



1 THE CHANLER GROUP  
2 CLIFFORD A. CHANLER, State Bar No. 135534  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710-2565  
6 Telephone: (510) 848-8880  
7 Facsimile: (510) 848-8118

8 Attorneys for Plaintiff  
9 RUSSELL BRIMER

10 FULBRIGHT & JAWORSKI L.L.P.  
11 JEFFREY B. MARGULIES, State Bar No. 126002  
12 555 South Flower Street  
13 Forty-First Floor  
14 Los Angeles, CA 90071  
15 Telephone: (213) 892-9200  
16 Facsimile: (213) 892-9494

17 Attorneys for Defendant  
18 LADY CAPTIVA INC.

FILED  
ALAMEDA COUNTY

JUN 03 2011

CLERK OF THE SUPERIOR COURT

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 UNLIMITED CIVIL JURISDICTION

17 RUSSELL BRIMER,

18 Plaintiff,

19 v.

20 LADY CAPTIVA INC.; and DOES 1-150,  
21 inclusive,

22 Defendants.

Case No. RG11-556987

[PROPOSED]  
CONSENT JUDGMENT AS TO  
LADY CAPTIVA INC.

1     **1. INTRODUCTION**

2             **1.1 Russell Brimer and Lady Captiva Inc.**

3             This Consent Judgment is entered into by and between plaintiff Russell Brimer ("Brimer")  
4     or "Plaintiff") and defendant Lady Captiva Inc. dba Beltsville ("Lady Captiva" or "Defendant"),  
5     with Brimer and Lady Captiva collectively referred to as the ("Parties").

6             **1.2 Russell Brimer.**

7             Brimer is an individual residing in the State of California who seeks to promote awareness  
8     of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous  
9     substances contained in consumer and commercial products.

10            **1.3 Lady Captiva Inc.**

11            Lady Captiva employs ten or more persons and is a person in the course of doing business  
12     for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
13     & Safety Code §25249.5 et seq. ("Proposition 65").

14            **1.4 General Allegations.**

15            Brimer alleges that Lady Captiva has manufactured, imported, distributed and/or sold  
16     handbags, wallets, purses, clutches, totes, belts and cuffs and belts containing lead for use in the  
17     State of California without the requisite health hazard warnings. Lead is listed pursuant to  
18     Proposition 65 as a chemical known to the State of California to cause birth defects and other  
19     reproductive harm.

20            **1.5 Notice of Violation.**

21            On November 12, 2010, Brimer served Lady Captiva and various public enforcement  
22     agencies with a document entitled "60-Day Notice of Violation," that alleged that Lady Captiva  
23     violated Proposition 65 by failing to warn consumers that handbags, wallets, purses, clutches,  
24     totes, belts and cuffs and belts including, but not limited to, the *Livia Super Skinny Belt, Item*  
25     *#156951*, exposed users in California to lead.

26            **1.6 No Admission.** The Parties enter into this Consent Judgment as a full and final  
27     settlement of all claims that were raised in the Complaint or that could have been raised in the  
28     Complaint, arising out of the facts or conduct alleged therein. By execution of this Consent

1 Judgment and agreeing to comply with its terms, Lady Captiva does not admit any facts or  
2 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or  
3 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable  
4 requirements relating to lead in Covered Products. Nothing in this Consent Judgment shall be  
5 construed as an admission by Lady Captiva of any fact, conclusion of law, issue of law or  
6 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an  
7 admission by Lady Captiva of any fact, conclusion of law, issue of law, or violation of law.  
8 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or  
9 defense Lady Captiva may have in this or any other or future legal proceedings. This Consent  
10 Judgment is the product of negotiation and compromise and is accepted by Lady Captiva for  
11 purposes of settling, compromising, and resolving issues disputed in this action. However, this  
12 section shall not diminish or otherwise affect the obligations, responsibilities and duties of Lady  
13 Captiva under this Consent Judgment.

14       **1.7 Consent to Jurisdiction.** For purposes of this Consent Judgment only, Lady  
15 Captiva stipulates that this Court has jurisdiction over Lady Captiva as to the allegations  
16 contained in the Complaint, that venue is proper in the County of Alameda and that this Court has  
17 jurisdiction to enter and enforce the provisions of this Consent Judgment.

18       **2. DEFINITIONS.**

19       **2.1** "Covered Product[s]" means handbags, wallets, purses, clutches, totes, belts and  
20 cuffs that are manufactured, imported, distributed or sold by Lady Captiva.

21       **2.2** "Effective Date" means the date this Consent Judgment is approved by the court.

22       **2.3** "Lead Limits" means the maximum concentration of lead and lead composites  
23 ("Lead") by weight specified in Section 3.2.

24       **2.4** "Manufactured" and "Manufactures" have the meaning defined in Section 3(a)(10)  
25 of the Consumer Product Safety Act ("CPSA") [15 U.S.C. § 2052(a)(10)],<sup>1</sup> as amended from time  
26 to time.

27 \_\_\_\_\_  
28 <sup>1</sup> As of the Effective Date, the term "Manufactured" and "Manufactures" means to manufacture,  
produce, or assemble.

1           2.5    "Non-Suspect Materials" means natural materials other than leather that have been  
2 determined not to exceed lead limits for children's products by the final rule of the Consumer  
3 Product Safety Commission set forth at 16 CFR § 1500.91(d) and (e), as it exists on the Effective  
4 Date.

5           2.6    "Paint or other Surface Coatings" has the meaning defined in 16 CFR 1303.2(b)<sup>2</sup>,  
6 as amended from time to time.

7           2.7    "Vendor" means a person or entity that Manufactures, imports, distributes, or  
8 supplies a product to Lady Captiva.

9    **3.    INJUNCTIVE RELIEF: REFORMULATION**

10          3.1    **Specification Compliance Date.** To the extent it has not already done so, no  
11 more than 30 days after the Effective Date, Lady Captiva shall provide the Lead Limits to its  
12 Vendors of Covered Products that will be sold or offered for sale to California consumers and  
13 shall instruct each Vendor to use reasonable efforts to provide Covered Products that comply with  
14 the Lead Limits on a nationwide basis. This Section 3.1 is not applicable with respect to Non-  
15 Suspect Materials.

16          3.2    **Lead Limits.**

17          Lady Captiva shall not purchase, import, Manufacture, or supply to an unaffiliated third  
18 party any Covered Product that will be sold or offered for sale to California consumers that  
19 exceeds the following Lead Limits:  
20  
21  
22  
23  
24

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25  
26    <sup>2</sup> As of the Effective Date, "Paint or other Surface Coatings" means a fluid, semi-fluid, or other  
27 material, with or without a suspension of finely divided coloring matter, which changes to a solid  
28 film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other  
surface. This term does not include printing inks or those materials which actually become a part  
of the substrate, such as the pigment in a plastic article, or those materials which are actually  
bonded to the substrate, such as by electroplating or ceramic glazing.

| ACCESSIBLE COMPONENT                                                                   | LEAD LEVEL | COMPLIANCE DATE FOR HANDBAGS, WALLETs, PURSES, CLUTCHES, AND TOTES | COMPLIANCE DATE FOR BELTS AND CUFFS |
|----------------------------------------------------------------------------------------|------------|--------------------------------------------------------------------|-------------------------------------|
| Surface Coatings on Accessible Components                                              | 90 ppm     | December 1, 2010                                                   | December 1, 2011                    |
| Leather Accessible Components (including composited Leather)                           | 600 ppm    | December 1, 2010                                                   | December 1, 2011                    |
|                                                                                        | 300 ppm    | December 1, 2011                                                   | December 1, 2012                    |
| PVC Accessible Components                                                              | 300 ppm    | December 1, 2010                                                   | December 1, 2011                    |
|                                                                                        | 200 ppm    | December 1, 2011                                                   | December 1, 2012                    |
| Metal and other Components (other than cubic zirconia, crystal, glass, or rhinestones) | 300 ppm    | December 1, 2010                                                   | December 1, 2011                    |

#### 4. ENFORCEMENT OF CONSENT JUDGMENT

4.1 Any Party may, after meeting and conferring, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment. Enforcement of the terms and conditions of Section 3.2 of this Consent Judgment shall be brought exclusively pursuant to Sections 4.3 through 4.4.

4.2 Within 30 days after the Effective Date, Lady Captiva shall notify Brimer of a means sufficient to allow Brimer to identify Covered Products supplied or offered by Lady Captiva on or after that date, for example, a unique brand name or characteristic system of product numbering or labeling. Information provided to Brimer pursuant to this Section 4.2, including but not limited to the identities of parties to contracts between Lady Captiva and third parties, may be designated by Lady Captiva as competitively sensitive confidential business

1 information, and if so designated shall not be disclosed to any person without the written  
2 permission of Lady Captiva. Any motions or pleadings or any other court filings that may reveal  
3 information designated as competitively sensitive confidential business information pursuant to  
4 this Section shall be submitted in accordance with California Rules of Court 8.160 and 2.550, *et*  
5 *seq.*

6       **4.3 Notice of Violation.** Brimer may seek to enforce the requirements of Section 3.2  
7 by issuing a Notice of Violation pursuant to this Section 4.3.

8               **4.3.1 Service of Notice.** Brimer shall serve the Notice of Violation on Lady  
9 Captiva within 45 days of the date the alleged violation(s) was or were observed,  
10 provided, however, that Brimer may have up to an additional 45 days to provide Lady  
11 Captiva with the test data required by Section 4.3.1(d) below if it has not yet obtained it  
12 from its laboratory.

13               **4.3.2 Supporting Documentation.** The Notice of Violation shall, at a minimum,  
14 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,  
15 (b) the location at which the Covered Product was offered for sale, (c) a description of the  
16 Covered Product giving rise to the alleged violation, and of each Accessible Component  
17 that is alleged not to comply with the Lead Limits and/or each Accessible Component that  
18 is a Non-Suspect Material that is alleged to contain Lead in excess of 300 ppm, including  
19 a picture of the Covered Product and all identifying information on tags and labels, and  
20 (d) all test data obtained by Brimer regarding the Covered Product. Wipe, swipe, x-ray  
21 fluorescence, and swab testing are not by themselves sufficient to support a Notice of  
22 Violation, although any such testing may be used as additional support for a Notice.

23               **4.3.3 Multiple Notices.** If Lady Captiva has received more than four Notices of  
24 Violation in any 12-month period, at Brimer's option, Brimer may seek whatever fines,  
25 costs, penalties, or remedies are provided by law for failure to comply with the Consent  
26 Judgment. For purposes of determining the number of Notices of Violation pursuant to  
27 this Section 4.3.3, the following shall be excluded:  
28

1 (a) Multiple notices identifying Covered Products Manufactured for or  
2 sold to Lady Captiva from the same Vendor; and

3 (b) A Notice of Violation that meets one or more of the conditions of  
4 Section 4.4.3(b).

5 **4.4 Notice of Election.** Within 30 days of receiving a Notice of Violation pursuant to  
6 Section 4.3, including the test data required pursuant to 4.3.1(d), Lady Captiva shall provide  
7 written notice to Brimer stating whether it elects to contest the allegations contained in the Notice  
8 of Violation ("Notice of Election"). Failure to provide a Notice of Election shall be deemed an  
9 election to contest the Notice of Violation.

10 **4.4.1 Contested Notices.** If the Notice of Violation is contested, the Notice of  
11 Election shall include all then-available documentary evidence regarding the alleged  
12 violation, including any test data. Within 30 days the parties shall meet and confer to  
13 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,  
14 Brimer may file an enforcement motion or application pursuant to Section 4.1. If Lady  
15 Captiva withdraws its Notice of Election to contest the Notice of Violation before any  
16 motion concerning the violations alleged in the Notice of Violation is filed pursuant to  
17 Section 4.1, Lady Captiva shall pay a civil penalty in the amount of \$12,500 to be  
18 apportioned in accordance with the provision of Section 5.1 hereunder, and shall comply  
19 with all of the non-monetary provisions of Section 4.4.2. If, at any time prior to reaching  
20 an agreement or obtaining a decision from the Court, Brimer or Lady Captiva acquires  
21 additional test or other data regarding the alleged violation, it shall promptly provide all  
22 such data or information to the other Party.

23 **4.4.2 Non-Contested Notices.** If the Notice of Violation is not contested, Lady  
24 Captiva shall include in its Notice of Election a detailed description of corrective action  
25 that it has undertaken or proposes to undertake to address the alleged violation. Any such  
26 correction shall, at a minimum, provide reasonable assurance that the Covered Product  
27 will no longer be offered by Lady Captiva or its customers for sale in California. If there  
28 is a dispute over the sufficiency of the proposed corrective action or its implementation,

1 Brimer shall promptly notify Lady Captiva and the Parties shall meet and confer before  
2 seeking the intervention of the Court to resolve the dispute. In addition to the corrective  
3 action, Lady Captiva shall pay a civil penalty in the amount of \$10,000 to be apportioned  
4 in accordance with the provision of Section 5.1 hereunder unless one of the provisions of  
5 Section 4.4.3 applies.

6 **4.4.3 Limitations in Non-Contested Matters.**

7 (a) The monetary liability of Lady Captiva if it elects not to contest a  
8 Notice of Violation before any motion concerning the violation(s) at issue has been filed  
9 shall be limited to the contributions required by this Section 4.4.3, if any.

10 (b) The civil penalty shall be:

11 (i) One thousand seven hundred fifty dollars (\$1,750) to be  
12 apportioned in accordance with the provision of Section 5.1 hereunder, if Lady  
13 Captiva, prior to receiving and accepting for distribution or sale the Covered  
14 Product identified in the Notice of Violation, obtained test results demonstrating  
15 that all of the Accessible Components in the Covered Product identified in the  
16 Notice of Violation complied with the applicable Lead Limits, and further  
17 provided that such test results would be sufficient to support a Notice of Violation  
18 and that the testing was performed within two years prior to the date of the sales  
19 transaction on which the Notice of Violation is based. Lady Captiva shall provide  
20 copies of such test results and supporting documentation to Brimer with its Notice  
21 of Election; or

22 (ii) Not required or payable, if the Covered Product is otherwise  
23 released from liability for alleged violations of Proposition 65 with respect to Lead  
24 by the terms of a separate settlement agreement or consent judgment entered into  
25 under Health and Safety Code Section 25249.7 ("Qualified Settlement"); or

26 (iii) Not required or payable, if the Notice of Violation concerns  
27 a Non-Suspect Material; provided, however, that the foregoing exemption shall not  
28 apply if Lady Captiva has received more than three Notices of Violation in an 18-

1 month period for the same Non-Suspect Material that was supplied by more than  
2 one Vendor; or

3 (iv) Not required or payable, if the Notice of Violation identifies  
4 the same Covered Product or Covered Products, differing only in size or color, that  
5 have been the subject of another Notice of Violation within the preceding 12  
6 months.

7 **5. MONETARY PAYMENTS**

8 **5.1 Payments Made Pursuant to Health & Safety Code §25249.7(b).**

9 Lady Captiva shall pay \$10,000 in civil penalties to be apportioned in accordance with  
10 California Health & Safety Code § 25192, with 75% of these funds remitted to the State of  
11 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining  
12 25% of the amount remitted to Russell Brimer as provided by California Health & Safety Code §  
13 25249.12(d). Lady Captiva shall issue two separate checks for the payment: (a) one check made  
14 payable to "The Chanler Group in trust For OEHHA" in the amount of \$7,500, representing 75%  
15 of the total payment; and (b) one check to "The Chanler Group in trust for Russell Brimer" in the  
16 amount of \$2,500, representing 25% of the total payment. Two separate 1099s shall be issued for  
17 the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486);  
18 and (b) Russell Brimer, whose information shall be provided five calendar days before the  
19 payment is due.

20 Payment shall be delivered to Brimer's counsel on or before December 15, 2010, at the  
21 following address:

22 The Chanler Group  
23 Attn: Proposition 65 Controller  
24 2560 Ninth Street  
25 Parker Plaza, Suite 214  
26 Berkeley, CA 94710-2565  
27  
28

1           **5.2 Reimbursement of Fees and Costs.**

2           Pursuant to Code of Civil Procedure § 1021.5, Lady Captiva shall reimburse Brimer and  
3 his counsel a total of \$40,000, for fees and costs incurred as a result of investigating, bringing this  
4 matter to Lady Captiva's attention, and litigating and negotiating a settlement in the public  
5 interest. Lady Captiva shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall  
6 make the check payable to "The Chanler Group" and to be delivered on or before December 15,  
7 2010, to the following address:

8           The Chanler Group  
9           Attn: Proposition 65 Controller  
10          2560 Ninth Street  
11          Parker Plaza, Suite 214  
12          Berkeley, CA 94710-2565

11       **6. CLAIMS COVERED AND RELEASE**

12           6.1 This Consent Judgment is a full, final, and binding resolution between Brimer and  
13 Lady Captiva and its parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
14 affiliates, and sister companies and their successors and assigns ("Defendant Releasees"), and  
15 their downstream distributors, wholesalers, customers, retailers, franchisees, cooperative  
16 members, licensors, and licensees, and any other person or entity to whom they directly or  
17 indirectly distribute or sell Covered Products, including, but not limited to, dELiA\*s, Inc. and its  
18 parents, subsidiaries, and affiliates ("Downstream Defendant Releasees"), of any violation of  
19 Proposition 65 that has been or could have been asserted in the public interest against Lady  
20 Captiva, Defendant Releasees, and Downstream Defendant Releasees regarding the failure to  
21 warn about exposure to lead in Covered Products. Defendant Releasees' compliance with this  
22 Consent Judgment shall constitute compliance with Proposition 65 with respect to Lead in  
23 Covered Products after the Effective Date.

24           6.2 Brimer on behalf of himself, his past and current agents, representatives, attorneys,  
25 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to  
26 institute or participate in, directly or indirectly, any form of legal action and releases all claims,  
27 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,  
28 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not

1 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether  
2 known or unknown, fixed or contingent (collectively "Claims"), against Lady Captiva, Defendant  
3 Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65  
4 regarding the failure to warn about exposure to lead in Covered Products.

5 6.3 Brimer also, in his individual capacity only and *not* in his representative capacity,  
6 provides a general release herein which shall be effective as a full and final accord and  
7 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
8 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,  
9 known or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint.  
10 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which  
11 provides as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
13 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
14 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.

15 Brimer, in his individual capacity only and *not* in his representative capacity, expressly  
16 waives and relinquishes any and all rights and benefits which he may have under, or which may  
17 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as  
18 under any other state or federal statute or common law principle of similar effect, to the fullest  
19 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In  
20 furtherance of such intention, the release hereby given shall be and remain in effect as a full and  
21 complete release notwithstanding the discovery or existence of any such additional or different  
22 claims or facts arising out of the released matters.

23 6.4 Lady Captiva waives any and all Claims against Brimer, his attorneys, and other  
24 representatives for any and all actions taken or statements made (or those that could have been  
25 taken or made) by Brimer and his attorneys and other representatives, whether in the course of  
26 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this  
27 matter, and/or with respect to the Covered Products.

1           6.5     Lady Captiva also provides a general release herein which shall be effective as a  
2 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
3 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Lady Captiva of any  
4 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject  
5 matter of the Action. Lady Captiva acknowledges that it is familiar with Section 1542 of the  
6 California Civil Code, which provides as follows:

7           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
9 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.

10          Lady Captiva expressly waives and relinquishes any and all rights and benefits which it  
11 may have under, or which may be conferred on it by the provisions of Section 1542 of the  
12 California Civil Code as well as under any other state or federal statute or common law principle  
13 of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining  
14 to the released matters. In furtherance of such intention, the release hereby given shall be and  
15 remain in effect as a full and complete release notwithstanding the discovery or existence of any  
16 such additional or different claims or facts arising out of the released matters.

17       **7.     COURT APPROVAL**

18           7.1     By this Consent Judgment and upon its approval, the Parties waive their right to  
19 trial on the merits, and waive rights to seek appellate review of any and all interim rulings,  
20 including all pleading, procedural, and discovery orders.

21           7.2     The parties acknowledge that, pursuant to California Health & Safety Code §  
22 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which  
23 Brimer shall file, and Lady Captiva shall join.

24           7.3     If this Consent Judgment is not approved by the Court, (a) this Consent Judgment  
25 and any and all prior agreements between the Parties merged herein shall terminate and become  
26 null and void, and the action shall revert to the status that existed prior to the execution date of  
27 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the  
28 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall

1 have any effect, nor shall any such matter be admissible in evidence for any purpose in this  
2 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine  
3 whether to modify the terms of the Consent Judgment and to resubmit it for approval. If the  
4 Superior Court does not approve the motion to approve this Consent Judgment, and if the parties  
5 choose not to pursue a modified Consent Judgment within 30 days after the Court's denial of the  
6 motion to approve, all payments made pursuant to this Consent Judgment will be returned to  
7 Lady Captiva.

8 **8. ATTORNEYS' FEES**

9 8.1 Should Plaintiff prevail on any motion, application for an order to show cause or  
10 other proceeding to enforce a violation of this Consent Judgment, Plaintiff shall be entitled to its  
11 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
12 Lady Captiva prevail on any motion application for an order to show cause or other proceeding,  
13 Lady Captiva may be awarded its reasonable attorneys' fees and costs as a result of such motion  
14 or application upon a finding by the court that Plaintiff's prosecution of the motion or application  
15 lacked substantial justification. For purposes of this Consent Judgment, the term substantial  
16 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of  
17 Civil Procedure Section 2016, *et seq.*

18 8.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its  
19 own attorneys' fees and costs.

20 8.3 Nothing in this Section 8 shall preclude a Party from seeking an award of  
21 sanctions pursuant to law.

22 **9. GOVERNING LAW**

23 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California, and shall apply only to Covered Products offered for sale in the State of California. In  
25 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law  
26 generally, or as to the Products, then Lady Captiva may provide written notice to Brimer of any  
27 asserted change in the law, and shall have no further obligations pursuant to this Consent  
28 Judgment with respect to, and to the extent that, the Covered Products are so affected.

1           9.2    The Parties, including their counsel, have participated in the preparation of this  
2   Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
3   Consent Judgment was subject to revision and modification by the Parties and has been accepted  
4   and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
5   ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
6   of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
7   agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
8   the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
9   this regard, the Parties hereby waive California Civil Code § 1654.

10   **10.   NOTICES**

11           10.1   Unless specified herein, all correspondence and notices required to be provided  
12   pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)  
13   first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any  
14   Party by the other Party at the following addresses:

15           To Lady Captiva:

16                   Faye Chiang  
17                   Lady Captiva Inc.  
18                   225 Dupont Street  
19                   Plainview, New York 11803

20           With a copy to:

21                   Jeffrey B. Margulies, Esq.  
22                   Fulbright & Jaworski LLP  
23                   555 South Flower Street  
24                   Forty-First Floor  
25                   Los Angeles, California 90071  
26                   213-892-9286  
27                   213-892-9494 fax  
28                   jmargulies@fulbright.com

          To Brimer:

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

1           10.2 Any Party, from time to time, may specify in writing to the other Party a change of  
2 address to which all notices and other communications shall be sent.

3       **11. MODIFICATION**

4           11.1 **Modification.** This Consent Judgment may be modified by written agreement of  
5 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any  
6 Party and entry of a modified Consent Judgment by the court.

7           11.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation or  
8 regulation is adopted that addresses the lead content of Covered Products sold in California, any  
9 Party shall be entitled to request that the Court modify the reformulation standard of Section 3.1  
10 of this Consent Judgment for good cause shown.

11          11.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
12 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to  
13 modify the Consent Judgment.

14       **12. ENTIRE AGREEMENT**

15          12.1 This Consent Judgment contains the sole and entire agreement and understanding  
16 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
17 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
18 and therein. No supplementation, modification, waiver, or termination of this Consent Judgment  
19 shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of  
20 the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the  
21 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing  
22 waiver.

23       **13. RETENTION OF JURISDICTION**

24          13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
25 Consent Judgment.

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1 **14. COUNTERPARTS; FACSIMILE SIGNATURES**

2 14.1 This Consent Judgment may be executed in counterparts and by facsimile or  
3 portable document format (pdf), each of which shall be deemed an original, and all of which,  
4 when taken together, shall constitute one and the same document.

5 **15. AUTHORIZATION**

6 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of  
7 their respective Parties and have read, understood, and agree to all of the terms and conditions of  
8 this Consent Judgment.

| 9 <b>AGREED TO:</b>                                                                  | <b>AGREED TO:</b>           |
|--------------------------------------------------------------------------------------|-----------------------------|
| 10 Date: <u>12-13-10</u>                                                             | Date: _____                 |
| 11  |                             |
| 12 By: _____                                                                         | By: _____                   |
| 13 Plaintiff RUSSELL BRIMER                                                          | Defendant LADY CAPTIVA INC. |

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19 **IT IS SO ORDERED.**

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

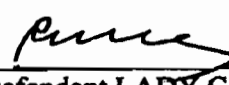
21 \_\_\_\_\_  
22 JUDGE OF THE SUPERIOR COURT

1 **14. COUNTERPARTS; FACSIMILE SIGNATURES**

2 14.1 This Consent Judgment may be executed in counterparts and by facsimile or  
3 portable document format (pdf), each of which shall be deemed an original, and all of which,  
4 when taken together, shall constitute one and the same document.

5 **15. AUTHORIZATION**

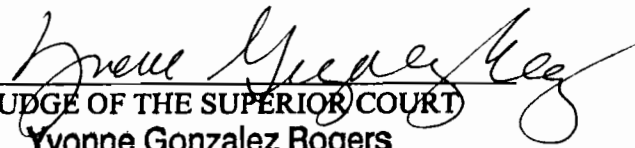
6 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of  
7 their respective Parties and have read, understood, and agree to all of the terms and conditions of  
8 this Consent Judgment.

| 9 AGREED TO:                | 9 AGREED TO:                                                                                      |
|-----------------------------|---------------------------------------------------------------------------------------------------|
| 10 Date: _____              | 10 Date: <u>DEC, 09, 2010</u>                                                                     |
| 11                          | 11                                                                                                |
| 12                          | 12                                                                                                |
| 13 By: _____                | 13 By: <u></u> |
| 14 Plaintiff RUSSELL BRIMER | 14 Defendant LADY CAPTIVA INC.                                                                    |

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**IT IS SO ORDERED.**

Date: 2 June 2011

  
JUDGE OF THE SUPERIOR COURT  
Yvonne Gonzalez Rogers

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