

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Russell Brimer and Fantasia Accessories, Ltd.

This Settlement Agreement (“Agreement”) is entered into by and between Russell Brimer, (hereinafter “Brimer”), and Fantasia Accessories, Ltd (hereinafter, “Fantasia”), with Brimer and Fantasia collectively referred to as the “Parties.” Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Fantasia employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

### 1.2 General Allegations

Brimer alleges that Fantasia has manufactured, distributed and/or sold in the State of California vinyl belts containing lead. Lead is a listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical known to the State of California to cause reproductive harm. Lead is referred to herein as the “Listed Chemical.”

### 1.3 Product Description

The products that are covered by this Agreement are defined as belts containing the Listed Chemical, including, but not limited to: Simply Basic Belt (#0 43834 08100 5). All such items shall be referred to herein as the “Products.”

**1.4 Notices of Violation**

On September 30, 2009, Brimer served Fantasia and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Fantasia and such public enforcers with notice that alleged that Fantasia was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the belt products exposed users in California to the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Fantasia denies the material factual and legal allegations contained in Brimer's Notices and maintains that all Products that it has sold and distributed in California have been and are in compliance with the law. Nothing in this Agreement shall be construed as an admission by Fantasia of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Fantasia of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Fantasia. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Fantasia under this Agreement.

**1.6 Effective Date**

For purposes of this Agreement, the term "Effective Date" shall mean the date the Agreement is fully executed.

**2. INJUNCTIVE RELIEF – REFORMULATION**

After the Effective Date, Fantasia shall not sell, ship or offer to be shipped for sale in

California any Products containing the listed Chemical unless should products comply with the reformulation standards of Section 2.1, or are otherwise excepted pursuant to Section 2.2.

**2.1 Reformulation.** After the Effective Date, the Products shall meet a reformulation standard that does not exceed the following limits: Lead in accessible components: 300 parts per million by weight for any accessible component part. For purposes of this Agreement, accessible component part shall mean components of a Product to which a person would be exposed to Lead by direct contact during normal and reasonably foreseeable use.

**2.2 Exceptions**

Except as otherwise provided for in this Agreement, the reformulation requirements set forth in Sections 2.1 shall not apply to:

- (i) Products manufactured before the Effective Date;
- (ii) Products for which a warning has been provided to the extent required under California Proposition 65.

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

In settlement of all the claims referred to in this Agreement, Fantasia shall pay the amount of \$1,000. Fantasia shall issue two separate checks for the penalty payment: (a) one check made payable to Chanler Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("Chanler Law Group in Trust for OEHHA") in the amount of \$750, representing 75% of the total penalty, and (b) one check to "Chanler Law Group in Trust for Brimer" in the amount of \$250 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010,

Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to Brimer, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before April 30, 2010, 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 Brimer and his counsel under the private attorney general doctrine and contract law. Under these legal principles, Fantasia shall reimburse Brimer's counsel for fees and costs incurred as a result of investigating, bringing this matter to Fantasia's attention, and negotiating a settlement in the public interest. Fantasia shall pay Brimer and his counsel \$12,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "Chanler Law Group" and shall be delivered on or before April 30, 2010, at the following address:

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

Fantasia shall issue a separate 1099 for fees and cost paid to Chanler Law Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN: 20-3929984).

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Fantasia and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, including, without limitation, The Chanler Group, all of their 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Fantasia and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, (including, but not limited to, Dollar Tree, Inc. and Dollar Tree Stores, Inc.) franchisees, 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 "Fantasia Releasees"). This release is limited to those Claims that arise under Proposition 65, as such claims relate to Fantasia' alleged failure to warn under the law or identification of lead contained in the Products.

Brimer in his individual capacity and *not* his representative capacity hereby releases all claims against Fantasia, irrespective of the subject matter, of all character, kind and nature, whether said claims are known or unknown or are suspected or unsuspected and Brimer expressly

waives any and all rights and benefits which he now has, under California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Compliance with the terms of this Agreement resolves any issue, now and in the future, concerning compliance by Fantasia and Fantasia Releasees with the requirements of Proposition 65 with respect to alleged exposure to Lead in the Products.

The Parties intend and agree that this Agreement shall be given full effect for purposes of precluding claims regarding the Products against Fantasia or the Fantasia Releasees under Proposition 65 as covered under this release. If requested in writing by Fantasia, Brimer shall file a complaint and seek approval of this Agreement through a court approved consent judgment incorporating the terms of this Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law, and Brimer shall reasonably cooperate with Fantasia and use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Agreement for approval by a superior court in California. Pursuant to CCP Sections 1021 and 1021.5, Fantasia will reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Agreement, in an amount not to exceed Ten Thousand Dollars (\$10,000) and Chanler and/or Brimer will use their best reasonable efforts to limit any such fees and costs to no more than Six Thousand Dollars (\$6,000). No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Fantasia to have Brimer file a complaint and seek a

consent judgment. Fantasia will remit payment to Chanler Law Group, at the address set forth in Section 8 below. Such additional fees shall be paid by Fantasia within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

**5.2 Fantasia's Release of Brimer**

Fantasia waives any and all claims against 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 Brimer and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

**6. SEVERABILITY**

If, subsequent to the execution of this Agreement, any of the provisions of this Agreement are determined 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 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 Fantasia may provide written notice to Brimer of any asserted change in the law, and shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve Fantasia from any obligation to comply with any pertinent state or federal toxics control law.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this 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:

For Fantasia:

Eddie Azar  
Fantasia Accessories, Ltd  
31 W. 34<sup>th</sup> St.  
New York, NY 10001

With copies to:

Mark R. Kaster  
Dorsey & Whitney, LLP  
50 South 6<sup>th</sup> Street  
Minneapolis, MN 55402

For 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.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Agreement may be executed in counterparts and by facsimile, 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 agrees to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f).

11. MODIFICATION

This Agreement may be modified only by a written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.


AGREED TO:

AGREED TO:

Date: \_\_\_\_\_  
\_\_\_\_\_

Date: 4/20/10  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

By:   
\_\_\_\_\_

Anthony E. Brimer, Ph.D., P.E.

Eddie Azar, President  
Fantasia Accessories, Ltd.

document.

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This Agreement may be modified only by a written agreement of the Parties.

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The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 4-16-10

Date: \_\_\_\_\_

By:  \_\_\_\_\_

Russell Brimer

By: \_\_\_\_\_

Eddie Azar, President  
Fantasia Accessories, Ltd.