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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 DGL GROUP, LTD. and DOES 1-150,

18 Defendants.

19 Case No. CIV 1205318

20 **JUDGMENT PURSUANT TO
21 PROPOSITION 65 SETTLEMENT**

22 Action Filed: November 30, 2012
23 Trial Date: Not Assigned

24 **FILED**

25 JUN 10 2014

26 KIM TURNER, Court Executive Officer
27 MARIN COUNTY SUPERIOR COURT
28 By: E. Chais, Deputy

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

10 **IT IS SO ORDERED.**

11 **MARK A. TALAMANTES**

12 Dated: JUN 10 2014

13 _____
14 Hon. Mark A. Talamantes
15 Judge Of The Superior Court
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EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
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2560 Ninth Street
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11 RUSSELL BRIMER

12 Plaintiff,

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14 DGL GROUP, LTD. and DOES 1-150,

15 Defendants.

Case No. CIV 1205318

**CONSENT TO JUDGMENT AS TO
DEFENDANT DGL GROUP, LTD.**

Action Filed: November 30, 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 DGL Group, Ltd. (“DGL”) with Brimer and DGL
5 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 DGL 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 DGL manufactured, distributed and/or sold, in the State of
16 California, certain types of vinyl/PVC cases for electronics, including, but not limited to, Hype
17 Reptile Case, HY-1019-IPD-BLKLIZ, that exposed users to DEHP, without first providing any
18 “clear and reasonable warning” under Proposition 65. DEHP is listed as a reproductive and
19 developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed
20 Chemical.”

21 1.5 **Notice of Violation**

22 On August 1, 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 these entities with notice of alleged violations of Health & Safety Code § 25249.6
25 for failing to warn consumers of the presence of DEHP, a toxic chemical found in and on
26 Defendant’s Covered Products sold in California. DGL received the Notice. To the best of the
27
28

1 DGL's knowledge, no public enforcer has commenced and is diligently prosecuting the
2 allegations set forth in the Notice.

3 **1.6 Complaint**

4 On November 30, 2012, Brimer, acting, in the interest of the general public in California,
5 filed a Complaint in the Superior Court of the State of California for the County of Marin,
6 alleging violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the
7 alleged exposures to DEHP contained in the referenced Covered Products (the "Action").

8 **1.7 No Admission**

9 This Consent To Judgment resolves claims that are denied and disputed by DGL. 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 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 DGL'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 DGL as to the allegations contained in the Complaint, that venue is proper in
26 the County in which the Complaint is filed, and that this Court has jurisdiction to enter and
27 enforce the provisions of this Consent Judgment. As an express part of this Agreement,

1 pursuant to C.C.P. §664.6 the Court in which this action was filed shall retain jurisdiction over
2 the parties to enforce the settlement until performance in full of the terms of the settlement.

3 **2. DEFINITIONS**

4 2.1 The term "Complaint" shall mean the November 30, 2012, Complaint.

5 2.2 The term "Exemplar Product" means the Hype Reptile Case, HY-1019-IPD-
6 BLKLIZ.

7 2.3 The term "Covered Products" means any vinyl/PVC/polyurethane case for
8 electronics devices, including, but not limited to the Hype Reptile Case, HY-1019-IPD-BLKLIZ.

9 2.4 The term "Effective Date" shall mean May 1, 2014.

10 2.5 The term "DEHP Free" Covered Products shall mean Covered Products
11 containing materials or other components that may be handled, touched or mouthed by a
12 consumer, and which components contain less than or equal to 1,000 parts per million ("ppm")
13 of DEHP as determined by a minimum of duplicate quality controlled test results performed by
14 a laboratory certified by the State of California or accredited by the State of California, a federal
15 agency, the National Environmental Laboratory Accreditation Program or similar nationally
16 recognized accrediting organization to perform the analysis in question using Environmental
17 Protection Agency ("EPA") testing methodologies 3580A and 8270C, CPSC-WH-C1001-09.3, or
18 equivalent methodologies utilized by state or federal agencies for the purpose of determining
19 DEHP content in a solid substance.

20 **3. INJUNCTIVE RELIEF**

21 **3.1 Formulation Commitment**

22 No later than April 1, 2014, Defendant shall provide the DEHP Free Standards, to its
23 then-current Vendors of Covered Products that will be sold or offered for sale to United States
24 consumers and shall instruct each Vendor to provide Covered Products that comply with such
25 DEHP Free Standards expeditiously. In addressing the obligation set forth in the preceding
26 sentence, Defendant shall not employ statements that will encourage a Vendor to delay
27 compliance with the DEHP Free Standard. Upon request, Defendant shall provide Plaintiff with

1 copies of such Vendor notification and Plaintiff shall regard such copies as confidential business
2 information.

3 As of the Effective Date, Defendant shall not order, cause to be ordered, manufacture or
4 cause to be manufactured any Covered Product for distribution to or sale in the United States
5 that the Vendor of the product has not certified is DEHP Free. For every Covered Product
6 ordered, caused to be ordered, manufactured or caused to be manufactured for distribution to or
7 sale in California after the Effective Date, Defendant shall maintain copies of any testing or
8 Vendor certification of such products demonstrating compliance with this section.

9
10 **3.2 Previously Obtained Covered Products.**

11 This Section 3.2 applies to any Covered Product manufactured, ordered or obtained by
12 DGL prior to the Effective Date (“Previously Obtained Covered Product”).

13 **3.2.1 Customer Notification**

14 No later than Effective Date, DGL shall issue an express, written letter (electronic or
15 otherwise) notice to (1) each, individual, California retail store or establishment to which it
16 supplied any Exemplar Products within fifteen months prior to the Effective Date, (2) any
17 California store or establishment from which defendant sold any Exemplar Products and (3) any
18 other California store or establishment that the party is aware of having sold any Exemplar
19 Product within fifteen months prior to the Effective Date, that identifies the Exemplar Product
20 (by brand and trade name, SKU, ISB and any other identifying name or number utilized by DGL
21 in the sale of the Exemplar Product), advises the recipient that each such identified Exemplar
22 Product “contains DEHP, a chemical known to the State of California to cause birth defects and
23 other reproductive harm”, and requests such recipient to either label the Exemplar Product with
24 the product label identified in Section 3.2.2 or to return the Exemplar Product to DGL. DGL shall
25 maintain records of all compliance correspondence or other communication generated pursuant
26 to this Section for two (2) years from the Effective Date and shall produce copies of such records
27 upon written request by Brimer.

28 **3.2.2 Product Warnings**

1 Commencing on the Effective Date, DGL shall not distribute or sell any Previously
2 Obtained Covered Products directly to California, or to a retailer that DGL reasonably
3 understands maintains a retail outlet in California, unless such Previously Obtained Covered
4 Products meet the DEHP Free standard of Section 2.4 or are manufactured, distributed or
5 shipped with one of the clear and reasonable warnings set forth hereafter.

6 Each such warning shall be prominently placed with such conspicuousness as compared
7 with other words, statements, designs, or devices as to render it likely to be read and understood
8 by an ordinary individual under customary conditions of purchase or use. Each warning shall
9 be affixed to or printed on the Previously Obtained Covered Product itself.

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

11 For DGL's distribution of Previously Obtained Covered Products to California, or
12 to any business entity that DGL reasonably understands maintains any retail outlets in
13 California, DGL shall affix a warning to the packaging, labeling, or directly on any Previously
14 Obtained Covered Products that states:

15 **WARNING:** This product contains DEHP, a chemical
16 known to the State of California to cause birth
17 defects and other reproductive harm.

18 (b) **Mail Order Catalog and Internet Sales.** DGL may satisfy its Proposition
19 65 warning obligations for Previously Obtained Covered Product sold by mail order catalogue or
20 from the internet by providing a warning: (1) in the mail order catalogue as specified in Section
21 3.2.1(b)(i); on the website as specified in Section 3.2.1(b)(ii); and/or by affixing the warning
22 specified in Section 3.2.1(a)(i) to the packaging, labeling, or directly on any Previously Obtained
23 Covered Product.

24 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
25 order catalog must be in the same type size or larger than the Previously Obtained Covered
26 Product description text within the catalog. The following warning shall be provided on the
27 same page and in the same location as the display and/or description of the Previously Obtained
28 Covered Product:

1 **WARNING:** This product contains DEHP, a chemical
2 known to the State of California to cause birth
3 defects and other reproductive harm.

4 Where it is impracticable to provide the warning on the same page and in the same
5 location as the display and/or description of the Previously Obtained Covered Product, DGL
6 may utilize a designated symbol to cross-reference the applicable warning and shall define the
7 term “designated symbol” with the following language on the inside of the front or back cover of
8 the catalog or on the same page as any order form for the Previously Obtained Covered Product:

9 **WARNING:** Certain products identified with this
10 symbol ▼ and offered for sale in this
11 catalog contain DEHP, a chemical known
12 to the State of California to cause birth
13 defects and other reproductive harm.

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

18 If DGL elects to provide warnings in any mail order catalog, then the warnings must be
19 included in all catalogs offering to sell one or more Previously Obtained Covered Product
20 printed after the Effective Date.

21 (ii) **Internet Website Warning.** A warning may be given in
22 conjunction with the sale of any Previously Obtained Covered Product via the Internet, provided
23 it appears either: (a) on the same web page on which a Previously Obtained Covered Product is
24 displayed; (b) on the same web page as the order form for a Previously Obtained Covered
25 Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web
26 pages displayed to a purchaser during the checkout process. The following warning statement
27 shall be used and shall appear in any of the above instances adjacent to or immediately following
28 the display, description, or price of the Previously Obtained Covered Product for which it is

1 the total penalty. Two separate 1099s shall be issued for the above payments. The checks and
2 1099s shall be delivered to the addresses listed in Section 4.3 below.

3 4.2 Final Civil Penalty

4 DGL shall pay a final civil penalty of \$8,000.00 within thirty five (35) days of the date of
5 Court approval of this settlement. The final civil penalty shall be waived in its entirety, however,
6 if an Officer of DGL provides Brimer, care of his counsel, with written certification that, as of the
7 Effective Date and continuing into the future, DGL has met the reformulation standard specified
8 in Section 3.1 above, such that all newly obtained Covered Products sold by Defendant after the
9 Effective Date are DEHP Free. Brimer must receive any such certification on or before 10
10 business days after the Effective Date, and time is of the essence. The final civil penalty shall be
11 apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) & (d), with
12 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to
13 Brimer, as provided by California Health & Safety Code § 25249.12(d). DGL shall issue two
14 separate checks for the penalty payment: (a) one check made payable to "OEHHA" in the
15 amount of \$6,000.00, representing 75% of the total penalty; and (b) one check made payable to
16 "The Chanler Group in Trust for Russell Brimer" in the amount of \$2,000.00, representing 25% of
17 the total penalty. Two separate 1099s shall be issued for the above payments. The checks and
18 1099s shall be delivered to the addresses listed in Section 4.3 below.

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 DGL 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

1 Defendant with a written demand for all such additional penalties and attorney fees under this
2 Section. After service of such demand, Defendant shall have thirty (30) days to meet and confer
3 regarding the demand and submit such payment to Plaintiff in accordance with the method of
4 payment of penalties identified in Sections 4.4. Should this thirty (30) day period pass without
5 any such resolution between the Parties and payment of such additional penalties and fees,
6 Plaintiff shall be entitled to file a formal legal claim for damages for breach of this contract and
7 the prevailing party in a breach of contract action shall be entitled to all reasonable attorney fees
8 and costs relating to that action.

9 **4.4 Payment Procedures**

10 **4.4.1 Issuance Of Payments.** Payments shall be delivered as follows:

- 11 (a) All payments owed to Brimer, pursuant to Sections 4.1 through 4.3,
12 shall be delivered to the following payment address:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

- 18 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
19 Sections 4.1 through 4.3, shall be delivered directly to OEHHA (Memo
20 line "Prop 65 Penalties") at the following addresses:

21 For United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
26 Sacramento, CA 95812-4010

27 For Non-United States Postal Service Delivery:

28 Mike Gyurics
29 Fiscal Operations Branch Chief
30 Office of Environmental Health Hazard Assessment
31 1001 I Street
32 Sacramento, CA 95814

1 With a copy of the checks payable to OEHHA mailed to The Chanler Group at the
2 address set forth above in 4.4.1(a), as proof of payment to OEHHA.

3 Any failure by defendant to deliver the above-referenced payments to either OEHHA or
4 The Chanler Group within two days of the required date shall result in imposition of a 10%
5 simple interest assessment on the undelivered payment(s) until delivery.

6 **4.4.2 Issuance Of 1099 Forms.** After each payment, DGL shall issue separate
7 1099 forms for each payment, as follows:

- 8 (a) For each penalty payment owed in Sections 4.1 through 4.3, a 1099
9 shall be issued to the Office of Environmental Health Hazard
10 Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-
11 0284486) in the amount of 75% of the total penalty payment;
- 12 (b) For each penalty payment owed in Sections 4.1 through 4.3, a 1099
13 shall be issued to Brimer, whose address and tax identification
14 number shall be furnished upon request, in the amount of 25% of
15 the total penalty payment.

16 **5. REIMBURSEMENT OF FEES AND COSTS**

17 The parties acknowledge that Brimer and his counsel offered to resolve this dispute
18 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
19 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
20 Brimer then expressed a desire to resolve the fee and cost issue shortly after the other settlement
21 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
22 compensation due to Brimer and his counsel under general contract principles and the private
23 attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all
24 work performed through the mutual execution of this agreement. DGL shall pay \$40,000.00 for
25 fees and costs incurred as a result of investigating, bringing this matter to DGL's attention, and
26 negotiating a settlement in the public interest. DGL shall issue a separate 1099 for fees and costs
27 (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver
28

1 payment within five (5) business days of the date of Court approval of this settlement, to the
2 following address:

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

8 Any failure by defendant to deliver the above-referenced payments to The Chanler
9 Group within two days of the required date shall result in imposition of a 10% simple interest
10 assessment on the undelivered payment(s) until delivery.

11 **6. CLAIMS COVERED AND RELEASE**

12 **6.1 Brimer's Releases of DGL**

13 **6.1.1** This Consent To Judgment is a full, final, and binding resolution between
14 Brimer, on behalf of himself, his past and current agents, representatives, attorneys, successors,
15 and/or assignees, and in the public interest, and DGL and its parents, subsidiaries, directors,
16 officers, employees, attorneys, owners, shareholders, members, successors, licensors and assigns
17 ("Defendant Releasees"), and all entities to whom DGL directly or indirectly distributes or sells
18 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
19 franchisees, cooperative members, and licensees ("Downstream Defendant Releasees") of any
20 violation of Proposition 65 that has been or could have been asserted against Defendant
21 Releasees and Downstream Defendant Releasees regarding the failure to warn about exposure to
22 the Listed Chemical arising in connection with Covered Products manufactured, sourced,
23 distributed, or sold by Defendant Releasees prior to the Effective Date. DGL's compliance with
24 this Consent To Judgment shall constitute compliance with Proposition 65 with respect to the
25 Listed Chemical in the Covered Products after the Effective Date.

26 **6.1.2** Brimer on behalf of himself, his past and current agents, representatives,
27 attorneys, successors, and/or assignees, and in the public interest, hereby waives with respect to
28 Covered Products all rights to institute or participate in, directly or indirectly, any form of legal

1 action and releases all claims, including, without limitation, all actions, and causes of action, in
2 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
3 expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any
4 nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"),
5 against Defendant Releasees and Downstream Defendant Releasees that arise under Proposition
6 65 or any other statutory or common law claims that were or could have been asserted in the
7 public interest, as such claims relate to Defendant Releasees' and Downstream Defendant
8 Releasees' alleged failure to warn about exposures to the Listed Chemical contained in the
9 Covered Products.

10 **6.1.3** Brimer also, in his individual capacity only and *not* in his representative
11 capacity, provides a general release herein which shall be effective as a full and final accord and
12 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
13 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,
14 known or unknown, suspected or unsuspected, arising out of the subject matter of the
15 Complaint as to Covered Products manufactured, distributed or sold by Defendant Releasees.

16 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which
17 provides as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
20 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.

21 Brimer, in his individual capacity only and *not* in his representative capacity, expressly
22 waives and relinquishes any and all rights and benefits which he may have under, or which may
23 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as
24 under any other state or federal statute or common law principle of similar effect, to the fullest
25 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
26 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
27

1 complete release notwithstanding the discovery or existence of any such additional or different
2 claims or facts arising out of the released matters.

3
4 The Parties further understand and agree that this Section 6.1 release shall not extend
5 upstream to any entities, other than Defendant, that manufactured the Covered Products or any
6 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
7 component parts thereof to Defendant.

8 **6.1.4** Upon court approval of the Consent To Judgment, the Parties waive their
9 respective rights to a hearing or trial on the allegations of the Complaint.

10 **6.2 DGL's Release of Brimer**

11 **6.2.1** DGL waives any and all claims against Brimer, his attorneys, and other
12 representatives for any and all actions taken or statements made (or those that could have been
13 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
14 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
15 and/or with respect to the Covered Products.

16 **6.2.2** DGL also provides a general release herein which shall be effective as a
17 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
18 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of DGL of any nature,
19 character or kind, known or unknown, suspected or unsuspected, arising out of the subject
20 matter of the Action. DGL acknowledges that it is familiar with Section 1542 of the California
21 Civil Code, which provides as follows:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
23 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
24 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.

25 DGL expressly waives and relinquishes any and all rights and benefits that it may
26 have under, or which may be conferred on it by the provisions of Section 1542 of the
27 California Civil Code as well as under any other state or federal statute or common law

1 principle of similar effect, to the fullest extent that it may lawfully waive such rights or
2 benefits pertaining to the released matters. In furtherance of such intention, the release
3 hereby given shall be and remain in effect as a full and complete release notwithstanding
4 the discovery or existence of any such additional or different claims or facts arising out of
5 the released matters.

6 **7. SEVERABILITY**

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

11 **8. COURT APPROVAL**

12 This Consent To Judgment is effective upon execution but must also be approved by the
13 Court. The Consent To Judgment shall become null and void if, for any reason, it is not
14 approved and entered by the Court within nine months after it has been fully executed by all
15 Parties. If the Consent to Judgment becomes null and void after any payment of monies under
16 this agreement to The Chanler Group in trust, such monies shall be returned to Defendant by
17 payment of such monies to its counsel, in trust for DGL.

18 **9. GOVERNING LAW**

19 The terms of this Consent To Judgment shall be governed by the laws of the State of
20 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
21 inapplicable by reason of law generally, or as to the Covered Products, then Defendant may
22 make a noticed motion to the Court to be relieved from the terms of this agreement or any
23 Judgment of the Court.

24 **10. NOTICES**

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

27 For DGL to:

28 Ezra Zaafarani, President

1 DGL Group, Ltd.
2 195 Raraitan Center Parkway
3 Edison, NJ 08837

4 With Copy to DGL's counsel:

5 Peg Carew Toledo, Esq.
6 Stacy Don. Esq.
7 Toledo Don LLP
8 3001 Douglas Blvd., Ste. 340
9 Roseville, CA 95661-3853

10 For Brimer to:

11 Proposition 65 Coordinator
12 The Chanler Group
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710-2565

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

18 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

21 **12. MODIFICATION**

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

25 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

26 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
27 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of
28 obtaining such approval, Brimer and DGL and their respective counsel agree to mutually
employ their best efforts to support the entry of this agreement as a Consent To Judgment and
obtain approval of the Consent To Judgment - sufficient to render a formal judgment approving
this agreement - by the Court in a timely manner. Any effort by Plaintiff or DGL to impede
judicial approval of this Consent To Judgment shall subject such impeding party to liability for

1 attorney fees and costs incurred by that party or his/its counsel in their efforts to meet or oppose
2 the impending conduct.

3 **14. ENTIRE AGREEMENT**

4 This Consent To Judgment contains the sole and entire agreement and understanding of
5 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
6 negotiations, commitments, and understandings related hereto. No representations, oral or
7 otherwise, express or implied, other than those contained herein have been made by any Party
8 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
9 deemed to exist or to bind any of the Parties.

10 **15. ATTORNEY'S FEES**

11 15.1 Should Brimer prevail on any motion, application for order to show cause or
12 other proceeding to enforce a violation of this Consent To Judgment, Brimer shall be entitled to
13 his reasonable attorney fees and costs incurred as a result of such motion, order or application,
14 consistent with C.C.P. §1021.5. Should Defendant prevail on any motion, application for order to
15 show cause or other proceeding to enforce a violation of this Consent Judgment, Defendant may
16 be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or
17 application upon a finding that Brimer's prosecution of the motion or application lacked
18 substantial justification. For purposes of this Consent To Judgment, the term substantial
19 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of
20 Civil Procedure §§ 2016, et seq.

21 15.2 Except as specifically provided hereinabove, each Party shall bear its own costs
22 and attorney's fees in connection with this action.

23 15.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
24 sanctions pursuant to law.

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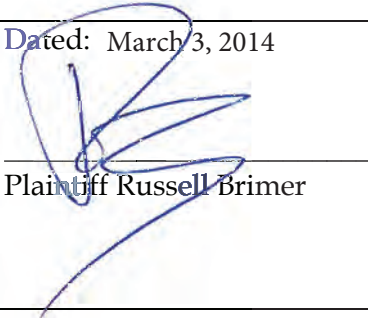
1 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

9 **IT IS SO AGREED**

| | |
|---|---|
| <p>10 Dated: March 3, 2014</p>  <p>11 _____ 12 Plaintiff Russell Brimer</p> | <p>Dated: February __, 2014</p> <p>_____</p> <p>Ezra Zaafarani, President DGL Group, Ltd.</p> |
|---|---|

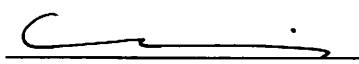
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|---|--|
| <p>10 Dated: February __, 2014</p> <p>11 _____</p> <p>12 Plaintiff Russell Brimer</p> | <p>10 Dated: February __, 2014 <i>March</i></p> <p>11 </p> <p>12 Ezra Zaafarani, President</p> <p>13 DGL Group, Ltd.</p> |
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