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Laurence D. Haveson, State Bar No. 152631  
Laralei S. Paras, State Bar No. 203319  
THE CHANLER GROUP  
81 Throckmorton Avenue, Suite 203  
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Facsimile: (415) 388-1135

Attorneys for Plaintiff  
RUSSELL BRIMER

ENDORSED  
FILED  
San Francisco County Superior Court

JUN 23 2011

CLERK OF THE COURT  
BY: MARJORIE SCHWARTZ-SCOTT  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
SAN FRANCISCO COUNTY - UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

UTRECHT MANUFACTURING  
CORPORATION; and DOES 1 through 150,

Defendants.

Case No. CGC-11-508435

**[PROPOSED] JUDGMENT  
PURSUANT TO STIPULATION AND  
CONSENT JUDGMENT**

Date: May 16, 2011  
Time: 9:30 A.M.  
Dept.: 301

Action Filed: February 22, 2011  
Trial Date: Not Yet Set

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant UTRECHT  
2 MANUFACTURING CORPORATION having agreed through their respective counsel that  
3 judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a  
4 Stipulation and [Proposed] Order Re: Consent Judgment ("Consent Judgment") entered into by the  
5 parties, and following issuance of an order approving this Proposition 65 settlement agreement and  
6 entering the Consent Judgment on May 19, 2011,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil  
8 Procedure § 664.6, judgment is entered in accordance with the terms of the Consent Judgment  
9 attached hereto as Exhibit 1.

10 **IT IS SO ORDERED.**

11  
12 Dated:                     JUN 23 2011                    

PETER J. BUSCH  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
PETER J. BUSCH

# Exhibit 1



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 Defendant Utrecht Manufacturing Corporation and Utrecht Manufacturing  
5       Corp. of California (“Utrecht” or “Defendant”), with Plaintiff and Defendant collectively referred  
6       to as the “Parties.”

7               **1.2     Plaintiff**

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

11              **1.3     Defendant**

12              Defendant employs 10 or more persons and is a person in the course of doing business for  
13       purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
14       Safety Code § 25249.6, *et seq.* (“Proposition 65”).<sup>1</sup> Defendant is a company that sells art  
15       products and bags designed for carrying or displaying art work and/or art products.

16              **1.4     General Allegations**

17              Brimer alleges that Defendant has manufactured, distributed and/or sold, in the State of  
18       California, messenger bags and carriers that expose users to lead, di(2-ethylhexyl)phthalate  
19       (“DEHP”) and other phthalates, such as di-n-butyl phthalate (“DBP”) and di-isodecyl phthalate  
20       (“DIDP”), without first providing “clear and reasonable warning” under Proposition 65. Lead is  
21       listed as a reproductive and developmental toxicant pursuant to Proposition 65. Di(2-  
22       ethylhexyl)phthalate (“DEHP”), di-n-butyl phthalate (“DBP”) and di-isodecyl phthalate (“DIDP”)  
23       are listed as reproductive toxicants under Proposition 65. Messenger bags and carriers that  
24       allegedly expose users to Lead, DEHP, DBP and/or DIDP are referred to herein as the  
25       “Products.” Lead, DEHP, DBP and DIDP shall be collectively referred to herein as the “Listed  
26       Chemicals.”

27       \_\_\_\_\_

28       <sup>1</sup> All statutory references contained herein are to California law.

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**1.5 Notices of Violation**

On October 15, 2010, Brimer served Defendant and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided such public enforcers and Defendant with notice of alleged violations of Proposition 65 for failing to warn consumers that messenger bags exposed users in California to Lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

On or about February 24, 2011, Brimer also served Defendant and public enforcers with a document entitled “Supplemental 60-Day Notice of Violation” (the “Supplemental Notice”) that provided Defendant and such public enforcers with notice of alleged violations of Proposition 65 for failing to warn consumers that messenger bags and carriers exposed users in California to DEHP, DBP, DIDP and/or lead. Until the sixty-sixth (66th) day after the date of issuance of the Supplemental Notice, the definition of Products herein shall only include messenger bags containing Lead, and the definition of “Defendant and “Utrecht” shall only include defendant Utrecht Manufacturing Corporation. After sixty-six (66) days have passed from the date of the Supplemental Notice, the definition of Products herein shall be deemed to also include messenger bags and carriers containing Lead, DEHP, DBP and/or DIDP, and the definition of Defendant and Utrecht herein shall be deemed to also include Utrecht Manufacturing Corp. of California, provided that no authorized public prosecutor has, prior to that date, filed a Proposition 65 enforcement action based on the Supplemental Notice. The Notice and Supplemental Notice are referred to collectively herein as the “Notices.”

**1.6 Complaint**

On or about February 22, 2011, Brimer, acting in the interest of the general public in California, filed a complaint in the Superior Court for the County of San Francisco, alleging violations of Proposition 65 based on the alleged exposures to lead contained in Products distributed and/or sold by Defendant. This action shall hereinafter be referred to as the “Action.” Following the expiration of the 66 days after Plaintiff’s issuance of the Supplemental Notice

1 referred to in Section 1.5 above, the Complaint in the Action shall be deemed amended to include  
2 allegations that the Products herein described contained the Listed Chemicals.

3 **1.7 No Admission**

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

15 **1.8 Consent to Jurisdiction**

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

20 **2. INJUNCTIVE RELIEF: REFORMULATION COMMITMENT**

21 Commencing on February 28, 2011 (the "Effective Date"), Defendant shall not have  
22 manufactured or shipped to it Products for sale in California unless such Products are Lead Free  
23 and Phthalate Free, as further defined below. For purposes of this Consent Judgment, "Lead  
24 Free" Products shall mean Products containing components that may be handled, touched or  
25 mouthed by a consumer, and which components yield less than 1.0 microgram of lead when using  
26 a wipe test pursuant to NIOSH Test Method 9100, and yield less than 100 parts per million  
27 ("ppm") lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or

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1 equivalent methodologies utilized by federal or state agencies for the purpose of determining lead  
2 content in a solid substance. Additionally, for purposes of this Consent Judgment, "Phthalate  
3 Free" shall mean Products containing less than or equal to 1,000 ppm of DEHP, DBP and DIDP,  
4 when analyzed pursuant to any testing methodology selected by Defendant that is acceptable to  
5 state or federal government agencies for purposes of determining phthalate content by weight in a  
6 solid substance. Products that are Lead Free and Phthalate Free are referred to hereinafter as  
7 "Reformulated Products."

8 Defendant hereby commits that 100% of the Products that it has manufactured or shipped  
9 to it for sale in California after the Effective Date shall be Reformulated Products.

### 10 **3. MONETARY PAYMENTS**

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

12 Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all the claims  
13 referred to in this Consent Judgment, Utrecht shall pay a total of \$12,000 in civil penalties in two  
14 installments. The first payment of the penalty shall be \$5,000, to be apportioned in accordance  
15 with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of  
16 California's Office of Environmental Health Hazard Assessment and the remaining 25% remitted  
17 to Brimer as provided by Health & Safety Code § 25249.12(d).

18 Utrecht shall issue two separate checks for the penalty payment: (a) one check made  
19 payable to "The Chanler Group in Trust for Office of Environmental Health Hazard  
20 Assessment" in the amount of \$3,750, representing 75% of the total; and (b) one check to "The  
21 Chanler Group in Trust for Brimer" in the amount of \$1,250, representing 25% of the total.

22 Two separate Forms 1099 shall be issued for the above payments: The first Form 1099 shall be  
23 issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA  
24 95184 (EIN: 68-0284486) in the amount of \$3,750. The second Form 1099 shall be issued in  
25 the amount of \$1,250 to Brimer, whose address and tax identification number shall be  
26 furnished, upon execution of this Agreement. The payment shall be delivered by March 3,  
27 2011, at the following address:

28



1 The Chanler Group  
2 Attn: Proposition 65 Controller  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710-2565

6 The second payment of \$7,000 in civil penalties is due on March 30, 2011; however, this  
7 amount shall be waived in its entirety if Utrecht certifies (in writing to Brimer by March 15,  
8 2011) that it has met the Reformulation Commitment set forth above in Section 2 as of the  
9 Effective Date. If the certification is not received, then the additional penalty payments shall be  
10 apportioned in the same manner outlined above in this Paragraph.

### 11 3.2 Attorney's Fees and Costs

12 The parties reached an accord on the compensation due to Brimer and his counsel under  
13 general contract principles and the private attorney general doctrine codified at California Code of  
14 Civil Procedure (CCP) §1021.5, for all work performed through the mutual execution of this  
15 agreement and for Brimer's anticipated future fees and costs including attorneys' fees to be  
16 incurred in seeking judicial approval of this Consent Judgment as well as any other legal work  
17 performed after the execution of this Consent Judgment in an effort to obtain finality of the  
18 Action. Defendant shall pay Brimer and his counsel a total of \$32,800 for fees and costs incurred  
19 as a result of investigating, bringing this matter to Defendant's attention, and litigating and  
20 negotiating a settlement in the public interest through the execution of this Agreement. Utrecht  
21 shall also reimburse Brimer and his counsel the total of 5,000 for all anticipated post-execution  
22 work, such as fulfilling reporting requirements, preparation and filing of the motion to approve  
23 this proposed Consent Judgment, and the preparation, service and filing of the notice of entry of  
24 judgment.

25 Utrecht shall issue a separate Form 1099 for fees and costs (EIN: 94-3171522) and shall  
26 make the check in the amount of \$37,800 payable to "The Chanler Group" and shall deliver the  
27 check by March 3, 2011, to the following address:

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

1       **4.       CLAIMS COVERED AND RELEASE**

2               **4.1       Brimer’s Release of Defendant and its Chain of Distribution**

3               This Consent Judgment is a full, final, and binding resolution between Brimer, acting on  
4       behalf of himself and in the interest of the general public, and Defendant, its owners, subsidiaries,  
5       affiliates, sister and related companies (including without limitation Utrecht Manufacturing Corp.  
6       of California), employees, shareholders, directors, insurers, attorneys, successors, and assigns  
7       (“Defendant Releasees”), and all entities to whom they directly or indirectly distribute or sell  
8       Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,  
9       cooperative members, and licensees (“Downstream Defendant Releasees”) of any violation of  
10      Proposition 65 or any statutory or common law claim that has been or could have been asserted  
11      against Defendant Releasees and Downstream Defendant Releasees individually or in the public  
12      interest regarding the failure to warn about exposure to the Listed Chemicals arising in  
13      connection with Products manufactured and/or shipped prior to the Effective Date even if sold by  
14      Downstream Defendant Releasees after the Effective Date. Defendant’s compliance with this  
15      Consent Judgment shall constitute compliance with Proposition 65 with respect to the Listed  
16      Chemicals in Products for both Defendant Releasees and Downstream Defendant Releasees for  
17      Products distributed and/or sold by Defendant after the Effective Date.

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

3 Brimer also, on behalf of himself, his past and current agents, representatives, attorneys,  
4 successors, and/or assignees and not in his representative capacity, provides a general release  
5 herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions,  
6 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities  
7 and demands of any nature, character or kind, known or unknown, suspected or unsuspected,  
8 against Defendant Releasees and Downstream Defendant Releasees arising under Proposition 65,  
9 as such claims relate to Defendant Releasees' alleged failure to warn about exposures to or  
10 identification of any chemicals listed under Proposition 65 contained in any products sold by  
11 Defendant Releasees. Brimer acknowledges that he is familiar with Civil Code § 1542, which  
12 provides as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
14 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
15 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
16 KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS  
17 SETTLEMENT WITH THE DEBTOR.

18 Brimer, in his individual capacity only and *not* in his representative capacity, and on behalf of  
19 himself, his past and current agents, representatives, attorneys, successors, and/or assignees  
20 expressly waives and relinquishes any and all rights and benefits which he may have under, or  
21 which may be conferred on him by the provisions of Civil Code § 1542 of the California as well  
22 as under any other state or federal statute or common law principle of similar effect, to the fullest  
23 extent that he may lawfully waive such rights or benefits pertaining to the released matters.

24 Upon court approval of the Consent Judgment, the Parties waive their respective rights to  
25 a hearing or trial on the allegations of the Complaint.

26 The Parties further understand and agree that, except as provided for above, this release  
27 shall not extend upstream to any third parties that manufactured the Products or any component  
28 parts thereof, or any distributors or suppliers who sold the Products or any component parts  
thereof to Defendant.

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**4.2 Defendant's Release of Brimer**

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

Defendant also provides a general release 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 Defendant of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Defendant acknowledges that it is familiar with Civil Code § 1542, which provides as follows:

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

Defendant 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 Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

**5. 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.

**6. COURT APPROVAL**

This Consent Judgment is not effective until it is approved and entered by the Court and

1 shall be null and void if, for any reason, it is not approved and entered by the Court within nine  
2 months after it has been fully executed by all Parties. In the event this consent judgment is (a) not  
3 entered by this Court within nine months (or thereafter) for any reason whatsoever, or (b) is  
4 entered by the Court and subsequently overturned by any appellate court, any monies that have  
5 been provided to Brimer, or his counsel pursuant to Section 3 above, together with interest at the  
6 prevailing federal rate accruing from the date of payment by Defendant, shall be refunded within  
7 fifteen (15) days after receiving written demand from Defendant for return of such funds.

8 **7. 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, preempted, or is otherwise rendered  
11 inapplicable by reason of law generally, or as to the Listed Chemicals and/or the Products, then  
12 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to,  
13 and to the extent that, the Products are so affected.

14 **8. NOTICES**

15 When any Party is entitled to receive any notice under this Consent Judgment, the notice  
16 shall be sent by certified mail and/or other verifiable form of written communication to the  
17 person(s) identified below:

<p>18 To Defendant: 19 Tom Becker, V.P. Finance &amp; 20 Administration 21 Utrecht Manufacturing Corporation and 22 Utrecht Manufacturing Corp. of 23 California 24 6 Corporate Drive, Suite 1 25 Cranbury, NJ 08512</p> <p>26 With copy to: 27 James Robert Maxwell, Esq. 28 Rogers Joseph O'Donnell 311 California Street San Francisco, CA 94104</p>	<p>To Brimer: The Chanler Group Attn: Proposition 65 Coordinator 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565</p>
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1 Any Party may modify the person and address to whom the notice is to be sent by sending  
2 each other Party notice by certified mail and/or other verifiable form of written communication.

3 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

4 Brimer agrees to comply with the reporting form requirements referenced, in Health &  
5 Safety Code § 25249.7(f) and to file a motion for approval of this Consent Judgment. Utrecht  
6 agrees that its counsel shall provide Brimer with a complete first draft of the moving papers  
7 within fourteen days of its execution of this Consent Judgment.

8 **10. 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 **11. ADDITIONAL POST-EXECUTION ACTIVITIES**

13 The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed  
14 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of  
15 obtaining such approval, Brimer and Defendant and their respective counsel agree to mutually  
16 employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain  
17 approval of the Consent Judgment by the Court in a timely manner.

18 **12. ENTIRE AGREEMENT**

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

25 **13. ATTORNEY'S FEES**

26 Should either Party prevail on any motion, application for an order to show cause or other  
27 proceeding to enforce a violation of this Consent Judgment, it may be awarded its reasonable

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1 attorneys' fees and costs as a result of such motion or application upon a finding by the Court that  
2 the other Party's opposition lacked substantial justification. For purposes of this Consent  
3 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
4 Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

5 Except as specifically provided in the above paragraph and in Section 3.2 above, each  
6 Party shall bear its own costs and attorney's fees in connection with this action.

7 **14. COUNTERPARTS, SIGNATURES**

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

11 **15. AUTHORIZATION**

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

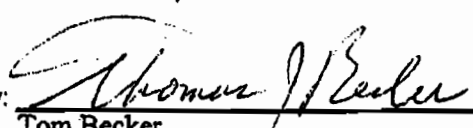
14 **AGREED TO:**

15 Date: 2-23-11

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17  
18 By:   
19 Plaintiff Russell Brimer

**AGREED TO:**

15 Date: 2/18/11

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17  
18 By:   
19 Tom Becker  
20 Utrecht Manufacturing Corporation and  
21 Utrecht Manufacturing Corp. of  
22 California