

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Russell Brimer and Riviera Trading

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and StyleMark, Inc., dba Riviera Trading (“StyleMark” or “Riviera”), with Brimer and Riviera collectively referred to 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. Riviera employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

### 1.2 General Allegations

Brimer alleges that Riviera has manufactured, distributed, and/or sold in the State of California hair accessories containing lead. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5 *et seq.* (“Proposition 65”), as a chemical known to the State of California to cause birth defects and other reproductive harm. Lead shall be referred to herein as the “Listed Chemical.”

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: hair accessories containing the Listed Chemical that are manufactured, imported, distributed, and/or sold in California by Riviera, including, but not limited to, *Riviera Trading Skinny Headband Set, RV3610202-999 (#0 22763 03975)*. All such items are referred to herein as the “Products.”

### 1.4 Notice of Violation

On or about December 15, 2009, Brimer served Riviera and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Riviera and such public enforcers with notice that Riviera was alleged to be in violation of California Health & Safety Code §25249.6 for failing to warn consumers that the Products exposed users in California to the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

This Settlement Agreement resolves claims that are denied and disputed by Riviera . The Parties enter into this Settlement Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Riviera denies the material, factual, and legal allegations contained in 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. Nothing in this Settlement Agreement shall be construed as an admission by Riviera of any fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Riviera of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Riviera. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Riviera under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 29, 2010.

**2. INJUNCTIVE RELIEF**

**2.1 Reformulation Commitment**

Commencing on the Effective Date, Riviera shall not ship, sell, or offer to ship for sale in California, any Products that contain more than 100 parts per million of the Listed Chemical when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and 6010B ("Digest Test") performed on any accessible component (i.e., any component part that may be handled, touched or mouthed by a consumer during the reasonably foreseeable use of the Products).

**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 \$2,000. Civil penalties are to be apportioned in accordance with California Health & Safety

Code §§25249.12(c) & (d), with 75% of the payment amount remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty paid to Brimer.

Riviera shall issue two separate checks for each of the penalty payments: (a) one check made payable to "The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment" in the amount of \$1,500 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$1,500. The second 1099 shall be issued to Brimer in the amount of \$500, whose address and tax identification number shall be furnished, upon request, three calendar days before payment is due. The payment shall be delivered by the Effective Date, at the following address:

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

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

##### **4.1 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 this fee issue to be resolved after the material terms of the agreement had been settled. Riviera then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. 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 (CCP) §1021.5, for all work performed through the mutual execution of this agreement. Riviera shall pay the total of \$18,000 for fees and costs incurred as a result of investigating, bringing this matter to

Riviera's attention, and negotiating a settlement in the public interest. Riviera shall make the check payable to "The Chanler Group," shall issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment to The Chanler Group by the Effective Date to the following address:

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

**5. RELEASE OF ALL CLAIMS**

**5.1.1 Brimer's Release of Riviera**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Brimer on behalf of himself, his past and current agents, representatives, attorneys, 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, whether known or unknown, fixed or contingent with respect to the Listed Chemical in the Products (collectively "Claims"), that were brought or could have been brought against Riviera, or its parents, subsidiaries or affiliates and the officers, directors, managers, employees, members, shareholders, agents, insurers and representatives of each of them ("Releasees"), and all of their 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 (collectively "Downstream Releasees)."

Riviera's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Products for both Releasees and Downstream Releasees for Products distributed and/or sold by Releasees after the Effective Date.

5.1.2 Brimer also, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees and not in his representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, and as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Releasees and Downstream Releasees arising under Proposition 65, as such claims relate to the Releasees' alleged failure to warn about exposures to or identification of listed chemicals contained in the Products sold or distributed by 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Brimer, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees but not in his representative capacity on behalf of the public interest 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. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any additional or different claims or facts arising out of the released matters.

5.1.3 The Parties further understand and agree that, except as provided for above, 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 to the Releasees.

5.1.4 The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Riviera, the Releasees, or the Downstream Releasees as covered under this release. If requested in writing by Riviera,

Riviera may ask Brimer to file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law. If requested within twelve (12) months of the full execution of this agreement, Brimer agrees to reasonably cooperate with Riviera and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, Riviera will reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an agreed or actual amount not to exceed \$15,000.00. No fees under this paragraph will be due and owing to Brimer or his counsel unless a written request is made by Riviera to have Brimer file a complaint and seek a consent judgment. Riviera will remit payment to The Chanler Group, at the address set forth in Section 8 below. Such additional fees shall be paid by Riviera within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph.

## **5.2 Riviera's Release of Brimer**

5.2.1 Riviera waives any and all claims against Brimer, his attorneys, and other representatives (collectively "Brimer Releasees") 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 or otherwise seeking enforcement of Proposition 65 against Riviera in this matter, and/or with respect to the Products.

5.2.2 Defendant also provides a general release herein which shall be effective as a full and final accord and satisfaction, and as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Defendant of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Defendant 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 FAVOR AT THE TIME OF

EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Defendant expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it 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 it may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any additional or different claims or facts arising out of the released matters.

**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 Riviera 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 notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Riviera:

Stephen Ascik, Vice President  
Riviera Trading Inc.  
180 Madison Ave., Floor 21  
New York, NY 10016

with a copy to:

James Robert Maxwell, Esq.  
Rogers Joseph O'Donnell  
Robert Dollar Building  
311 California Street, 10th Floor  
San Francisco, CA 94104-2695425

For 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 facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

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

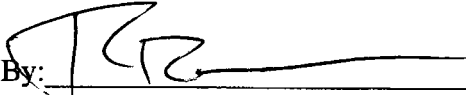
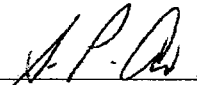
**11. MODIFICATION**

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.



<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: <u>10-26-10</u>	Date: <u>10/21/2010</u>
By:  Russell Brimer	By:  Stephen Ascik, Vice President StyleMark, Inc.