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3 THE CHANLER GROUP
4 2560 Ninth Street
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9 Attorneys for Plaintiff
10 RUSSELL BRIMER

ENDORSED
FILED
San Francisco County Superior Court

JUN 22 2011

CLERK OF THE COURT
BY: GINA GONZALES
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 DOLLAR EMPIRE, LLC ; and DOES 1
18 through 150,

19 Defendants.

Case No. CGC-10-503371

CB
**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: June 13, 2011

Time: 9:30 a.m.

Dept.: 301

Judge: Hon. Peter J. Busch


1 Plaintiff, Russell Brimer, and defendant, Dollar Empire, LLC, having agreed through their
2 respective counsel that judgment be entered pursuant to the terms of their settlement agreement in
3 the form of a Consent Judgment, and following this Court's issuance of an Order approving the
4 Proposition 65 settlement and Consent Judgment,

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

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11 **IT IS SO ORDERED.**

JUN 22 2011

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13 Dated: JUN 22 2011

14 
15 JUDGE OF THE SUPERIOR COURT

16 PETER J. BUSCH

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
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6 Attorneys for Plaintiff
RUSSELL BRIMER
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COUNTY OF SAN FRANCISCO

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UNLIMITED CIVIL JURISDICTION

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RUSSELL BRIMER,

Case No. CGC-10-503371

14

Plaintiff,

[PROPOSED] CONSENT JUDGMENT

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v.

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DOLLAR EMPIRE, LLC; and DOES 1-150,
inclusive,

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Defendants.

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CONSENT JUDGMENT

EXH. 1

1 **1. INTRODUCTION**

2 **1.1 The Parties**

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

6 **1.2 Plaintiff**

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

10 **1.3 Dollar Empire**

11 Dollar Empire employs 10 or more persons and is a person in the course of doing business
12 for 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 Dollar Empire has manufactured, distributed, and/or sold in the State
16 of California, colored, vinyl-coated paper fasteners, specifically, those offered in connection with
17 the *Family Maid Stationery Set, #1644 (#8 27680 16644 0)* (“Products”) that expose users to lead
18 without first providing the “clear and reasonable warning” required by Proposition 65. Lead is
19 listed as a reproductive and developmental toxicant pursuant to Proposition 65 and shall be
20 referred to hereinafter as the “Listed Chemical.”

21 **1.5 Notices of Violation**

22 On February 12, 2010, Brimer served Dollar Empire and various public enforcement
23 agencies with a document entitled “60-Day Notice of Violation” that alleged violations of Health
24 & Safety Code § 25249.6 for failing to warn consumers that the Products Dollar Empire
25 manufactured, distributed and/or sold exposed users in California to excessive amounts of the
26 Listed Chemical.

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1.6 Complaint

On September 9, 2010, Brimer, acting in a representative capacity in the interest of the general public in California filed the instant action (“Complaint”) in the Superior Court for the County of San Francisco alleging violations of Health & Safety Code § 25249.6 based on the exposures to the Listed Chemical contained in the Products manufactured, distributed, and/or sold by Dollar Empire.

1.7 No Admission

Dollar Empire denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products it has manufactured, distributed, and/or sold in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Dollar Empire of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Dollar Empire of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Dollar Empire. The Parties enter into this Consent Judgment as a full and final settlement of any and all claims either may have regarding the allegations contained in the Complaint. However, this Section shall not diminish or otherwise affect the Parties’ obligations, responsibilities, and/or 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 Dollar Empire as to the allegations contained in the Complaint, that venue is proper in the 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.

1.9 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean May 1, 2011.

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1 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

2 **2.1 Product Reformulation**

3 As of the Effective Date, Dollar Empire shall only distribute, sell, or offer for sale in
4 California, Products that are Lead Free. For purposes of this Consent Judgment, "Lead Free"
5 shall mean Products which yield a result of no more than 1.0 micrograms of residual lead when
6 analyzed pursuant to NIOSH 9100 testing protocol and which contain less than 90 parts per
7 million lead content when analyzed pursuant to Environmental Protection Agency testing
8 methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state
9 agencies for the purpose of determining lead content in a solid substance.

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, Dollar Empire shall
13 pay \$2,500 in civil penalties to be apportioned in accordance with California Health & Safety
14 Code §§ 25249.12(c)(1) & (d) with 75% of the funds paid to the State of California's Office of
15 Environmental Health Hazard Assessment ("OEHHHA") and the remaining 25% of the penalty
16 remitted to Brimer.

17 Payment shall be made as follows: On or before May 1, 2011, Dollar Empire shall issue
18 two checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust
19 for OEHHHA" in the amount of \$1,875; and (b) one check made payable to "The Chanler Group in
20 Trust for Russell Brimer" in the amount of \$625.

21 The penalty payments are to be delivered to Brimer's counsel at the following address:

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

27 Two 1099 forms shall be issued for the above penalty payments to: (a) Office of
28 Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-
0284486); and (b) Russell Brimer, whose address and tax identification number shall be
provided upon request five days before payment is due.

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 attorney fees and costs to be reimbursed to them, thereby
5 leaving the fee issue to be resolved after the material terms of the agreement had been settled.

6 Dollar Empire then expressed a desire to resolve the fee and cost issue shortly after the other
7 settlement terms had been finalized. The parties then attempted to (and did) reach an accord on
8 the 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 § 1021.5, for all work
10 performed through the mutual execution of this agreement and entry of this Consent Judgment.

11 Dollar Empire shall pay the total amount of \$16,000 for fees and costs relating to the Notice,
12 Complaint, and this Consent Judgment, including, without limitation, investigating, bringing this
13 matter to Dollar Empire's attention, and litigating and negotiating a settlement in the public
14 interest.

15 Dollar Empire shall issue a total of four checks for Brimer's fees and costs paid in four
16 monthly installments. Payments shall be made as follows: (a) on or before May 1, 2011, Dollar
17 Empire shall issue a check payable to "The Chanler Group" in the amount of \$2,500; (b) on or
18 before June 1, 2011, Dollar Empire shall issue a check payable to "The Chanler Group" in the
19 amount of \$5,000; (c) on or before July 1, 2011, Dollar Empire shall issue a check payable to
20 "The Chanler Group" in the amount of \$5,000; and (d) on or before August 1, 2011, Dollar
21 Empire shall issue a check payable to the "The Chanler Group" in the amount of \$3,500.

22 Each of the four payments for attorneys' fees shall be delivered to the following address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

28 Dollar Empire shall issue a single 1099 for all payments made pursuant to this Section to The
Chanler Group (EIN: 94-3171522).

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Brimer's Release of Defendant**

3 In further consideration of the promises and agreements herein contained, and for the
4 payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, his past
5 and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of
6 the general public, hereby waives all rights to institute or participate in, directly or indirectly, any
7 form of legal action and releases all claims including, without limitation, all actions and causes of
8 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
9 losses or expenses of any nature whatsoever, whether known or unknown, fixed or contingent
10 (collectively "Claims"), against Dollar Empire and each of its downstream distributors,
11 wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners,
12 purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective
13 officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and
14 parent entities (collectively "Releasees"). This release is limited to those Claims that arise under
15 with respect to Dollar Empire's alleged failure to warn about exposures to or identification of the
16 Listed Chemical contained in the Products, as defined in Section 1.4.

17 **5.2 Dollar Empire's Release of Brimer**

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

23 **6. SEVERABILITY**

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

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1 **7. 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 twelve
4 months after it has been fully executed by all Parties. If the Court does not grant its approval of
5 this Consent Judgment within one year of execution, all payments made by Defendant shall be
6 returned within fifteen days of receipt by Plaintiff's counsel of Defendant's written request for
7 reimbursement indicating that the one-year period has ended.

8 **8. GOVERNING LAW**

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

14 **9. NOTICES**

15 When any Party is entitled to receive any notice under this Consent Judgment, the notice
16 shall be sent in writing by certified mail, return receipt requested, to the persons identified below:

17 To Dollar Empire:

18 Wei Kai "Kelly" Wu
19 Dollar Empire, LLC
4423 Bandini Boulevard
20 Vernon, CA 90058

21 To Brimer:

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

24 Any Party may modify the person and address to whom the notice is to be sent by sending each
25 other Party notice by certified mail and/or other verifiable form of written communication.
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1 **10. ADDITIONAL POST-EXECUTION ACTIVITIES**

2 Brimer agrees to comply with the reporting form requirements referenced, in California
3 Health & Safety Code §25249.7(f). The parties acknowledge that, pursuant to Health & Safety
4 Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent
5 Judgment. In furtherance of obtaining such approval, Brimer and Dollar Empire agree to
6 mutually employ their best efforts to support the entry of this Agreement as a Consent Judgment
7 and to obtain approval of the Consent Judgment by the Court in a timely manner.

8 **11. MODIFICATION**

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

12 **12. ENTIRE AGREEMENT**

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

19 **13. COUNTERPARTS, FACSIMILE SIGNATURES**

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

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Attn: BRIAN,
510-848-8118

1 **14. 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.

6 **AGREED TO:**

AGREED TO:

7 Dated: 4-8-11

Dated: 4/4/11

8
9 By: 
10 Russell Frimer

By: 
Wei Kai (Kelly) Wu
Dollar Empire, LLC

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