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6 RUSSELL BRIMER

FILED
Superior Court of California
County of San Francisco
AUG - 2 2010
ENDORSED FILED
Superior Court of California
County of San Francisco
AUG - 2 2010
CLERK OF THE COURT
BY: ~~XXXX~~
Deputy Clerk
CLERK OF THE COURT
BY: J. RIOS-MERIDA
Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE CITY AND COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION

11
12 RUSSELL BRIMER,
13 Plaintiff,
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15 v.
16 ACCO BRANDS CORPORATION, et al.,
17 Defendants.
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Case No. CGC-09-485784
REASSIGNED FOR ALL PURPOSES
TO:
The Honorable Richard A. Kramer

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
CONSENT TO JUDGMENT AS TO
FOUR SEASONS GENERAL
MERCHANDISE, INC.**

Date: June 23, 2010
Time: 9:30 A.M.
Dept.: 304

Action Filed: March 5, 2009

MAY 04 2010

1 Now come Plaintiff RUSSELL BRIMER and Defendant FOUR SEASONS GENERAL
2 MERCHANDISE, INC., 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 executed by the above-referenced parties, and following issuance of an order approving
5 this Proposition 65 settlement agreement on June 23, 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: 8-2-10

12 
13 _____
14 Judge of the San Francisco City & County Superior Court

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
Laurence D. Haveson, State Bar No. 152631
2 Daniel Bornstein, State Bar No. 181711
Christopher M. Martin, State Bar No. 186021
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7 Attorneys for Plaintiff
RUSSELL BRIMER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 CITY AND COUNTY OF SAN FRANCISCO
10 UNLIMITED JURISDICTION
11

12 RUSSELL BRIMER,)
13) Case No. CGC-09-485784
14 Plaintiff,)
15) CONSENT TO JUDGMENT AS TO
v.) DEFENDANT FOUR SEASONS
16) GENERAL MERCHANDISE, INC.
17)
18 ACCO BRANDS CORPORATION; A & W)
19 PRODUCTS CO., INC.; J.J. PARAMOUNT)
INTERNATIONAL, INC.; PARAMOUNT)
IMPORTS AND WHOLESALE; KOLE)
IMPORTS; NATIONWIDE TRADING CORP.;)
TOPCO ASSOCIATES, LLC; KINGSTON)
MARKETING, CO; and DOES 1-600, inclusive,)
20 Defendants.)

21 **1. INTRODUCTION**
22 **1.1 The Parties**

23 This Consent Judgment is entered into by and between Plaintiff Russell Brimer (“Brimer”
24 or “Plaintiff”) and Defendant Four Seasons General Merchandise, Inc. (“Four Seasons”), with
25 Plaintiff and Defendant collectively referred to as the “Parties.”
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1.2 Plaintiff

Brimer is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Four Seasons

Four Seasons employs 10 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).

1.4 General Allegations

Brimer alleges that all Four Seasons has manufactured, distributed and/or sold, in the State of California, vinyl coated paper fasteners with vinyl components and tape measures with hand straps that expose users to lead, without first providing “clear and reasonable warning” under Proposition 65. Lead is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.” Four Seasons denies Brimer’s allegations.

1.5 Notices of Violation

1.5.1 On June 10, 2009, Brimer served Four Seasons and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and Four Seasons with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers that vinyl coated paper fasteners that Four Seasons manufactured, distributed and/or sold exposed users in California to lead.

1.5.2 On August 14, 2009, Brimer served Four Seasons and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and Four Seasons with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers that tape measures with hand straps that Four Seasons manufactured, distributed and/or sold exposed users in California to lead.

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1.6 Complaint

On November 13, 2009 Brimer, acting, in the interest of the general public in California, filed a second amended complaint (“SAC”) in the Superior Court in and for the City and County of San Francisco, alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to lead contained in vinyl coated paper fasteners and tape measures with hand straps, manufactured, distributed and/or sold by Four Seasons. This action, originally commenced on March 5, 2009, shall hereinafter be referred to as the “Action.”

1.7 No Admission

This Consent Judgment resolves claims that are denied and disputed by Four Seasons. The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Four Seasons denies the material factual and legal allegations contained in the Notices and Complaint and maintains that all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Consent Judgment shall be construed as an admission by Four Seasons of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Four Seasons of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Four Seasons. However, this Section shall not diminish or otherwise affect Four Seasons’ obligations, responsibilities, and duties under this Consent Judgment.

1.8 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Four Seasons as to the allegations contained in the Complaint, that venue is proper in the City and County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to California Code of Civil Procedure §664.6.

2. DEFINITIONS

2.1 The term “Complaint” shall mean the SAC.

1 2.2 The term “Covered Products” means vinyl coated paper fasteners and tape
2 measures with hand straps.

3 2.3 The term “Compliance Date” means December 1, 2009.

4 **3. INJUNCTIVE RELIEF: REFORMULATION**

5 3.1 **Vinyl Coated Paper Fasteners.** After the Compliance Date, Four Seasons shall
6 not sell, ship, or offer to be shipped for sale in California any vinyl coated paper fastener with a
7 vinyl coating that contains more than 300 parts per million (“ppm”) of lead.

8 3.2 **Tape Measures with Hand Straps.** After the Compliance Date, Four Seasons
9 shall not sell, ship, or offer to be shipped for sale in California any tape measure with a hand strap
10 that contains more than 300 ppm of lead. .

11 3.3 **Previously-Distributed Covered Products.**

12 3.3.1 Within ten days of the entry of this Consent Judgment, Four Seasons shall
13 send a letter or electronic communication with request for receipt of delivery to each customer in
14 California to whom it supplied, on or after July 1, 2008, any vinyl coated paper fasteners that did
15 not meet the reformulation standard of Section 3.1, requesting that the customer either provide
16 Proposition 65 warnings for such Covered Product(s) remaining in its inventory, or return any
17 such Covered Product(s) to Four Seasons at no cost to the customer.

18 3.3.2 If Four Seasons elects to instruct the customer to provide a Proposition 65
19 warning, it shall include in the letter a sufficient number of warning stickers containing the
20 following language:

21 **WARNING:** This product contains lead, a chemical
22 known to the State of California to cause
23 birth defects and other reproductive harm.

24 with instructions that the stickers be placed on the product packaging for those Covered Products
25 in such customer’s inventory, and shall be prominently placed with such conspicuousness as
26 compared with other words, statements, designs or devices as to render it likely to be read and
27 understood by an ordinary individual under customary conditions of purchase or use.
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1 3.4 Four Seasons shall provide notice to Brimer within 30 days of the entry of this
2 Consent Judgment of its compliance with this Section 3.3, shall maintain records of such
3 compliance, and shall produce copies of such records upon written request by Brimer.

4 **4. MONETARY PAYMENTS**

5 4.1 **Payments Pursuant to Health & Safety Code § 25249.7(b)**

6 4.1.1 In settlement of all claims related to the Covered Products and Listed
7 Chemical referred to in the Complaint, and this Consent Judgment, pursuant to Health & Safety
8 Code § 25249.7(b), Four Seasons shall pay \$2,000 in civil penalties.

9 4.1.2 Civil penalties are to be apportioned in accordance with California Health
10 & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
11 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
12 remitted to Brimer as provided by California Health & Safety Code §25249.12(d). Four Seasons
13 shall issue two separate checks for the penalty payment: (a) one check made payable to "Chanler
14 Law Group in Trust for OEHHA" in an amount representing 75% of the total penalty; and (b) one
15 check to "Chanler Law Group in Trust for Brimer" in an amount representing 25% of the total
16 penalty.

17 4.1.3 Payment shall be delivered to Brimer's counsel on or before February 28,
18 2010, at the following address:

19 Chanler Law Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710-2565

24 **5. REIMBURSEMENT OF FEES AND COSTS**

25 5.1 **Attorney Fees and Costs**

26 5.1.1 The parties reached an accord on the compensation due to Brimer and his
27 counsel under general contract principles and the private attorney general doctrine codified at
28 California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual
execution of this agreement and approval by the trial court, excluding any fees on appeal. Four

1 Seasons shall pay Brimer and his counsel a total of \$38,000 for fees and costs incurred as a result
2 of investigating, bringing this matter to Four Seasons' attention, and litigating and negotiating a
3 settlement in the public interest.

4 5.1.2 Payment shall be delivered to Brimer's counsel on or before February 28,
5 2010, at the following address:

6 Chanler Law Group
7 Attn: Proposition 65 Controller
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710-2565

9 **6. CLAIMS COVERED AND RELEASE**

10 **6.1 Brimer's Release of Four Seasons and its Chain of Distribution**

11 6.1.1 This Consent Judgment is a full, final, and binding resolution between
12 Brimer and Four Seasons, and its owners, subsidiaries, affiliates, sister and related companies,
13 employees, shareholders, directors, insurers, attorneys, successors, and assigns ("Defendant
14 Releasees"), and all entities to whom they directly or indirectly distribute or sell Covered
15 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,
16 cooperative members, and licensees ("Downstream Defendant Releasees") of any violation of
17 Proposition 65 that has been or could have been asserted against Defendant Releasees and
18 Downstream Defendant Releasees regarding the failure to warn about exposure to the Listed
19 Chemical arising in connection with Covered Products manufactured, sourced, distributed, or sold
20 by Defendant Releasees prior to the Compliance Date. Defendant Releasees' compliance with
21 this Consent Judgment shall constitute compliance with Proposition 65 with respect to the Listed
22 Chemical in Covered Products after the Compliance Date.

23 6.1.2 Brimer on behalf of himself, his past and current agents, representatives,
24 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
25 with respect to Covered Products all rights to institute or participate in, directly or indirectly, any
26 form of legal action and releases all claims, including, without limitation, all actions, and causes
27 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
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1 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
2 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
3 (collectively "claims"), against Defendant Releasees and Downstream Defendant Releasees that
4 arise under Proposition 65 or any other statutory or common law claims that were or could have
5 been asserted in the public interest, as such claims relate to Defendant Releasees' and
6 Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed
7 Chemical contained in the Covered Products.

8 6.1.3 Brimer also, on behalf of himself, his past and current agents,
9 representatives, attorneys, successors, and/or assignees and not in his representative capacity,
10 provides a general release herein which shall be effective as a full and final accord and
11 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
12 damages, losses, claims, liabilities and demands of any nature, character or kind, known or
13 unknown, suspected or unsuspected, against Defendant Releasees and Downstream Defendant
14 Releasees arising under Proposition 65, as such claims relate to Defendant Releasees' alleged
15 failure to warn about exposures to or identification of any chemicals listed under Proposition 65
16 contained in any products sold by Defendant Releasees. This release shall apply to all products,
17 including, but not limited to the Covered Products, which have been manufactured, distributed or
18 sold by Defendant Releasees prior to February 28, 2010. Brimer acknowledges that he is familiar
19 with Section 1542 of the California Civil Code, which provides as follows:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
21 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
22 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
23 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
24 DEBTOR.

25 Brimer, in his individual capacity only and *not* in his representative capacity, and on behalf of
26 himself, his past and current agents, representatives, attorneys, successors, and/or assignees
27 expressly waives and relinquishes any and all rights and benefits which he may have under, or
28 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

1 fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.
2 In furtherance of such intention, the release hereby given shall be and remain in effect as a full
3 and complete release notwithstanding the discovery or existence of any such additional or
4 different claims or facts arising out of the released matters.

5 6.1.4 Upon court approval of the Consent Judgment, the Parties waive their
6 respective rights to a hearing or trial on the allegations of the Complaints.

7 6.1.5 The Parties further understand and agree that, except as provided for above,
8 this release shall not extend upstream to any third parties that manufactured the Covered Products
9 or any component parts thereof, or any distributors or suppliers who sold the Covered Products or
10 any component parts thereof to Four Seasons.

11 **6.2 Four Seasons' Release of Brimer**

12 6.2.1 Four Seasons waives any and all claims against Brimer, his attorneys, and
13 other representatives for any and all actions taken or statements made (or those that could have
14 been taken or made) by Brimer and his attorneys and other representatives, whether in the course
15 of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
16 matter, and/or with respect to the Covered Products.

17 6.2.2 Four Seasons also provides a general release herein which shall be
18 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
19 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
20 Four Seasons of any nature, character or kind, known or unknown, suspected or unsuspected,
21 arising out of the subject matter of the Action. Four Seasons acknowledges that it is familiar with
22 Section 1542 of the California Civil Code, which provides as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
25 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
26 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
27 DEBTOR.

28 Four Seasons 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

1 California Civil Code as well as under any other state or federal statute or common law principle
2 of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining
3 to the released matters. In furtherance of such intention, the release hereby given shall be and
4 remain in effect as a full and complete release notwithstanding the discovery or existence of any
5 such additional or different claims or facts arising out of the released matters.

6 **7. SEVERABILITY**

7 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
8 Consent Judgment are held by a court to be unenforceable, unless the Court finds that any
9 unenforceable provision is not severable from the remainder of the Consent Judgment.

10 **8. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and
12 shall be null and void if, for any reason, it is not approved and entered by the Court within nine
13 months after it has been fully executed by all Parties.

14 **9. GOVERNING LAW**

15 The terms of this Consent Judgment shall be governed by the laws of the State of
16 California.

17 **10. NOTICES**

18 When any Party is entitled to receive any notice under this Consent Judgment, the notice
19 shall be sent by certified mail and electronic mail to the person(s) identified in Exhibit A. Any
20 Party may modify the person and address to whom the notice is to be sent by sending each other
21 Party notice by certified mail and/or other verifiable form of written communication.

22 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

25 **12. MODIFICATION**

26 This Consent Judgment may be modified only: (1) by written agreement of the Parties; or
27 (2) upon a successful motion of any party and entry of a modified Consent Judgment by the
28 Court.

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

2 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
3 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
4 obtaining such approval, Brimer and Four Seasons and their respective counsel agree to mutually
5 employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain
6 approval of the Consent Judgment by the Court in a timely manner.

7 **14. ENTIRE AGREEMENT**

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

14 **15. ATTORNEY’S FEES**

15 15.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
16 Judgment shall be required to pay the prevailing Party’s reasonable attorney’s fees and costs
17 unless the unsuccessful Party has acted with substantial justification. For purposes of this
18 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
19 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

20 15.2 Except as specifically provided in the above paragraph and in Section 5.1, each
21 Party shall bear its own costs and attorney’s fees in connection with this action.

22 15.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
23 sanctions pursuant to law.

24 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

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1 **17. 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 **AGREED TO:**

AGREED TO:

6 Date: March 23, 2010

Date: March __, 2010

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10 By: 

By: _____

11 Plaintiff Russell Brimer

Defendant Four Seasons General
Merchandise, Inc.

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6 Date: March __, 2010

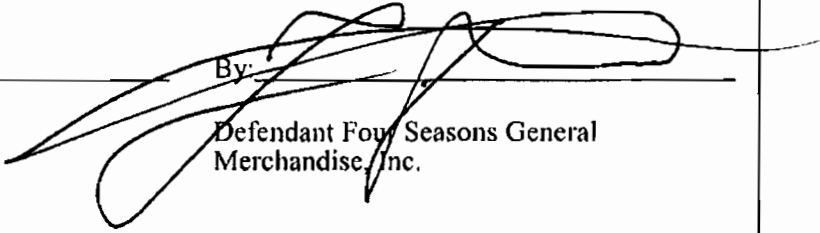
Date: March __, 2010

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10 By: _____
11 Plaintiff Russell Brimer

By:  _____
Defendant Four Seasons General
Merchandise, Inc.

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