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10 Attorneys for Plaintiff
11 RUSSELL BRIMER

FILED
San Francisco County Superior Court

SEP 27 2013

CLERK OF THE COURT
BY: *Gina Gonzales*
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 HUGO BOSCA COMPANY, INC.; *et al.*,

16 Defendants.

Case No.: CGC-12-525500

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

Date: September 26, 2013
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Marla J. Miller

REC'D AUG 12 2013

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In the above-entitled action, plaintiff Russell Brimer and defendant Hugo Bosca Company, 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 on SEP 26 2013:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. 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: SEP 26 2013



JUDGE OF THE SUPERIOR COURT

Leslie C. Nichols

EXHIBIT 1

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
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9 Attorneys for Plaintiff
10 RUSSELL BRIMER

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 RUSSELL BRIMER,

17 Plaintiff,

18 v.

19 HUGO BOSCA COMPANY, INC.;;
20 and DOES 1-150, inclusive,

21 Defendants.
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Case No. CGC-12-525500

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Hugo Bosca Company, Inc.**

3 This Consent Judgment is entered into by and between Russell Brimer ("Brimer" or
4 "Plaintiff") on the one hand, and Hugo Bosca Company, Inc. ("Bosca" or "Defendant") on the
5 other hand, with Brimer and Bosca collectively referred to as the "Parties," and each individually
6 referred to as a Party.

7 **1.2 Russell Brimer**

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

11 **1.3 Hugo Bosca Company, Inc.**

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

15 **1.4 General Allegations**

16 Brimer alleges Bosca has sold in the State of California, without the requisite Proposition
17 65 health hazard warning, checkbook covers with vinyl/polyvinyl chloride components containing
18 di(2-ethylhexyl)phthalate ("DEHP"), which is listed pursuant to Proposition 65 as a chemical
19 known to the State of California to cause birth defects and other reproductive harm. DEHP shall
20 be referred to as the "Listed Chemical." Bosca denies Brimer's allegations and denies that it has
21 or had any obligation to provide warnings under Proposition 65 or otherwise, as set forth below.

22 **1.5 Product Description**

23 The products covered by this Consent Judgment are checkbook covers with
24 vinyl/polyvinyl chloride components including, but not limited to, the *Bosca Deluxe Checkbook*,
25 #1094/29 (#0 09309 05317 5), containing the Listed Chemical, that are sold or offered for sale in
26 California by Bosca ("Products").

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1 **1.6 Notice of Violation**

2 On or about July 11, 2012, Brimer served Bosca and various public enforcement agencies
3 with a "60-Day Notice of Violation" ("Notice"), alleging that Bosca was in violation of
4 Proposition 65 for failing to warn its customers and consumers that the Products containing the
5 Listed Chemical, sold by Bosca in California, expose consumers to the Listed Chemical. To the
6 best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting
7 the allegations set forth in the Notice.

8 **1.7 Complaint**

9 On or about October 26, 2012, Brimer filed a complaint in San Francisco County Superior
10 Court against Bosca and Does 1 through 150 (the "Complaint" or "Action"), alleging violations of
11 Proposition 65, based on the alleged exposures to the Listed Chemical contained in
12 certain Products sold by Bosca to consumers in California.

13 **1.8 No Admission**

14 Bosca denies the material, factual and legal allegations contained in the Notice and the
15 Complaint and maintains that all of the products it has sold in California, directly or indirectly,
16 including but not limited to the Products, have been, and are, in compliance with all laws.
17 Nothing in this Consent Judgment shall be construed as an admission by Bosca or any other
18 person released by this Consent Judgment of any fact, finding, conclusion of law, issue of law, or
19 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
20 an admission by Bosca or any other person released by this Consent Judgment of any fact,
21 finding, conclusion of law, issue of law, or violation of law, such being specifically denied by
22 Bosca. This Section shall not, however, diminish or otherwise affect Bosca's obligations,
23 responsibilities, and duties under this Consent Judgment.

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Bosca as to the allegations contained in the Complaint, that venue is proper in
27 the City and County of San Francisco, and that this Court has jurisdiction to enter and enforce the
28 provisions of this Consent Judgment, pursuant to California Code of Civil Procedure § 664.6, as a

1 full and binding resolution of all claims that were or could have been raised in the Complaint
2 against Bosca with respect to the Products based on the facts alleged therein and in the Notice.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean July 31,
5 2013.

6 **2. INJUNCTIVE RELIEF: REFORMULATION**

7 **2.1 Product Reformulation Standard**

8 "Reformulated Products" are defined as those Products containing DEHP in
9 concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.
10 Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology
11 utilized by federal or state government agencies for the purpose of determining DEHP content in
12 a solid substance.

13 **2.2 Reformulation Commitment**

14 As of the Effective Date all Products manufactured, caused to be manufactured, imported,
15 distributed, sold, or offered for sale in the State of California by Bosca shall be Products that
16 qualify as Reformulated Products as defined in Section 2.1 above.

17 **2.3 Proposition 65 Business Compliance**

18 Products produced, imported, sold or offered for sale in compliance with Section 2.1 of
19 this Consent Judgment shall be deemed to comply with Proposition 65 as it relates to the presence
20 of DEHP in the Products and shall be exempt from any Proposition 65 warning requirements
21 regarding DEHP. Bosca's compliance with the injunctive terms of this Section 2 constitutes
22 compliance with Proposition 65 by all persons released by this Consent Judgment with respect to
23 DEHP as to the Products manufactured, imported and/or acquired for distribution and/or sale in
24 California by Bosca.

25 **3. MONETARY TERMS**

26 **3.1 Civil Penalties**

27 In settlement of all the claims referred to in this Consent Judgment, Bosca shall pay a
28 maximum of \$30,000 in civil penalties in accordance with this Section. Each penalty payment

1 will be allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d), with 75%
2 of the funds remitted to the California Office of Environmental Health Hazard Assessment
3 (“OEHHA”), in the form of a check made payable to “OEHHA,” and the remaining 25% of the
4 penalty remitted to Brimer, in the form of a check made payable to “The Chanler Group in Trust
5 for Russell Brimer.”

6 **3.1.1 Initial Civil Penalty**

7 Within five days of the Effective Date, Bosca shall pay an initial civil penalty of
8 \$10,000.

9 **3.1.2 Final Civil Penalty; Waiver on Certification of Compliance**

10 On or before December 31, 2013, Bosca shall pay a final civil penalty of \$20,000,
11 except that, the final civil penalty will be waived, in its entirety, if no later than December 15,
12 2013, Bosca provides Brimer’s counsel with written certification that all of the Products
13 purchased for sale by Bosca, imported for sale by Bosca, distributed for sale by Bosca, or
14 manufactured by Bosca for sale in California after December 15, 2013 comply with the
15 Reformulation Standard set forth in Section 2. The certification in lieu of a final civil penalty
16 payment provided by this Section is a material term, and time is of the essence.

17 **3.2 Reimbursement of Brimer’s Fees and Costs**

18 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
19 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
20 this fee issue to be resolved after the material terms of the agreement had been settled. Brimer
21 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
22 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
23 to Brimer and his counsel under general contract principles (with this Consent Judgment being the
24 sole contract) and the private attorney general doctrine, codified at Code of Civil Procedure §
25 1021.5, for all work performed through the mutual execution of this agreement. Bosca shall, on
26 the Effective date, pay \$49,500 for fees and costs incurred (and to be incurred) as a result of
27 investigating, bringing this matter to Bosca’s attention, negotiating a settlement in the public
28 interest and obtaining court approval of that settlement, including this Consent Judgment. Bosca

1 shall issue a separate 1099 for fees and costs (EIN: 94-3171522), provide its payment in the form
2 of a check payable to "The Chanler Group," and deliver payment on or before the Effective Date
3 at the address provided in Section 3.3.1(a). Each party otherwise shall bear its own costs and
4 attorneys' fees.

5 **3.3 Payment Procedures: Payments shall be delivered as follows:**

6 **3.3.1 Issuance of Payments**

7 (a) All payments owed to Brimer, pursuant to Sections 3.1 and 3.2, shall be
8 delivered to the following address:

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

14 (b) All payments owed to OEHHA(EIN: 68-0284486), pursuant to Sections
15 3.1, shall be delivered directly to OEHHA (Subject line: "Prop 65 Penalties") at one of the
16 following addresses, as appropriate:

17 For United States Postal Service:

18 Mike Gyrics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 P.O. Box 4010
22 Sacramento, CA 95812-4010

23 For delivery by other than the United States Postal Service:

24 Mike Gyrics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 1001 I Street
28 Sacramento, CA 95814

3.3.2 Proof of Payment

A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to
The Chanler Group at the address set forth above in Section 3.3.1(a), as proof of payment to
OEHHA.

1 **3.3.3 Tax Documentation**

2 Upon making each payment required by this Section 3, Bosca shall issue separate 1099
3 forms as follows: For each penalty payment to OEHHA, a 1099 shall be issued to the Office of
4 Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-
5 0284486); for each penalty payment to Russell Brimer, a 1099 shall be issued to "Russell
6 Brimer," whose address and tax identification number shall be furnished upon request after this
7 Proposed Consent Judgment is fully executed by the Parties; for each payment in reimbursement
8 of fees and costs, Bosca shall issue a separate 1099 form to "The Chanler Group" (EIN: 94-
9 3171522).

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Brimer's Public Release of Proposition 65 Claims**

12 Plaintiff, acting on his own behalf and in the public interest, releases Bosca and each
13 person that has distributed or sold and/or offered for sale Products provided directly or indirectly
14 by Bosca, including but not limited to downstream distributors, wholesalers, customers, retailers,
15 franchisees, cooperative members, licensors, and licensees, and all of their predecessors and
16 successors in interest, parent, subsidiary and affiliated entities under common ownership or
17 control, directors, officers, employees, agents, shareholders, members and attorneys
18 ("Releasees"), from all claims for violations of Proposition 65 with respect to all Products
19 manufactured, imported, acquired for distribution, distributed, sold, and/or offered for sale,
20 directly or indirectly, by Bosca up through the Effective Date based on actual or alleged exposure
21 to the Listed Chemical from the Products as set forth in the Notice and the Complaint.
22 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
23 with respect to exposures to the Listed Chemical from the Products as set forth in the Notice and
24 the Complaint. This release does not apply to any entities upstream of Bosca.

25 **4.2 Brimer's Individual Release of Claims**

26 Plaintiff also, in his individual capacity only and *not* in his representative capacity,
27 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
28 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,

1 claims, liabilities and demands of Plaintiff of any nature, character or kind, whether known or
2 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
3 the Listed Chemical in the Products sold by Bosca.

4 **4.3 Bosca's Release of Brimer**

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

11 **5. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and
13 shall be null and void if, for any reason, it is not approved and entered by the Court within 1 year
14 after it has been fully executed by the Parties, in which event any monies that have been paid to
15 Brimer or his counsel pursuant to Section 3 above shall be refunded within fifteen (15) days after
16 Brimer's receipt of written notice from Bosca that the 1-year period has expired, and the Action
17 shall return to *status quo ante* as if there had been no settlement, and nothing in or about the
18 settlement, this proposed Consent Judgment, or any act, agreement or statement of Bosca or any
19 other Releasee regarding the settlement or this proposed Consent Judgment shall be relevant,
20 admissible, discoverable or otherwise considered for any purpose whatsoever.

21 **6. SEVERABILITY**

22 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
23 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
24 provisions remaining shall not be adversely affected.

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California.

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1 **8. SALES DATA**

2 Bosca, and any other entity released by this Consent Judgment, understands that the sales
3 data it provided to Brimer was a material factor upon which Brimer has relied to determine the
4 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent
5 Judgment. To the best of Bosca's knowledge the sales data provided by Bosca to Brimer is full
6 and complete, and is a true and accurate reflection of any and all sales of the Products in
7 California during the relevant period.

8 If, within nine months of the Effective Date, Brimer discovers and presents to Bosca
9 evidence that prior to execution of this Consent Judgment the Products have been distributed by
10 Bosca in sales volumes materially different than those identified by Bosca prior to execution of
11 this Consent Judgment, then Bosca may be liable for an additional penalty amount as well as
12 additional attorney fees expended by Brimer in the public interest. In the event Brimer believes
13 there is evidence that the Products have been distributed by Bosca in sales volumes materially
14 different than those identified by Bosca, Brimer shall provide Bosca with a written demand for
15 additional penalties and attorney fees under this Section. After service of such demand, Bosca
16 shall have 30 days to meet and confer regarding the demand and submit such payment to Brimer
17 in accordance with the method of payment procedures identified in Section 3.3. Should this 30
18 day period pass without any such resolution between the Parties and payment of such additional
19 penalties and fees, Brimer shall be entitled to file a formal legal claim including, but not limited
20 to, a claim for damages for breach of this contract, and the prevailing party shall be entitled to all
21 reasonable attorney fees and costs relating to that action.

22 **9. NOTICES**

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

Christopher Bosca
President
Hugo Bosca Company, Inc.
1905 West Jefferson Street
Springfield, OH 45506

For Brimer:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

Attorneys for Russell Brimer

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.

10. COUNTERPARTS; FACSIMILE AND PDF 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.

11. ADDITIONAL POST EXECUTION ACTIVITIES

Brimer shall comply with the reporting form requirements referenced in Health and Safety Code § 25249.7(f). In addition, the Parties acknowledge that, pursuant to Health and Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Brimer shall prepare and file such motion to approve this Consent Judgment, and Bosca shall not oppose such motion. In furtherance of obtaining such approval, Brimer and Bosca 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.

12. 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.

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
2 deemed to exist or to bind any of the Parties.

3 **13. AUTHORIZATION**

4 The undersigned are authorized to execute this Consent Judgment on behalf of their
5 respective Parties, and have read, understood, and agree to all of the terms and conditions of this
6 Consent Judgment.

7 **AGREED TO:**

AGREED TO:

8
9
10 By: 
11 RUSSELL BREMER

By: 
Christopher Bosca, President
HUGO BOSCA COMPANY, INC.

12
13 Date: July 5, 2013

Date: 7-8-13

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