

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

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

**ENDORSED
FILED**
San Francisco County Superior Court

APR 13 2010

CLERK OF THE COURT
BY: KARISSA SHAW
Deputy Clerk

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 RUSSELL BRIMER,
17 Plaintiff,

18 v.

19 ACCO BRANDS CORPORATION, *et al.*,
20 Defendants.

Case No. CGC-09-485784
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Richard A. Kramer

~~[REVISED PROPOSED]~~
JUDGMENT PURSUANT TO
TERMS OF CONSENT TO
JUDGMENT AS TO TOPCO
ASSOCIATES, LLC

Date: April 13, 2010
Time: 9:30 a.m.
Dept.: 304

Action Filed: March 5, 2009

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant TOPCO
2 ASSOCIATES, LLC, having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the Proposition 65 settlement agreement in the form of a Consent To
4 Judgment entered into by the parties, and following issuance of an order approving this Proposition
5 65 settlement 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
12 Dated: 4/13/10

12 RUSSELL BRIMER
13 JUDGE OF THE SUPERIOR COURT

Exhibit 1

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 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

11 Edward P. Sangster, State Bar No. 121041
12 Ramiz I. Rafeedie, State Bar No. 215070
13 K&L GATES LLP
14 Four Embarcadero Center, Suite 1200
15 San Francisco, CA 94111
16 Telephone: (415) 882-8200
17 Facsimile: (415) 882-8220

18 Attorneys for Defendant
19 TOPCO ASSOCIATES, LLC

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE CITY AND COUNTY OF SAN FRANCISCO
22 UNLIMITED CIVIL JURISDICTION

23 RUSSELL BRIMER,

24 Plaintiff,

25 v.

26 ACCO BRANDS CORPORATION, et al.,

27 Defendants.

Case No. CGC-09-485784

**STIPULATION AND ~~PROPOSED~~
ORDER RE: CONSENT JUDGMENT**

28
29
30
31
32
33
34
35
36
37
38
39
40

1 **1. INTRODUCTION**

2 **Plaintiff and Topco Associates, LLC.** This Consent Judgment is entered into by and
3 between plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”) and defendant Topco
4 Associates, LLC (hereinafter “Topco” or “Defendant”), with Plaintiff and Defendant collectively
5 referred to as the “Parties” and Brimer and Topco each being a “Party.”

6 **Plaintiff.** Brimer is an individual residing in California who seeks to promote awareness
7 of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
8 substances contained in consumer products.

9 **Defendant.** Topco employs ten or more persons and is a person in the course of doing
10 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
11 Health & Safety Code §25249.6 *et seq.* (“Proposition 65”).

12 **General Allegations.** Plaintiff alleges that Defendant has manufactured, distributed
13 and/or sold in the State of California vinyl-coated paper fastener products containing lead on the
14 exterior surface. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act
15 of 1986, California Health & Safety Code §§25249.5 *et seq.* and is known to be a reproductive
16 toxicant. Lead (and/or lead compounds) shall be referred to herein as the “Listed Chemical.”

17 **Product Description.** The products that are covered by this Consent Judgment are
18 defined as follows: vinyl-coated paper fasteners containing lead, manufactured, imported,
19 distributed and/or otherwise sold by Defendant in California. Such products collectively are
20 referred to herein as the “Products.”

21 **Notices of Violation.** On or about December 23, 2008, Brimer served Topco and various
22 public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”),
23 that provided Topco and such public enforcers with notice that alleged that Topco was in
24 violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain Products
25 that they sold expose users in California to the Listed Chemical. No public enforcer has diligently
26 prosecuted the allegations set forth in the Notice.

27 **Complaint.** On March 5, 2009, Brimer, who was and is acting in the interest of the
28 general public in California, filed a complaint (hereafter referred to as the “Complaint” or the

1 “Action”) in the Superior Court for the County of San Francisco against Topco, other defendants,
2 and Does 1 through 600, alleging violations of Health & Safety Code §25249.6 based on the
3 alleged exposures to lead contained in certain Products sold by Defendant without the requisite
4 health hazard warnings. On March 12, 2009, Brimer filed an Amended Complaint in the Superior
5 Court for the County of San Francisco.

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

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

19 **Effective Date.** For purposes of this Consent Judgment, the “Effective Date” shall be
20 October 23, 2009.

21 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS AND**
22 **REFORMULATION**

23 **2.1 Reformulation Commitment.** Commencing on the Effective Date, Topco shall
24 not knowingly (as defined by 27 C.C.R. §25102(n)) ship, sell or offer to be shipped for sale in
25 California any vinyl coated paper fastener with a vinyl coating that is not “Lead Free.” For
26 purposes of this Consent Judgment, “Lead Free” Products shall mean Products containing
27 components that may be handled, touched or mouthed by a consumer, and which components
28 have less than 300 parts per million (“ppm”) of lead, when using a method of detection and

1 analysis authorized under 27 C.C.R. §25900. Products that are Lead Free are referred to
2 hereinafter as “Reformulated Products.”

3 **3. MONETARY PAYMENTS**

4 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b).** Pursuant to Health
5 & Safety Code §25249.7(b), the total civil penalty assessed shall be \$11,000. Civil penalties are
6 to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these
7 funds remitted to the State of California’s Office of Environmental Health Hazard Assessment
8 (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer as provided by California
9 Health & Safety Code §25249.12(d).

10 Topco shall issue two separate checks for each of the penalty payments: (a) one check
11 made payable to Hirst & Chanler LLP in Trust for the State of California’s Office of
12 Environmental Health Hazard Assessment (OEHHA) in the amount of \$8,250 representing
13 75% of the total penalty; and (b) one check to Hirst & Chanler LLP in Trust for Brimer in the
14 amount of \$2,750, representing 25% of the total penalty. Two separate 1099s shall be issued
15 for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010,
16 Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$8,250. The second 1099 shall be
17 issued to Brimer in the amount of \$2,750, whose address and tax identification number shall be
18 furnished, upon request, five calendar days before payment is due. The payment shall be made
19 payable to Hirst & Chanler LLP and shall be delivered within ten (10) days of the Effective
20 Date, at the following address:

21 Hirst & Chanler LLP
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710-2565

26 ///
27 ///
28 ///

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

2 **4.1 Attorney Fees and Costs.**

3 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
4 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
5 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
6 Topco then expressed a desire to resolve the fee and cost issue shortly after the other settlement
7 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
8 compensation due to Brimer and his counsel under general contract principles and the private
9 attorney general doctrine codified at California Code of Civil Procedure (C.C.P.) §1021.5, for
10 all work performed through the mutual execution of this agreement. Topco shall reimburse Dr.
11 Held and his counsel a total of \$49,500 for fees and costs incurred as a result of investigating,
12 bringing this matter to Topco's attention, and litigating and negotiating a settlement in the
13 public interest. Topco shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and
14 shall make the check payable to "Hirst & Chanler LLP" and shall be delivered within ten (10)
15 days of the Effective Date, at the following address:

16 Hirst & Chanler LLP
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710-2565

21 **5. RELEASE OF ALL CLAIMS**

22 **5.1 Brimer's Release of Topco.** In further consideration of the promises and
23 agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4,
24 Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors,
25 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
26 participate in, directly or indirectly, any form of legal action and releases all claims including,
27 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
28 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

1 unknown, fixed or contingent (collectively "Claims"), that were brought or could have been
2 brought against Topco or its parents, subsidiaries or affiliates (including Kingston Marketing),
3 and all of their customers, members, distributors, wholesalers, retailers, licensors, licensees, or
4 any other person in the course of doing business, and the successors and assigns of any of them,
5 who may use, maintain, manufacture, distribute, advertise, market or sell Products, and the
6 officers, directors, managers, employees, members, shareholders, agents, insurers and
7 representatives of each of them (collectively "Defendant Releasees") in this Action. This release
8 is limited to, but is intended to be a full, final, and binding resolution of, those Claims that arise
9 under Proposition 65, as against Topco and Defendant Releasees, as such Claims relate to
10 Topco's alleged failure to warn about exposures to the Listed Chemical contained in the Products.
11 Topco's compliance with this Consent Judgment shall constitute compliance with Proposition 65
12 for Topco and its Releasees with respect to the Listed Chemical in such items after the Effective
13 Date.

14 Brimer also, in his individual capacity only and *not* in his representative capacity, provides
15 a general release herein which shall be effective as a full and final accord and satisfaction, as a bar
16 to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
17 claims, liabilities and demands of Brimer of any nature, character or kind, known or unknown,
18 suspected or unsuspected, relating to any chemical listed under Proposition 65 and contained in
19 any product sold by Topco. Brimer acknowledges that he is familiar with Section 1542 of the
20 California Civil Code, which provides as follows:

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

23 Brimer, in his individual capacity only and *not* in his representative capacity, expressly
24 waives and relinquishes any and all rights and benefits which he may have under, or which may
25 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as
26 under any other state or federal statute or common law principle of similar effect, to the fullest
27 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
28 furtherance of such intention, the release hereby given shall be and remain in effect as a full and

1 complete release notwithstanding the discovery or existence of any such additional or different
2 claims or facts arising out of the released matters.

3 The Parties further understand and agree that this release shall not extend upstream to any
4 entities that manufactured the Products for Topco or any component parts thereof or to any
5 distributors or suppliers who sold the Products or any component parts thereof to Topco.

6 **5.2 Topco's Release of Brimer.** Topco waives any and all claims against Brimer, his
7 attorneys, and other representatives for any and all actions taken or statements made (or those that
8 could have been taken or made) by Brimer and his attorneys and other representatives, whether in
9 the course of investigating claims or otherwise seeking enforcement of Proposition 65 against
10 them in this matter, and/or with respect to the Products.

11 Topco also provides a general release to Brimer, his attorneys and other representatives
12 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
13 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
14 demands of Topco of any nature, character or kind, known or unknown, suspected or
15 unsuspected, arising out of the subject matter of the Action. Topco acknowledges that it is
16 familiar with Section 1542 of the California Civil Code, which provides as follows:

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

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

26 ///

27 ///

28 ///

1 **6. COURT APPROVAL**

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

7 **7. SEVERABILITY**

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

11 **8. ENTIRE AGREEMENT**

12 This Consent Judgment contains the sole and entire agreement and understanding of the
13 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
14 negotiations, commitments, and understandings related hereto. No representations, oral or
15 otherwise, express or implied, other than those contained herein have been made by any party
16 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
17 to exist or to bind any of the parties.

18 **9. GOVERNING LAW**

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

24 **10. NOTICES**

25 All correspondence and notices required to be provided pursuant to this Consent
26 Judgment shall be in writing and personally delivered or sent by: (i) first-class, registered,
27 certified mail, return receipt requested, or (ii) overnight courier on either Party by the other at

28 ///

1 the addresses listed below. Either Party, from time to time, may specify a change of address to
2 which all notices and other communications shall be sent.

3 For Plaintiff:
4 Russell Brimer
5 c/o Hirst & Chanler LLP
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710-2565

For Defendant:
Topco Associates LLC
c/o Frank Muschetto
7711 Gross Point Road
Skokie, Illinois 60077-2697
With a copy to:
Edward P. Sangster
Ramiz I. Rafeedie
K&L Gates LLP
4 Embarcadero Center, Suite 1200
San Francisco, CA 94111

10 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

11 This Consent Judgment may be executed in counterparts and by facsimile, each of which
12 shall be deemed an original, and all of which, when taken together, shall constitute one and the
13 same document.

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

15 Brimer and Topco agree to comply with the reporting form requirements referenced in
16 California Health & Safety Code §25249.7(f).

17 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

18 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
19 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
20 obtaining such approval, Brimer agrees to employ his best efforts to support the entry of this
21 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in
22 a timely manner. Topco agrees to support and join in such motion.

23 **14. MODIFICATION**

24 This Consent Judgment may be modified only by: (1) written agreement of the Parties
25 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any
26 Party as provided by law and upon entry of a modified Consent Judgment by the Court.
27

28

1 15. AUTHORIZATION

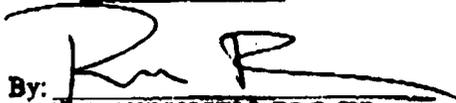
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agree to all of the terms and conditions of this
4 Consent Judgment.

5
6 AGREED TO:

AGREED TO:

7 Date: 10-22-09

Date: _____

8
9 By: 
10 Plaintiff RUSSELL BRIMER

By: _____
Defendant TOPCO ASSOCIATES, LLC

11
12
13
14 IT IS SO ORDERED.

15
16 Date: 4-13-10



JUDGE OF THE SUPERIOR COURT

RICHARD A. KRAMER

17
18
19
20
21
22
23
24
25
26
27
28

1 **15. AUTHORIZATION**

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

5
6 **AGREED TO:**

AGREED TO:

7 Date: _____

8 Date: 10/24/09

9 By: _____
10 Plaintiff RUSSELL BRIMER

11 By: 
12 Defendant TOPCO ASSOCIATES, LLC

13
14 **IT IS SO ORDERED.**

15
16 Date: _____

17 _____
18 JUDGE OF THE SUPERIOR COURT

19
20
21
22
23
24
25
26
27
28