

1 Jennifer Henry, State Bar No. 208221
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
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9 Attorneys for Plaintiff
10 RUSSELL BRIMER

ENDORSED
FILED
San Francisco County Superior Court
JUN 19 2012
CLERK OF THE COURT
BY: MARTA VALLEJO
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 NORDIC GROUP OF COMPANIES, LTD.,
18 FLAMBEAU, INC.; and DOES 1-150,
19 inclusive,

20 Defendants.

Case No. CGC-11-510759

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

Date: June 19, 2012

Time: 9:30 a.m.

Dept.: 302

Judge: Hon. Harold E. Kahn

1 In the above-entitled action, Plaintiff, Russell Brimer, and Defendant, Flambeau, Inc.,
2 having agreed through their respective counsel that Judgment be entered pursuant to the terms of
3 their settlement agreement in the form of a Consent Judgment, and following this Court's
4 issuance of an Order approving this 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.

10
11 **IT IS SO ORDERED.**

12
13 Dated: JUN 19 2012

JAMES J. MCBRIDE

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Josh Voorhees, State Bar No. 241436
2 Jennifer Henry, State Bar No. 208221
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
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10 RUSSELL BRIMER

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

RUSSELL BRIMER,

Plaintiff,

v.

NORDIC GROUP OF COMPANIES, LTD.;
FLAMBEAU, INC.; *et al.*,

Defendants.

Case No. CGC-11-510759 _____

[PROPOSED] CONSENT JUDGMENT

CONSENT JUDGMENT

840062.1

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, Flambeau, Inc. ("Flambeau" or "Defendant"), with
5 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 Defendant**

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

14 **1.4 General Allegations**

15 Brimer alleges that Flambeau has manufactured, distributed, and/or sold in the State of
16 California *ArtBin Workstation Tote Bags*, #6909SA (#0 71617 00514 6) (hereinafter referred to as
17 "Products") that expose users to lead and di-n-butyl phthalate ("DBP") without first providing a
18 "clear and reasonable warning," as required by Proposition 65. Lead and DBP are listed as
19 reproductive and developmental toxicants pursuant to Proposition 65 and shall be referred to
20 hereinafter as the "Listed Chemicals."

21 **1.5 Notices of Violation**

22 On October 15, 2010, Brimer served Flambeau, Nordic Group Of Companies, Ltd.
23 ("Nordic Group") and various public enforcement agencies with a document entitled "60-Day
24 Notice of Violation" that provided the public enforcers and Flambeau with notice of alleged
25 violations of Health & Safety Code § 25249.6 for failing to warn consumers that the Products
26 Flambeau manufactured, distributed and/or sold exposed users in California to excessive amounts
27 of lead. On November 12, 2010, Brimer served Flambeau, Nordic Group and various public
28 enforcement agencies with a document entitled "60-Day Notice of Violation" that provided the

1 public enforcers and Flambeau with notice of alleged violations of Health & Safety Code §
2 25249.6 for failing to warn consumers that the Products Flambeau manufactured, distributed
3 and/or sold exposed users in California to excessive amounts of DBP. The October 15, 2010 and
4 November 12, 2010 60-Day Notices shall hereinafter be referred to as the “Notices”.

5 **1.6 Complaint**

6 On May 5, 2011, Brimer, acting in a representative capacity in the interest of the general
7 public in California, filed the instant action in the Superior Court for the County of San Francisco
8 alleging violations of Health & Safety Code § 25249.6 based on the exposures to the Listed
9 Chemicals contained in the Products manufactured, distributed, and/or sold by Flambeau and
10 Nordic (“Complaint”). On or about July 11, Nordic Group was dismissed.

11 **1.7 No Admission**

12 Flambeau denies the material, factual, and legal allegations contained in the Notices and
13 Complaint, and maintains that all of the products it has manufactured, distributed, and/or sold in
14 California, including the Products, have been, and are, in compliance with all laws. Nothing in
15 this Consent Judgment shall be construed as an admission by Flambeau of any fact, finding,
16 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
17 constitute or be construed as an admission by Flambeau of any fact, finding, conclusion, issue of
18 law, or violation of law, the same being specifically denied by Flambeau. However, this Section
19 shall not diminish or otherwise affect the Parties’ obligations, responsibilities, and/or duties under
20 this Consent Judgment.

21 **1.8 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Flambeau as to the allegations contained in the Complaint, that venue is proper
24 in the County of San Francisco, and that this Court has jurisdiction to enter and enforce the
25 provisions of this Consent Judgment pursuant to California Code of Civil Procedure § 664.6.

26 **1.9 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean March 2,
28 2012.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Standards**

3 Flambeau represents that it has ceased sales and shipments of the *ArtBin Workstation*
4 *Tote, #6909 SA* (“Products”) for sale in California. In the future, Flambeau shall not sell, ship, or
5 offer to be shipped for sale in California any Product unless such Products are Reformulated
6 Products. Reformulated Products are defined as those Products which (1) yield less than 100
7 parts per million (“ppm”) of lead when analyzed pursuant to EPA testing methodologies 3050B
8 and 6010B (“digest test”), or equivalent methodologies utilized by federal or state agencies for the
9 purpose of determining lead content in a solid substance, and which components yield a result of
10 no more than 1.0 microgram (“µg”) of lead when analyzed pursuant to NIOSH Test Method 9100
11 (“wipe test”); and (2) contain less than or equal to 1000 ppm of DBP when analyzed pursuant to
12 EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or
13 state agencies for the purpose of determining DBP content in a solid substance.

14 **3. MONETARY PAYMENTS**

15 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

16 Flambeau shall be assessed a civil penalty of \$5,000 in combined penalty payments and
17 credits. Due to Flambeau’s commitment to only offer Reformulated Products pursuant to
18 Section 2.1, above, Brimer agrees to apply an automatic credit of \$2,500 to the total civil
19 penalty. Therefore, Flambeau shall make a payment of the remaining \$2,500, to be apportioned
20 in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with
21 75% of these funds earmarked for the State of California’s Office of Environmental Health
22 Hazard Assessment (“OEHHA”) and the remaining 25% of these penalty monies earmarked for
23 Plaintiff.

24 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

25 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
26 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
27 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
28 Flambeau then expressed a desire to resolve the fee and cost issue shortly after the other

1 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
2 the compensation due to Brimer and his counsel under general contract principles and the private
3 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
4 work performed in this matter, except fees that may be incurred on appeal. Under these legal
5 principles, Flambeau shall pay the amount of \$15,000 for fees and costs incurred investigating,
6 litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred)
7 negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public
8 interest.

9 **3.3 Payment Procedures**

10 **3.3.1** All payments made under this Consent Judgment shall be held in trust
11 until the Court approves the Consent Judgment. The Parties acknowledge that Brimer gave
12 Flambeau the option of depositing the funds into its attorney's trust account, but that Flambeau
13 elected to have the funds held in trust by The Chanler Group. The settlement funds shall be
14 made payable by checks, as follows:

- 15 (a) "The Chanler Group in Trust for OEHHHA" in an amount equal to
16 75% of the civil penalty;
- 17 (b) "The Chanler Group in Trust for Brimer" in an amount equal to
18 25% of the penalty; and
- 19 (c) "The Chanler Group in Trust" in an amount totaling \$15,000.

20 **3.3.2** After the Consent Judgment has been approved, Flambeau shall issue a
21 1099 form to each of the following entities:

- 22 (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010,
23 Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalties payable to OEHHHA;
- 24 (b) Brimer, whose address and tax identification number shall be furnished
25 upon request, for the civil penalties payable to Brimer; and
- 26 (c) The Chanler Group (EIN: 94-3171522) for the amount of \$15,000.

27 **3.3.3** All payments transmitted to the Chanler Group shall be delivered to the
28 following address:

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

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Brimer's Public Release of Proposition 65 Claims.** Brimer, acting on his own
8 behalf and in the public interest, releases Flambeau from all claims for violations of Proposition
9 65 up through the Effective Date based on exposure to the Listed Chemicals from the Products
10 as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes
11 compliance with Proposition 65 with respect to exposures to the Listed Chemicals from the
12 Products as set forth in the Notices.

13 **4.2 Brimer's Individual Release of Claims.** Brimer also, in his individual capacity
14 only and *not* in his representative capacity, provides a release herein which shall be effective as
15 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
16 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any
17 nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and
18 arising out of alleged or actual exposures to the Listed Chemicals in the Products manufactured,
19 distributed or sold by Flambeau.

20 **4.3 Flambeau's Release of Brimer.** Flambeau on behalf of itself, its past and
21 current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and
22 all claims against Brimer, his attorneys and other representatives, for any and all actions taken or
23 statements made (or those that could have been taken or made) by Brimer and his attorneys and
24 other representatives, whether in the course of investigating claims or otherwise seeking to
25 enforce Proposition 65 against it in this matter with respect to the Products.

26 **5. SEVERABILITY**

27 If, subsequent to Court approval of this Consent Judgment, any of the provisions
28 contained herein are held by a court to be unenforceable, the validity of the enforceable provisions
remaining shall not be adversely affected.

1 **6. 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.

5 **7. GOVERNING LAW**

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

11 **8. NOTICES**

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

14 To Flambeau:

15 Stephen L. Marsh, Esq.
16 Luce, Forward, Hamilton & Scripps LLP
17 600 West Broadway, Suite 2600
18 San Diego, CA 92101-3391

18 To Brimer:

19 The Chanler Group
20 Attn: Proposition 65 Coordinator
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 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.

26 **9. ADDITIONAL POST-EXECUTION ACTIVITIES**

27 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
28 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
obtaining such approval, Brimer, Flambeau and their respective counsel agree to mutually employ
their best efforts to support the entry of this agreement as a Consent Judgment and obtain

1 approval of the Consent Judgment by the Court in a timely manner. For purposes of this
2 paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any
3 papers in support of the required motion for judicial approval.

4 **10. MODIFICATION**

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

8 **11. ENTIRE AGREEMENT**

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

15 **12. COUNTERPARTS, FACSIMILE SIGNATURES**

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

19 **13. AUTHORIZATION**

20 The undersigned are authorized to execute this Consent Judgment on behalf of their
21 respective Parties and have read, understood, and agree to all of the terms and conditions of this
22 Consent Judgment.
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AGREED TO:

AGREED TO:

Dated: 2-28-12

Dated: 3/27/12

By: 
Russell Brimer

By: , Asst Secretary
Flambeau, Inc.