

1 Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
2 THE CHANLER GROUP
81 Throckmorton Avenue, Suite #202
3 Mill Valley, CA 94941
Telephone: (415) 388-0911
4 Facsimile: (415) 388-9911

5 Attorneys for Plaintiff
RUSSELL BRIMER

FILED

NOV - 7 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Yarborough, Deputy

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

12 RUSSELL BRIMER,
13 Plaintiff,

14 v.

15 WARNER MANUFACTURING COMPANY
16 and DOES 1-150,
17 Defendants.

Case No. CIV 1203098

ky
~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AGREEMENT

Action Filed : July 5, 2012

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant WARNER
2 MANUFACTURING COMPANY, having agreed through their respective counsel that a judgment be
3 entered pursuant to the terms of the Consent To Judgment entered into by the parties in resolution of
4 this Proposition 65 action, and following the issuance of an order approving the Parties' Consent to
5 Judgment on this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to
6 Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered
7 in accordance with the terms of the Consent To Judgment attached hereto as Exhibit A. By stipulation
8 of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil
9 Procedure § 664.6.
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11 **IT IS SO ORDERED.**

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13 Dated: NOV - 7 2012

13 ROY CHERNUS
14 Hon. Roy O. Chernus
15 Judge Of The Superior Court
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EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 WARNER MANUFACTURING COMPANY
18 and DOES 1-150,

19 Defendants.

Case No. CIV 1203098

**CONSENT TO JUDGMENT AS
TO DEFENDANT WARNER
MANUFACTURING COMPANY**

Action Filed: July 5, 2012
Trial Date: Not Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent To Judgment is entered into by and between Plaintiff Russell Brimer,
4 (“Brimer” or “Plaintiff”) and Defendant Warner Manufacturing Company (“Warner” or
5 “Defendant”) with Brimer and Warner 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
8 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Warner employs 10 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 &
13 Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Warner manufactured, distributed and/or sold, in the State of
16 California, certain types of hand tools with grips containing DEHP and Lead, including, but not
17 limited to, Warner paint and wall scraper, Item #019634, that exposed users to DEHP and Lead
18 without first providing “clear and reasonable warning” under Proposition 65. DEHP and Lead
19 are listed as a reproductive and developmental toxicant pursuant to Proposition 65 and are
20 collectively referred to hereinafter as the “Listed Chemical.”

21 **1.5 Notice of Violation**

22 On January 31, 2012, Brimer served Defendant and various public enforcement agencies
23 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public
24 enforcers and Defendant with notice of alleged violations of Health & Safety Code § 25249.6 for
25 failing to warn consumers of the presence of DEHP and Lead, toxic chemicals found in and on
26 hand tool products sold in California. Defendant received the 60-Day Notice of Violation.
27 Defendant represents that, as of the date it executes this Consent Judgment, that it is not aware
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1 of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related
2 to DEHP and/or Lead in its products, as identified in the 60-Day Notice.

3 **1.6 Complaint**

4 On July 5, 2012, Brimer, acting, in the interest of the general public in California, filed a
5 Complaint in the Superior Court of the State of California for the County of Marin, alleging
6 violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged
7 exposures to DEHP and Lead contained in the referenced hand tool products (the "Action").

8 **1.7 No Admission**

9 This Consent To Judgment resolves claims that are denied and disputed by Warner. The
10 Parties enter into this Consent To Judgment pursuant to a full and final settlement of any and all
11 claims between the Parties for the purpose of avoiding prolonged litigation. Defendant denies
12 the material factual and legal allegations contained in the Notice and Action, maintains that it
13 did not knowingly or intentionally expose California consumers to DEHP and Lead through the
14 reasonably foreseeable use of the Covered Products and otherwise contends that all Covered
15 Products it has manufactured, distributed and/or sold in California have been and are in
16 compliance with all applicable laws. Nothing in this Consent To Judgment shall be construed as
17 an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall
18 compliance with this Consent To Judgment constitute or be construed as an admission by the
19 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
20 specifically denied by Defendant. However, notwithstanding the foregoing, this section shall not
21 diminish or otherwise affect Warner's obligations, responsibilities, and duties under this Consent
22 To Judgment.

23 **1.8 Consent to Jurisdiction**

24 For purposes of this Consent To Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Warner as to the allegations contained in the Complaint, that venue is proper in
26 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
27 Consent To Judgment. As an express part of this Consent To Judgment, pursuant to C.C.P.
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1 §664.6 the Court in which this action was filed shall retain jurisdiction over the parties to enforce
2 the settlement until performance in full of the terms of the settlement.

3 **2. DEFINITIONS**

4 2.1 The term "Complaint" shall mean the Complaint.

5 2.2 The term "Covered Products" means any hand tools with grips or other
6 Accessible Components currently containing any amount of DEHP or Lead, previously
7 containing any amount of DEHP or Lead or that Warner reasonably believes currently contain or
8 previously contained any amount of DEHP or Lead, including, but not limited to, Warner paint
9 and wall scraper, Item #019634.

10 2.3 The term "Noticed Product" shall mean the Warner paint and wall scraper, Item
11 #019634.

12 2.4 "Accessible Component" means a metal, poly vinyl chloride, soft plastic, vinyl,
13 foam, synthetic leather or other grip-related component or material of a Covered Product that
14 could be touched by a person during reasonably foreseeable use.

15 2.5 The term "DEHP Free" Covered Products shall mean Covered Products
16 containing Accessible Components, materials or other components that may be handled,
17 touched or mouthed by a consumer, and which components contain less than or equal to 1,000
18 parts per million ("ppm") of DEHP as determined by a minimum of duplicate quality controlled
19 test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and
20 8270C. The term "DEHP Free Standard" shall mean the above-referenced standard that will
21 cause a Covered Product to qualify as DEHP Free

22 2.6 The term "LEAD Free" Covered Products shall mean Covered Products and
23 Noticed Products containing Accessible Components, materials or other components that may be
24 handled, touched or mouthed by a consumer, and which components each yield less than 1.0
25 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100 and each yield
26 less than 100 parts per million ("ppm") lead when each such component material is analyzed
27 pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized
28 by federal or state agencies for the purpose of determining lead content in a solid substance. The

1 term "LEAD Free Standard" shall mean the above-referenced standard that will cause a Covered
2 Product to qualify as LEAD Free.

3 2.7 "Effective Date" shall mean July 20, 2012.

4 2.8 "Manufacture", "manufactured" and "manufactures" have the meaning defined
5 in Section 3(a)(10) of the Consumer Product Safety Act ("CPSA") [15 U.S.C. § 2052(a)(10)], as
6 amended from time to time.

7 **3. INJUNCTIVE RELIEF**

8 **3.1 Formulation Commitment**

9 No later than the Effective Date, Warner shall provide to Plaintiff, care of his attorneys, a
10 letter certification, signed by a director or officer of Warner, confirming (i) that prior to March 1,
11 2012, Warner sourced raw materials that were both Lead Free and DEHP Free for use in Noticed
12 Products, (ii) that prior to April 7, 2012, Lead Free and DEHP Free raw materials were used in
13 the production of Noticed Products and (iii) that as of May 1, 2012, Warner had ceased shipment
14 into California of all Noticed Products that were not Lead Free and DEHP Free. Warner's failure
15 to perform this obligation shall result in Warner's payment of an additional \$3,000 in civil
16 penalties under Section 4.

17 No later than the Effective Date, Warner shall also provide to Plaintiff, care of his
18 attorneys, a letter certification, signed by a director or officer of Warner, confirming as of the
19 date of the letter certification, that Warner has either destroyed any Noticed Products that are
20 not DEHP and Lead Free in the custody, control or possession of Defendant or otherwise
21 remaining in the possession of any retail store or internet distribution warehouse controlled,
22 owned or operated by Defendant in the United States or that Defendant has no such remaining
23 inventory of Noticed Products that are not DEHP and Lead Free. Warner's failure to perform
24 this obligation shall result in Warner's payment of an additional \$3,000 in civil penalties under
25 Section 4.

26 **3.1.1** No later than July 20, 2012, Defendant shall provide the DEHP Free and LEAD
27 Free Standards, to its then-current Vendors of Covered Products that will be sold or offered for
28 sale to California consumers and shall instruct each Vendor to use reasonable efforts to provide

1 Covered Products that comply with such DEHP Free and LEAD Free Standards expeditiously.
2 In addressing the obligation set forth in the preceding sentence, Defendant shall not employ
3 statements that will encourage a Vendor to delay compliance with the DEHP Free and LEAD
4 Free Standard. Upon request, Defendant shall provide Plaintiff with copies of such Vendor
5 notification and Plaintiff shall regard such copies as confidential business information.

6
7 **3.1.2** After December 31, 2012, Defendant shall not distribute, cause to be distributed,
8 sell or cause to be sold, in California or for distribution to or sale to any retailer that Defendant
9 reasonably understand maintains retail outlets in California, any Covered Product that is not
10 DEHP Free and LEAD Free.

11 **3.2 Previously Obtained or Distributed Covered Products.**

12 **3.2.1 Product Warnings**

13 Commencing on December 31, 2012, and until such date six (6) months thereafter,
14 Warner shall not sell or ship any Covered Products that will be offered for sale in California
15 unless such Covered Products are DEHP and LEAD Free under Sections 2.4 and 2.5 or are sold
16 or shipped with one of the clear and reasonable warnings set forth hereafter.

17 Each warning shall be prominently placed with such conspicuousness as compared with
18 other words, statements, designs, or devices as to render it likely to be read and understood by
19 an ordinary individual under customary conditions *before* purchase or use. Each warning shall
20 be provided in a manner such that the consumer or user understands to which *specific* Covered
21 Product the warning applies, so as to minimize the risk of consumer confusion.

22 (a) **Retail Store Sales.**

23 (i) **Product Labeling.** Warner may affix a warning to the packaging,
24 labeling, or directly on any Covered Products sold at a retail outlet of Defendant in California
25 that states:

26 **WARNING:** This product contains DEHP and/or Lead, a
27 chemical known to the State of California to
28 cause birth defects and other reproductive
harm.

1 (ii) **Point-of-Sale Warnings.** Alternatively, Warner may provide
2 warning signs in the form below to retail outlets in California, which stores it is reasonably
3 aware of having sold the Covered Products or having inventory or orders of the Covered
4 Products, with instructions to post the signs *in immediate proximity* to the point of display of
5 any and all such Covered Products for the benefit of its customers.

6 **WARNING:** This product contains DEHP and/or Lead, a
7 chemical known to the State of California to
8 cause birth defects and other reproductive
9 harm.

10 (b) **Mail Order Catalog and Internet Sales.** In the event that Warner sells any
11 Covered Products via mail order catalog or the Internet to customers located in California any
12 such catalog or Internet site offering any Covered Product for sale shall include a warning in the
13 catalog or within the website, identifying the specific Covered Product to which the warning
14 applies, as specified in Sections 3.2.2(b)(i) and (ii).

15 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
16 order catalog must be in the same type size or larger than the Covered Product description text
17 within the catalog. The following warning shall be provided on the same page and in the same
18 location as the display and/or description of the Covered Product:

19 **WARNING:** This product contains DEHP and/or Lead, a
20 chemical known to the State of California to
21 cause birth defects and other reproductive
22 harm.

23 Where it is impracticable to provide the warning on the same page and in the same
24 location as the display and/or description of the Covered Product, Defendant may utilize a
25 designated symbol to cross reference the applicable warning and shall define the term
26 "designated symbol" with the following language on the inside of the front or back cover of the
27 catalog or on the same page as any order form for the Covered Product(s):

28 **WARNING:** Certain products identified with this
symbol ▼ and offered for sale in this
catalog contain DEHP and/or Lead, a

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chemical known to the State of California
to cause birth defects and other
reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Covered Product. On each page where the designated symbol appears, Warner must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If Defendant elects to provide warnings in any mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Covered Products printed after the Effective Date.

(ii) **Internet Website Warning.** A warning must be given in conjunction with the sale of any Covered Products by Warner via the Internet, provided it appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Covered Product for which it is given in the same type size or larger than the Covered Product description text:

WARNING: This product contains DEHP and/or Lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Covered Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol ▼ contain DEHP and/or Lead, a chemical known to the

1 State of California to cause birth defects
2 and other reproductive harm.

3 **3.2.2** Commencing on July 1, 2013, Warner shall discontinue all sales of any Covered
4 Products that are not DEHP Free and Lead Free in California, regardless of compliance with
5 Section 3.2.1.

6 **4. MONETARY PAYMENTS**

7 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

8 Warner shall make a payment of \$10,000.00 to be apportioned in accordance with Health
9 & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked
10 for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")
11 and the remaining 25% of these penalty monies earmarked for Brimer. The civil penalty
12 Warner is required to pay under this Section is substantially reduced credited in light of
13 Warner's commitment to reformulate its Covered Products to essentially remove the presence
14 of the listed chemicals from those products. *The initial assessment contemplated civil penalties in*
15 *the amount of \$56,000. An amount of \$40,000 was automatically credited in light of settling*
16 *Defendant's commitment to reformulate its product lines to essentially remove the presence of the listed*
17 *chemicals. An additional civil penalty amount of \$6,000 was automatically credited in light of*
18 *Defendant's agreement to the certification obligation under Section 3.1.*

19 **4.3 Augmentation of Penalty Payments**

20 For purposes of the penalty assessment under this Consent To Judgment, plaintiff is
21 relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of
22 the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date,
23 plaintiff discovers and presents to Defendant evidence that the Noticed Product has been
24 distributed by Warner in sales volumes materially different than those identified by Defendant
25 prior to execution of this Agreement, then Defendant shall be liable for an additional penalty
26 amount of \$10,000. Defendant shall also be liable for any reasonable, additional attorney fees
27 expended by plaintiff in discovering such additional retailers or sales. Plaintiff agrees to provide
28 Defendant with a written demand for all such additional penalties and attorney fees under this

1 Section. After service of such demand, defendant shall have thirty (30) days to meet and confer
2 regarding the demand and submit such payment to plaintiff in accordance with the method of
3 payment of penalties and fees identified in Sections 4.5. Should this thirty (30) day period pass
4 without any such resolution between the parties and payment of such additional penalties and
5 fees, plaintiff shall be entitled to file a formal legal claim for damages for breach of this contract
6 and the prevailing party in a breach of contract action shall be entitled to all reasonable attorney
7 fees and costs relating to that action.

8 **4.4 Reimbursement of Plaintiff's Fees and Costs**

9 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
11 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
12 Warner then expressed a desire to resolve the fee and cost issue shortly after the other
13 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
14 the compensation due to Brimer and his counsel under general contract principles and the
15 private attorney general doctrine codified at California Code of Civil Procedure section 1021.5,
16 for all work performed in this matter, except fees that may be incurred on appeal. Under these
17 legal principles, Warner shall pay the amount of \$35,500.00 for fees and costs incurred
18 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
19 to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent To
20 Judgment in the public interest.

21 **4.5 Payment Procedures**

22 **4.5.1 Funds Held In Trust:** All payments required by Sections 4.1 and 4.4 shall
23 delivered on or before July 13, 2012, to either The Chanler Group or the attorney of record for
24 Warner, and shall be Brimer in trust pending the Court's approval of this Consent To Judgment.

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

- 26 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
27 the amount of \$7,500.00;
- 28 (b) One check made payable to "The Chanler Group in Trust for Brimer" in

1 the amount of \$2,500.00; and

2 (c) One check made payable to "The Chanler Group in Trust" in the amount
3 of \$35,500.00.

4 Payments delivered to Stoel Rives LLP shall be made payable, as follows:

5 (a) One check made payable to "Stoel Rives LLP in Trust for OEHHA" in the
6 amount of \$7,500.00;

7 (b) One check made payable to "Stoel Rives LLP in Trust for Brimer" in the
8 amount of \$2,500.00; and

9 (c) One check made payable to "Stoel Rives LLP in Trust for The Chanler
10 Group" in the amount of \$35,500.00.

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

16 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
17 the amount of \$7,500.00;

18 (b) One check to "The Chanler Group in Trust for Brimer" in the amount of
19 \$2,500.00; and

20 (c) One check to "The Chanler Group" in the amount of \$35,500.00.

21 Any failure by defendant to deliver the above-referenced payments to The Chanler
22 Group within five business days of the date of the hearing on which the Court approves
23 the Consent To Judgment shall result in imposition of a 10% simple interest assessment
24 on the undelivered payment(s) until delivery.

25 **4.5.2 Issuance of 1099 Forms.** After the Consent To Judgment has been
26 approved and the settlement funds have been transmitted to plaintiff's counsel, Warner shall
27 issue three separate 1099 forms, as follows:

28 (a) The first 1099 shall be issued to the Office of Environmental Health

1 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in
2 the amount of \$7,500.00;

3 (b) The second 1099 shall be issued to Brimer in the amount of \$2,500.00,
4 whose address and tax identification number shall be furnished upon request;
5 and

6 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in
7 the amount of \$35,500.00

8 **4.5.3 Payment Address:** All payments to the Chanler Group shall be delivered
9 to the following payment address:

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
Berkeley, CA 94710

14 **5. CLAIMS COVERED AND RELEASE**

15 **5.1 Brimer's Releases of Warner**

16 This Consent To Judgment is a full, final, and binding resolution between Brimer, on
17 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
18 assignees, and in the interest of the general public, and Warner and its attorneys, successors,
19 licensors and assigns ("Defendant Releasees"), and all entities to whom Warner directly or
20 indirectly distribute or sell Covered Products, including but not limited to distributors,
21 wholesalers, customers, retailers, franchisees, cooperative members, licensors and licensees
22 ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been or could
23 have been asserted against Defendant Releasees and Downstream Defendant Releasees
24 regarding the failure to warn about exposure to the Listed Chemical arising in connection with
25 Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to
26 the Effective Date. Warner's compliance with this Consent To Judgment shall constitute
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1 compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products
2 after the Effective Date.

3 5.1.1 Brimer on behalf of himself, his past and current agents, representatives,
4 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
5 with respect to Covered Products all rights to institute or participate in, directly or indirectly,
6 any form of legal action and releases all claims, including, without limitation, all actions, and
7 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
8 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
9 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
10 (collectively "claims"), against Defendant Releasees and Downstream Defendant Releasees that
11 arise under Proposition 65 or any other statutory or common law claims that were or could have
12 been asserted in the public interest, as such claims relate to Defendant Releasees' and
13 Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed
14 Chemical contained in the Covered Products.

15 5.1.2 Brimer also, in his individual capacity only and *not* in his representative capacity,
16 provides a general release herein which shall be effective as a full and final accord and
17 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
18 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,
19 known or unknown, suspected or unsuspected, arising out of the subject matter of the
20 Complaint as to Covered Products manufactured, distributed or sold by Defendant Releasees.
21 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which
22 provides as follows:

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

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

7 This Section 5.1 release is expressly limited to those claims that arise under Proposition
8 65, as such claims relate to Defendant's alleged failure to warn about exposures to or
9 identification of the Listed Chemical contained in the Covered Products and as such claims are
10 identified in the Proposition 65 60-Day Notice to Defendant.

11 Nothing in this Section affects Brimer's right to commence or prosecute an action under
12 Proposition 65 against any person other than Defendant Releasees and Downstream Defendant
13 Releasees.

14 The Parties further understand and agree that this Section 5.1 release shall not extend
15 upstream to any entities, other than Defendant, that manufactured the Covered Products or any
16 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
17 component parts thereof to Defendant.

18 5.1.3 Upon court approval of the Consent To Judgment, the Parties waive their
19 respective rights to a hearing or trial on the allegations of the Complaint.

20 **5.2 Warner's Release of Brimer**

21 5.2.1 Warner waives any and all claims against Brimer, his attorneys, and other
22 representatives for any and all actions taken or statements made (or those that could have been
23 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
24 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
25 and/or with respect to the Covered Products.

26 5.2.2 Warner also provides a general release herein which shall be effective as a full
27 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
28 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Warner of any

1 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
2 subject matter of the Action. Warner 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 WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
6 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
7 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
8 WITH THE DEBTOR.

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

15 **6. SEVERABILITY**

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

20 **7. COURT APPROVAL**

21 This Consent To Judgment is effective upon execution but must also be approved by the
22 Court. If this Consent To Judgment is not approved by the Court in its entirety, the Parties
23 shall meet and confer to determine whether to modify the terms of the Consent To Judgment
24 and to resubmit it for approval. In meeting and conferring, the Parties agree to undertake any
25 actions reasonably necessary to amend and/or modify this Consent To Judgment in order to
26 further the mutual intention of the Parties in entering into this Consent To Judgment.

27 The Consent to Judgment shall become null and void if, for any reason, it is not approved
28 and entered by the Court within one year after it has been fully executed by all Parties. If the

1 Consent to Judgment becomes null and void after any payment of monies under this agreement
2 to The Chanler Group in trust, such monies shall be returned to Warner by payment of such
3 monies to its counsel, in trust for Warner.

4 If this Consent To Judgment is not entered by the Court, and the Parties have exhausted
5 their meet and confer efforts pursuant to this Section, upon fifteen (15) days written notice, the
6 law firm holding Defendant's funds in trust shall refund to Defendant any and all payments
7 made into its trust account by Defendant.

8 **8. GOVERNING LAW**

9 The terms of this Consent To Judgment shall be governed by the laws of the State of
10 California.

11 **9. NOTICES**

12 When any Party is entitled to receive any notice under this Consent To Judgment, the
13 notice shall be sent by certified mail and electronic mail to the following:

14 For Warner, to:

15 Craig Warner, President
16 Warner Manufacturing Company
17 13435 Industrial Park Boulevard
18 Plymouth MN 55441

18 With copy to their counsel at

19 Melissa A. Jones
20 Stoel Rives, LLP
21 500 Capitol Mall, Suite 1600
22 Sacramento, CA 95814

22 For Brimer to:

23 Proposition 65 Coordinator
24 The Chanler Group
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

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

28

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

4 **11. MODIFICATION**

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

8 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

9 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
10 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of
11 obtaining such approval, Brimer and Warner and their respective counsel agree to mutually
12 employ their best efforts to support the entry of this agreement as a Consent To Judgment and
13 obtain approval of the Consent To Judgment - sufficient to render a formal judgment approving
14 this agreement - by the Court in a timely manner. Any effort by Brimer or Warner to impede
15 judicial approval of this Consent To Judgment shall subject the impeding party to liability for
16 attorney fees and costs incurred by the other party regarding such conduct.

17 **13. ENTIRE AGREEMENT**

18 This Consent To Judgment contains the sole and entire agreement and understanding of
19 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
20 negotiations, commitments, and understandings related hereto. No representations, oral or
21 otherwise, express or implied, other than those contained herein have been made by any Party
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
23 deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or
24 termination of this Consent To Judgment shall be binding unless executed in writing by the
25 Party to be bound. No waiver of any of the provisions of this Consent To Judgment shall be
26 deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor
27 shall such waiver constitute a continuing waiver

28

1 **14. ATTORNEY'S FEES**

2 14.1 Should Brimer prevail on any motion, application for order to show cause or
3 other proceeding to enforce a violation of this Consent To Judgment, Brimer shall be entitled to
4 his reasonable attorney fees and costs incurred as a result of such motion, order or application,
5 consistent with C.C.P. § 1021.5. Should Defendant prevail on any motion, application for order
6 to show cause or other proceeding to enforce a violation of this Consent To Judgment, Defendant
7 shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion,
8 order or application upon a finding that Brimer's prosecution of the motion or application lacked
9 substantial justification. For purposes of this Consent To Judgment, the term substantial
10 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of
11 Civil Procedure §§ 2016, *et seq.*

12 14.2 Except as specifically provided in the above paragraph and in Section 5.1, each
13 Party shall bear its own costs and attorney's fees in connection with this action.

14 14.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions
15 pursuant to law.

16 **15. NEUTRAL CONSTRUCTION**

17 Both Parties and their counsel have participated in the preparation of this Consent To
18 Judgment and this Consent To Judgment is the result of the joint efforts of the Parties. This
19 Consent To Judgment was subject to revision and modification by the Parties and has been
20 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
21 uncertainty or ambiguity existing in this Consent To Judgment shall not be interpreted against
22 any Party as a result of the manner of the preparation of this Consent To Judgment. Each Party
23 to this Consent To Judgment agrees that any statute or rule of construction providing that
24 ambiguities are to be resolved against the drafting Party should not be employed in the
25 interpretation of this Consent To Judgment and, in this regard, the Parties hereby waive
26 California Civil Code Section 1654.

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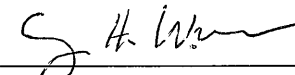
1 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

5 **17. AUTHORIZATION**

6 The undersigned parties and their counsel are authorized to execute this Consent To
7 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the
8 terms and conditions of this Consent To Judgment.

9 **IT IS SO AGREED**

<p>10 Dated: June __, 2012</p> <p>11</p> <p>12 _____</p> <p>13 Plaintiff Russell Brimer</p>	<p>10 Dated: June ¹⁰ / July, 2012</p> <p>11 </p> <p>12 _____</p> <p>13 Craig Warner, President</p> <p>14 Warner Manufacturing Company</p>
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8 terms and conditions of this Consent To Judgment.

9 **IT IS SO AGREED**

10 Dated: June ^{July} 10, 2012 11  12 Plaintiff Russell Brimer	Dated: June __, 2012 13 _____ 14 Craig Warner, President Warner Manufacturing Company
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