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1021-12011

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 4 THE CHANLER GROUP  
 5 2560 Ninth Street  
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*Endorsed*  
**FILED**  
 ALAMEDA COUNTY

SEP 15 2011

CLERK OF THE SUPERIOR COURT  
 By *[Signature]* Deputy

6 Attorneys for Plaintiff  
 7 RUSSELL BRIMER

8  
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 COUNTY OF ALAMEDA  
 11 UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER,  
 14 Plaintiff,  
 15 v.  
 16 BIG 5 SPORTING GOODS CORPORATION;  
 17 *et al.*,  
 18 Defendants.

Case No.: RG10546497

~~PROPOSED~~ JUDGMENT PURSUANT  
 TO TERMS OF PROPOSITION 65  
 SETTLEMENT AND ORDER RE:  
 CONSENT JUDGMENT

Date: September 15, 2011  
 Time: 2:00 p.m.  
 Dept.: 20  
 Judge: Hon. Robert B. Freedman

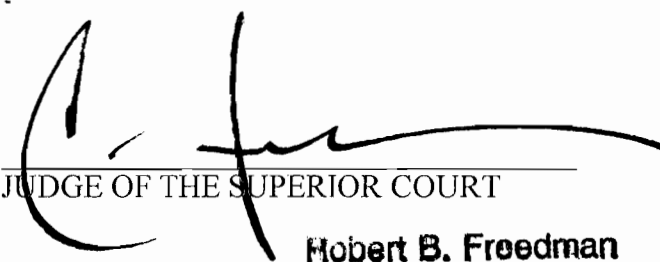
Reservation No.: R-1200903

1 In the above-titled action, plaintiff Russell Brimer and defendant, Big 5 Sporting Goods  
2 Corporation, having agreed through their respective counsel that judgment be entered pursuant to the  
3 terms of the [Proposed] Consent Judgment (“Consent Judgment”) mutually executed by the parties in  
4 resolution of this Proposition 65 action, and following the issuance of an Order approving the parties’  
5 settlement on September 15, 2011;

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

11  
12 **IT IS SO ORDERED.**

13  
14 Dated: SA 15, 2011

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\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
**Robert B. Freedman**

# Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534  
2 Stephen S. Sayad, State Bar No. 104866  
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4 THE CHANLER GROUP  
5 2560 Ninth Street  
6 Parker Plaza, Suite 214  
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8 Telephone: (510) 848-8880  
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10 Attorneys for Plaintiff  
11 RUSSELL BRIMER

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

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 BIG 5 SPORTING GOODS CORPORATION;  
19 and DOES 1-150, inclusive,

20 Defendants.

Case No. RG10546497

~~PROPOSED~~ CONSENT  
JUDGMENT

Health & Safety Code § 25249.6

1     **1.     INTRODUCTION**

2             **1.1     Russell Brimer and Big 5 Sporting Goods Corporation**

3             This Consent Judgment is entered into by and between Russell Brimer (“Brimer”) and Big 5  
4 Corp, erroneously named in the 60-Day Notice and Complaint as Big 5 Sporting Goods Corporation  
5 (“Big 5”), with Brimer and Big 5 collectively referred to as the “Parties.”

6             **1.2     Plaintiff**

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

10            **1.3     Defendant**

11            Big 5 employs ten 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 & Safety  
13 Code § 25249.6 *et seq.* (“Proposition 65”).

14            **1.4     General Allegations**

15            Brimer alleges that Big 5 has manufactured, distributed, and/or sold in the State of California  
16 accessory sports bag tags containing lead. Lead is listed pursuant to Proposition 65 as chemicals  
17 known to the State of California to be reproductive toxicants.

18            **1.5     Products Description**

19            The products that are covered by this Consent Judgment are defined as follows: Accessory  
20 Sports bag tags containing lead manufactured, imported, distributed, and/or sold in California by Big  
21 5, including but not limited to *Accessory Sports Athletic Bag Tag, Basketball, #03982329* and  
22 *Accessory Sports Athletic Bag Tag, Football, #03982345* (“Products”).

23            **1.6     Notices of Violation**

24            On July 1, 2010, Brimer served Big 5 and various public enforcement agencies with a  
25 document entitled “60-Day Notice of Violation” (“Notice”) that alleged that Big 5 was in violation of  
26 California Health & Safety Code Section 25249.6 for failing to warn consumers that the Products  
27 exposed users in California to lead. No public enforcer has diligently prosecuted the allegations set  
28 forth in the Notice.

1           **1.7      Complaint**

2           On November 15, 2010, Brimer, who alleges that he was and is acting in the interest of the  
3 general public in California, filed a complaint in the Alameda Superior Court ("Complaint"), naming  
4 Big 5 as a defendant and alleging violations of Proposition 65 by Big 5 based on the alleged  
5 exposures to lead contained in the Products it imported, manufactured, distributed, and/or offered for  
6 sale in California.

7           **1.8      No Admission**

8           Big 5 denies the material factual and legal allegations contained in the Notices, Complaint,  
9 and First Amended Complaint, and maintains that all of the Products that it has sold in California  
10 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be  
11 construed as an admission by Big 5 of any fact, finding, conclusion, issue of law, or violation of law;  
12 nor shall compliance with this Consent Judgment constitute or be construed as an admission by Big 5  
13 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by  
14 Big 5. However, this section shall not diminish or otherwise affect the obligations, responsibilities,  
15 and duties of Big 5 under this Consent Judgment.

16           **1.9      Consent to Jurisdiction**

17           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
18 jurisdiction over Big 5 as to the allegations contained in the Complaint, that venue is proper in the  
19 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this  
20 Consent Judgment.

21           **1.10     Effective Date**

22           For purposes of this Consent Judgment, the term "Effective Date" shall mean June 15, 2011.

23           **2.      INJUNCTIVE RELIEF**

24           **2.1     Reformulations Standards**

25           Big 5 asserts that on or about August 18, 2010, it removed the Products from sale in all of its  
26 stores and has not shipped the Products for sale, sold or offered to ship the Products for sale in  
27 California since that time. Big 5 also asserts that it will not sell or offer to be shipped for sale in  
28 California the Products in the future.

1 If Big 5 elects to sell the Products in California on or after the Effective Date, they shall be  
2 reformulated to contain no more than 100 parts per million of lead when analyzed pursuant to  
3 Environmental Protection Agency ("EPA") testing methodologies 3050B and 6010B.

4 **3. MONETARY PAYMENTS**

5 **3.1 Payments Pursuant to California Health & Safety Code § 25249.7(b)**

6 Pursuant to Health & Safety Code Section 25249.7(b), the total civil penalty assessed to Big 5  
7 shall be \$8,000 to be apportioned in accordance with California Health & Safety Code §§  
8 25249.12(c)(1) & (d), with seventy-five percent of the penalty amount remitted to the State of  
9 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining  
10 twenty-five percent of the penalty paid to Brimer. Big 5 shall issue two separate checks for the  
11 penalty payment: (a) one check made payable to "The Chanler Group in Trust for OEHHA" in the  
12 amount of \$6,000; and (b) one check payable to "The Chanler Group in Trust for Russell Brimer" in  
13 the amount of \$2,000. Two separate 1099s shall be issued for the above-payments: (a) Office of  
14 Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-  
15 0284486); and (b) Russell Brimer, whose information shall be provided upon request. Payment shall  
16 be delivered to Brimer's counsel on or before June 15, 2011 at the following address:

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

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

23 **4.1 Attorney Fees and Costs**

24 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
25 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
26 issue to be resolved after the material terms of the agreement had been settled. Big 5 then expressed  
27 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.  
28 The Parties then attempted to (and did) reach an accord on the compensation due to Brimer and his  
counsel under general contract principles and the private attorney general doctrine codified at  
California Code of Civil Procedure (CCP) §1021.5, for all work performed in this matter, except

1 fees that may be incurred on appeal. Under these legal principles, Big 5 shall pay the amount of  
2 \$30,000 for fees and costs incurred as a result of investigating, bringing this matter to Big 5's  
3 attention, and negotiating a settlement in the public interest. Big 5 shall issue a separate 1099 for  
4 fees and costs (EIN: 94-3171522) and shall make the check payable to "The Chanler Group."  
5 Payment shall be delivered on or before June 15, 2011, at the following address:

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

11 **5. RELEASE OF ALL CLAIMS**

12 **5.1 Brimer's Release of Big 5**

13 In further consideration of the promises and agreements herein contained, and for the  
14 payments to be made pursuant to Sections 3.1 and 4.1, Brimer on behalf of himself, his past, and  
15 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the  
16 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
17 legal action and releases all claims including, without limitation, all actions, and causes of action, in  
18 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or  
19 expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees), of any  
20 nature whatsoever (collectively "Claims"), that were brought or could have been brought against Big  
21 5, or its parents, subsidiaries, or affiliates, and all of its downstream customers, distributors,  
22 wholesalers, retailers, licensors, licensees, or any other downstream person in the course of doing  
23 business, and the successors and assigns of any of them, who may use, maintain, manufacture,  
24 distribute, advertise, market or sell the Products, and the officers, directors, managers, employees,  
25 members, shareholders, agents, insurers and representatives of each of them (collectively  
26 "Releasees") in this matter. This release is limited to, but is intended to be a full, final, and binding  
27 resolution of, those Claims that arise under Proposition 65, as against Big 5 and the Releasees, as  
28 such Claims relate to Big 5's alleged failures to warn about exposures to lead contained in the  
Products. Big 5's compliance with this Consent Judgment shall constitute compliance with



1 Proposition 65 for Big 5 and the Releasees with respect to the lead in Products after the Effective  
2 Date.

3 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code,  
4 which provides as follows:

5 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
6 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**  
7 **EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
8 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR**  
9 **HER MUST HAVE MATERIALLY AFFECTED HIS**  
10 **SETTLEMENT WITH THE DEBTOR.**

11 Brimer, in his individual capacity only and *not* in his representative capacity, expressly  
12 waives and relinquishes any and all rights and benefits which he may have under, or which may be  
13 conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any  
14 other state or federal statute or common law principle of similar effect, to the fullest extent that he  
15 may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such  
16 intention, the release hereby given shall be and remain in effect as a full and complete release  
17 notwithstanding the discovery or existence of any such additional or different claims or facts arising  
18 out of the released matters.

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

#### 22 **5.2 Big 5's Release of Brimer**

23 Big 5 waives any and all claims against Brimer, his attorneys, and other representatives  
24 (collectively, the "Brimer Releasees") for any and all actions taken or statements made (or those that  
25 could have been taken or made) by Brimer and his attorneys and other representatives in this matter  
26 and/or with respect to the Products, whether in the course of investigating claims or otherwise  
27 seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

28 Big 5 also provides a general release to the Brimer Releasees herein, which shall be effective  
as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Big 5 of any nature,

1 character, or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of  
2 the Notice or this Consent Judgment. Big 5 acknowledges that it is familiar with Section 1542 of the  
3 California Civil Code, which provides as follows:

4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
5 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**  
6 **EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
7 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR**  
8 **HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**  
9 **SETTLEMENT WITH THE DEBTOR.**

10 Big 5 expressly waives and relinquishes any and all rights and benefits which it may have  
11 under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil  
12 Code as well as under any other state or federal statute or common law principle of similar effect, to  
13 the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.  
14 In furtherance of such intention, the release hereby given shall be and remain in effect as a full and  
15 complete release notwithstanding the discovery or existence of any such additional or different claims  
16 or facts arising out of the released matters.

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
19 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
20 has been fully executed by all Parties, in which event any monies that have been provided to Brimer  
21 or his counsel pursuant to Sections 3.1 and/or Section 4.1 above shall be refunded within fifteen (15)  
22 days after receiving written notice from Big 5 that the one-year period has expired and the Consent  
23 Judgment has not been approved by the Court.

24 **7. SEVERABILITY**

25 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
26 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions  
27 remaining shall not be adversely affected.

28 **8. GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California  
and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is

1 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Big 5 may  
2 provide written notice to Brimer of any asserted change in the law, and shall have no further  
3 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
4 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Big 5 from any  
5 obligation to comply with any pertinent state or federal toxics control laws.

6 **9. NOTICES**

7 Unless specified herein, all correspondence and notices required to be provided pursuant to  
8 this Consent Judgment shall be in writing and delivered or sent by: (i) personal service; (ii) first-  
9 class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by  
10 the other party at the following addresses:

11 For Big 5:

12 Gary Meade, Senior Vice President and General Counsel  
13 Big 5 Corp.  
14 2525 East El Segundo Boulevard  
15 El Segundo, CA 90245

16 With copies to:

17 Carol Brophy, Esq.  
18 Sedgwick, Detert, Moran & Arnold LLP  
19 One Market Plaza, 8th Floor  
20 San Francisco, CA 94105

21 For Brimer:

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

27 Any party, from time to time, may specify in writing to the other party a change of address to  
28 which all notices and other communications shall be sent.

29 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(D)**

2 Brimer agrees to comply with the reporting form requirements referenced in California Health  
3 & Safety Code § 25249.7(f).

4 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

5 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a  
6 noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of  
7 obtaining such approval, Brimer and Big 5 and their respective counsel agree to mutually employ  
8 their "best efforts" to support the entry of this agreement as a Consent Judgment and obtain approval  
9 of the Consent Judgment by the Court in a timely manner. For purposes of this section, "best efforts"  
10 shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the  
11 required motion for judicial approval.

12 **13. MODIFICATION**

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

16 **14. INTEGRATION CLAUSE**

17 This Consent Judgment contains the complete agreement of the Parties; there is no other  
18 agreement, express or implied.

19 **15. AUTHORIZATION**

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

22 **AGREED TO:**

**AGREED TO:**

23  
24 Date: 6-2-11

Date: 06-02-11

25  
26 By:   
Plaintiff, Russell Brimer

By:   
Defendant, Big 5 Corp

27  
28