

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Scentco, Inc. (“Scentco”) with Brimer and Scentco each individually referred to as a “Party” and, collectively, as the “Parties.” Brimer is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health, by reducing or eliminating hazardous substances used in consumer products. Scentco 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

Brimer alleges that Scentco manufactures, imports, distributes, sells or offers for sale in California vinyl/PVC key chains containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC key chains containing DEHP that are manufactured, imported, distributed, sold or offered for sale in California by Scentco including, but not limited to, the *Spider-Man Scented Keychain*, *Spider-Gwen*, *SPMN7004-9664-02/17*, *UPC #6 92046 94234 7* (hereinafter, “Products”).

1.4 Notice of Violation

On January 17, 2018, Brimer served Scentco, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Scentco violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. To the best of the Parties’

knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Scentco denies the material, factual, and legal allegations in the Notice, and maintains that all of the products it sold and distributed for sale 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 Scentco 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 Scentco of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Scentco. This Section shall not, however, diminish or otherwise affect Scentco'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 January 25, 2019.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS

Commencing on the Effective Date and continuing thereafter, Scentco shall only import for sale, sell or distribute for sale, in California, Products that are either: (a) Reformulated Products, as defined in Section 2.1, below; or (b) Products bearing one of the Proposition 65-compliant health hazard warnings, detailed in Sections 2.2 and 2.3, below.

2.1 Reformulated Products Defined

For purposes of this Consent Judgment, "Reformulated Products" are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

2.2 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, Scentco shall provide clear and reasonable warnings as set forth in this section for all Products imported, sold or distributed for sale, in California, that do not qualify as Reformulated Products. Each warning shall be prominently placed 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* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Settlement Agreement, a clear and reasonable warning displayed or transmitted according the above criteria, and containing the following statement, shall satisfy these requirements:



WARNING:

This product can expose you to chemicals, including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

Or, if placed directly on a Product or the Product's packaging and/or labeling, Scentco may use the following short-form warning statement, provided it appears in a type size no smaller than the largest type size used for other consumer information on the Product's label and in no case smaller than 6-point type:



WARNING:

Cancer and Reproductive Harm -
www.P65Warnings.ca.gov/product

2.3 Internet Product Warnings

In the event Scentco sells Products that do not qualify as Reformulated Products via the internet to customers located in California, the warning requirements of this Section shall be satisfied if, prior to purchase: (a) one of the foregoing warnings, described in Section 2.2, appears on the same page, in the same type size or larger than the Product description text, as the Product; (b) a warning appears on the same web page as the price for the Product, in the same

type size or larger than the Product description text; (c) a warning appears on one or more web pages displayed to the consumer prior to purchase, in the same type size or larger than the Product description text; or (d) a hyperlink, clearly marked “WARNING,” appears on the Product display page, in type large enough so that the consumer does not have to search for it, and a prominently placed warning appears elsewhere, such as on the Product description page, in a manner that clearly associates it with the Product to which the warning applies, prior to checkout or purchase.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims alleged in the Notice and referred to in this Settlement Agreement, within five days of the Effective Date, Scentco agrees to pay \$3,000 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty paid to Brimer. Scentco shall issue its payment in two checks for the following amounts: (a) “OEHHA” in the amount of \$2, 250; and (b) “Russell Brimer, Client Trust Account” in the amount of \$750. Brimer’s counsel shall be responsible for delivering OEHHA’s portion of any penalty payment made under this Settlement Agreement.

3.2 Attorneys’ 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 this Settlement Agreement had been settled. After the Parties reached an agreement as to all other settlement terms, the Parties then reached 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 § 1021.5, for all work performed through the mutual execution of this Settlement

Agreement. Under these legal principles, Scentco agrees to pay \$17,000 to Brimer and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Scentco's management, and negotiating a settlement in the public interest. Scentco agrees to make two installment payments for attorneys' fees and costs, in the form of two checks, payable to "The Chanler Group" and delivered to the address in Section 3.3, below, as follows: (a) the first payment of \$7,000 shall be due within five days of the Effective Date; and (b) the second payment of \$10,000 shall be due on or before February 28, 2019.

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to:

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

4. CLAIMS COVERED AND RELEASED

4.1 Brimer's Release of Scentco

This Settlement Agreement is a full, final, and binding resolution between Brimer, on his own behalf and not on behalf of the public, and Scentco, of any violation of Proposition 65 that was or could have been asserted by Brimer, on his own behalf, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Scentco, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Scentco directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, including, without limitation Bed Bath & Beyond, Inc., franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale in California by Scentco before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Brimer, on his own behalf and not on behalf of the public, on behalf of his past and current agents,

representatives, attorneys, successors, and assignees, hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Scentco and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by Scentco, before the Effective Date.

The releases provided by Brimer under this Settlement Agreement are provided solely on Brimer's behalf and are not releases on behalf of the public.

4.2 Scentco's Release of Brimer

Scentco, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. 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.

6. 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 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Scentco may provide written notice to Brimer of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Scentco:

Chris Coté
Scentco, Inc.
8640 Argent Street
Santee, CA 92071

For Brimer:

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

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

8. **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.

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

Brimer and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

10. **MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

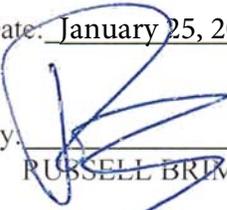
11. **AUTHORIZATION**

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:

Date: January 25, 2019

By: 

RUSSELL BRIMER

AGREED TO:

Date: January 22, 2019

By: 

Chris Cote

Digitally signed by Chris Cote
DN: cn=Chris Cote, ou=Scentco, Inc., ou=
email=ccote@scntcoinc.com, c=US
Date: 2019.01.22 21:41:22 -0800

Chris Coté
President
SCENTCO, INC.