

## SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT ("Agreement") dated as of September 24, 2009 (the "Effective Date"), by and among Harry Winston, Inc. ("HWI"), a New York corporation with a principal place of business at 718 Fifth Avenue, New York, New York, and Harry Winston S.A. ("HWSA"), a Swiss corporation located at 8 rue chemin du Tourbillon, CP 159-1228 Plan-les-Ouates, Genève, Switzerland (collectively, "Winston" or "Plaintiffs"); Charles Winston Luxury Group, LLC, ("CWLG"), a Florida Limited Liability Company located at 3301 North 29<sup>th</sup> Avenue, Hollywood, Florida; and The LP Watch Group, ("LPWG"), a Florida corporation located at 3301 North 29<sup>th</sup> Avenue, Hollywood, Florida (collectively, "Defendants").

### RECITALS

**WHEREAS**, Plaintiffs claim that the names and trademarks "Winston" and "Harry Winston" have, for nearly a century, been exclusively associated with the House of Harry Winston and its fine jewelry and precious stones, and are synonymous with the Winston reputation for quality jewelry and designs that emphasize the beauty of the stones and fine craftsmanship; and

**WHEREAS**, Plaintiffs claim that Mr. Harry Winston was world-renowned as the "Jeweler to the Stars" who promoted the Winston name to the general public through activities at functions such as the annual Academy Awards of Motion Picture Arts and Sciences ("Oscars"), where for many years Plaintiff HWI has loaned millions of dollars worth of jewels to the celebrity attendees, such that the name and trademarks "Winston" and "Harry Winston" are closely associated in the minds of consumers with celebrity imagery and glamour; and

**WHEREAS**, Plaintiffs are the owners of numerous trademark registrations for “Winston”, “Harry Winston” and “Jeweler to the Stars” for jewelry and precious stones, fine timepieces, and retail jewelry store services, as more fully set forth in U.S. trademark registration numbers; 848,629, 3,355,622, 3,079,120, 1,747,040, and 2,200,587 (Exhibit I attached); and

**WHEREAS**, Plaintiffs claim that since as early as 1998, Charles J. Winston has been selling on cable television costume jewelry made to resemble high priced, designer jewelry; and

**WHEREAS**, Plaintiffs claim that Charles J. Winston, individually and through his company, Charles Winston Enterprises LLC, operated a website at [www.charleswinston.com](http://www.charleswinston.com) that at the time of the filing of the Lawsuit made prominent use of the tagline “Jewelry for the Celebrity in You”; and

**WHEREAS**, in January 2007 CWLG was formed, of which LPWG initially owned 100%; CWLG then purchased certain assets of Charles Winston Enterprises LLC (excluding the diamond and 14k gold jewelry business) pursuant to an Asset Purchase Agreement dated January 18, 2007 between CWLG and Charles Winston Enterprises, LLC through its sole member Charles J. Winston; and subsequently C.W.E. Consulting Corporation acquired 20% of CWLG; and

**WHEREAS**, Plaintiffs claim that Defendant CWLG was promoting and selling jewelry and watches under the Winston name, and that Defendant LPWG was selling and marketing Charles Winston jewelry and watches on its website at [www.lpwatchgroup.com](http://www.lpwatchgroup.com); and

**WHEREAS**, Plaintiffs claim that they have repeatedly objected to those activities of Charles J. Winston and C.W.E. Consulting Corporation that Plaintiffs claim infringe upon, trade off of, unfairly compete with and dilute and tarnish the Winston Marks; and

**WHEREAS**, on June 4, 2008, Plaintiffs filed the action *Harry Winston, Inc., et al. v. Charles Winston Luxury Group, LLC, et al.*, Case No. 2:08-cv-536, (S.D. Ohio) against Defendants CWLG and LPWG, alleging trademark infringement under 15 U.S.C. § 1114, false designation of origin, passing off and false advertising under 15 U.S.C. § 1125(a), and dilution of famous marks (tarnishment) under 15 U.S.C. § 1125(c) (the “Lawsuit”); and

**WHEREAS**, on September 4, 2008, Plaintiffs amended their Complaint in the Lawsuit to add C.W.E. Consulting Corporation as a Defendant; and

**WHEREAS**, Plaintiffs, C.W.E. Consulting Corporation and Charles J. Winston, an individual, entered into a Settlement Agreement with an Effective Date of October 14, 2008 and C.W.E. Consulting Corporation agreed to a Final Consent Judgment and Permanent Injunction with Plaintiffs (collectively, “Charles Winston Settlement”) that was entered by the Court on October 21, 2008; and

**WHEREAS**, Defendants deny Plaintiffs’ allegations and factual assertions and have moved to dismiss or transfer the Lawsuit on grounds of lack of personal jurisdiction and improper venue; and

**WHEREAS**, without any admission of liability and in light of the Charles Winston Settlement, Defendants have agreed to settle all claims arising out of the claims asserted by Plaintiffs in the Lawsuit upon the terms set forth below.

**NOW, THEREFORE**, in consideration of the representations, promises and mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Plaintiffs and Defendants, without any admission of liability, hereby agree as follows:

1. The term “Winston Trademark Registrations” shall mean U.S. trademark Registration Nos. 848,629, 3,355,622, 3,079,120, 1,747,040 for the marks “Winston”, “Harry Winston” and variants, and Registration No. 2,200,587 for the mark JEWELER TO THE STARS (copies of the U.S. Registration Certificates are attached as Exhibit 1).

2. The term “Winston Trademarks” shall mean both: a) the common law trademarks and common law trade names that include the term “Winston”; and b) the trademarks shown in any U.S. Winston Trademark registrations (Exhibit 1) now existing or hereafter registered, as applied to the goods in such registrations.

3. Defendants do not contest the validity of and the exclusive ownership by Harry Winston of the Winston Trademarks as both common law and registered trademarks and common law trade names as applied to the goods and services recited in the aforesaid registrations and agree never to contest or question the same in any court, tribunal, agency or administrative bodies in the United States, its territories and possessions, or take any action to cancel, oppose or challenge any existing or future efforts by Winston to register a Winston Trademark.

4. After January 18, 2007, CWLG sold fashion jewelry, watches and timepieces under the Charles Winston brand and has made use of the tagline “Jewelry for the Celebrity in You”; and LPWG has represented Charles Winston watches is one of its brands.

5. Except as otherwise provided in this Agreement, Defendants hereby agree a) not to use the Winston Trademarks or variations of said trademarks (including the trademark "Charles Winston") on watches; b) not to use the Winston Trademarks or variations of said trademarks (including the trademark "Charles Winston") on jewelry with the use of a celebrity marketing scheme; or c) not to represent in the promotion, marketing or sale of any of their products that such products are connected with or inspired by Plaintiffs and Plaintiffs' products and services.

6. Except as otherwise provided in this Agreement, Defendants hereby agree not to use the Winston Trademarks or variations of said trademarks in any way that (a) is likely to deceive or cause confusion as to the affiliation, connection or association of Defendants with Plaintiffs, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities by Plaintiffs; (b) unfairly trade off of the fame and goodwill of Harry Winston as the "Jeweler to the Stars"; and (c) tarnish the Winston Trademarks.

7. Except as otherwise provided in this Agreement, Defendants and each of their agents, servants, employees, officers, directors, shareholders, assigns, representatives, successors, and all persons in active concert or participation with them, excepting Charles Winston individually and any entity associated with Charles Winston other than Defendants, hereby agree, as of either the Effective Date or Entry Date of the Final Consent Judgment and Permanent Injunction (attached hereto as Exhibit 2), whichever shall occur earlier:

(a) To cease use of any of the Winston Trademarks, or any variation of the word "Winston" specifically including, but not limited to, the use of the name "Winston" by itself as a trademark, trade name, corporate name or domain name;

(b) To permanently refrain from attempting to obtain a federal trademark registration of any trademark for jewelry or watches or retail jewelry or watch store services (including online sales) that includes the word "Winston" or "Charles Winston";

(c) To cease and permanently refrain from making any type of representation that Charles J. Winston is a celebrity jeweler or any words to that effect;

(d) To cease and permanently refrain from selling any jewelry items under the name "Winston" by itself or in font or typestyle that uses the word "Winston" in larger size than the word "Charles";

(e) To cease and permanently refrain from selling any watches or timepieces under the name "Charles Winston" or "Winston" or any other term that includes the word "Winston" as part of the name;

(f) To cease and permanently refrain from selling any item under the "Charles Winston" name with a retail price that exceeds Nine Hundred Ninety-Nine Dollars (\$999.00);

(g) To cease and permanently refrain from using any of the Winston Trademarks for goods or services, or on the internet, or as domain names, email addresses, meta tags, invisible data, or engage in acts or conduct that are likely to cause confusion as to the source, sponsorship, endorsement or affiliation of Defendants with Plaintiffs;

(h) To cease using the name "Charles Winston" for jewelry: 1) four (4) years from the Effective Date of this Agreement; or 2) within three (3) years from the date of Charles J. Winston's death (provided that Defendants' use of "Charles Winston" not exceed four (4) years); or 3) upon Defendants entering into any written agreement with Charles J. Winston and/or any of his companies to cease use of the name "Charles Winston"; or 4) upon any final decision of a court of competent jurisdiction that is not appealed which holds that Defendants have no right to use the name "Charles Winston" for jewelry, whichever happens first;

(i) To cease and permanently refrain from making any representation that Charles J. Winston is a relative of the late Harry Winston, that Charles J. Winston was trained or otherwise learned how to create or produce jewelry through his family relationship and/or brief work relationship with Harry Winston, or that Charles Winston has any connection with HWI; and

(j) Nothing contained herein shall in any way restrict Defendants' use of the initials "CW" as a brand, trade name or trademark or any variation thereof on jewelry, watches or any other product, except to the extent in conflict with the other terms set forth herein.

8. Notwithstanding anything in this Agreement to the contrary, Plaintiffs shall not object to Defendants' use of the name and trademark "Charles Winston" for jewelry for four (4) years from the Effective Date of this Agreement ("Phase-Out period") or three (3) years from the date of Charles J. Winston's death (not to exceed the four year Phase-Out period) and provided Defendants are in compliance with each of the following three conditions:

(1) Defendants are in compliance with all terms and conditions of both this Agreement and the Final Consent Judgment and Permanent Injunction entered in the U.S. District Court, S.D. Ohio subject to the notice and cure provisions in this Agreement; and

(2) No court of competent jurisdiction has entered a final order or judgment (which has not been appealed) that provides Defendants do not have the legal right to use the name or trademark "Charles Winston" for jewelry; and

(3) Defendants do not enter into any agreement with any non-related third party (including but not limited to Charles Winston) that: a) acknowledges that Defendants have no legal right to own or use the name "Charles Winston"; or (b) licenses, assigns, conveys, or otherwise transfers or alienates to any such party, any or all of Defendants' right, title and interest (which Defendants may now own or hereafter acquire) in the name and trademark "Charles Winston" or any variant thereof for jewelry, and/or Defendants' rights of persona, likeness and rights of publicity to Charles Winston.

In the event that Defendants are in breach of any of the above conditions, and such breach either cannot be cured (in the case of condition numbers 2 or 3 in this paragraph, above) or such breach is not cured within fifteen (15) business days after notice of such breach is given to Defendants (in the case of condition number 1 in this paragraph above), then Defendants' right under this Agreement to continue using the

name and trademark “Charles Winston” for the manufacturing, distribution and sale of jewelry shall end immediately and without further notice.

9. The parties agree that, as of the Effective Date, Defendants do not own or control the charleswinston.com website (the “Website”); that Defendants do not have the ability to change or control the content on the Website and that Defendants are not responsible for any content on the Website.

10. Plaintiffs acknowledge that Defendants have pending U.S. Trademark applications for CELEBRITY STYLE and JEWELRY FOR THE CELEBRITY IN YOU (the “Celebrity Marks”); that Plaintiffs agree not to challenge the Celebrity Marks in any proceeding, including any cancellation or infringement actions, provided that, beginning immediately, the Defendants cease using the Celebrity Marks with: a) the words WINSTON or CHARLES WINSTON; or b) with any photo or image or other rights of persona to or in CHARLES WINSTON. For purposes of illustration only without limitation, this Agreement does not prohibit Defendants from either (a) using a Celebrity Mark during the Phase-Out Period, provided that the web page, advertisement, marketing material or other document on which a Celebrity Mark appears does not also refer directly or indirectly to CHARLES WINSTON; or (b) using the Celebrity Marks with the initials “CW” or the given name CHARLES without the surname “Winston” or misspelling of the surname Winston.

11. As of the Effective Date of the Settlement Agreement, Plaintiffs have no knowledge that Defendants are in breach of any term or condition of this Agreement, and Defendants' activities depicted on the attached Exhibit 3 are not in breach of any term or condition of the Settlement Agreement.



12. Plaintiffs and Defendants will stipulate to the voluntary dismissal, with prejudice, of the claims asserted in the Lawsuit pursuant to the terms and conditions set forth in the Final Consent Judgment and Permanent Injunction to be filed therein, and attached hereto as Exhibit 2.

13. Except for actions arising out of a breach of this Agreement, Plaintiffs, on behalf of themselves and all of their Affiliates hereby release and forever discharge Defendants, and all of their past and present owners, directors, officers, employees, agents, shareholders and representatives, excepting Charles Winston individually and any entity associated with Charles Winston other than the Defendants, (collectively, the "Defendant Releasees") from any and all claims, actions, causes of action, suits, debts, charges, complaints, demands, agreements, liabilities, damages, losses or obligations of any kind and nature whatsoever, whether known or unknown, which Plaintiffs now have or have ever had against the Defendant Releasees arising out of or relating to the claims set forth in the Lawsuit. This release does not extend to any claims to enforce the terms of this Agreement.

14. Except for actions arising out of the breach of this Agreement, Defendants, on behalf of themselves and all of their Affiliates, excepting Charles Winston individually and any entity associated with Charles Winston other than the Defendants, hereby release and forever discharge Plaintiffs, their Affiliates, and all of their past and present directors, officers, employees, agents, shareholders and representatives, excepting Charles Winston, (collectively, the "Harry Winston Releasees") from any and all claims, actions, causes of action, suits, debts, charges, complaints, demands, agreements, liabilities, damages, losses or obligations of any kind

and nature whatsoever, whether known or unknown, which Defendants now have or have ever had against the Harry Winston Releasees arising out of or relating to the claims set forth in the Lawsuit. This release does not extend to any claims to enforce the terms of this Agreement.

15. "Affiliate," with respect to either party, means any entity controlled by, controlling or under common control with such party, and any director, officer, agent or employee of such entity, or relative by blood or marriage of any of the foregoing. For the purposes hereof, "control" means direct or indirect ownership of more than 20% of the voting stock or other class of equity interest in any entity, or the power to elect or appoint a majority of the board of directors or other governing body of such entity, or the power to otherwise manage or direct the business affairs of such entity, or relative by blood or marriage of any of the foregoing.

16. All parties have had the opportunity to seek the advice of independent counsel and have had an opportunity to review this Agreement with their attorneys and the releases contained herein prior to its execution. The parties warrant and represent that they have fully informed themselves of the contents of the Agreement and any exhibits relevant to its contents.

17. Each party shall bear its own costs and attorney's fees for and related to the matters settled by this Agreement and in connection with the preparation of this Agreement.

18. This Agreement will be binding on and enforceable by and against the parties and their respective successors, assigns, heirs and administrators; provided, however, that should a court of competent jurisdiction subsequently determine and enter

a final decision that is not appealed that Defendants have no rights in or to the name “Charles Winston”, any rights granted by Plaintiffs herein to such use will be superseded by that decision.

19. This Agreement constitutes the entire understanding of the parties with respect to the matters set forth herein and supersedes all prior and contemporaneous written and/or oral understandings among the parties with respect thereto. No amendment, modification or waiver of any of the provisions of this Agreement shall be valid unless set forth in a written instrument signed by both parties.

20. No waiver by any party to this Agreement of any provision hereof, and no failure by any party to exercise any of such party's rights or remedies hereunder, shall be deemed to constitute a waiver of such provision, right, or remedy in the future, or of any other provision, right, or remedy hereunder, unless such waiver shall be set forth in a written instrument signed by the party against whom such waiver is sought to be enforced.

21. This Agreement shall continue in full force and effect in perpetuity.

22. The parties shall not be considered agents or legal representatives of each other and shall have no power or authority to bind or commit each other. The parties expressly acknowledge that no franchise, partnership or joint venture relationship exists or is intended to exist between the parties during the term of this Agreement.

23. All of the parties hereby declare that the terms of this Agreement are completely read and fully understood and voluntarily accepted after consultation with their respective counsel, each of whom shall be considered as having drafted this Agreement. All of the parties acknowledge that this Agreement is a full, fair and final

settlement of all claims released hereunder. If any provision of this Agreement shall be held by an agency or a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be construed in all respects as if such invalid or unenforceable provision were replaced with a valid and enforceable provision as similar as possible to the one replaced, and the remainder of this Agreement shall continue in full force and effect and shall not be invalidated, impaired, or otherwise affected.

24. An action for breach or enforcement of this Agreement or violation of the Consent Judgment and Permanent Injunction shall not be initiated by a complaining party until such party has first given written notice to the offending party of the breach and the offending party has failed to cure the breach within fifteen (15) business days of such notice.

25. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficiently given (i) the following business day after having been timely sent by reputable overnight courier service for priority, next day delivery, (ii) upon confirmation of receipt by the recipient after having been sent by fax, in each case to the applicable party's street address or fax number as set forth below (as the same may be amended by such party upon written notice to the other), or by such other means as the parties may hereafter agree in writing, and shall only be effective if delivered to all addressees indicated as follows:

If to Plaintiffs:

Mr. Robert Scott  
Chief Financial Officer  
Harry Winston, Inc.  
1330 Avenue of Americas  
New York, New York 10019  
Telephone: (212) 315-7917

Email: [RScott@HarryWinston.com](mailto:RScott@HarryWinston.com)

With a copy to:

Joseph R. Dreitler, Esq.  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215  
Telephone: (614)-227-2300  
Facsimile: (614) 227-2390  
E-mail: [jdreitler@bricker.com](mailto:jdreitler@bricker.com)

If to L.P. Watch Group and Charles Winston Luxury Group:

David Koss  
LP Watch Group  
3301 North 29<sup>th</sup> Avenue  
Hollywood, FL 33020  
Facsimile: (954) 922-5154

With a copy to:

Franklin Zemel, Esq.  
c/o Arnstein & Lehr, LLP  
200 East Las Olas Boulevard  
17<sup>th</sup> Floor  
Ft. Lauderdale, FL 33301  
Telephone: (954) 713-7600  
Facsimile: (954) 713-7710  
Email: [FLZemel@arnstein.com](mailto:FLZemel@arnstein.com)

26. All parties agree that this Agreement and the attached Final Consent Judgment and Permanent Injunction shall be filed with the United States District Court, Southern District of Ohio, Eastern Division.

27. This Agreement shall be construed under and governed by the laws of the State of Ohio, without regard to conflicts of laws principles. Plaintiffs and Defendants agree that the exclusive venue for all actions to enforce this Agreement shall be in the United States District Court of Ohio, Southern District, Eastern Division. To the extent an action to enforce this Agreement is brought in the future, Plaintiffs and Defendants

agree that the United States District Court of Ohio, Southern District, Eastern Division shall have personal jurisdiction over all parties and all parties consent and waive any objections to said exercise of personal jurisdiction. Further, the parties consent to service of process by registered mail, return receipt requested, overnight carrier, facsimile, email, or by any other manner provided by law. In the event any party hereto attempts to set aside or to enforce this Agreement, or any party brings any action for its breach, such action must be brought only in the U.S. District Court for the Southern District of Ohio, and the prevailing party shall be entitled to all reasonable costs, including, but not limited to, reasonable attorneys' fees.

28. Each party represents and warrants that this Agreement is a legal, valid, and binding agreement enforceable against such party in accordance with its terms. Each party represents and warrants to all others that their respective signatories have been properly authorized to enter into this Agreement and to perform all of the covenants and agreements stated herein. If an undersigned is executing this Agreement in a representative capacity, the individual executing this Agreement has full authority to execute the same in a representative capacity. The parties hereto waive any right to assert any claim that they were induced to enter into this Agreement by any representation, promise statement, or warranty which is not expressly set forth in this Agreement. Except as expressly stated, neither party makes any other warranties.

29. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A facsimile copy of this Agreement and any signature hereon shall be considered for all purposes as originals.

30. This Agreement shall apply throughout the world.

IN WITNESS WHEREOF, Plaintiffs and Defendants have executed this Agreement with an Effective Date as set forth above.

Harry Winston, Inc.

By: 

Its: CFO

Dated: 9/21/09

LP Watch Group, Inc.

By: 

Its: Chairman

Dated: 9/24/09

Harry Winston S.A.

By: 

Its: Finance Director

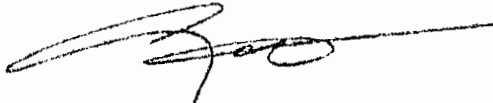
Dated: 9/22/09

Charles Winston Luxury Group LLC

By: 

Its: President

Dated: 9/24/09



VP SALES

9/22/09