

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Russell Brimer and Mad Catz, Inc.

This Settlement Agreement is entered into by and between Russell Brimer (hereinafter “Mr. Brimer”) and Mad Catz, Inc. (hereinafter “Mad Catz”), with Mr. Brimer and Mad Catz collectively referred to as the “Parties.” Mr. 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. Mad Catz 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

Mr. Brimer alleges that Mad Catz has manufactured, distributed, and/or sold in the State of California backpacks containing lead without the requisite Proposition 65 warning. Lead is listed pursuant to Proposition 65, as a chemical known to the State of California to cause birth defects and other reproductive harm. Lead is referred to herein as the “Listed Chemical.”

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: backpacks containing lead that are manufactured, imported, distributed, and/or sold in California by Mad Catz, including, but not limited to, *Petz Dogz Photo Pak, Item No. #2457 (#7 28658 01486 5)*. All such items are referred to herein as “Products.”

### 1.4 Notice of Violation

On or about March 17, 2011, Mr. Brimer served Mad Catz and various public

enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Mad Catz and such public enforcers with notice that Mad Catz was alleged to be in violation of Proposition 65 for failing to warn consumers that the Products exposed users in California to the Listed Chemical. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

### **1.5 No Admission**

Mad Catz denies the material factual and legal allegations contained in Mr. Brimer’s 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, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Mad Catz of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Mad Catz of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Mad Catz. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Mad Catz under this Settlement Agreement.

### **1.6 Effective Date**

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

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Commitment**

Commencing on the Effective Date, Mad Catz shall do one of the following: (a) cease all sales, shipping, or distribution of the Products to entities in California or to entities which may offer the Products for sale in California; or (b) refrain from manufacturing, distributing, shipping, selling or offering to be shipped for sale in California any Products unless the products contain

less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100 or contain less than or equal to 100 parts per million of the Listed Chemical when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or any method allowed by any state or federal agency to assess the lead content by weight of a solid substance.

### **3. MONETARY PAYMENTS**

#### **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

Pursuant to Health & Safety Code § 25249.7(b) the total civil penalty assessed shall be \$2,400. Civil penalties are to be apportioned in accordance with California Health & Safety Code §25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% to Mr. Brimer.

Mad Catz shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust for the Office of Environmental Health Hazard Assessment" in the amount of \$1,800, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$600, representing 25% of the total penalty.

Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,800. The second 1099 shall be issued to Mr. Brimer in the amount of \$600, whose address and tax identification number shall be furnished, upon request, three calendar days before payment is due. Payment shall be delivered within 10 days of the Effective Date, at the following address:

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

#### **4. REIMBURSEMENT OF FEES AND COSTS**

##### **4.1 Attorney's Fees and Costs**

The Parties reached an accord on the compensation due to Mr. 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 in this matter. Under these legal principles, Mad Catz shall pay the total of \$20,000 for fees and costs incurred as a result of investigating, bringing this matter to the attention of Mad Catz, and negotiating a settlement in the public interest. Mad Catz shall make a separate check payable to "The Chanler Group," issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment within 10 days of the Effective Date, to the following address:

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

#### **5. RELEASE OF ALL CLAIMS**

##### **5.1 Mr. Brimer's Release of Mad Catz**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Mr. Brimer, on behalf of himself, his past and current agents, representatives, attorneys, including, without limitation, The Chanler Group, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever (collectively "Claims") that were brought or could have been brought against Mad Catz or its

subsidiaries or affiliates, and each of Mad Catz' downstream customers, distributors, wholesalers, retailers, licensors, licensees, or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers and representatives of each of them (collectively "Releasees") that arise under Proposition 65, as such claims relate to Mad Catz' alleged failure to warn about exposures to lead contained in the Products. The Parties further understand and agree that this release shall not extend upstream to any third parties that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Mad Catz.

Compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by Mad Catz and Mad Catz' Releasees with the requirements of Proposition 65 with respect to alleged exposure to the Listed Chemical from the Products distributed or sold by Mad Catz.

#### **5.2 Mad Catz's Release of Mr. Brimer**

Mad Catz waives any and all claims against Mr. Brimer, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Mr. Brimer and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

#### **6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products and/or the Listed Chemical, then Mad Catz shall provide written notice to Mr. Brimer of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be 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 Mad Catz:

Whitney Peterson, General Counsel  
Mad Catz, Inc.  
7480 Mission Valley Road, Suite 101  
San Diego, CA 92108

For Mr. Brimer:

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

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

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

Mr. Brimer agrees to comply with the reporting form requirements referenced in Health & Safety Code §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.

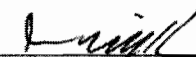
**AGREED TO:**

**AGREED TO:**

Date: 10-11-11

Date: 12/6/11

By:   
Russell Brimer

By:   
Darren Richardson, President and CEO  
Mad Catz, Inc.