

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Russell Brimer, (“Brimer”) and Vera Bradley, Inc., Vera Bradley Designs, Inc., and Vera Bradley Sales, LLC (collectively “Vera Bradley”), with Brimer and Vera Bradley collectively referred to as the “Parties.”

1.2 Brimer

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.

1.3 Vera Bradley

Each Vera Bradley, Inc., Vera Bradley Designs, Inc., and Vera Bradley Sales, LLC employs 10 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”).

1.4 General Allegations

Brimer alleges that Vera Bradley, Inc. and Vera Bradley Designs, Inc. manufactured, distributed and/or sold, in the State of California, pen cases made with vinyl/PVC materials that exposed users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical” or “DEHP”

1.5 Notice of Violation

On October 26, 2012, Brimer served Vera Bradley, Inc., Vera Bradley Designs, Inc. and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that

provided public enforcers and Vera Bradley with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, a toxic chemical found in their pen case products sold in California. Each Vera Bradley, Inc. and Vera Bradley Designs, Inc. received the 60-Day Notice of Violation. Each Vera Bradley, Inc. and Vera Bradley Designs, Inc. represents, as of the date it executes this Agreement, that it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP in its products, as identified in the 60-Day Notice.

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Vera Bradley. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Vera Bradley denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the Covered Products and otherwise contends that, to Vera Bradley's actual knowledge, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Vera Bradley of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Vera Bradley of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Vera Bradley. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Vera Bradley's obligations, responsibilities, and duties under this Agreement.

1.7 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Vera Bradley as to the allegations in the 60-Day Notice received from Brimer, and this Agreement, that venue is proper in County of Marin, and that the Marin County Superior Court has jurisdiction to enforce the provisions of this Agreement. As an express part of this Agreement, pursuant to C.C.P. §664.6 the Marin County Superior Court has jurisdiction over the parties to enforce the

settlement until performance in full of the terms of the settlement.

2. DEFINITIONS

2.1 The term "Covered Products" means any pen cases made of any vinyl or PVC material, such as, but not limited to, *Vera Bradley Flag & Tag Baroque, Style #11329-069 (#8 86003 07752 8)*. All such pen cases are referred to hereinafter as the "Products" or "Covered Products".

2.2 The term "DEHP Free" Covered Products shall mean Covered Products containing materials or other components that may be handled, touched or mouthed by a consumer, and which materials or other components are confirmed to contain less than or equal to 1,000 parts per million ("ppm") of DEHP through Testing by a certified U.S. laboratory.

2.3 The term "Testing" shall mean Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.4 The term "DEHP Free Standard" shall mean the above-referenced standard that will cause a Covered Product to qualify as DEHP Free

2.5 "Effective Date" shall mean March 1, 2013.

3. INJUNCTIVE-TYPE RELIEF

3.1 Formulation Commitment

Commencing no later than the Effective Date, and continuing thereafter, Vera Bradley shall not manufacture, cause to be manufactured, purchase or otherwise obtain any Covered Product for distribution or sale in California, or for distribution to or sale to any retailer that Vera Bradley reasonably understand maintains retail outlets in California, that is not DEHP Free.

3.2 Product Warnings For Previously Obtained Covered Products.

To the extent that Vera Bradley currently maintains or controls any inventory of Covered Product that Vera Bradley has not confirmed is DEHP Free, then Vera Bradley shall not sell in California, ship

into California or sell or otherwise distribute to any retailer that Vera Bradley reasonably understand maintains retail outlets in California any such non-DEHP Free Covered Product unless such Covered Products are sold or shipped with the following clear and reasonable warning:

WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

Each warning shall be prominently placed on or with each Covered Product 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* Covered Product the warning applies, so as to minimize the risk of consumer confusion.

After July 1, 2013, Vera Bradley shall discontinue all sales of any Covered Products that are not DEHP Free in California, regardless of compliance with Section 3.2.1.

4. MONETARY PAYMENTS

In settlement of all the claims referred to in this Settlement Agreement, Vera Bradley shall pay a total of \$10,000.00 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, as follows:

4.1 Initial Civil Penalty

Vera Bradley shall pay an initial civil penalty in the amount of \$6,000.00 on or before the Effective Date. Vera Bradley shall issue two separate checks to: (a) "OEHHA" in the amount of \$4,500.00; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,500.00. All penalty payments shall be delivered to the addresses listed in Section 4.3 below.

4.2 Final Civil Penalty

Vera Bradley shall pay a final civil penalty of \$4,000.00 on or before March 15, 2013. The final

civil penalty shall be waived in its entirety, however, if, no later than the Effective Date, an officer of Vera Bradley provides Brimer with written certification that, as of the date of such certification and continuing into the future, Vera Bradley has met the DEHP Free standard specified above, such that all new Products manufactured, imported, distributed, sold and offered for sale in California by Vera Bradley after Effective Date are DEHP Free. Brimer, or Brimer's counsel, must receive any such certification on or before the Effective Date. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. If the final civil penalty is not waived pursuant to the provisions of this Section 4.2, Vera Bradley shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$3,000.00; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,000.00.

4.3 Payment Procedures

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

- (a) All payments owed to Brimer, pursuant to Sections 4.1 through 4.2, 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 4.1 through 4.2, 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 4.3.1(a), as proof of payment to OEHHA.

4.3.2 Issuance of 1099 Forms. After each penalty payment, Vera Bradley 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 4.3.1 above.

4.4 Augmentation Of Penalty Payments

For purposes of the penalty assessment under this Agreement, Brimer is relying entirely upon Vera Bradley and its counsel for accurate, good faith reporting to Brimer of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Brimer discovers and presents to Vera Bradley evidence that the Covered Products have been distributed by Vera Bradley in sales volumes materially different than those identified by Vera Bradley prior to execution of this Agreement, then Vera Bradley shall be liable for an additional penalty amount of \$10,000.00. Vera Bradley shall also be liable for any reasonable, additional attorney fees expended by Brimer in discovering such additional retailers or sales. Brimer agrees to provide Vera Bradley with a written demand (including documentation of the additional sales) for all such additional penalties and attorney fees under this Section. After service of such demand, Vera Bradley shall have thirty (30) days to agree to the amount of fees and penalties owing by Vera Bradley and submit such payment to Brimer in accordance with the method of payment of penalties and fees identified in Sections 4.3. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and

fees, Brimer 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.

4.5 Reimbursement Of 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. Brimer then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties did not reach an accord on the compensation due to Brimer and his counsel. All parties reserve all rights concerning recovery of such fees and costs.

5. RELEASES

5.1 Brimer's Release Of Vera Bradley

This Settlement Agreement is a full, final and binding resolution between Brimer, and Vera Bradley, 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 Vera Bradley, Inc., Vera Bradley Designs, Inc., Vera Bradley Sales, LLC, and each of their parents, subsidiaries, directors, officers, employees, attorneys, and each entity to whom either Vera Bradley, Inc., Vera Bradley Designs, Inc. or Vera Bradley Sales, LLC directly or indirectly distributes or sells Covered 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 DEHP contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by Vera Bradley in California before the Effective Date.

Except as to any claims, applications, actions, causes of action or other proceeding by Brimer regarding his potential recovery from Vera Bradley, Inc., Vera Bradley Designs, Inc., Vera Bradley Sales, LLC, or any other responsible entity, of Brimer's and his counsel's costs, expenses and/or attorneys' fees

in any way arising out of his investigation and prosecution of Proposition 65 claims against Vera Bradley, Inc. and Vera Bradley Designs, Inc., Brimer provides a general release herein for all claims of Brimer, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the October 26, 2012, 60-Day Notice as to Covered Products containing the Listed Chemical manufactured, distributed or sold by Vera Bradley and Releasees. Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Except as excepted above, Brimer expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

This Section 5.1 release is expressly limited to those claims that arise under Proposition 65, as such claims relate to Vera Bradley's alleged failure to warn about exposures to or identification of the DEHP contained in the Covered Products and as such claims are identified in the Proposition 65 60-Day Notice to Vera Bradley.

This Section 5.1 release is expressly limited to any alleged violations that occur prior to thirty (30) days after the Effective Date and does not release any entity or individual besides Releasees from any liability for any violation of Proposition 65 regarding the Covered Products that occurs more than thirty (30) days after the Effective Date.

Nothing in this Section affects Brimer's right to commence or prosecute an action under Proposition 65 against any person other than Releasees. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Vera Bradley, 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 Vera Bradley.

Nothing in this Section affects Brimer's right to commence or prosecute an action against Vera Bradley, Inc., Vera Bradley Designs, Inc., Vera Bradley Sales, LLC, and each of their parents, subsidiaries, directors or officers to secure recovery of attorney fees and costs related to the investigation, institution and prosecution of the claims resolved by this Agreement.

5.2 Vera Bradley's Release of Brimer

Vera Bradley, Inc., Vera Bradley Designs, Inc. and Vera Bradley Sales, LLC each 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.

Vera Bradley, Inc., Vera Bradley Designs, Inc. and Vera Bradley Sales, LLC each acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Vera Bradley, Inc., Vera Bradley Designs, Inc. and Vera Bradley Sales, LLC each expressly waives and relinquishes any and all rights and benefits which they may have under, or which may be conferred on them by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Vera Bradley may ask Brimer, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Brimer agrees to reasonably cooperate with Vera Bradley and to use his best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Vera Bradley will reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$10,000.00, exclusive of fees and cost that may be incurred on appeal. Vera Bradley will remit payment to The Chanler Group, at the address set forth in Section 9 below, within ten business days after its receipt of an invoice from Brimer. Any failure by Vera Bradley to timely pay Brimer invoices under this Section shall result in the assessment of ten percent (10%) interest on any outstanding balance.

7. SEVERABILITY

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

8. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California. If Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally or as to the Products, or is replaced with another law, then Vera Bradley may make a noticed motion to the Marin County Superior Court to be relieved of some or all of its obligations under this Agreement.

9. NOTICES

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by

certified mail and electronic mail to the following:

For Vera Bradley:

Vera Bradley
5620 Industrial Road
Fort Wayne, IN 46825
Attn: Stacy Knapper

with a copy to:

Kaye Scholer LLP
1999 Avenue of the Stars, Suite 1600
Los Angeles, CA 90067
Attn: Aton Arbisser

For Brimer:

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

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

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

11. MODIFICATION

This Agreement may be modified only by written agreement of the Parties or court order.

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically

referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

13. ATTORNEY'S FEES

13.1 Should Brimer prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Brimer shall be entitled to his reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5. Should Vera Bradley prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Vera Bradley shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application upon a finding that Brimer's prosecution of the motion or application lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

14. NEUTRAL CONSTRUCTION

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to

be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

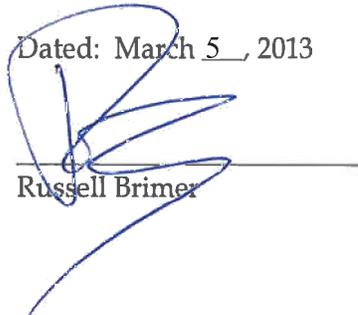
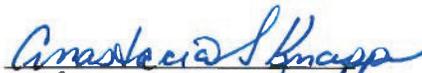
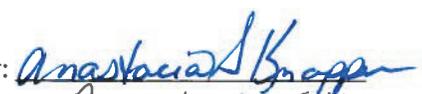
15. COUNTERPARTS, FACSIMILE SIGNATURES

This Agreement may be executed in counterparts and by facsimile or portable document format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

16. AUTHORIZATION

The undersigned parties and their counsel are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

IT IS SO AGREED.

<p>Dated: March <u>5</u>, 2013</p>  <p>Russell Brimer</p>	<p>Dated: March <u>1</u>, 2013</p> <p>VERA BRADLEY, INC.</p> <p>By: </p> <p>Name: Anastacia S. Knapper</p> <p>Title: VP & General Counsel</p>
<p>Dated: March <u>1</u>, 2013</p> <p>VERA BRADLEY DESIGNS, INC.</p> <p>By: </p> <p>Name: Anastacia S. Knapper</p> <p>Title: VP & General Counsel</p>	<p>Dated: March <u>1</u>, 2013</p> <p>VERA BRADLEY SALES, LLC</p> <p>By: </p> <p>Name: Anastacia S. Knapper</p> <p>Title: VP & General Counsel</p>