

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Russell Brimer and Adrianna Papell, L.L.C.

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Adrianna Papell, L.L.C. (“Adrianna Papell”), with Brimer and Adrianna Papell collectively referred to as the “Parties.” 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. Adrianna Papell 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 Adrianna Papell has manufactured, distributed and/or sold belts which contain lead and di(2-ethylhexyl)phthalate (“DEHP”) (collectively referred to herein as the “Listed Chemicals”), without providing the requisite Proposition 65 warnings. Lead is listed as a reproductive and developmental toxicant pursuant to Proposition 65. Di(2-ethylhexyl)phthalate (“DEHP”) is listed as reproductive toxicants under Proposition 65.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: belts made of any fabric or material that are worn as fashion accessories on garments either for functional use or as decorative elements and that are offered for sale in California either separately or as part of the garment itself, such as, but not limited to, *Adrianna Papell Samed Sheath Dress, Style #014199220 (#7 97532 34063 5)*. All such belts are referred to hereinafter as the “Products”.

### 1.4 Notices of Violation

On or about February 24, 2011, Brimer served Adrianna Papell and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Adrianna Papell and public enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers that the Products that Adrianna Papell sold exposed users in California to the listed chemical, Lead.

On or about June 30, 2011, Brimer also served Defendant and public enforcers with a document entitled “Supplemental 60-Day Notice of Violation” (the “Supplemental Notice”) that provided Defendant and such public enforcers with notice of alleged violations of Proposition 65 for failing to warn consumers that belts exposed users in California to DEHP and/or lead. Until the sixty-sixth (66th) day after the date of issuance of the Supplemental Notice, the definition of Products herein shall only include belts containing Lead. After sixty-six (66) days have passed from the date of the Supplemental Notice, the definition of Products herein shall be deemed to also include belts containing Lead and/or DEHP, provided that no authorized public prosecutor has, prior to that date, filed a Proposition 65 enforcement action based on the Supplemental Notice. The Notice and Supplemental Notice are referred to collectively herein as the “Notices.”

### **1.5 No Admission**

Adrianna Papell denies the material, factual and legal allegations contained in Brimer’s 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 Adrianna Papell 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 Adrianna Papell of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Adrianna Papell. However, this section shall not diminish or otherwise affect Adrianna Papell’s obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Execution Date**

For purposes of this Settlement Agreement, the term “Execution Date” shall mean the date on which this Settlement Agreement is signed by all Parties.

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

### **2.1 Reformulation Standards**

Reformulated Products are defined as those Products containing less than or equal to:

(a) 90 parts per million (“ppm” or “mg/kg”) of the listed chemical, Lead, for Paint or other Surface Coatings on Accessible Components: 90 parts per million (“ppm”);

(b) 100 ppm of the listed chemical, Lead, for all Accessible Components other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or rhinestones; and

(c) 1000 ppm of the listed chemical, DEHP, for all Accessible Components, other than cubic zirconia (sometimes called cubic zirconium, CZ), crystal, glass or rhinestones.

For purposes of this section, “Accessible Components” means a functional or decorative part of a Covered Product that could be touched by a person during normal and reasonably foreseeable use and “Paint or Surface Coatings” has the meaning defined in 16 C.F.R. § 1303.2(b) , as amended from time to time.

## **2.2 Reformulation Commitment**

As of the Execution Date, Adrianna Papell shall not: (a) place any order for the manufacture and delivery of any Products for retail sale in its California retail stores unless such Products constitute Reformulated Products pursuant to section 2.1 above, (b) receive into or hold in inventory any Product for retail sale in California unless such Products constitute Reformulated Products pursuant to section 2.1 above, and (c) shall not sell or offer for sale in California any Product unless such Product constitutes a Reformulated Products pursuant to section 2.1 above. For purposes of this Section 2.1, when Adrianna Papell direct customer sells or offers for sale to California consumers a Product after the Compliance Date, Adrianna Papell is deemed to “offer for sale in California” that Product. As such, Adrianna Papell hereby commits that one hundred percent (100%) of the Products that it manufactures, sells or ships after the Effective Date for sale in California, shall qualify as Reformulated Products.

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

Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all the claims referred to in this Settlement Agreement, Adrianna Papell shall pay a total of \$12,000 in civil penalties in two installments. The first payment of the penalty shall be \$2,000, to be apportioned in accordance with Health & Safety Code § 25192, with 75% of these 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).

Adrianna Papell shall issue two checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust for OEHHA" in the amount of \$1,500, representing 75% of the total penalty and (b) one check made payable to "The Chanler Group in Trust for Brimer" in the amount of \$500, representing 25% of the total penalty. Two Forms 1099 shall be issued for the above payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose address and tax identification number shall be furnished, upon execution of this Agreement. The payment shall be delivered within ten days of the Effective Date at the following address:

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

The second civil penalty payment of \$10,000 is due on August 1, 2011; however, this amount shall be waived in its entirety if Adrianna Papell certifies (in writing to Brimer's counsel by July 15, 2011) that it has met the Reformulation Commitment set forth above in Section 2.2 as of the Effective Date. If the certification is not received, then the additional penalty payments shall be apportioned in the same manner outlined above and delivered to Brimer's counsel at the above address.

#### **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, Adrianna Papell shall reimburse Brimer's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Adrianna Papell attention, and negotiating a settlement in the public interest. Adrianna Papell shall pay Brimer and his counsel \$23,000 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 within ten days of the Execution Date at the following address:

THE CHANLER GROUP  
Attn: Proposition 65 Controller  
2560 Ninth Street, Suite 214

Berkeley, CA 94710

Adrianna Papell shall issue a separate Form 1099 for attorney's fees and costs paid in the amount of \$23,000 to The Chanler Group, 2560 Ninth Street, Suite 214, Berkeley, CA 94710 (EIN: 94-3171522).

**5. RELEASE OF ALL CLAIMS**

**5.1 Brimer's Release of Adrianna Papell**

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 and in his representative capacity, 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 attorney's fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against Adrianna Papell and each of its wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, cooperative members, 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 "Releasees") that arise under Proposition 65, as such claims relate to Adrianna Papell alleged failure to warn about exposures to the Listed Chemical contained in the Products. The Parties further understand and agree that this release shall not extend upstream to any third parties that manufactured the Products or any component parts thereof, or to any distributors or suppliers who sold the Products or any component parts thereof to Defendant.

**5.2 Adrianna Papell's Release of Brimer**

Adrianna Papell, on behalf of itself and its Releasees, waives any and all claims against Brimer, his attorneys, and other representatives for any and all actions taken 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.

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**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, then Adrianna Papell 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: (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:

To Adrianna Papell:

Scott Perlman  
Adrianna Papell, L.L.C.  
512 Seventh Avenue, Floor 8  
New York, NY 10018

Aton Arbisser  
Kaye Scholer LLP  
1999 Avenue of the Stars, 16<sup>th</sup> Floor  
Los Angeles, CA 90067

To Brimer:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street, 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. ATTORNEY'S FEES**

Should Brimer prevail in any proceeding to enforce a violation of this Agreement, he shall be entitled to his reasonable attorneys' fees and costs incurred as a result of such proceeding. Should

Adrianna Papell prevail in any proceeding, it may be awarded its reasonable attorneys' fees and costs as a result of such proceeding upon a finding by a court that Brimer's proceeding to enforce this Agreement lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning a used in the Civil Discovery Act, California Code of Civil Procedure § 2016 *et seq.*

Except as specifically provided in the above paragraph and in Section 4, each Party shall bear its own costs and attorneys' fees in connection with the Notices.

**10. 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.

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

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

**12. MODIFICATION**

This Settlement Agreement may be modified only by 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.

AGREED TO:

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

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

Russell Brimer

AGREED TO:

Date: 6/23/14

By: 

Scott Periman, CFO  
Adrianna Papell, L.L.C.

Adrianna Papell prevail in any proceeding, it may be awarded its reasonable attorneys' fees and costs as a result of such proceeding upon a finding by a court that Brimer's proceeding to enforce this Agreement lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act, California Code of Civil Procedure § 2016 *et seq.*

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AGREED TO:

AGREED TO:

Date: 6.30.11

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

By:   
Russell Brimer

By: \_\_\_\_\_  
Scott Perlman, CFO  
Adrianna Papell, L.L.C.