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FILED
ALAMEDA COUNTY

JAN 24 2013

CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

DMI SPORTS, INC.; and DOES 1–150, inclusive,

Defendants.

Case No. RG12634679

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

Date: January 24, 2013
Time: 9:00 a.m.
Dept. 25
Judge: Hon. Ronni B. MacLaren

Reservation No. R-1345200

Plaintiff, Russell Brimer, and defendant, DMI Sports, Inc., 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 and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 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 section 664.6.

IT IS SO ORDERED.

Dated: Jan. 24, 2013

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

Laurence D. Haveson, State Bar No. 152631
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RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER, Plaintiff, v. DMI SPORTS, INC.; and DOES 1-150, inclusive, Defendants.	Case No. RG12634679 **[PROPOSED] CONSENT JUDGMENT** (*Cal. Health & Saf. Code, § 25249.6 et seq.*)

1. INTRODUCTION

1.1 Russell Brimer and DMI Sports, Inc.

This Consent Judgment is entered into by and between Russell Brimer ("Brimer" or "Plaintiff") and DMI Sports, Inc. ("DMI" or "Defendant"), with Brimer and DMI collectively referred to as the "Parties."

1.2 Plaintiff

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

1.3 Defendant

DMI employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6 et seq. ("Proposition 65").

1.4 General Allegations

Brimer alleges that DMI has manufactured, imported, distributed, and/or sold in California table tennis sets containing lead without the requisite Proposition 65 warnings. Lead is on the Proposition 65 list as a chemical known to cause birth defects and other reproductive harm.

1.5 Product Description

The products that are covered by this Consent Judgment are table tennis sets containing Di(2-ethylhexyl)phthalate ("DEHP") and/or lead, including, but not limited to, the *Prince 2 Player Racket Set, Item #: 2PLAYSET (#7 19981 70590 2)*, manufactured, imported, distributed, and/or sold by DMI, directly or through others, to consumers in California ("Products").

1.6 Notices of Violation

On or about January 19, 2012, Brimer served DMI and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided DMI and such officials with notice that alleged that DMI was in violation of Proposition 65 for failing to warn its direct customers and end users that its table tennis sets exposed users in California to

lead. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

Brimer shall, within thirty days of the execution of this agreement, serve DMI and various public enforcement agencies with a notice consistent with Health and Safety Code § 25249.7(d)(1) entitled "Supplemental 60-Day Notice of Violation" ("Supplemental Notice") alleging that DMI is or was in violation of Proposition 65 for failing to warn its direct customers and end users that its table tennis sets exposed users in California to DEHP.

1.7 Complaint

On June 14, 2012, Brimer filed a complaint in Alameda County Superior Court against DMI and Does 1 through 150 (the "Complaint" or "Action"), alleging violations of Proposition 65, based on the alleged exposures to lead contained in certain table tennis sets sold by DMI.

Upon entry of this Consent Judgment, and provided that no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Supplemental Notice, the Complaint shall be deemed amended *nunc pro tunc* to include the violations of Proposition 65 alleged in the Supplemental Notice.

1.8 No Admission

DMI denies the material factual and legal allegations contained in the Notice, Supplemental Notice, and Complaint and maintains that all products that it has manufactured, imported, 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 DMI of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by DMI of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by DMI. However, this Section shall not diminish or otherwise affect DMI's obligations, responsibilities and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over DMI as to the allegations contained in the Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment, pursuant to California Code of Civil Procedure section 664.6, as a full and binding resolution of all claims that were or could have been raised in the Complaint against DMI based on the facts alleged therein and in the Notice.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean November 12, 2012.

2. INJUNCTIVE RELIEF

2.1 Reformulation

As of the Effective Date, except as described in section 2.2, DMI shall not ship, sell, distribute, or supply any Product that will be sold or offered for sale to California businesses, users, or consumers unless each Accessible Component (i.e., any component that can be touched, handled, or mouthed by a person during reasonably foreseeable use) of any table tennis set meets both the Lead Standard and the Phthalate Standard, defined as follows:

(a) Lead Standard

Each Accessible Component of a Product shall contain lead in concentration less than 50 parts per million when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and/or 6010B, and 1.0 microgram when analyzed pursuant to the NIOSH 9100 testing protocol.

(b) Phthalate Standard

Each Accessible Component of a Product shall contain each of the following phthalates in concentration less than 1,000 parts per million when analyzed pursuant to EPA sample preparation and test methodologies 3580A and 8270C: DEHP, Butyl benzyl phthalate ("BBP"),

Di-isodecyl phthalate ("DIDP"), Di-n-butyl phthalate ("DBP"), and Di-n-hexyl phthalate ("DnHP").

2.2 Sell-Through Warnings for Non-Conforming Products

For each Product in DMI's possession or control as of the Effective Date which is shipped to, or for ultimate sale to, or use by, California consumers, businesses, or users to which DMI has not already affixed a clear and reasonable warning as required by Proposition 65 as of August 1, 2012, and which does not meet both the Lead Standard and the Phthalate Standard described above ("Non-Conforming Product"), DMI shall provide a warning as set forth in this section. The Lead Warning Language shall be used if the Non-Conforming Product is not in compliance with the Lead Standard but is in compliance with the Phthalate Standard; the Phthalate Warning Language shall be used if the Non-Conforming Product is not in compliance with the Phthalate Standard but is in compliance with the Lead Standard; and, if the Non-Conforming Product is in compliance with neither the Lead Standard nor the Phthalate Standard, the Dual Warning Language shall be used. That Warning language is defined as follows:

(a) Lead Warning Language

WARNING: This product contains lead, a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

(b) Phthalate Warning Language

WARNING: This product contains phthalate chemicals known to the State of California to cause cancer, birth defects and other reproductive harm.

(c) Dual Warning Language

WARNING: This product contains phthalate chemicals and lead, chemicals that are known to the State of California to cause cancer, birth defects and other reproductive harm.

(d) Warning Location

Each Warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an

ordinary individual under customary conditions before purchase or use. Each Warning shall be provided in a manner such that the consumer or user understands to which specific Non-Conforming Product the Warning applies, so as to minimize the risk of consumer or user confusion.

If the Non-Conforming Product is to be sold in retail outlets in California by any person or entity, including DMI, then DMI shall affix (or cause to be affixed) the appropriate Warning Language to the packaging or labeling of that Non-Conforming Product, or directly on each Non-Conforming Product ("On-Product Warning").

DMI shall provide a Warning for Non-Conforming Products sold via mail order catalog to California consumers, businesses, or users in any mail order catalog printed after the Effective Date. Any Warning provided in a mail order catalog must be in the same type size or larger than the product description text within the catalog. The Warning shall be provided on the same page and in the same location as the display and description of the product it accompanies. Warnings given in the mail order catalog shall identify the specific Non-Conforming Product to which the Warning applies.

DMI shall provide a Warning for Non-Conforming Products sold via the Internet to California consumers, businesses, or users on any website controlled by DMI. Any such Warning must appear in one or more of the following locations: (a) on the same Web page on which the Non-Conforming Product is displayed; (b) on the same Web page as the order form for the Non-Conforming Product; (c) on the same page on which the price of the Product is provided to the purchaser; or (d) on one or more Web pages displayed to the purchaser during the checkout process. The Warning shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Non-Conforming Product for which it is given in the same type size or larger than the product description text. Warnings given on the Internet shall identify the specific Non-Conforming Product to which the Warning applies.

DMI shall provide an On-Product Warning for any Non-Conforming Product sold via the Internet to California consumers, businesses, or users on any website not controlled by DMI

(e) Prohibition Against Over-Warning

DMI shall not provide, nor require or request that any other person or entity provide, a Warning for any Product it knows or should know does not contain at least one chemical listed pursuant to Proposition 65.

3. MONETARY PAYMENTS

All payments made under this Consent Judgment shall be held in trust by the Chanler Group until the Court approves the Consent Judgment. All payments transmitted to the Chanler Group shall be delivered to the following address ("Payment Address"):

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

In the alternative, payments may be made by wire transfer, instructions for which will be provided upon request.

3.1 Penalties

Payments of all penalties by DMI under this Agreement shall be apportioned in accordance with Health & Safety Code section 25249.12(c)(1) and (d). In each instance, payments equal to 75% of the civil penalty shall be earmarked for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") made payable to "The Chanler Group in Trust for OEHHA," and the remaining 25% of the penalty monies shall be earmarked for Brimer made payable to "The Chanler Group in Trust for Russell Brimer."

Upon payment of each penalty, DMI shall issue two 1099 forms, one to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalties payable to OEHHA, and a second to Brimer, whose address and tax identification number shall be furnished upon request, for the civil penalties payable to Brimer.

(a) Initial Civil Penalty

On or before the Effective Date DMI shall pay a penalty of $6,000.

(b) Second Civil Penalty

DMI shall pay a second civil penalty of $18,000 on or before December 10, 2012. The second civil penalty shall be waived in its entirety if an officer or director of DMI certifies, in writing, that, as of December 10, 2012, all of the Products that DMI distributes, ships, sells, or offers to ship for sale in California comply with the Lead Standard and the Phthalate Standard. Such certification must be received by The Chanler Group on or before December 17, 2012.

3.2 Reimbursement of Plaintiff's Fees and Costs

The Parties have reached an accord on the compensation to be paid to Brimer and his counsel, which the parties agree is appropriate under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be incurred in the event of an appeal. DMI shall pay $25,000, on or before the Effective Date, and $24,000 on or before January 31, 2013, for fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public interest.

Payments of all fees and costs by DMI under this Agreement shall be by check or wire transfer to "The Chanler Group in Trust." Upon each payment of fees and costs, DMI shall issue a 1099 form to The Chanler Group (EIN: 94-3171522) for the amount paid.

4. CLAIMS COVERED AND RELEASED

4.1 Plaintiff's Public Release of Proposition 65 Claims

Brimer acting on his own behalf and in the public interest releases DMI from all claims for violations of Proposition 65 up through the Effective Date based on exposure to lead and/or DEHP from the Products. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead and/or DEHP from the Products.

4.2 Plaintiff's Individual Release of Claims.

Brimer also, in his individual capacity only and *not* in his representative capacity, provides a 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 plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead, DEHP, BBP, DIDP, DBP, and/or DnHP in the Products manufactured, distributed, or sold by DMI.

4.3 Defendant's Release of Plaintiff

DMI on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby 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 to enforce Proposition 65 against it in this matter with respect to the Products.

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by the Parties, in which event any monies that have been provided to Brimer or his counsel pursuant to Sections 3 above shall be refunded within fifteen (15) days after receiving written notice from DMI that the one-year period has expired.

6. SEVERABILITY

If, subsequent to the execution 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.

7. 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.

8. NOTICES

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

For DMI:

Peter McGaw, Esq.
Archer Norris
2033 N. Main St., Suite 800
Walnut Creek, CA 94596
Attorneys for DMI Sports, Inc.

For Brimer:

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

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. POST EXECUTION ACTIVITIES

Brimer agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7, subdivision (f). In addition, the Parties acknowledge that, pursuant to Health and Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Brimer and DMI and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a

timely manner. For purposes of this section, best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

11. MODIFICATION

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

12. AUTHORIZATION

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

AGREED TO:

By: _____
RUSSELL BRIMER

Date: November 1, 2012

AGREED TO:

By: _____
Gary Giegerich, President
DMI SPORTS, INC.

Date: _____

timely manner. For purposes of this section, best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

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AGREED TO:

By:_____
RUSSELL BRIMER

Date:_____

AGREED TO:

By:_____
Gary Giegerich, President
DMI SPORTS, INC.

Date: 11-7-12