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Clifford A. Chanler, State Bar No. 135534  
Josh Voorhees, State Bar No. 241436  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

Attorneys for Plaintiff  
RUSSELL BRIMER

**FILED**  
ALAMEDA COUNTY  
DEC 12 2011  
CLERK OF THE SUPERIOR COURT  
By Tacey Owsen  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,  
  
Plaintiff,  
  
v.  
  
FLORACRAFT CORPORATION; *et al.*,  
  
Defendants.

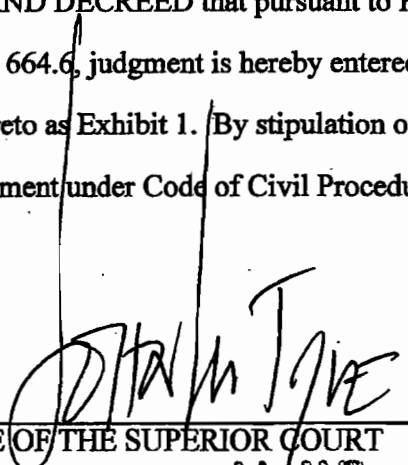
) Case No.: RG10525081  
) ~~PROPOSED~~ JUDGMENT PURSUANT  
) TO TERMS OF PROPOSITION 65  
) SETTLEMENT AND CONSENT  
) JUDGMENT  
) Date: December 12, 2011  
) Time: 3:00 p.m.  
) Dept.: 512  
) Judge: Hon. John M. True, III  
) Reservation No.: R-1225225

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant FLORACRAFT  
2 CORPORATION having agreed through their respective counsel that a judgment be entered pursuant  
3 to the terms of the Consent Judgment entered into by the parties in resolution of this Proposition 65  
4 action, and following the issuance of an order approving the Parties' settlement agreement on  
5 December 12, 2011.

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 hereby entered in accordance  
8 with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties,  
9 the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

10 IT IS SO ORDERED.

11  
12 Dated: 12-12-11

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14 \_\_\_\_\_  
15 JUDGE OF THE SUPERIOR COURT

16 John M. True, III  
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# Exhibit 1

1 Christopher M. Martin, State Bar No. 186021  
2 Josh Voorhees, State Bar No. 241436  
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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA  
13 UNLIMITED JURISDICTION

14 RUSSELL BRIMER, )  
15 )  
16 Plaintiff, )  
17 )  
18 v. )  
19 )  
20 FLORACRAFT CORPORATION; and DOES )  
21 1 through 150, )  
22 )  
23 Defendants. )

Case No. RG10525081

**[PROPOSED] CONSENT JUDGMENT**

**Dept:**  
**Judge:**  
**Date:**  
**Complaint Filed: July 13, 2010**

1       **1.     INTRODUCTION**

2               **1.1    The Parties**

3               This Consent Judgment is entered into by and between Plaintiff Russell Brimer (“Brimer”  
4       or “Plaintiff”) and Floracraft Corporation (“Floracraft” or “Defendant”), with Plaintiff and  
5       Defendant collectively referred to as the “Parties.”

6               **1.2    Plaintiff**

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

10              **1.3    Defendant**

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

14              **1.4    General Allegations**

15              Brimer alleges that Floracraft has manufactured, distributed and/or sold, in the State of  
16     California, color-coated wire products that expose users to lead, without providing a warning  
17     required under Proposition 65. Lead is listed as a reproductive and developmental toxicant  
18     pursuant to Proposition 65. Color-coated wire products that allegedly expose users to lead are  
19     referred to herein as the “Products.”

20              **1.5    Notice of Violation**

21              On December 15, 2009, Brimer served Floracraft and various public enforcement agencies  
22     with a document entitled “60-Day Notice of Violation” that provided the recipients with notice of  
23     alleged violations of Health & Safety Code § 25249.6 stating that Floracraft failed to warn  
24     consumers that color-coated wire products that Floracraft distributed and/or sold exposed users in  
25     California to lead. On June 9, 2011, Brimer served Floracraft, Dollar Tree, Inc., and various  
26     public enforcement agencies with a document entitled “Supplemental 60-Day Notice of  
27     Violation” that provided the recipients with notice of alleged violations of Health & Safety Code

28

1 § 25249.6 stating that Floracraft and Dollar Tree failed to warn consumers that color-coated wire  
2 products that Floracraft distributed and/or sold exposed users in California to lead.

3 **1.6 Complaint**

4 On July 13, 2010, Brimer, acting in the interest of the general public in California, filed a  
5 complaint in the Superior Court for the County of Alameda, alleging violations of Health &  
6 Safety Code § 25249.6 based on the alleged exposures to lead contained in color-coated wire  
7 products distributed and/or sold by Floracraft (“Complaint” or “Action”).

8 **1.7 No Admission**

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

20 **1.8 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22 jurisdiction over Floracraft as to the allegations contained in the Complaint, that venue is proper  
23 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions  
24 of this Consent Judgment.

25 **1.9 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean July 30,  
27 2011.

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**2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

**2.1 Reformulation Commitment**

As of the Effective Date, Floracraft shall only distribute or sell in California, or cause to be distributed for sale in California, Products that are Lead Free as defined below, or which contain the warnings required pursuant to Section 2.2 below. For purposes of this Consent Judgment, “Lead Free” Products shall mean Products containing components that may be handled, touched or mouthed by a consumer, and which components: (a) yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100; and (b) yield less than 100 parts per million (“ppm”) lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance. Products that are Lead Free are referred to hereinafter as “Reformulated Products.”

**2.2 Warnings Commitment**

Except with respect to Reformulated Products, as of the Effective Date, Defendant shall provide Proposition 65-compliant warnings with respect to all Products shipped, sold, or offered for sale in California. The parties hereby acknowledge and agree that Floracraft already implemented a labeling program that uses the following language:

**WARNING:** This product contains chemicals known to the State of California to cause birth defects or other reproductive harm.

Therefore, the parties agree that Floracraft may continue to distribute, sell and/or offer to sell in California Products that already contain the above language. All Products not yet containing the above warning shall contain the specific language provided in Sections 2.2(a) below. 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

1 warning applies, so as to minimize the risk of consumer confusion. The warnings shall be  
2 provided as follows:

3 (a) Product Labeling.

4 To the extent they do not address their obligations under this Consent Judgment through  
5 timely reformulation, Floracraft shall address its warning obligation by affixing a warning to the  
6 packaging of, or, if no packaging exists, directly on, each Additional Product sold in California  
7 that states:

8 **WARNING:** This product contains chemicals, including  
9 lead, known to the State of California to  
10 cause cancer and birth defects or other  
reproductive harm.

11 For Products sold by catalog or via the internet or by telephone, Floracraft shall allow the  
12 consumer to return the Product for a full refund (including shipping costs for both the receipt and  
13 the return of the product) within fifteen (15) days of his or her receipt of the Product. Floracraft  
14 shall notify consumers of the above return policy in a reasonable manner, such as by placing a  
15 link to the return policy in a conspicuous place on Floracraft's internet site, or by providing the  
16 consumer with written information advising the consumer, in a conspicuous manner, of the return  
17 policy.

18 **2.3 Exceptions To Warning Requirements**

19 The warning requirements set forth in Section 2.2 shall not apply to:

- 20 (i) Any Product shipped, distributed or sold by Floracraft before the Effective  
21 Date; or
- 22 (ii) Reformulated Products (as defined in Section 2.1 above).

23 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

24 **3.1 Civil Penalty.**

25 In settlement of all the claims referred to in this Consent Judgment against it,  
26 Floracraft has been assessed a civil penalty in the amount of \$18,000. However, due to  
27 Floracraft's good faith efforts to reduce lead content in the Products and proactive steps to  
28 implement a warning program, Floracraft shall receive a credit of \$10,000. Therefore,



1 Floracraft shall make a civil penalty payment of \$8,000, to be apportioned in accordance with  
2 California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to  
3 the State of California's Office of Environmental Health Hazard Assessment and the remaining  
4 25% of the civil penalty remitted to Russell Brimer, as provided by California Health & Safety  
5 Code § 25249.12(d). Floracraft shall issue two separate checks for the penalty payment: (a) one  
6 check made payable to "The Chanler Group in Trust For the Office of Environmental Health  
7 Hazard Assessment" in the amount of \$6,000, representing 75% of the total penalty; and (b) one  
8 check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$2,000,  
9 representing 25% of the total penalty. Two separate 1099s shall be issued for the above  
10 payments: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento,  
11 CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose address and tax identification  
12 number shall be furnished, upon request, at least five (5) calendar days before the payment is  
13 due. The payments shall be delivered to Brimer's counsel on or before the Effective Date, at  
14 the following address:

15                   The Chanler Group  
16                   Attn: Proposition 65 Controller  
17                   2560 Ninth Street  
18                   Parker Plaza, Suite 214  
19                   Berkeley, CA 94710

#### 20 **4. REIMBURSEMENT OF FEES AND COSTS**

##### 21 **4.1 Attorney Fees and Costs**

22                   **4.1.1** The Parties reached an accord on the compensation due to Brimer and his  
23 counsel under general contract principles and the private attorney general doctrine codified at  
24 California Code of Civil Procedure §1021.5. The Parties acknowledge that Brimer and his  
25 counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to  
26 be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the  
27 agreement had been settled. Floracraft then expressed a desire to resolve the fee and cost issue  
28 shortly after the other settlement terms had been finalized. Floracraft shall reimburse Brimer and  
his counsel a total of \$44,500 for fees and costs incurred as a result of investigating, issuing the

1 60-Day Notice of Violation, bringing this matter to Floracraft's attention, litigating, and  
2 negotiating a settlement in the public interest, as well as fees to be incurred in obtaining approval  
3 by the trial court, excluding any fees on appeal.

4 **4.1.2** The payment shall be issued by check made payable to "The Chanler  
5 Group" and shall be delivered to Brimer's counsel at the following address on or before the  
6 Effective Date:

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

10 **5. CLAIMS COVERED AND RELEASE**

11 **5.1 Full Final and Binding Resolution of Proposition 65 Allegations**

12 This Consent Judgment is a full, final and binding resolution between Plaintiff, on behalf  
13 of himself and the public, and Floracraft, of any violation of Proposition 65 that was or could  
14 have been asserted by Plaintiff against Floracraft, its parents, subsidiaries, affiliated entities that  
15 are under common ownership, directors, officers, employees, attorneys, and each entity to  
16 whom Floracraft directly or indirectly distributes or sells Products, including but not limited to  
17 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,  
18 licensors, and licensees ("Releasees"), based on their failure to warn about alleged exposures to  
19 lead contained in the Products that were distributed or sold by Floracraft.

20 **5.2 Plaintiff's Public Release of Proposition 65 Claims**

21 In further consideration of the promises and agreements herein contained, Plaintiff on  
22 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or  
23 assignees, and in the interest of the general public, hereby waives all rights to institute or  
24 participate in, directly or indirectly, any form of legal action and releases all claims, including,  
25 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,  
26 demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not  
27 limited to, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on

1 appeal -- limited to and arising under Proposition 65 with respect to lead in the Products  
2 distributed or sold by Floracraft (collectively "claims"), against Floracraft and Releasees.

3 **5.3 Plaintiff's Individual Release of Claims**

4 Plaintiff also, in his individual capacity only and not in his representative capacity,  
5 provides a release herein which shall be effective as a full and final accord and satisfaction, as a  
6 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,  
7 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or  
8 unknown, suspected or unsuspected, with respect to the Products distributed or sold by  
9 Floracraft.

10 **5.4 Floracraft's Release of Plaintiff**

11 Floracraft on behalf of itself, its past and current agents, representatives, attorneys,  
12 successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys  
13 and other representatives, for any and all actions taken or statements made (or those that could  
14 have been taken or made) by Plaintiff and his attorneys and other representatives, whether in the  
15 course of investigating claims or otherwise seeking to enforce Proposition 65 against it, in this  
16 matter with respect to the Products.

17 **6. SEVERABILITY**

18 If, subsequent to court approval of this Consent Judgment, any of the provisions of this  
19 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
20 provisions remaining shall not be adversely affected unless the Court finds that any unenforceable  
21 provision is not severable from the remainder of the Consent Judgment.

22 **7. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and  
24 shall be null and void if, for any reason, it is not approved and entered by the Court within nine  
25 months after it has been fully executed by all Parties. In the event this consent judgment is (a)  
26 not entered by this Court within nine months (or thereafter) for any reason whatsoever, or (b) is  
27 entered by the Court and subsequently overturned by any appellate court, any monies that have  
28

1 been provided to Brimer, or his counsel pursuant to Section 3 and/or Section 4 above, together  
2 with interest at the U.S. prime rate as published in the Wall Street Journal on the date of payment  
3 by Floracraft and accruing from that date, shall be refunded within fifteen (15) days after  
4 receiving written demand from Floracraft for return of such funds.

5 If this Consent Judgment is not entered by the Court, it will be of no force or effect and no  
6 Party may introduce it into evidence or otherwise use it in any proceeding for any purpose.

7 **8. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of  
9 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
10 inapplicable by reason of law generally, or as to lead and/or the Products, then Defendant shall  
11 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
12 that, the Products are so affected.

13 **9. NOTICES**

14 When any Party is entitled to receive any notice under this Consent Judgment, the notice  
15 shall be sent by certified mail and electronic mail to the person(s) identified below:

16 To Floracraft:

17 James Scatena, Chief Executive Officer  
18 Floracraft Corporation  
1 Longfellow Place  
19 Ludington, MI 49431

20 With copy to:

21 Christopher J. Predko, Esq.  
22 Warner Norcross & Judd LLP  
900 Fifth Third Center  
23 111 Lyon Street NW  
Grand Rapids, MI 49503

To Brimer:

The Chanler Group  
Attn: Proposition 65 Coordinator  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

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

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

**11. MODIFICATION**

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

**12. ADDITIONAL POST-EXECUTION ACTIVITIES**

The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Brimer shall draft and Floracraft shall join, such joinder being subject to Floracraft's approval of the motion, which approval shall not be unreasonably withheld. In furtherance of obtaining such approval, Brimer and Floracraft and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. If any third party objection to the noticed motion is filed, Brimer and Floracraft shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach. If the Superior Court does not approve the motion to approve this Consent Judgment, and if the parties choose not to pursue a modified Consent Judgment within 30 days after the Court's denial of the motion to approve, all payments made pursuant to this Consent Judgment will be returned.

1 **13. ENTIRE AGREEMENT**

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

8 **14. COUNTERPARTS, FACSIMILE SIGNATURES**

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

12 **15. AUTHORIZATION**

13 The undersigned are authorized to execute this Consent Judgment and have read,  
14 understood, and agree to all of the terms and conditions of this Consent Judgment.

15 **AGREED TO:**

16 Date: 7-14-11  
17 \_\_\_\_\_

18   
19 By: \_\_\_\_\_  
20 Plaintiff, Russell Brimer

**AGREED TO:**

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

By: \_\_\_\_\_  
James Scatena, Chief Executive Officer  
Floracraft Corporation

21 **IT IS SO ORDERED.**

22 Dated: \_\_\_\_\_

23 By \_\_\_\_\_  
24 Judge of the Superior Court

13.1 ENTIRE AGREEMENT

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

14.8 COUNTERPARTS, FACSIMILE SIGNATURES

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

15.2 AUTHORIZATION

13 The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

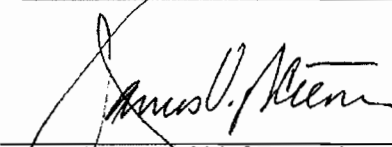
15  
16 **AGREED TO:**

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

18  
19 By: \_\_\_\_\_  
20 Plaintiff, Russell Brimer

**AGREED TO:**

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

By:   
James Scatena, Chief Executive Officer  
Floracraft Corporation

21  
22 **IT IS SO ORDERED.**

23  
24 Dated: \_\_\_\_\_

By \_\_\_\_\_  
Judge of the Superior Court