

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and Milano Series International Products Ltd.

This Settlement Agreement is entered into by and between Russell Brimer (hereinafter "Brimer") and Milano Series International Products Ltd. (hereinafter "Milano"), with Brimer and Milano 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. Milano 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 Milano has manufactured, distributed and/or sold in the State of California the Milano Series Cosmetic Pouch containing lead. Lead is 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 be a reproductive toxicant. Lead shall be referred to herein as the "Listed Chemical."

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as the Milano Series Cosmetic Pouch, Item #10048813, manufactured, imported, distributed and/or sold into California by Milano. Such products collectively are referred to herein as the "Covered Products."

1.4 Notice of Violation

On or about November 23, 2010, Brimer served Milano and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Milano and such public enforcers with notice that alleged that Milano was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Covered Products exposed users in California to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Milano denies the material factual and legal allegations contained in Brimer's Notice and maintains that all products that it has sold and distributed in California, including the Covered

Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Milano 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 Milano of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Milano. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Milano under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean March 1, 2012.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 New Product Reformulation Commitment

Defendant represents and warrants that prior to February 1, 2012, it has discontinued the Covered products and had all Covered Products withdrawn from California retail outlets and destroyed. Hereafter, should Defendant manufacture, purchase or distribute Covered Products, such Covered Products shall be Lead Free, as set forth below.

For purposes of this Settlement Agreement, "Lead Free" products shall mean Covered Products containing materials on any outer surface of the exterior or interior of the Covered Product that may be handled, touched or mouthed by a consumer, and which surface materials each yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100 and each yield less than 100 parts per million ("ppm") lead when such surface material is 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.

2.2 Existing Product Warnings

Based on Defendant's representation and warranty that it has no Covered Products that are not Lead Free, and that all such Covered Products have been withdrawn from California retail outlets or destroyed, no Product Warning is required by this Settlement Agreement.

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

3.1 Penalty Assessment

As partial consideration for settlement of all the claims referred to in this Settlement Agreement, Defendant shall pay \$11,500.00 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies remitted to Brimer as provided by California Health & Safety Code §25249.12(d). Defendant shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$8,625.00, representing 75% of the total penalty and (b) one check to The Chanler Group in Trust for Brimer in the amount of \$2,875.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$8,625.00. The second 1099 shall be issued to Brimer in the amount of \$2,875.00, whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due.

Payments 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

3.2 Penalty Augmentation

If within nine (9) months of the Effective Date, plaintiff discovers and presents to Defendant evidence that the Covered Products have been distributed by Milano in sales volumes materially different than those identified by Defendant prior to execution of this Agreement, then Defendant shall be liable for an additional penalty amount of \$150 per quantity of Covered Product sold prior to execution of this Agreement but not identified by Defendant to plaintiff. Defendant shall also be liable for any reasonable, additional attorney fees expended by plaintiff in discovering such additional retailers or sales. Plaintiff agrees to provide Defendant with a written demand for all such

additional penalties and attorney fees under this Section. After service of such demand, defendant shall have thirty (30) days to agree to the amount fees and penalties owing by Defendant and submit such payment to plaintiff in accordance with the method of payment of penalties and fees identified in Sections 3.1 and 4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, plaintiff shall be entitled to file a formal legal claim for damages for breach of this contract and shall be entitled to all reasonable attorney fees and costs relating to such claim.

3.3 Optional Penalty Reductions

Defendants may reduce their penalty obligation in Section 3.1 by agreeing to perform and performing the following commitment:

Defendant may realize a \$2,500.00 reduction in the total penalty amount due under Section 3.1 above if Defendant agrees, by express, written confirmation, from a director or officer of Defendant, served upon Brimer and his counsel by the Effective Date, that such Defendant has issued a written letter (electronic or otherwise) notice to (1) each California retail store or establishment to which it supplied any Covered Products within one year prior to the Effective Date (for any chain stores, such notice shall be sent to each individual store), (2) any business entity for which Defendant shipped Covered Products inside the State of California, (3) any other business entity to which Defendant sold or distributed Covered Products and which entity Defendant is reasonably aware of having sold any Covered Product in California within one year prior to the Effective Date and (4) any other business entity to which Defendant sold or distributed Covered Products, within one year prior to the Effective Date, and which entity Defendant is reasonably aware of having made any Covered Product available for sale through a web-based store, portal or other internet connected electronic method, that identifies the Covered Product, advises the recipient that each such Covered Product "is made with materials that contain LEAD, a chemical known to the State of California to cause birth defects and other reproductive harm", and requests such recipient to either label the Covered Product with the product label identified in Section 2.2 or to return the Covered Product to Defendant at Defendant's sole expense. Defendant shall maintain records of all compliance correspondence or other communication generated pursuant to this Section for two (2) years from the Effective Date and shall produce copies of such records upon written request by Brimer.

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, Defendant shall reimburse Brimer’s counsel for fees and costs, incurred as a result of investigating, bringing this matter to Defendant’s attention, and negotiating a settlement in the public interest. Except as to any attorney fees and costs expended pursuant to Section 3.2, Defendant shall pay Brimer and his counsel \$31,000.00 for all attorneys' fees, expert and investigation fees, and related costs. The payment of this reimbursement amount shall be made payable to The Chanler Group and shall be delivered for receipt by The Chanler Group on the following schedule:

On or before February 23, 2012:	\$6,000.00
On or before March 19, 2012:	\$12,500.00
On or before April 13, 2012:	\$12,500.00

All payments under this Section shall be delivered to the following address:

THE CHANLER GROUP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

Paying Defendant shall issue a separate 1099 for fees and cost paid in the amount of \$31,000.00 to The Chanler Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710. If one or more of the payments required by this section is not made on or before the required date, such payment amount shall accrue simple interest at a 10% annual interest rate until paid.

This agreement is conditioned and contingent upon all payments under Sections 3 and 4 being made. Should any such payment not be made within ninety (90) days of the payment due date then this Agreement shall be void and any previous payment delivered by defendant hereunder shall be forfeited to payee and shall not be subject to recovery or use as future credit.

5. RELEASE OF ALL CLAIMS

5.1 Release of Defendants 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, and excepting any claim, agreement, penalty, fee or cost to be agreed or assessed under Section 3.2, this Settlement Agreement is a full,

final and binding resolution between Brimer, and Milano, of any violation of Proposition 65 that was or could have been asserted by Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Milano, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Milano directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on their failure to warn about alleged exposures to the Listed Chemical contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by Milano in California before the Effective Date.

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, hereby waives all Brimer's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Brimer may have, 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 the Listed Chemical in the Products manufactured, distributed, sold and/or offered for sale by Milano before the Effective Date (collectively "claims"), against Milano and Releasees.

This release does not waive the rights or claims of any third-party enforcer to act individually or on behalf of the public, nor does it bind any such third-party enforcer. This Release does not release any person, party or entity from any liability for any violation of Proposition 65 regarding the Covered Products that occurs after the Effective Date.

The Parties further understand and agree that this release shall not extend upstream to any entities, other than Milano and Releasees, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Milano.

5.2 Milano's Release of Brimer

Milano on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Brimer and 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

6. ELECTION TO SECURE JUDGMENT UPON SETTLEMENT

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Covered Products against Defendant or the Releasees under Proposition 65 as covered under the terms of the release in Section 5. If requested in writing by Defendant, within six months of the Effective Date, Defendant may ask Brimer to file a complaint and seek judicial 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 Section 25249.7, or as may be otherwise allowed by law. If so requested, Brimer agrees to reasonably cooperate with Defendant and to use best efforts and that of his counsel to support the entry of an Order, from a Superior Court of California, approving any consent judgment incorporating the terms of this Settlement Agreement and for entry of Judgment thereupon. Pursuant to CCP Sections 1021 and 1021.5, should Defendant request Brimer to file a complaint and seek judicial approval of this settlement agreement, Defendants shall then 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 the amount of \$15,000.00, unless plaintiff identifies having incurred a lesser amount.

Should Defendant request Brimer to file such a complaint and seek judicial approval of this settlement agreement, Defendant agrees to reimburse Brimer, within ten (10) days of receipt of an invoice therefor, subject to the \$15,000.00 maximum, all fees and costs incurred by Brimer and his counsel in completing such request at their then effective billing rates. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Defendant to have Brimer file a complaint and seek settlement approval and a judgment. Defendant will remit payment to The Chanler Group, at the address set forth in Section 4 above.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, 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.

8. 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 Covered Products, then Defendant shall 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 Covered Products are so affected.

9. 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: (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 Milano Series Int'l Products, Ltd.: Bruce Parisi, President Milano Series International Products, Ltd. 453 North Macquesten Parkway Mount Vernon, NY 10552	With a copy to: Bruce Nye, Esq. Adams Nye Becht LLP 222 Kearny Street, 7th Floor San Francisco, CA 94108-4521
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.

10. 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.

11. 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).

12. MODIFICATION

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

13. 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.

Date: _____	Date: <u>2-14-12</u> _____
By: _____ Bruce Parisi, President Milano Series International Products, Ltd.	By:  _____ Russell Brimer

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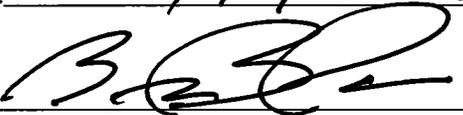
Brimer agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f).

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

13. 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.

Date: <u>2/11/2012</u>	Date: _____
By:  Bruce Parisi, President Milano Series International Products, Ltd.	By: _____ Russell Brimer