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10 RUSSELL BRIMER



MAR - 4 2011

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Dale, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN
13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 RUG DOCTOR, INC.; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. CIV 1003366

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AGREEMENT**

Date: March 1, 2011

Time: 8:30 a.m.

Dept.: J

Judge: Hon. Verna A. Adams

Action Filed: June 28, 2010

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

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

9
10 **IT IS SO ORDERED.**

11
12 Dated: MAR - 4 2011

LYNN DUBVEE

JUDGE OF THE SUPERIOR COURT

Exhibit 1

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1. INTRODUCTION

1.1 The Parties

This Consent Judgment is entered into by and between Plaintiff Russell Brimer (“Brimer” or “Plaintiff”) and Defendant Rug Doctor, Inc. (referred to as “Rug Doctor” or “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties.”

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 Rug Doctor

Rug Doctor 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 Rug Doctor has manufactured, distributed and/or sold, in the State of California, carpet cleaners and carpet cleaner hand tool attachment kits (“Products”) 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.” Rug Doctor denies Brimer’s allegations.

1.5 Notices of Violation

On December 15, 2009, Brimer served Rug Doctor and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and Rug Doctor with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers that the Products that Rug Doctor manufactured, distributed and/or sold exposed users in California to lead.

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1.6 Complaint

On June 28, 2010 Brimer, acting in a representative capacity in the interest of the general public in California, filed a complaint in the Superior Court for the County of Marin, alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to lead contained in the Products manufactured, distributed and/or sold by Rug Doctor. This action shall hereinafter be referred to as the "Action."

1.7 No Admission

Rug Doctor denies the material factual and legal allegations contained in the Notice and Complaint and maintains that all 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 Rug Doctor 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 Rug Doctor of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Rug Doctor.

1.8 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Rug Doctor as to the allegations contained in the Complaint, that venue is proper in the County of Marin, 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.

1.9 Full and Final Settlement

The Parties enter into this Consent Judgment as a full and final settlement of any and all claims between the Parties. However, this Section shall not diminish or otherwise affect the Parties' obligations, responsibilities, and duties under this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean September 1, 2010.

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2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Commitment

As of the Effective Date, Rug Doctor 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 yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100, and yield less than 300 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. As of August 1, 2011, however, the 300 ppm limit shall be reduced to 100 ppm; all other aspects of the Reformulation Commitment shall remain unchanged. 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 clear and reasonable warnings with respect to all Products shipped, sold, or offered for sale in California, as follows:

(a) Retail Store Sales.

(i) Product Labeling. Rug Doctor may affix a warning to the

packaging, labeling, or directly on each Product sold in retail outlets in California by Rug Doctor or its agents, containing the following language:

WARNING: This product contains chemicals, including lead, known to the State of California to cause cancer and birth defects or other reproductive harm. Wash hands after handling. DO NOT REMOVE THIS TAG.

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2 **Point-of-Sale Warnings.** Alternatively, Rug Doctor may provide warning
3 signs in the form below to its customers in California with instructions to post the warnings in
4 close proximity to the point of display of the Products.

5 **WARNING:** This product contains chemicals,
6 including lead, known to the State of
7 California to cause cancer and birth
8 defects or other reproductive harm.
9 Wash hands after handling.
10 DO NOT REMOVE THIS TAG.

11 **(b) Mail Order Catalog and Internet Sales.** In the event that Rug Doctor
12 sells Products via mail order catalog or internet to customers located in California after the
13 Effective Date that are not Reformulated Products, Rug Doctor shall provide a warning for
14 Products sold via mail order catalog or the Internet to California residents: (1) in the mail order
15 catalog; or (2) on the website. Warnings given in the mail order catalog or on the website shall
16 identify the specific Product to which the warning applies as further specified in Sections 2.2(b)(i)
17 and (ii). The requirements set forth in this Section (b) shall not apply to mail order catalogs or
18 internet sites of Defendant's downstream distributors or customers.

19 **(i) Mail Order Catalog Warning.** Any warning provided in a mail
20 order catalog must be in the same type size or larger than the Product description text within the
21 catalog. The following warning shall be provided on the same page and in the same location as
22 the display and/or description of the Product:

23 **WARNING:** This product contains chemicals,
24 including lead, known to the State of
25 California to cause cancer and birth
26 defects or other reproductive harm.
27 Wash hands after handling.

28 Where it is impracticable to provide the warning on the same page and in the same
location as the display and/or description of the Product, Rug Doctor may utilize a designated
symbol to cross reference the applicable warning and shall define the term "designated symbol"
with the following language on the inside of the front cover of the catalog or on the same page as
any order form for the Product(s):

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WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals, including lead, known to the State of California to cause cancer and birth defects or other reproductive harm. Wash hands after handling.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Rug Doctor must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If Rug Doctor elects to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Products printed after the Effective Date.

(ii) Internet Website Warning. A warning may be given in conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same web page as the price for any Product; (d) on one or more web pages displayed to a purchaser during the checkout process; or (e) on a web page directly accessed from one of the foregoing web pages via a link titled "Proposition 65 Information for California Residents". The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

WARNING: This product contains chemicals, including lead, known to the State of California to cause cancer and birth defects or other reproductive harm. Wash hands after handling.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

1 **WARNING:** Products identified on this page with the
2 following symbol contain chemicals,
3 including lead, known to the State of
4 California to cause cancer and birth
 defects or other reproductive harm.
 Wash hands after handling. ▼

5 **2.3 Exceptions To Warning Requirements**

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

- 7 (i) Any Product shipped, distributed or sold by Rug Doctor in California prior
8 to the Effective Date; or
9 (ii) Reformulated Products (as defined in Section 2.1 above).

10 **3. MONETARY PAYMENTS**

11 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

12 In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay
13 \$2,000 in civil penalties to be apportioned in accordance with California Health & Safety Code
14 §25192, with 75% of these funds remitted to the State of California's Office of Environmental
15 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Russell
16 Brimer as provided by California Health & Safety Code §25249.12(d). Defendant shall issue two
17 separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in
18 Trust For OEHHA" in the amount of \$1,500, representing 75% of the total penalty; and (b) one
19 check to "The Chanler Group in Trust for Russell Brimer" in the amount of \$500, representing
20 25% of the total penalty.

21 Within ten (10) business days after execution and delivery of this Consent Judgment by
22 both parties, the penalty payment shall be made by Defendants to the following address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

26 Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box
27 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose address and
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2 tax identification information shall be provided at the time of execution and delivery of this
3 Consent Judgment.

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

5 **4.1 Attorney Fees and Costs**

6 4.1.1 The parties reached an accord on the compensation due to Brimer and his
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure § 1021.5, for all work performed through the mutual
9 execution of this agreement and approval by the trial court, excluding any fees on appeal. Rug
10 Doctor shall pay Brimer and his counsel a total of \$22,000 for fees and costs incurred as a result
11 of investigating, bringing this matter to Rug Doctor' attention, and litigating and negotiating a
12 settlement in the public interest. These fees and costs include those that will be reasonably
13 incurred in the future to support entry of this agreement including, but not limited to fulfilling
14 reporting requirements, filing a motion to approve, providing notice of entry of judgment and
15 such other activities as may be necessary.

16 4.1.2 Payment shall be delivered to Brimer's counsel within ten (10) business
17 days after execution and delivery of this Consent Judgment by both parties, at the following
18 address:

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

24 4.2 Except as specifically provided in this Section 4.1, each Party shall bear its own
25 costs and attorney's fees in connection with this action.

26 **5. RELEASE OF ALL CLAIMS**

27 **5.1 Brimer's Release of Defendant**

28 In further consideration of the promises and agreements herein contained, and for the
payments to be made pursuant to Sections 3 and 4, Brimer on behalf of himself, his past and

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2 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
3 general public pursuant to Health & Safety Code Section 25249.7(d), hereby waives all rights to
4 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
5 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
6 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
7 limited to, investigation fees, expert fees, and attorney's fees) of any nature whatsoever, whether
8 known or unknown, fixed or contingent (collectively "claims"), against Defendant and each of its
9 wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, dealers,
10 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and
11 their respective officers, directors, attorneys, representatives, shareholders, agents, and
12 employees, and sister and parent entities, (collectively "Releasees") that arise under Proposition
13 65, as such claims relate to Defendants' alleged failure to warn about exposures to the Listed
14 Chemical contained in the Products.

15 Brimer in his individual capacity on behalf of himself, his past and current agents,
16 representatives, attorneys, and successors and/or assigns, and *not* his representative capacity,
17 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
18 action and releases all claims which he now has or may have in the future against Defendant,
19 irrespective of the subject matter, of all character, kind and nature, whether said claims are known
20 or unknown or are suspected or unsuspected and Brimer expressly waives any and all rights and
21 benefits which he now has, or in the future may have, under California Civil Code § 1542, which
22 provides as follows:

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

It is expressly agreed and understood that the general release by Brimer of Defendant is a
determinative consideration of Defendants' willingness and decision to enter into this Consent
Judgment.

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5.2 Defendants' Release of Brimer

Defendant, on behalf of itself and its Releasees, waives any and all claims against Brimer, his attorneys, and other representatives for any and all actions taken by Brimer and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

6. SEVERABILITY

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

7. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within nine months after it has been fully executed by all Parties. If the Superior Court does not approve the motion to approve this Consent Judgment within one year of execution, all payments made by Defendant shall be returned to counsel for Defendant.

8. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendant shall provide written notice to Brimer of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

9. NOTICES

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

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To Rug Doctor:

Tim Wall, President
Rug Doctor, Inc.
4701 Old Shepard Place
Plano, TX 75093

With a copy to:
Kathleen D. Patterson
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105

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. In furtherance of obtaining such approval, Brimer and Rug Doctor and their respective counsel agree to mutually

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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.

13. ENTIRE AGREEMENT

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. COUNTERPARTS, FACSIMILE SIGNATURES

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. AUTHORIZATION

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.

AGREED TO:

AGREED TO:

Dated: August 20, 2010

Dated: August __, 2010

By: 
Plaintiff Russell Brimer

By: _____
The Rug Doctor, Inc.

IT IS SO ORDERED.

Dated: _____

By: _____
Judge of the Superior Court

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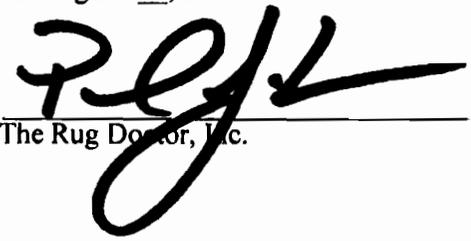
AGREED TO:

AGREED TO:

Dated: August __, 2010

Dated: August 23, 2010

By: _____
Plaintiff Russell Brimer

By: 
The Rug Doctor, Inc.

IT IS SO ORDERED.

Dated: _____

By: _____
Judge of the Superior Court