

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Russell Brimer and Delsey Luggage, Inc. USA

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Delsey Luggage, Inc. USA (“Delsey”) with Brimer and Delsey collectively referred to as the “Parties.” Brimer is an individual residing in the state of California who asserts that he seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Delsey employs ten 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”).

#### 1.2 General Allegations

Brimer alleges that Delsey has manufactured, distributed, sold and/or offered for sale in California shopper bags containing lead and the phthalate chemicals di(2-ethylhexyl)phthalate (“DEHP”) and di-n-butyl phthalate (“DBP”) without the requisite Proposition 65 warnings. Lead, DEHP and DBP (hereinafter “Listed Chemicals”) are listed pursuant to Proposition 65 as chemicals known to cause birth defects and other reproductive harm.

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: shopper bags containing the Listed Chemicals including, but not limited to, *Delsey On The Go Medium Shopper*, #07518 (#0 98376 99828 1) and *Delsey On the Go Large Shopper* manufactured, distributed, sold and/or offered for sale in California by Delsey. All such shopper bags containing the Listed Chemicals are referred to hereinafter as the “Products.”

#### **1.4 Notices of Violation**

On or about June 17, 2010, Brimer served Delsey and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“June Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by Delsey for failing to warn its customers and consumers in California that the Products it sold exposed users to lead. On or about November 23, 2010, Brimer served Delsey and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“November Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by Delsey for failing to warn its customers and consumers in California that the Products it sold exposed users to DEHP and DBP. The June Notice and the November Notice shall be collectively referred to herein as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

#### **1.5 No Admission**

Delsey denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products that it has sold and distributed 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 Delsey of any 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 Delsey of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Delsey. However, this section shall not diminish or otherwise affect Delsey’s obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean November 30, 2011.

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

### **2.1 Reformulation Standards**

As of the Effective Date, Delsey shall only manufacture, distribute, sell and/or offer for sale in California Products that are both “Lead Free” and “Phthalate Free,” or include warnings in accordance with Section 2.2 below. 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. Additionally, for purposes of this Settlement Agreement, “Phthalate Free” Products shall mean Products containing less than or equal to 1,000 parts per million (0.1%) of DEHP and less than or equal to 1,000 parts per million (0.1%) of DBP when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C. Products that are Lead Free and Phthalate Free are hereinafter referred to as “Reformulated Products.”

### **2.2 Warning Requirement**

Commencing on the Effective Date, Delsey shall, for all Products sold in California that are not Reformulated Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). Each warning shall be prominently placed with such conspicuousness, as 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

**(a) Retail Store Sales**

**(i) Product Labeling.** Delsey shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Delsey or any person selling the Products, that states:

**WARNING:** This product contains chemicals known to the state of California to cause birth defects and other reproductive harm.

**(ii) Point-of Sale Warnings.** Alternatively, Delsey may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Delsey's customers shall be sent by certified mail, return receipt requested.

**WARNING:** This product contains chemicals known to the state of California to cause birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.1), the following statement shall be used:<sup>1</sup>

**WARNING:** This product contains chemicals known to the state of California to cause birth defects and other reproductive harm.

*[list products for which warning is required]*

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<sup>1</sup> For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

**(b) Mail Order Catalog and Internet Sales**

In the event that Delsey sells Products via mail order catalog or internet to customers located in California after the Effective Date that are not Reformulated Products, Delsey shall provide a warning for Products sold via mail order catalog or the internet to California residents: (1) in the mail order catalog; or (2) on the internet. Warnings given in the mail order catalog or on the internet shall identify the specific Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

**(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

**WARNING:** This product contains chemicals  
known to the state of California to  
cause birth defects and other  
reproductive harm.

If Delsey elects to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Products printed after the Effective Date.

**(ii) Internet Warning.** A warning may be given in conjunction with the sale of the Products via the internet, provided it appears either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

**WARNING:** This product contains chemicals known to the state of California to cause birth defects and other reproductive harm.

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

Pursuant to California Health & Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notices and Complaint and referred to in this Settlement Agreement, Delsey shall pay \$1,000.

The penalty amount of \$1,000 will be paid by Delsey and apportioned according to Health & Safety Code §§ 25249.12 (c)(1) & (d), with 75% of the penalty amount remitted to the state of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty paid to Brimer.

Delsey shall issue two checks for the penalty payment: (a) one check payable to "The Chanler Group in Trust for OEHHA" in the amount of \$750 and (b) one to "The Chanler Group in Trust for Brimer" in the amount of \$250. Two 1099 forms shall be provided for the above payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Brimer, whose address and tax identification number shall be furnished, upon request, at least five (5) calendar days before payment is due. Payment shall be delivered on or before the Effective Date 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 principles of contract law. Under these legal principles, Delsey shall reimburse Brimer's counsel for a portion of the fees and costs incurred as a result of investigating, bringing this matter to Delsey's attention, and

negotiating a settlement in the public interest. Delsey shall pay Brimer's counsel \$10,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third check made payable to "The Chanler Group" and shall be delivered on or before the Effective Date at the following address:

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

Delsey shall issue a separate 1099 for attorneys' fees and costs paid to The Chanler Group (EIN: 94-3171522).

## **5. CLAIMS COVERED AND RELEASED**

### **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

This Settlement Agreement is a full, final and binding resolution between Russell Brimer, on behalf of himself and the public, and Delsey, of any violation of Proposition 65 that was or could have been asserted by Brimer against Delsey, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Delsey directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on their failure to warn about alleged exposures to lead, DEHP or DBP contained in the Products that were sold by Delsey.

### **5.2 Brimer's Public Release of Proposition 65 Claims**

In further consideration of the promises and agreements herein contained, 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 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, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to lead, DEHP and DBP in the Products sold by Delsey (collectively "claims"), against Delsey and Releases.

### **5.3 Brimer Individual Release of Claims Against Delsey**

Brimer also, in his individual capacity only and *not* in his representative capacity, provides a 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 plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead, DEHP and DBP in the Products manufactured, distributed or sold by Delsey.

### **5.4 Delsey's Release of Brimer**

Delsey on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby 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 to enforce Proposition 65 against it in this matter with respect to the Products.

## **6. POST EXECUTION ACTIVITIES**

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Delsey or the Releasees under Proposition 65 as covered under this release. If requested in writing by Delsey (within twelve months of the Effective Date), Delsey may ask Brimer to file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If



requested, Brimer agrees to reasonably cooperate with Delsey and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, Delsey will reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement in an amount not to exceed \$16,000. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Delsey to have Brimer file a complaint and seek a consent judgment. Delsey will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Delsey within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph. In the event a third party were to appeal the entry of a consent judgment sought pursuant to this Section 6, Brimer and his counsel shall be entitled to seek their fees and costs associated with all such appealed work pursuant to CCP § 1021.5.

**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 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Delsey may provide written notice to Brimer of any asserted change in the law, and 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**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (a) first-class, registered or certified mail, return receipt requested; or (b) overnight courier on any party by the other party at the following addresses:

To Delsey:

Mike Silén, Chief Financial Officer & Vice President  
Delsey Luggage, Inc. USA  
6090 Dorsey Road  
Hanover, MD 21076  
6735 Business Parkway, Suite A  
Elkridge, MD 21075

With copy to:

Jerald Oppel  
Ober, Kaler, Grimes & Shriver, PC  
Attorneys at Law  
100 Light Street  
Baltimore, MD 21202

To Russell 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 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. A facsimile or .pdf signature shall be as valid as the original.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Russell Brimer and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. MODIFICATION**

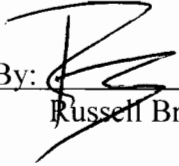
This Settlement Agreement may be modified only by written agreement of the Parties.

**12. AUTHORIZATION**

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

AGREED TO:

Date: 11-16-11

By:   
Russell Brimer

AGREED TO:

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

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

Mike Silén, Chief Financial Officer &  
Vice President  
Delsey Luggage, Inc. USA

**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.

AGREED TO:

Date:

By:

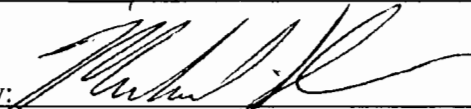
Russell Brimer

AGREED TO:

Date:

11/18/11

By:



Mike Silén, Chief Financial Officer &  
Vice President  
Delsey Luggage, Inc. USA