance to manufacturers, importers, and retailers of children’s upper outerwear. The letter urges them to make certain that all children’s upper outerwear sold in the United States complies with ASTM F1816-97. The letter states that the Staff considers children’s upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (“FHSA”) section 15(c), 15 U.S.C. § 1274(c). The letter also notes the CPSA’s section 15(b) reporting requirements.

10. The Commission was not informed of any incidents or injuries from the Drawstring Sweatshirts and Windbreakers.

11. Vacation Clothing's distribution in commerce of the Drawstring Sweatshirts and Windbreakers did not meet the Guidelines or ASTM F1816-97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On February 13, 2007, the Commission and Vacation Clothing announced a recall of the Drawstring Sweatshirts and Windbreakers, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Vacation Clothing had presumed and actual knowledge that the Drawstring Sweatshirts and Windbreakers distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. § 1274(c)(1). Vacation Clothing had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts and Windbreakers contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. § 2064(b)(2) and (3), required Vacation Clothing to immediately inform the Commission of the defect and risk.

14. Vacation Clothing knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts and Windbreakers as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. § 2064(b)(2) and (3), and as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. § 2069, this failure subjected Vacation Clothing to civil penalties.

## VACATION CLOTHING RESPONSE

15. Vacation Clothing denies the Staff's allegations above that Vacation Clothing knowingly violated the CPSA.

## AGREEMENT OF THE PARTIES

16. Under the CPSA, the Commission has jurisdiction over this matter and over Vacation Clothing.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Vacation Clothing, or a determination by the Commission, that Vacation Clothing has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Vacation Clothing shall pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000.00) in five (5) installments as follows: The first installment of five-thousand dollars (\$5,000.00) shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second payment of five-thousand dollars (\$5,000.00) shall be paid within six (6) months of service of the Commission's final Order accepting the Agreement; the third payment of five-thousand dollars (\$5,000.00) shall be paid within twelve (12) months of service of the Commission's final Order accepting the Agreement; the fourth payment of five-thousand dollars (\$5,000.00) shall be paid within eighteen (18) months of service of the Commission's final Order accepting the Agreement; and the fifth payment of five-thousand dollars (\$5,000.00) shall be paid within twenty-four (24) months of service of the Commission's final Order accepting the Agreement. Each payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set

forth in 16 C.F.R. § 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the *Federal Register*.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Vacation Clothing knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Vacation Clothing failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Vacation Clothing and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Vacation Clothing to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the

Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Vacation Clothing agree that severing the provision materially affects the purpose of the Agreement and the Order.

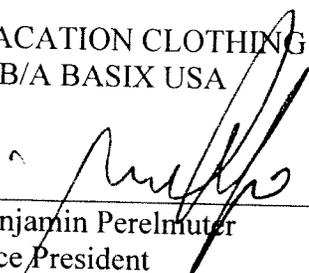
26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 C.F.R. § 1118.20 with respect to Staff allegations that any

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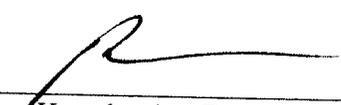
person or firm violated 15 U.S.C. § 2068, where the total amount of the settlement involves no more than \$100,000.

VACATION CLOTHING EXCHANGE, INC.  
D/B/A BASIX USA

Dated: 7/21/08 By: \_\_\_\_\_

  
Benjamin Perelmuter  
Vice President  
Vacation Clothing Exchange, Inc., d/b/a Basix USA  
2778 NW 31<sup>st</sup> Avenue  
Lauderdale Lakes, FL 33311

Dated: 7/21/08 By: \_\_\_\_\_

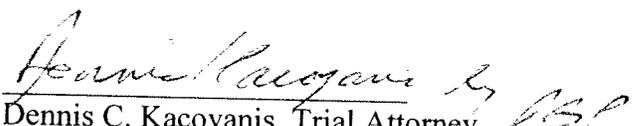
  
Brian Kopelowitz, Esquire  
The Kopelowitz Ostrow Law Firm, P.A.  
200 SW 1<sup>st</sup> Avenue, 12<sup>th</sup> Floor  
Fort Lauderdale, FL 33301  
Attorney for Vacation Clothing Exchange, Inc.,  
d/b/a Basix USA

U.S. CONSUMER PRODUCT SAFETY  
COMMISSION STAFF

J. Gibson Mullan  
Assistant Executive Director  
Office of Compliance and Field Operations

Ronald G. Yelenik, Acting Director  
Legal Division  
Office of Compliance and Field Operations

Dated: 7/31/08 By: \_\_\_\_\_

  
Dennis C. Kacoyanis, Trial Attorney  
Legal Division  
Office of Compliance and Field Operations

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CPSC Docket No. 08-C0020

ORDER

Upon consideration of the Settlement Agreement entered into between Vacation Clothing Exchange, Inc., d/b/a Basix USA (“Vacation Clothing”) and the U.S. Consumer Product Safety Commission (“Commission”) staff, and the Commission having jurisdiction over the subject matter and over Vacation Clothing, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED, that the Settlement Agreement be, and hereby is, accepted; and it is

FURTHER ORDERED, that Vacation Clothing shall pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000.00) in five (5) installments as follows: The first payment of five-thousand dollars (\$5,000.00) shall be paid within twenty (20) calendar days of service of the Commission’s final Order accepting the Agreement; the second payment of five-thousand dollars (\$5,000.00) shall be paid within six (6) months of service of the Commission’s final Order accepting the Agreement; the third payment of five-thousand dollars (\$5,000.00) shall be paid within twelve (12) months of service of the Commission’s final Order accepting the Agreement; the fourth payment of five-thousand dollars (\$5,000.00) shall be paid within eighteen (18) months of service of the Commission’s final Order accepting the Agreement; and

the fifth payment of five-thousand dollars (\$5,000.00) shall be paid within twenty-four (24) months of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Vacation Clothing to make the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Vacation Clothing at the federal legal rate of interest set forth at U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 4<sup>th</sup> day of August 2008.

BY ORDER OF THE COMMISSION:



Todd A. Stevenson, Secretary  
U.S. Consumer Product Safety Commission