

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Sunham Home Fashions, LLC (“Sunham”), with Brimer and Sunham 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. Sunham 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 Sunham manufactures, imports, distributes, sells and/or offers for sale in the State of California vinyl/PVC travel cases containing di(2-ethylhexyl)phthalate (“DEHP”) and lead without the requisite Proposition 65 health hazard warnings. DEHP and lead are listed pursuant to Proposition 65 as chemicals known to the State of California to cause birth defects and other reproductive harm. DEHP and lead are hereinafter referred to as the “Listed Chemicals.”

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as vinyl/PVC travel cases containing the Listed Chemicals, specifically limited to the *Lacoste Sport Travel Collection, #13492 714 (#7 34737 27671 0)*, which were manufactured, imported, distributed, sold and/or offered for sale in California by Sunham, hereinafter referred to as the “Products.”

1.4 Notice of Violation

On or about September 21, 2012, Brimer served Sunham and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients that Sunham was alleged to be in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to the Listed Chemicals. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently

prosecuting the allegations set forth in the Notice.

1.5 No Admission

Sunham denies the material, factual, and legal allegations contained in the 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 Sunham of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Sunham of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Sunham. This section shall not, however, diminish or otherwise affect Sunham'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 March 15, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

Reformulated Products are defined as those Products containing components that may be handled, touched or mouthed by a consumer, and which components yield: (1) less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100; (2) less than 100 parts per million ("ppm") lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B; and (3) contain less than or equal to 1,000 ppm (0.1%) DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C.

2.2 Product Warnings

Commencing on the Effective Date, Sunham shall, for all Products other than 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) Sales in California.

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

WARNING: This product contains chemicals, including DEHP and lead, known to the State of California to cause cancer, birth defects and other reproductive harm.

(ii) Point-of-Sale Warnings. Alternatively, Sunham 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 Sunham's customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains chemicals, including DEHP and lead, known to the State of California to cause cancer, 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:¹

WARNING: The following products contain chemicals, including DEHP and lead, known to the State of California to cause cancer, birth defects and other reproductive harm:

[list products for which warning is required]

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

In settlement of all the claims referred to in this Settlement Agreement, Sunham shall pay a total of \$4,000 in civil penalties in accordance with this Section. Each penalty payment will be

¹ 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.

allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer, as follows:

3.1 Initial Civil Penalty

Sunham shall pay an initial civil penalty in the amount of \$1,000 on or before April 8, 2013. Sunham shall issue two separate checks to: (a) “OEHHA” in the amount of \$750; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$250. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Sunham shall pay a final civil penalty of \$3,000 on or before May 15, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than May 1, 2013, an officer of Sunham provides Brimer with written certification that, as of the date of such certification and continuing into the future, Sunham will not sell, ship and/or offer for sale in California any Products, unless such Products are Reformulated Products pursuant to Section 2.1 above. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Sunham shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$2,250; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$750.

3.3 Payment Procedures

3.3.1 Issuance of Payments. Payments shall be delivered as follows:

- (a) All payments owed to Brimer, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

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

- (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, Sunham shall issue separate 1099 forms for each payment to Brimer, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties 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 § 1021.5, for all work performed through the mutual execution of this agreement. Sunham shall pay \$17,000 for fees and costs incurred as a result of investigating, bringing this matter to Sunham's attention, and negotiating a settlement in the public interest. Sunham shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before April 8, 2013, to the address listed in Section 3.3.1 above.

5. RELEASES

5.1 Brimer's Release of Sunham

This Settlement Agreement is a full, final, and binding resolution between Brimer and Sunham, 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 Sunham, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and specifically Sunham's licensors for the Products, Lacoste SA and Zucchi, and each entity to whom Sunham directly or indirectly distributes or sells the 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 Chemicals contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by Sunham 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 of his rights to institute or participate in directly or indirectly, any form of legal action against Sunham and Releasees, and hereby releases and discharges 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 limited to and arising under Proposition 65 with respect to the Products manufactured, imported, distributed, sold and/or offered for sale by Sunham prior to the execution of this Settlement Agreement (collectively "claims"), against Sunham and Releasees.

5.2 Sunham's Release of Brimer

Sunham 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 Products.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision is 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 Chemicals, then Sunham 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 notice required to be provided pursuant to this Settlement Agreement shall be sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

For Sunham:

Arthur Courbanou
Sunham Home Fashions, LLC
136 Madison Avenue, Floor 16
New York, NY 10016

For Brimer:

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

With copy to:

Michael D. Roth, Esq.
Caldwell Leslie & Proctor, PC
725 South Figueroa Street, 31st Floor
Los Angeles, CA 90017

Any party may, from time to time, 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.

10. POST-EXECUTION ACTIVITIES

Within twelve months of the execution of this Settlement Agreement, Sunham may send Brimer a written request to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment that provides a release in the public interest for the released Products, and to seek court approval of the consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Brimer and Sunham agree to reasonably cooperate, and to use their best efforts and that of their counsel to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

If so requested by Sunham in writing, pursuant to CCP §§ 1021 and 1021.5, then Sunham will reimburse Brimer and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$16,000, exclusive fees and costs incurred on appeal, if any. Sunham shall remit payment to The Chanler Group at the payment address provided in Section 3.3 within five business days of receiving a monthly invoice from Brimer's counsel for work performed under this section.

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.

AGREED TO:

AGREED TO:

Date: March 19, 2013

Date: 3/22/13

By:  _____

By:  _____

Russell Brimer

Sunham Home Fashions, LLC