

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Belcam Inc. (“Belcam”), with Brimer and Belcam individually referred to as a “Party” and collectively 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. Belcam 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Brimer alleges that Belcam manufactures, imports, sells, or distributes for sale in the state of California, eyelash curlers with grips that contain lead, and the phthalate chemicals benzyl-butyl phthalate (“BBP”), di-n-butyl phthalate (“DBP”) and/or di(2-ethylhexyl)phthalate (“DEHP”), and tweezers containing BBP, DBP and/or DEHP, without first providing the clear and reasonable exposure warning required by Proposition 65. Lead, BBP, DBP and DEHP are each listed pursuant to Proposition 65 as a chemical that is known to the state of California 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:

- (a) eyelash curlers with grips containing lead that are manufactured, sold, or distributed for sale in California by Belcam, including, without limitation, the *Sow Good Eyelash Curler, #4901S (#0 42137 49012 5)* (referred to hereinafter as “Covered Products”);
- (b) eyelash curlers with grips containing BBP, DBP, DEHP, and/or lead that are manufactured, sold, or distributed for sale in California by Belcam, including,

without limitation, the *Denco Eyelash Curler, #4901 (#0 42137 49010 1)*
(referred to hereinafter as “Additional Products”)

(c) tweezers with grips containing BBP, DBP, and/or DEHP that are
manufactured, sold, or distributed for sale in California by Belcam, including,
without limitation, the *Denco Accents The Big Gripper, #4863 (#0 42137
48630 2)* (also referred to as “Additional Products”).

1.4 Notice of Violation

On or about October 26, 2012, Brimer served Belcam and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Belcam violated Proposition 65 by failing to warn its customers and consumers in California that the Covered Products expose users to lead. 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

Belcam denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale in California, including the Covered Products and Additional Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Belcam 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 Belcam of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Belcam. This Section shall not, however, diminish or otherwise affect Belcam’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 July 26, 2013.

2. INJUNCTIVE RELIEF

Commencing on the Effective Date and continuing thereafter, Belcam shall only manufacture, distribute, ship, sell, or offer to ship for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Covered Products and Additional Products that contain a maximum concentration, by weight, of 1,000 parts per million ("ppm") each of BBP, DBP and/or DEHP, when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C; and a maximum lead concentration, by weight, of 90 ppm when analyzed pursuant to EPA testing methodologies 6020 and 3050B, and that yield a result of no more than 1.0 micrograms of lead when sampled pursuant to the NIOSH 9100 testing protocol and analyzed pursuant to EPA testing methodologies 6020 and 3050B . In addition to the EPA test methods set forth above, the Parties may use any other testing methodology utilized by state or federal agencies for the purpose of determining phthalate and/or lead content in a solid substance to determine compliance with this Section.

3. MONETARY PAYMENTS

3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Belcam shall pay a total of \$18,000 in civil penalties in accordance with this Section. Each penalty payment will be 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.

3.1.1 Initial Civil Penalty

Belcam shall pay an initial civil penalty in the amount of \$4,500 on or before July 31, 2013. Belcam shall issue two separate checks to: (a) "OEHHA" in the amount of \$3,375; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,125. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.1.2 Final Civil Penalty

Belcam shall pay a final civil penalty of \$13,500 on or before January 30, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than January 15, 2014, an officer of Belcam provides Brimer with written certification that, as of the date of such certification and continuing into the future, Belcam has met the reformulation standard specified in Section 2 above, such that all Covered Products and Additional Products manufactured, imported, distributed, sold and offered for sale in California by Belcam are Reformulated Products. Brimer must receive Belcam's certification no later than January 15, 2014. The option to provide a certification of reformulation in lieu of making the final civil penalty payment provided by this Section is a material term, and with regard to such term, time is of the essence. Belcam shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$10,125; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$3,375.

3.2 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Belcam expressed a desire to resolve the fee and cost issue. 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 section 1021.5, for all work performed through the mutual execution of this agreement. Belcam shall pay \$28,500 for fees and costs incurred as a result of investigating, bringing this matter to Belcam's attention, and negotiating a settlement in the public interest.

3.3 Payment Procedures

3.3.1 Payment Addresses. All payments and tax forms required by this agreement shall be delivered as follows:

(a) All payments owed to Brimer and his counsel shall be delivered to the following address:

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

(b) All payments to OEHHA shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as appropriate:

For U.S. Postal Delivery:

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

For Non-U.S. Postal Delivery or Courier:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.2 Proof of Payment to OEHHA. Belcam shall provide Brimer with a copy of the checks payable to OEHHA as proof of payment to OEHHA.

3.3.3 Issuance of 1099 Forms. Belcam shall issue a separate 1099 form for its payments to each of the following payees: (a) "Russell Brimer," whose address and tax identification number will be provided upon request after this Settlement Agreement is fully executed by the Parties, (b) "California Office of Environmental Health Hazard Assessment (EIN: 68-0284486); and (c) "The Chanler Group" (EIN: 94-3171522).

4. CLAIMS COVERED AND RELEASED

4.1 Brimer's Release of Belcam

This Settlement Agreement is a full, final, and binding resolution between Brimer and Belcam of any violation of Proposition 65 that was or could have been asserted by Brimer, on

behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Belcam, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Belcam directly or indirectly distributes or sells the Covered Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on unwarned exposures to lead contained in Covered Products sold or distributed for sale by Belcam in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Brimer, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Belcam and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to lead in Covered Products manufactured, sold, or distributed for sale in California by Belcam prior to the Effective Date.

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 Brimer of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP, DBP and BBP and lead in the Covered Products and Additional Products manufactured, distributed or sold by Belcam prior to the Effective Date.

4.2 Belcam’s Release of Brimer

Belcam, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Brimer and his attorneys and other representatives, for any and all actions taken or statements

made by Brimer and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products and Additional Products.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Belcam may request in writing that Brimer draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Covered Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Brimer and Belcam agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Belcam agrees to reimburse Brimer and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this Section in an amount not to exceed \$15,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from Brimer's counsel for work performed under this Section, Belcam will remit payment to the address provided in Section 3.3.1(a)

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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 Covered Products and Additional Products, then Belcam may provide written notice to Brimer of any asserted change

in the law, and 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 sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For Belcam:

John Knot, President
Belcam Inc.
27 Montgomery Street
Rouses Point, NY 12979

John Knot, President
Belcam Inc.
P.O. Box 277
Rouses Point, NY 12979

With a copy to:

Bruce Nye, Esq.
Adams Nye Becht LLP
222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521

For Russell Brimer:

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

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

Brimer agrees to comply with the reporting form requirements referenced in Health and Safety Code section 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.

AGREED TO:

AGREED TO:

Date: August 6, 2013

Date: August 1st 2013

By:  Russell Brimer

By:  John Knot, President
Belcam Inc.