

**ENDORSED  
FILED**  
*San Francisco County Superior Court*

APR 13 2010

CLERK OF THE COURT  
BY: KARISSA SHAW  
Deputy Clerk

1 Clifford A. Chanler, State Bar No. 135534  
2 Laurence D. Haveson, State Bar No. 152631  
3 Christopher Martin, State Bar No. 186021  
4 THE CHANLER GROUP  
5 2560 Ninth Street  
6 Parker Plaza, Suite 214  
7 Berkeley, California 94710-2565  
8 Telephone: (510) 848-8880  
9 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff  
7 RUSSELL BRIMER

8 Shelley Hurwitz, State Bar No. 217566  
9 HOLLAND & KNIGHT, LLP  
10 633 W. 5<sup>th</sup> Street, Suite 2100  
11 Los Angeles, California 90071-2040  
12 Telephone: (213) 896-2476  
13 Facsimile: (213) 896-2450

11 Attorneys for Defendant  
12 A & W PRODUCTS, CO., INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
15 UNLIMITED CIVIL JURISDICTION

17 RUSSELL BRIMER,  
18 Plaintiff,  
19 v.  
20 ACCO BRANDS CORPORATION, et al.,  
21 Defendants.

Case No. CGC-09-485784

ASSIGNED FOR ALL PURPOSES TO:  
The Honorable Richard A. Kramer

~~PROPOSED~~ JUDGMENT  
PURSUANT TO TERMS OF  
CONSENT TO JUDGMENT AS TO  
A & W PRODUCTS, CO., INC.

Date: April 13, 2010  
Time: 9:00 a.m.  
Dept.: 304

Action Filed: March 5, 2009

1 Now come Plaintiff RUSSELL BRIMER and Defendant A & W PRODUCTS, CO., INC.,  
2 having agreed through their respective counsel that judgment be entered pursuant to the terms of the  
3 Proposition 65 settlement agreement in the form of a Consent To Judgment executed by the above-  
4 referenced parties, and following issuance of an order approving this Proposition 65 settlement  
5 agreement on April 13, 2010.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety  
7 Code § 25249.7(f)(4) and Code of Civil Procedure §664.6, judgment is entered in accordance with  
8 the terms of the Consent To Judgment attached hereto as Exhibit 1. By stipulation of the parties, the  
9 Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

10 **IT IS SO ORDERED.**

11 Dated: 4/13/10

EDWARD A. KRAMER

Judge of the San Francisco City & County Superior Court

# **EXHIBIT 1**

1           **1.7 Complaint.** On March 5, 2009, Brimer, who was and is acting in the interest of the  
2 general public in California, filed a complaint in the Superior Court for the County of San Francisco  
3 against Defendant and Does 1 through 600, alleging violations of Health & Safety Code §25249.6  
4 based on the alleged exposures to lead contained in certain Products sold by Defendant without the  
5 requisite health hazard warnings. On March 12, 2009, Brimer filed an Amended Complaint in the  
6 Superior Court for the County of San Francisco. ( The Complaint and First Amended Complaint are  
7 referred to herein collectively as the "Complaint" or the "Action")

8           **1.8 No Admission.** Defendant denies the material factual and legal allegations contained  
9 in Plaintiff's Notice and Complaint and maintains that all products that it has sold and distributed in  
10 California including the Products have been and are in compliance with all laws. Nothing in this  
11 Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law,  
12 or violation of law, nor shall compliance with this Agreement constitute or be construed as an  
13 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law. However,  
14 this section shall not diminish or otherwise affect the obligations, responsibilities and duties of  
15 Defendant under this Consent Judgment.

16           **1.9 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties  
17 stipulate that this Court has jurisdiction over the Parties and concerning the alleged violations at issue  
18 and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper  
19 in the County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions  
20 of this Consent Judgment.

21           **1.10 Effective Date.** For purposes of this Consent Judgment, the "Effective Date" shall be  
22 October 1, 2009.

23 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS AND REFORMULATION**

24           **2.1 Reformulation Commitment.** Commencing on the Effective Date, Defendant shall  
25 not sell, ship or offer to be shipped for sale in California any vinyl coated paper fastener with a vinyl  
26 coating that contains more than 300 parts per million ("ppm") of lead.  
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1           **2.2 Requirements for Products Remaining in Inventory in California.**

2           Within 30 days of the entry of this Consent Judgment, Defendant shall send a letter to each  
3 customer in California to whom it supplied, on or after July 1, 2008, Products that did not meet the  
4 reformulation standard of Section 2.1, requesting that the customer either provide Proposition 65  
5 warnings for such Products remaining in its inventory or return such Products to Defendant. A copy  
6 of the letter shall be provided to counsel for Plaintiff and shall state that Defendant will pay for  
7 shipping of the returned product.

8           If Defendant elects to instruct its customer to provide a Proposition 65 warning, it shall include  
9 a sufficient number of warning stickers containing the following language:

10                           **WARNING:** This product contains lead, a chemical known to  
11   the State of California to cause cancer, birth  
12   defects and other reproductive harm.

13           with instructions that the stickers be placed on the product packaging for those Products in such  
14 customer's inventory, and shall be prominently placed with such conspicuousness as compared with  
15 other words, statements, designs or devices as to render it likely to be read and understood by an  
16 ordinary individual under customary conditions before purchase or use. As part of the instructions  
17 under either option, Defendant must specify the product name, product number, an SKU number if  
18 available, for each Product covered by the instruction letter.

19           **3. MONETARY PAYMENTS**

20           **3.1 Payments Pursuant to Health & Safety Code §25249.7(b).** Pursuant to Health &  
21 Safety Code §25249.7(b), the total civil penalty assessed shall be \$12,500. Civil penalties are to be  
22 apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds  
23 remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")  
24 and the remaining 25% of the penalty remitted to Brimer as provided by California Health & Safety  
25 Code §25249.12(d).

26           Defendant shall issue two separate checks for each of the penalty payments: (a) one check  
27 made payable to Hirst & Chanler LLP in Trust for the State of California's Office of Environmental  
28 Health Hazard Assessment (OEHHA) in the amount of \$9,375, representing 75% of the total

1 penalty; and (b) one check to Hirst & Chanler LLP in Trust for Brimer in the amount of \$3,125,  
2 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments:  
3 The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-  
4 0284486) in the amount of \$9,375. The second 1099 shall be issued to Brimer in the amount of  
5 \$3,125, whose address and tax identification number shall be furnished, upon request, five calendar  
6 days before payment is due. The payment shall be made payable to Hirst & Chanler LLP and shall  
7 be delivered within ten (10) days of the Effective Date, to the following address:

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

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

13 **4.1 Attorney Fees and Costs.** The parties acknowledge that Brimer and his counsel  
14 offered to resolve this dispute without reaching terms on the amount of fees and costs to be  
15 reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the  
16 agreement had been settled. Defendant then expressed a desire to resolve the fee and cost issue. The  
17 parties then attempted to (and did) reach an accord on the compensation due to Brimer and his counsel  
18 under general contract principles and the private attorney general doctrine codified at California Code  
19 of Civil Procedure (CCP) §1021.5. Defendant shall reimburse Brimer and his counsel the total of  
20 \$42,500 for fees and costs incurred through the mutual execution of this agreement and approval by  
21 the trial court. Defendant shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall  
22 make the check payable to "Hirst & Chanler LLP" and shall be delivered to the following address:

23 Hirst & Chanler LLP  
24 Attn: Proposition 65 Controller  
25 2560 Ninth Street  
26 Parker Plaza, Suite 214  
27 Berkeley, CA 94710-2565  
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1 **5. RELEASE OF ALL CLAIMS**

2 **5.1. Brimer's Release of Defendant and Its Chain of Distribution.**

3 **5.1.1** This Consent Judgment is a full, final, and binding resolution between Brimer and  
4 Defendant, and its parents, subsidiaries, affiliates, sister companies, owners, employees, shareholders,  
5 directors, insurers, attorneys, successors, and assigns ("Defendant Releasees"), and all entities to  
6 whom it directly or indirectly distributes or sells Products, including but not limited to distributors,  
7 wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream  
8 Defendant Releasees") of any violation of Proposition 65, or any other statutory or other law, that has  
9 been or could have been asserted against Defendant Releasees and Downstream Defendant Releasees  
10 regarding the failure to warn about exposure to the Listed Chemical arising in connection with  
11 Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to the Effective  
12 Date. Defendant Releasees' compliance with this Consent Judgment shall constitute compliance with  
13 Proposition 65 with respect to the Listed Chemical in Products after the Effective Date.

14 **5.1.2** Brimer on behalf of himself, his past and current agents, representatives, attorneys,  
15 successors, and/or assignees, and the general public, hereby waives all rights to institute or participate  
16 in, directly or indirectly, any form of legal action and releases all claims including, without limitation,  
17 all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,  
18 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees,  
19 and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
20 (collectively "Claims"), that were brought or could have been brought against Defendant Releasees  
21 and Downstream Defendant Releasees that arise under Proposition 65 or any other statutory or  
22 common law claims, that were or could have been asserted in the public interest, as such claims relate  
23 to Defendant Releasees' and Downstream Defendant Releasees' alleged failure to warn about  
24 exposures to the Listed Chemical contained in the Products.

25 **5.1.3** Brimer also, in his individual capacity only and *not* in his representative capacity,  
26 provides a general release herein which shall be effective as a full and final accord and satisfaction, as  
27 a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,  
28

1 claims, liabilities and demands of Brimer of any nature, character or kind, known or unknown,  
2 suspected or unsuspected, arising out of the subject matter of this action. Brimer acknowledges that  
3 he is familiar with Section 1542 of the California Civil Code, which provides as follows:

4           A general release does not extend to claims which the creditor does not  
5           know or suspect to exist in his or her favor at the time of executing the  
6           release, which if known by him or her must have materially affected his  
7           or her settlement with the debtor.

8           **5.1.4** Brimer, in his individual capacity only and *not* in his representative capacity, expressly  
9 waives and relinquishes any and all rights and benefits which he may have under, or which may be  
10 conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any  
11 other state or federal statute or common law principle of similar effect, to the fullest extent that he  
12 may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such  
13 intention, the release hereby given shall be and remain in effect as a full and complete release  
14 notwithstanding the discovery or existence of any such additional or different claims or facts arising  
15 out of the released matters.

16           **5.1.5** The Parties further understand and agree that this release shall not extend upstream to  
17 any entities that manufactured the Products for Defendant or any component parts thereof or to any  
18 distributors or suppliers who sold the Products or any component parts thereof to Defendant.

19           **5.2 Defendant's Release of Brimer.**

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

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

1 Defendant acknowledges that it is familiar with Section 1542 of the California Civil Code, which  
2 provides as follows:

3 A general release does not extend to claims which the creditor does not  
4 know or suspect to exist in his or her favor at the time of executing the  
5 release, which if known by him or her must have materially affected his  
6 or her settlement with the debtor.

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

13 **6. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
15 be null and void if, for any reason, it is not approved and entered by the Court within one year after  
16 it has been fully executed by all Parties, in which event any monies that have been provided to  
17 Plaintiff or his counsel pursuant to section 3 and section 4 above, shall be refunded within fifteen  
18 (15) days.

19 **7. SEVERABILITY**

20 If, subsequent to court approval of this Consent Judgment, any of the provisions of this  
21 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
22 provisions remaining shall not be adversely affected.

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California  
25 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
26 rendered inapplicable by reason of law generally, or as to the Products specifically, then Defendant  
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1 shall have no further injunctive obligations pursuant to this Consent Judgment with respect to, and  
2 to the extent that, those Products are so affected.

3 **9. NOTICES**

4 All correspondence and notices required to be provided to the Parties pursuant to this  
5 Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, registered,  
6 certified mail, return receipt requested, or (ii) overnight courier on either Party by the other at the  
7 addresses listed below. Either Party, from time to time, may specify a change of address to which  
8 all notices and other communications shall be sent.

9  
10 For Plaintiff:

11 Russell Brimer  
12 c/o Hirst & Chanler LLP  
13 Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

For Defendant:

Shelley Hurwitz  
Holland & Knight  
633 W. Fifth Street  
21<sup>st</sup> Floor  
Los Angeles, CA 90071

14 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

15 This Consent Judgment may be executed in counterparts and by facsimile or portable  
16 document format (PDF), each of which shall be deemed an original, and all of which, when taken  
17 together, shall constitute one and the same document.

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

19 Brimer agrees to comply with the reporting form requirements referenced in California  
20 Health & Safety Code §25249.7(f), and to file a motion for approval of this Consent Judgment.

21 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

22 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion  
23 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such  
24 approval, Brimer and Defendant and their respective counsel agree to mutually employ their best  
25 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the  
26 Consent Judgment by the Court in a timely manner.

1 **13. MODIFICATION**

2 This Consent Judgment may be modified only by: (1) written agreement of the Parties, or  
3 (2) motion of any Party as provided by law and upon entry of a modified Consent Judgment by the  
4 Court.

5 **14. AUTHORIZATION**

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

9 **15. ATTORNEY'S FEES**

10 **15.1** A Party who unsuccessfully brings or contests an action arising out of this Consent  
11 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs unless  
12 the unsuccessful Party has acted with substantial justification. For purposes of this Consent  
13 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
14 Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

15 **15.2** Except as specifically provided in the above paragraph and in Section 4, each Party  
16 shall bear its own costs and attorney's fees in connection with this action.

17 **15.3** Nothing in this Section 15 shall preclude a Party from seeking an award of sanctions  
18 pursuant to law.

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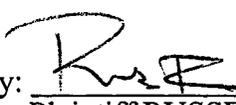
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Date: 9/30/09

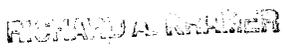
Date: \_\_\_\_\_

By:   
Plaintiff RUSSELL BRIMER

By: \_\_\_\_\_  
Defendant A & W PRODUCTS CO.,  
INC.

**IT IS SO ORDERED.**

Date: 4/13/10

  
JUDGE OF THE SUPERIOR COURT

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

Date: Oct. 1 - 09

By: \_\_\_\_\_  
Plaintiff RUSSELL BRIMER

By: Paul Augustin  
Defendant A & W PRODUCTS CO.,  
INC.

IT IS SO ORDERED.

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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