

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Russell Brimer and Secret Charm, LLC

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Secret Charm, LLC (“Secret Charm”), with Brimer and Secret Charm collectively referred to as the “Parties.” Brimer is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Secret Charm 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 Secret Charm has manufactured, distributed, sold and/or offered for sale in the State of California belts containing Lead, without the requisite Proposition 65 warnings. Lead shall be referred to herein as the “Listed Chemical.” The Listed Chemical is identified by the State of California as a chemical known to cause birth defects and other reproductive harm.

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are belts containing the Listed Chemical that are manufactured, distributed, sold and/or offered for sale in California by Secret Charm, including, but not limited to, *As U Wish Dress with Belt, Style #41733A1 (#8 42917 04296 0)*. All such items are referred to herein as “Products.”

#### 1.4 Notice of Violation

On or about February 24, 2011, Brimer served Secret Charm and various public

enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that informed Secret Charm and such public enforcers that Secret Charm was alleged to be in violation of California Health & Safety Code §25249.6 for failing to warn its customers and consumers in California that the Products exposed users to the Listed Chemical. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.5 No Admission**

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

**1.6 Effective Date**

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

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## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Commitment**

As of the 90 days from the Effective Date, Secret Charm shall not manufacture, distribute, sell or offer for sale to consumers in California Products unless such Product contains no more than 100 ppm of the Listed Chemical when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and 6010B (“Digest Test”), or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance, and yields no more than 1.0 micrograms per sample (“µg/s”) when any surface is tested according to NIOSH 9100 testing methodology (“Wipe Test”) applied to the Products.

## **3. MONETARY PAYMENTS**

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

In settlement of all the claims referred to in this Settlement Agreement against it, Secret Charm shall make payments and receive credits totaling \$2,500.00, in civil penalties, as follows

3.1.1 Secret Charm shall pay an initial civil penalty of \$2,500.00 to be apportioned in accordance with Health & Safety Code §§ 25249.12 (c)(1) & (d), with 75% of the penalty funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of these penalty monies remitted to Brimer as provided by Health & Safety Code § 25249.12(d). Secret Charm shall issue two separate checks for the penalty payment: (a) one check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$1,875.00, representing 75% of the total penalty, and (b) one check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$625.00, 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 \$1,875.00. The second 1099 shall be issued to Brimer in the amount of \$625.00, whose address and tax identification number shall be furnished, upon request, at least five (5) calendar days before payment is due. The payments shall be delivered on or before March 15, 2011, at the address set forth in Section 3.4.

3.1.2 All payments, unless waived, shall be delivered to the following address:

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

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

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

The parties acknowledge that Brimer and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Secret Charm then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach 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. Secret Charm shall pay the total of \$26,000.00 for fees and costs incurred as a result of investigating, bringing this matter to Secret Charm's attention, and negotiating a settlement in the public interest. Secret Charm shall make the check payable to "The Chanler Group," shall issue a separate 1099 for fees and costs (EIN: 94-

3171522), and deliver payment to The Chanler Group within ten days of the Effective

Date to the following address:

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

## **5. RELEASE OF ALL CLAIMS**

### **5.1 Brimer's Release of Secret Charm**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, 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) of any nature whatsoever, fixed or contingent (collectively "Claims"), that were brought or could have been brought against Secret Charm, or its parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers, licensors, licensees, or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers and representatives of each of them (collectively "Releasees") in this matter.

The Parties intend and agree that this Settlement Agreement shall be given full

effect for purposes of precluding claims regarding the Products against Secret Charm or the Releasees under Proposition 65 as covered under this release. If requested in writing by Secret Charm (within twelve months of the Effective Date), Secret Charm 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 Section 25249.7, or as may be otherwise allowed by law. If requested, Brimer agrees to reasonably cooperate with Secret Charm 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, Secret Charm 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 \$10,000.00. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Secret Charm to have Brimer file a complaint and seek a consent judgment. Secret Charm will remit payment to The Chanler Group, at the address set forth in Section 8 below. Such additional fees shall be paid by Secret Charm within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

## **5.2 Secret Charm's Release of Brimer**

Secret Charm waives any and all claims against Brimer, his attorneys, and other representatives (collectively "Brimer Releasees") 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.

**6. 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.

**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 and/or the Listed Chemical, then Secret Charm 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 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: (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 Secret Charm:

Eran Haroni, President  
Secret Charm, LLC  
1437 East 20<sup>th</sup> Street  
Los Angeles, CA 90011

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 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 form requirements referenced in Health & Safety Code §25249.7(f).

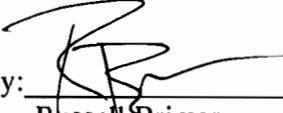
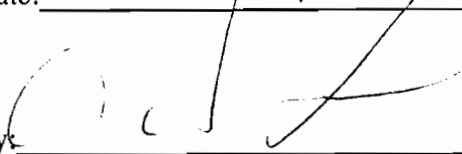
**11. MODIFICATION**

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>5-3-11</u>	Date: <u>5/3/2011</u>
By:  <u>Russell Brimer</u>	By:  <u>Eran Haroni, President</u> <u>Secret Charm LLC</u>