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Christopher M. Martin, State Bar No. 186021
Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
THE CHANLER GROUP
2560 Ninth Street, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
RUSSELL BRIMER

FILED

DEC 11 2012

KIM TURNER, Court Exec. Officer
MARIN CO. SUPERIOR COURT
By: E. Turner, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

SERVICE TOOL COMPANY, L.L.C.; *et al.*,

Defendants.

Case No. CIV1105661

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

Date: November 27, 2012
Time: 9:00 a.m.
Dept. L
Judge: Hon. Lynn Duryee

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Plaintiff Russell Brimer and Defendant Service Tool Company, L.L.C., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

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

IT IS SO ORDERED.

Dated: 12/11/12

LYNN DURYEE

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Clifford A. Chanler, State Bar No. 135534
Christopher M. Martin, State Bar No. 186021
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5 Attorneys for Plaintiff
6 RUSSELL BRIMER

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION
10

11 RUSSELL BRIMER,
12 Plaintiff,
13
14 v.
15 SERVICE TOOL COMPANY, L.L.C.; and
DOES 1 through 150, inclusive,
16 Defendants.

Case No. CIV1105661

[PROPOSED] CONSENT JUDGMENT

1 **5. INTRODUCTION**

2 **5.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”
4 or “Plaintiff”) and Service Tool Company, L.L.C. (“Service Tool” or “Defendant”), with Brimer
5 and Service Tool 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 improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Defendant**

11 Service Tool 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 **5.4 General Allegations**

15 Brimer alleges that Service Tool has manufactured, distributed, sold, and/or offered for
16 sale in the State of California tape measures with hand straps containing lead without the
17 requisite Proposition 65 health hazard warnings. Brimer further alleges that Service Tool has
18 manufactured, distributed, sold, and/or offered for sale in the State of California tape measures
19 with hand straps containing di(2-ethylhexyl)phthalate (“DEHP”) and hand tool grips containing
20 lead without the requisite Proposition 65 health hazard warnings. Lead and DEHP are listed
21 pursuant to Proposition 65 as chemicals known to cause birth defects and other reproductive
22 harm.

23 **5.5 Product Description**

24 The products that are covered by this Consent Judgment include: (a) tape measures with
25 hand straps containing lead including, but not limited to, *Tool Cache 16' x 3/4" Tape with*
26 *Scriber, #51111 (#0 42374 30506 0)*, manufactured, distributed, sold and/or offered for sale in
27 California by Service Tool, hereinafter the “Initial Noticed Products;” and (b) (1) tape measures
28 with hand straps containing DEHP including, but not limited to, *Tool Cache 16' x 3/4" Tape with*

1 *Scriber*, #51111 (#0 42374 30506 0), manufactured, distributed, sold and/or offered for sale in
2 California by Service Tool, and (2) the *Tool Cache Hammer*, #51627 (#0 42374 70946 2)
3 containing lead manufactured, distributed, sold and/or offered for sale in California by Service
4 Tool, both hereinafter referred to collectively as the “Supplemental Noticed Products.” Initial
5 Noticed Products and Supplemental Noticed Products are collectively referred to as “Products.”

6 **5.6 Notices of Violation**

7 On or about September 1, 2011, Brimer served Service Tool and various public
8 enforcement agencies with a document entitled “60-Day Notice of Violation” (“Initial Notice”)
9 that provided the recipients with notice of alleged violations of Proposition 65 by Service Tool
10 for failing to warn its customers and consumers in California that the Initial Noticed Products it
11 sold exposed users to lead. To the best of the Parties’ knowledge, no public enforcer has
12 commenced and is diligently prosecuting the allegations set forth in the Initial Notice.

13 On or about August 16, 2012, Brimer served Service Tool and various public enforcement
14 agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“Supplemental
15 Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by
16 Service Tool for failing to warn its customers and consumers in California that tape measures
17 with hand straps it sold exposed users to DEHP and hand tools with grips exposed users to lead.
18 The Initial Notice and Supplemental Notice are collectively referred to as the “Notices.”

19 **5.7 Complaint**

20 On November 16, 2011, Brimer, who was and is acting in the interest of the general public
21 in California, filed a complaint (“Complaint” or “Action”) in the Superior Court for the County
22 of Marin against Service Tool and Does 1 through 150, alleging violations of Proposition 65
23 based on the alleged exposures to lead contained in the Initial Noticed Products. In the event that
24 no public enforcer undertakes diligent prosecution of the allegations set forth in the
25 Supplemental Notice, and upon entry of this Consent Judgment by the Court, the Complaint shall
26 be deemed amended to including violations of Proposition 65 based on the alleged exposures to
27 DEHP contained in the tape measures with hand straps and to lead contained in the *Tool Cache*
28 *Hammer*, #51627 (#0 42374 70946 2).

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5.8 No Admission

Service Tool denies the material factual and legal allegations contained in Brimer’s Notices and Complaint, and maintains that all Products sold and distributed in California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Service Tool 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 Service Tool of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Service Tool. However, this section shall not diminish or otherwise affect Service Tool’s obligations, responsibilities, and duties under this Consent Judgment.

5.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Service Tool 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.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this Consent Judgment is approved by the Court.

6. INJUNCTIVE RELIEF: REFORMULATION

Commencing on the Effective Date, Service Tool shall manufacture, distribute, sell and/or offer for sale in California only Products that are “Reformulated Products.” For purposes of this Consent Judgment, “Reformulated Products” shall mean Products containing components that may be handled, touched or mouthed by a consumer, and which components yield: (1) less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100; (2) less than 100 parts per million (“ppm”) lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B; and (3) contain less than or equal to 1,000 ppm (0.1%) DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C.

1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty Payment**

3 Pursuant to Health & Safety Code § 25249.7(b), Service Tool shall pay \$19,000 in civil
4 penalties. Service Tool shall pay an initial civil penalty of \$4,000 and a final civil penalty of
5 \$15,000 on the dates provided in Section 3.3. However, the final civil penalty shall be waived in
6 its entirety if an officer of Service Tool provides Brimer with a written certification that, as of
7 September 30, 2012, and continuing on into the future, Service Tool has sold and will continue
8 to sell only Reformulated Products as defined in Section 2 of this Consent Judgment. Brimer
9 must receive any such certification no later than March 15, 2013, and time is of the essence.

10 The penalty payments will be allocated according to Health & Safety Code §§ 25249.12
11 (c)(1) & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California
12 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five
13 (25%) of the penalty amount earmarked for Brimer.

14 **3.2 Reimbursement of Brimer’s Fees and Costs**

15 The Parties acknowledge that Brimer and his counsel offered to resolve the non-monetary
16 terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to
17 them, thereby leaving this fee issue to be resolved after the non-monetary terms of the
18 agreement had been settled. The Parties then agreed to resolve the fee and cost issue shortly
19 after the non-monetary terms had been finalized, subject to agreement on fees. The Parties then
20 attempted to (and did) reach an accord on the compensation due to Brimer and his counsel
21 under general contract principles and the private attorney general doctrine codified at California
22 Code of Civil Procedure § 1021.5, for all work performed in this matter, except fees that may be
23 incurred on appeal. Under these legal principles, Service Tool shall pay the amount of \$23,000
24 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees
25 and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s
26 approval of this Consent Judgment in the public interest.

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3.3 Payment Procedures

3.3.1 Funds Held In Trust: The initial civil penalty payments required by Section 3.1 and the payment required by Section 3.2 shall be delivered on or before September 21, 2012 to either The Chanler Group or the attorney of record for Service Tool and shall be held in trust pending the Court’s approval of this Consent Judgment.

Payments delivered to The Chanler Group shall be made payable, as follows:

- (i) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$3,000;
- (ii) One check made payable to “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,000; and
- (iii) One check made payable to “The Chanler Group in Trust” in the amount of \$23,000.

Payments delivered to Barg, Coffin, Lewis & Trapp, LLP shall be made payable, as follows:

- (i) One check made payable to “Barg, Coffin, Lewis & Trapp, LLP in Trust for OEHHA” in the amount of \$3,000;
- (ii) One check made payable to “Barg, Coffin, Lewis & Trapp, LLP in Trust for Russell Brimer in the amount of \$1,000; and
- (iii) One check made payable to “Barg, Coffin, Lewis & Trapp, LLP in Trust for The Chanler Group” in the amount of \$23,000.

If Service Tool elects to deliver payments to its attorney of record, such attorney of record shall: (a) confirm in writing within five days of receipt that the funds have been deposited in a trust account; and (b) within five days of the date of the hearing on which the Court approves the Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as follows:

- (i) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$3,000;

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- (ii) One check made payable to “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,000; and
- (iii) One check made payable to “The Chanler Group” in the amount of \$23,000.

If the final civil penalty of \$15,000 referenced in Section 3.1 above is not waived, payments shall be delivered on or before March 29, 2013, to The Chanler Group and made payable, as follows:

- (i) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$11,250; and
- (ii) One check made payable to “The Chanler Group in Trust for Russell Brimer” in the amount of \$3,750.

3.3.2 Issuance of 1099 Forms: After the Consent Judgment has been approved and the settlement funds have been transmitted to Brimer’s counsel, Service Tool shall issue separate 1099 forms, when reasonably available, as follows:

- (i) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$3,000;
- (ii) The second 1099 shall be issued to Russell Brimer in the amount of \$1,000, whose address and tax identification number shall be furnished upon request;
- (iii) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of \$23,000.
- (iv) If the penalty of \$15,000 referenced in Section 3.1 above is paid, the fourth 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$11,250; and

1 (v) If the penalty of \$15,000 referenced in Section 3.1 above is paid,
2 the fifth 1099 shall be issued to Brimer in the amount of \$3,750,
3 whose address and tax identification number shall be furnished
4 upon request.

5 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered
6 to the following payment address:

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

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

12 This Consent Judgment is a full, final and binding resolution between Brimer, on behalf of
13 himself and the public, and Defendant, of any violation of Proposition 65 that was or could have
14 been asserted by Brimer against Defendant, or its parent, subsidiaries, affiliated entities that are
15 under common ownership, directors, officers, employees, attorneys, and each entity to whom
16 each Defendant directly or indirectly distributes or sells Products, including but not limited to
17 downstream distributors, wholesalers, customers, retailers (“Downstream Releasees”) and their
18 respective parents, subsidiaries, affiliated entities that are under common ownership, directors,
19 officers, employees, attorneys, franchisees, cooperative members, licensors, and licensees of
20 each Downstream Releasees (Defendant and the Downstream Releasees and the other entities
21 identified in this Section 4.1 are collectively referred to herein as “Releasees”) based on their
22 failure to warn about alleged exposures to lead contained in the Initial Noticed Products that
23 were manufactured, distributed, sold and/or offered for sale by Releasees prior to the Effective
24 Date.

25 In the event that the Complaint is deemed amended pursuant to Section 1.7 above to
26 include the allegations found in the Supplemental Notice, this Consent Judgment constitutes a
27 full, final and binding resolution between Brimer, on behalf of himself and in the public interest,
28 and Releasees of any violation of Proposition 65 regarding the failure to warn about exposure to

1 DEHP in the tape measures with hand straps and to lead in the *Tool Cache Hammer, #51627 (#0*
2 *42374 70946 2)* manufactured, distributed or sold by Releasees. Any other hand tool grips
3 containing lead manufactured, distributed, sold and/or offered for sale by Releasees besides the
4 *Tool Cache Hammer, #51627 (#0 42374 70946 2)* are expressly excluded from this release.

5 **4.4 Service Tool's Release of Plaintiff**

6 Service Tool on behalf of itself, its past and current agents, representatives, attorneys,
7 successors, and/or assignees, hereby waives any and all claims against Brimer, his attorneys and
8 other representatives, for any and all actions taken or statements made (or those that could have
9 been taken or made) by Brimer and his attorneys and other representatives, whether in the course
10 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
11 with respect to the Products.

12 **5. SEVERABILITY**

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

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved and entered by the Court within one
20 year after it has been fully executed by all Parties, in which event any monies that have been
21 provided to Brimer or his counsel pursuant to Section 3 above, shall be refunded within
22 fifteen (15) days after receiving written demand from Service Tool for return of such funds.

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California. In the event that Proposition 65 is repealed,
26 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to lead, DEHP
27 and/or the Products, then Service Tool shall provide written notice to Brimer of any asserted
28 change in the law, and shall have no further obligations pursuant to this Consent Judgment with

1 respect to, and to the extent that, the Products are so affected.

2 **8. NOTICES**

3 When any Party is entitled to receive any notice under this Consent Judgment, the notice
4 shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail)
5 return receipt requested; or (ii) overnight courier on any Party by the other Party at the following
6 addresses:

7 To Service Tool:

8 Thomas Le Blanc, President
9 Service Tool Company, L.L.C.
10 2501 South Lewis Street
11 New Iberia, LA 70560

To Brimer:

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

12 With copy to:

13 Joshua A. Bloom
14 Barg, Coffin, Lewis & Trapp, LLP
15 350 California Street, 22nd Floor
16 San Francisco, CA 94104-1435

17 Any Party may modify the person and address to whom the notice is to be sent by
18 sending each other Party notice by certified mail and/or other verifiable form of written
19 communication.

20 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

21 Brimer agrees to comply with the reporting form requirements referenced in California
22 Health & Safety Code § 25249.7(f) and to file a motion for approval of this Consent Judgment.

23 **10. MODIFICATION**

24 This Consent Judgment may be modified only: (1) by written agreement of the parties and
25 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
26 motion of any party and entry of a modified Consent Judgment by the court.

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1 **11. ADDITIONAL POST-EXECUTION ACTIVITIES**

2 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to
3 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
4 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
5 Health and Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of
6 this Consent Judgment, which Brimer shall prepare and file, and which Service Tool shall not
7 oppose. If any third party objection to the noticed motion is filed, Brimer and Service Tool shall
8 work together to file a joint reply and appear at any hearing before the Court. If the Superior
9 Court does not approve the motion to approve this Consent Judgment, and the Parties choose not
10 to pursue a modified Consent Judgment within 30 days of said denial, or in the event that the
11 Superior Court approves this Consent Judgment and any person successfully appeals that
12 approval, all payments made pursuant to this Consent Judgment will be returned to Service Tool.

13 **12. ENTIRE AGREEMENT**

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

20 **13. COUNTERPARTS, FACSIMILE SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile or portable
22 document format (".pdf"), each of which shall be deemed an original, and all of which, when
23 taken together, shall constitute one and the same document. A facsimile or .pdf signature shall
24 be as valid as the original.


25 **14. AUTHORIZATION**

26 The undersigned are authorized to execute this Consent Judgment and have read,
27 understood, and agree to all of the terms and conditions of this Consent Judgment.
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AGREED TO:

Date: Sept 19, 2012

By:  _____
Russell Brimer

AGREED TO:

Date: _____

By: _____
Service Tool Company, L.L.C.

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AGREED TO:

Date: _____

By: _____
Russell Brimer

AGREED TO:

Date: 9-17-12

By: 
Service Tool Company, L.L.C.