

1 Laralei S. Paras, State Bar No. 203319
Daniel Bornstein, State Bar No. 181711
2 PARAS LAW GROUP
655 Redwood Hwy., Suite 216
3 Mill Valley, CA 94941
Tel: (415) 380-9222
4 Fax: (415) 380-9223

5 Clifford A. Chanler, State Bar No. 135534
CHANLER LAW GROUP
6 71 Elm Street, Suite 8
New Canaan, CT 06840
7 Tel: (203) 966-9911
8 Fax: (203) 801-5222

9 Attorneys for Plaintiff
RUSSELL BRIMER

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA – HAYWARD BRANCH
13 UNLIMITED CIVIL JURISDICTION

14
15 RUSSELL BRIMER) No. HG04188878
16 Plaintiff,)
17 v.) **PROPOSITION 65 SETTLEMENT**
18) **AGREEMENT RE: ATTORNEYS'**
19 GOTTSCHALKS, INC.; and DOES 1 through) **FEEES AND COSTS**
150.)
20 Defendants.)
21 _____)

1 This Proposition 65 Settlement Agreement Re: Attorneys' Fees and Costs ("Agreement")
2 is entered into by and between plaintiff Russell Brimer ("Plaintiff"), a California citizen, on the one
3 hand, and defendant Gottschalks, Inc., a corporation ("Gottschalks"), on the other hand
4 (collectively referred to herein as the "Parties"), as of December 15, 2005, (the "Effective Date")
5 with reference to the following:

6 **WHEREAS,**

7 A. Russell Brimer represents that he is an individual residing in Northern California.
8 who seeks to promote awareness of exposures to toxic chemicals and improve human health by
9 reducing or eliminating hazardous substances contained in consumer products.

10 B. Gottschalks represents that it is a company that has sold suncatchers plaintiff alleged
11 contained lead and/or lead compounds.

12 C. On or about July 30, 2004, Russell Brimer first served Gottschalks and certain
13 public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice")
14 which provided notice that Russell Brimer considered Gottschalks to be in violation of Proposition
15 65 for allegedly failing to warn purchasers that certain products they manufacture, distribute and/or
16 offer for sale in California expose users to the listed chemical. Specifically, the Notice alleged that
17 Gottschalks manufactures, distributes and/or offers for retail sale in California suncatchers that
18 contain one or more chemicals listed pursuant to California Health & Safety Code §25249.5 *et seq.*
19 ("Proposition 65") including lead and lead compounds (the "Listed Chemicals"). Further alleged in
20 the Notice is that Gottschalks has manufactured, distributed and/or sold these suncatchers for use in
21 California since at least December 17, 2003.

22 D. On December 10, 2004, Russell Brimer filed a Complaint entitled *Russell Brimer v.*
23 *Gottschalks, Inc., et al.*, Case No. HG04188878, in the Alameda County Superior Court against
24 Gottschalks, regarding the Proposition 65 claims described in the 60-Day Notice ("Action").

25 ////

26 ////

27 ////

28 ////

1 E. In order to avoid the costs and expense of litigation, and without admitting liability
2 or wrongdoing by any Party, the Parties have elected to resolve this matter by settlement on the
3 terms set forth in the Stipulation and Order Re: Consent Judgment (“Consent Judgment”) approved
4 by the Court on November 11, 2005 and this Proposition 65 Settlement Agreement Re: Attorneys’
5 Fees and Costs.

6
7 **BASED ON THE FOREGOING AND THE MUTUAL PROMISES AND COVENANTS SET
8 FORTH BELOW, THE PARTIES AGREE AS FOLLOWS:**

8 1. **Reimbursement of Fees and Costs.** The Parties acknowledge they agreed to
9 resolve the dispute without reaching an agreement on the amount of attorneys’ fees and costs to
10 be reimbursed to Russell Brimer, thereby leaving open this issue to be resolved after the material
11 terms of the settlement had been reached, and the agreement signed. Following the execution of
12 the Consent Judgment and entry of Judgment based on the terms of the Consent Judgment, the
13 Parties then attempted to (and did) reach an accord on the amount of reimbursement for
14 attorneys’ fees and costs incurred by Russell Brimer and his counsel under the private attorney
15 general doctrine codified at Code of Civil Procedure §1021.5 for all work performed through the
16 Effective Date of the Agreement and reasonably to be performed in connection with the terms set
17 forth in this Agreement after the Effective Date.

18 Under the private attorney general doctrine codified at Code of Civil Procedure §1021.5,
19 Gottschalks shall reimburse Russell Brimer and his counsel for fees and costs, incurred as a result
20 of investigating, bringing this matter to the parties’ attention, litigating and negotiating a settlement
21 in the public interest in the amount of \$25,225 for all attorneys’ fees, expert and investigation fees,
22 and litigation costs incurred through the Effective Date (and including those efforts through the
23 Court’s approval of this agreement and monitoring Gottschalks’ compliance with the terms of this
24 agreement) on or before December 30, 2005. Payment should be made payable to “Chanler Law
25 Group.”

26 ////

27 ////

28 ////

1 2. **Severability.** In the event that any of the provisions of this Agreement are held by a
2 court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

3 3. **Attorneys' Fees.** In the event that a dispute arises with respect to the interpretation
4 or enforcement of any provision(s) of the Consent Judgment or this Agreement, the prevailing party
5 in any action to interpret or enforce the Consent Judgment or this Agreement shall be entitled to
6 recover its costs and reasonable attorneys' fees.

7 4. **Governing Law.** The terms of this Agreement shall be governed by the laws of the
8 State of California.

9 5. **Compliance with Health & Safety Code § 25249.7(f).** Plaintiff agrees to comply
10 with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). Pursuant to
11 regulations promulgated under that section, Plaintiff shall present this Agreement to the California
12 Attorney General's Office within five (5) days after receiving all of the necessary signatures.

13 6. **Additional Post Execution Activities.** The Parties shall mutually employ their best
14 efforts to obtain approval of this Agreement by the Court in a timely manner. In the event that any
15 third party, including the Attorney General or any other public enforcer, objects or otherwise
16 comments to one or more provisions of this Agreement, Gottschalks agrees to undertake its best
17 efforts to satisfy such concerns or objections and support the terms of this Agreement.

18 7. **Counterparts and Facsimile.** This Agreement may be executed in counterparts
19 and facsimile, each of which shall be deemed an original, and all of which, when taken together,
20 shall constitute one and the same document.

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////


1 8. **Authorization.** Each of the undersigned represents and warrants that he or she is
2 authorized to execute this Agreement on behalf of the respective Parties for which they are
3 signing and have read, understood and agree to all of the terms and conditions of this Agreement.

4
5 **AGREED TO:**

5 **AGREED TO:**

6 Date: December 27, 2005

6 Date: December __, 2005

7
8 By: 
9 Plaintiff Russell Brimer

8 By: _____
9 Defendant Gottschalks, Inc.

10 **APPROVED AS TO FORM:**

10 **APPROVED AS TO FORM:**

11 Date: December 27, 2005

11 Date: December __, 2005

12
13 PARAS LAW GROUP

12
13 THE LAW FIRM OF WEAKLEY,
14 RATLIFF, ARENDT & McGUIRE, LLP

14
15 By: 
16 Laralee S. Paras
17 Attorneys for Plaintiff
18 RUSSELL BRIMER

15 By: _____
16 Rosemary T. McGuire
17 Attorneys for Defendant
18 GOTTSCHALKS, INC.

1 8. **Authorization.** Each of the undersigned represents and warrants that he or she is
2 authorized to execute this Agreement on behalf of the respective Parties for which they are
3 signing and have read, understood and agree to all of the terms and conditions of this Agreement.

4
5 **AGREED TO:**

6 Date: December __, 2005

7
8 By: _____
9 Plaintiff Russell Brimer

5 **AGREED TO:**

6 Date: December 21, 2005

7
8 By: *George J. Amador*
9 Defendant Gottschalks, Inc.

10 **APPROVED AS TO FORM:**

11 Date: December __, 2005

12
13 PARAS LAW GROUP

14
15 By: _____
16 Laralei S. Paras
17 Attorneys for Plaintiff
18 RUSSELL BRIMER

10 **APPROVED AS TO FORM:**

11 Date: December 21, 2005

12
13 THE LAW FIRM OF WEAKLEY,
14 RATLIFF, ARENDT & McGUIRE, LLP

15 By: *Rosemary T. McGuire*
16 Rosemary T. McGuire
17 Attorneys for Defendant
18 GOTTSCHALKS, INC.