

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 The Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Accessories Marketing, Inc. (“Accessories Marketing”), with Brimer and Accessories Marketing collectively referred to as the “Parties.”

#### 1.2 Brimer

Brimer is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

#### 1.3 Accessories Marketing

Accessories Marketing employs 10 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).

#### 1.4 General Allegations

Brimer alleges that Accessories Marketing has manufactured, distributed and/or sold, in the State of California, tire pressure gauge products that expose users to lead, without first providing “clear and reasonable warning” under Proposition 65. Lead is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.” Tire pressure gauge products, including but not limited to *Slime Tire Pressure Gauge #20055 (#7 16281 00199 4)*, that allegedly expose users to Lead are referred to herein as the “Products”.

#### 1.5 Notice of Violation

On February 12, 2010, Brimer served Accessories Marketing and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and Accessories Marketing with notice of alleged violations of

Health & Safety Code § 25249.6 for failing to warn consumers that tire gauges that Accessories Marketing distributed and/or sold exposed users in California to lead.

#### **1.6 No Admission**

This Settlement Agreement resolves claims that are denied and disputed by Accessories Marketing. The Parties enter into this Settlement Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Accessories Marketing denies the material factual and legal allegations contained in the Notice and maintains that all Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Settlement Agreement shall be construed as an admission by Accessories Marketing of any fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Accessories Marketing of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Accessories Marketing. However, this Section shall not diminish or otherwise affect Accessories Marketing's obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.7 Effective Date**

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

## **2. INJUNCTIVE RELIEF: REFORMULATION**

**Tire Gauges.** Commencing on October 15, 2010, Accessories Marketing shall not ship, sell or offer for sale in California any Products unless such Products 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. The brass tongue component fitted within the pressure gauge stem of Products is not considered accessible for handling, touching or mouthing during reasonably foreseeable use or misuse. Products that are Lead Free are referred to hereinafter as “Reformulated Products.”

### **3. MONETARY PAYMENTS**

#### **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

In settlement of all claims related to the Covered Products and Listed Chemical referred to in the Complaint and this Settlement Agreement, pursuant to Health & Safety Code § 25249.7(b), Accessories Marketing shall pay \$4,000 in civil penalties.

Civil penalties are to be apportioned in accordance with California Health & Safety Code §§25249.12(c)(1) & (d), with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer as provided by California Health & Safety Code §25249.12(d). Accessories Marketing shall issue two separate checks for the penalty payment: (a) one check made payable to “The Chanler Group in Trust for OEHHA” in an amount representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Brimer” in an amount representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose information shall be provided five (5) calendar days before the payment is due.

3.1.1 Payment shall be delivered to Brimer’s counsel at the following address on or before October 15, 2010:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

#### **4. REIMBURSEMENT OF FEES AND COSTS**

##### **4.1 Attorney Fees and Costs**

4.1.1 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 California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual execution of this agreement and approval by the trial court, excluding any fees on appeal. Accessories Marketing shall pay Brimer and his counsel a total of \$28,000 for fees and costs incurred as a result of investigating, bringing this matter to Accessories Marketing's attention, and negotiating a settlement in the public interest.

4.1.2 The payment shall be issued in a third separate check made payable to "The Chanler Group" and shall be delivered to Brimer's counsel at the following address on or before October 15, 2010:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

#### **5. CLAIMS COVERED AND RELEASE**

##### **5.1 Brimer's Release of Accessories Marketing and its Chain of Distribution**

5.1.1 This Settlement Agreement is a full, final, and binding resolution between Brimer, acting on behalf of himself and in the interest of the general public, and Accessories Marketing, its owners, subsidiaries, affiliates, sister and related companies, employees, shareholders, directors, insurers, attorneys, successors, and assigns ("Accessories Marketing Releasees"), and all entities to whom they directly or indirectly distribute or sell Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream

Releasees”) of any violation of Proposition 65 or any statutory or common law claim that has been or could have been asserted against Accessories Marketing Releasees and Downstream Releasees individually or in the public interest regarding the failure to warn about exposure to the Listed Chemical arising in connection with Products manufactured and/or distributed prior to the Effective Date even if sold by Downstream Releasees after the Effective Date. Accessories Marketing’s compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemical in Products for both Accessories Marketing Releasees and Downstream Releasees for Products distributed and/or sold by Accessories Marketing after the Effective Date.

5.1.2 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 with respect to Products 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 Accessories Marketing Releasees and Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in the public interest, as such claims relate to Accessories Marketing Releasees’ and Downstream Releasees’ alleged failure to warn about exposures to the Listed Chemical contained in the Products.

5.1.3 Brimer also, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees and not in his representative capacity, provides a general 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 any nature,

character or kind, known or unknown, suspected or unsuspected, against Accessories Marketing Releasees and Downstream Releasees arising under Proposition 65, as such claims relate to Accessories Marketing Releasees' alleged failure to warn about exposures to or identification of any chemicals listed under Proposition 65 contained in any products sold by Accessories Marketing Releasees. Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, 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.

Brimer, in his individual capacity only and *not* in his representative capacity, and on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.1.4 The Parties further understand and agree that, except as provided for above, this release shall not extend upstream to any third parties that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Accessories Marketing.

## 5.2 **Accessories Marketing's Release of Brimer**

5.2.1 Accessories Marketing 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 them in this matter, and/or with respect to the Products.

5.2.2 Accessories Marketing also provides a general 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 Accessories Marketing of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Accessories Marketing acknowledges that it is familiar with Section 1542 of the California Civil Code, 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.

Accessories Marketing expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

## **6. SEVERABILITY**

If any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely

affected unless the Court finds that any unenforceable provision is not severable from the remainder of the Settlement Agreement.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Products, then Accessories Marketing shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**8. NOTICES**

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by certified mail and electronic mail to the person(s) identified below:

To Accessories Marketing:  
Brent Christensen, Chief Financial Officer  
Accessories Marketing, Inc.  
800 Farroll Road  
Grover Beach, CA 93433

With copy to:  
George Gigounas, Esq.  
DLA Piper LLP  
555 Mission Street, 24<sup>th</sup> Floor  
San Francisco, CA 94105

To Brimer:  
The Chanler Group  
Attn: Proposition 65 Coordinator  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.



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

Brimer agrees 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. 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, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

**12. ATTORNEY'S FEES**

12.1 A Party who unsuccessfully brings or contests an action arising out of this Settlement Agreement shall be required to pay the prevailing Party's reasonable attorney's fees and costs unless the unsuccessful Party has acted with substantial justification. For purposes of this Settlement Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

12.2 Except as specifically provided in the above paragraph and in Section 4.1 above, each Party shall bear its own costs and attorney's fees in connection with this action.

**13. COUNTERPARTS, FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same documents.

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 Settlement 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)**

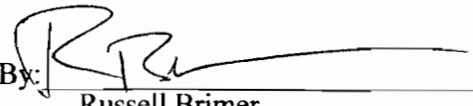
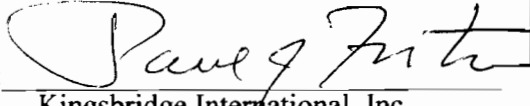
Brimer agrees to comply with the reporting requirements referenced in California Health & Safety Code § 25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by a 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, understood and agree to all of the terms and conditions of this Settlement Agreement.

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: <u>10-8-10</u>	Date: <u>10-11-10</u>
By:  Russell Brimer	By:  Kingsbridge International, Inc.