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Attorneys for Plaintiff  
RUSSELL BRIMER

ENDORSED  
FILED  
ALAMEDA COUNTY  
MAY 22 2014  
CLERK OF THE SUPERIOR COURT  
By DIANNE HYATT  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,  
  
Plaintiff,  
  
v.  
  
ATLANTIC REPRESENTATIONS, INC.;  
and DOES 1-150, inclusive,  
  
Defendants.

Case No. RG12658471  
  
**[PROPOSED] JUDGMENT  
PURSUANT TO TERMS OF  
PROPOSITION 65 SETTLEMENT  
AND CONSENT JUDGMENT**  
  
Date: May 21, 2014  
Time: 2:30 p.m.  
Dept. 522  
Judge: Hon. Dennis Hayashi  
  
Reservation No. R-1482234

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Plaintiff, Russell Brimer, and defendant, Atlantic Representations, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

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

**IT IS SO ORDERED.**

Dated: 5/21/14

  
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JUDGE OF THE SUPERIOR COURT

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Attorneys for Defendant  
ATLANTIC REPRESENTATIONS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,  
  
Plaintiff,  
  
v.  
  
ATLANTIC REPRESENTATIONS, INC.; *et*  
*al.*  
  
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) Case No.: RG12658471  
)  
)  
) **[PROPOSED]**  
) **CONSENT JUDGMENT**  
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)  
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1       **1. INTRODUCTION**

2               **1.1 Russell Brimer and Atlantic Representations, Inc.**

3               This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”) and Atlantic Representations, Inc. (“Atlantic”), with Brimer and Atlantic collectively referred to as the “parties,” and individually as a “party.” Brimer is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Brimer alleges that Atlantic employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

11              **1.2 General Allegations**

12              1.2.1 Brimer alleges that Atlantic manufactured, imported, sold and/or distributed for sale in the State of California, vinyl/PVC media cases that contain di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause birth defects and other reproductive harm. Brimer alleges that DEHP escapes from vinyl/PVC, leading to human exposures.

17              1.2.2 Brimer alleges that Atlantic manufactured, imported, sold and/or distributed for sale in California, ottomans with foam padding containing tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard warnings. Pursuant to Proposition 65, on October 28, 2011, California identified and listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Brimer alleges that TDCPP escapes from foam padding, leading to human exposures.

25              1.2.3 DEHP and TDCPP are collectively referred to herein as the “Listed Chemicals.”

1           **1.3 Product Description**

2           The categories of products that are covered by this Consent Judgment (collectively, the  
3 “Products”) are:

4           (a) upholstered ottomans with foam padding or material containing TDCPP  
5 including, but not limited to, *Room Essentials Ottoman Durable Steel Frame Cushion Top*, #249  
6 19 0429 R00 ID053422-0001, UPC #0 31742 35877 7, manufactured, imported, distributed and/or  
7 sold by Atlantic for sale in the State of California (“Ottomans”); and

8           (b) vinyl/PVC media cases containing DEHP including, but not limited to,  
9 *Atlantic Media Case, Item #96635529* (#0 31742 35529 5), *Atlantic Tech Box 72 CDs/64 DVDs*,  
10 #012 08 0056, No. 96635738 (#0 31742 35738 1), *Atlantic Halogen 24 Discs Wallet*, Item # 8706-  
11 59 (#0 31742 98706 9), the *Atlantic 24 CD Halogen Wallet*, Item # 8706-115 (#0 31742 58706 1),  
12 and the *Media Living Movie Bin + 36 Sleeves*, No. 96635585 (#0 31742 35585 1) manufactured,  
13 imported, distributed and/or sold by Atlantic for sale in the State of California (“Media Cases”).

14           **1.4 Notices of Violation**

15           1.4.1 On August 16, 2012, Brimer served Atlantic and various public enforcement  
16 agencies with a document entitled “60-Day Notice of Violation” (the “DEHP Notice”) that  
17 provided recipients with notice alleging that Atlantic was in violation of Proposition 65 for failing  
18 to warn consumers and customers that Media Cases exposed users in California to DEHP.

19           1.4.2 On September 27, 2013, Brimer served Atlantic and various public  
20 enforcement agencies with a document entitled “60-Day Notice of Violation” (the “TDCPP  
21 Notice”) that provided recipients with notice alleging that Atlantic was in violation of Proposition  
22 65 for failing to warn consumers and customers that Ottomans exposed users in California to  
23 TDCPP.

24           1.4.3 The DEHP Notice and TDCPP Notice are collectively referred to herein as  
25 the “Notices.” No public enforcer has diligently prosecuted the allegations set forth in the Notices.

26           **1.5 Complaint**

27           On or about December 4, 2012, Brimer filed a complaint in the Superior Court in and for  
28 the County of Alameda against Atlantic Representations, Inc. and Does 1 through 150, *Brimer v.*

1 *Atlantic Representations, Inc., et al.*, Case No. RG12658471, alleging violations of Proposition 65,  
2 based on the alleged exposures to DEHP contained in Media Cases sold by Atlantic (“Complaint”).  
3 Following the expiration of the 66 days after Brimer’s issuance of the TDCPP Notice referred to in  
4 Section 1.4.2 above, the Complaint in the above captioned matter shall be deemed amended to  
5 include allegations that the Products described in Section 1.3 above contained one or more of the  
6 Listed Chemicals.

7 **1.6 No Admission**

8 Atlantic denies the material, factual and legal allegations contained in Brimer’s Notices and  
9 Complaint and maintains that it has at all times been in compliance with all laws and all products  
10 that it has sold, manufactured, imported and/or distributed for sale in California, including the  
11 Products. Nothing in this Consent Judgment shall be construed as an admission by Atlantic of any  
12 fact, finding, issue of law or violation of law, nor shall compliance with this Consent Judgment  
13 constitute or be construed as an admission by Atlantic of any fact, finding, conclusion, issue of law  
14 or violation of law. However, this Section shall not diminish or otherwise affect Atlantic’s  
15 obligations, responsibilities and duties under this Consent Judgment.

16 **1.7 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
18 jurisdiction over Atlantic as to the allegations contained in the Complaint, that venue is proper in  
19 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of  
20 this Consent Judgment.

21 **2. DEFINITIONS**

22 **2.1 California Customers**

23 “California Customer” shall mean any customer that Atlantic reasonably understands is  
24 located in California, has a California warehouse or distribution center, maintains a retail outlet in  
25 California, or has made internet sales into California on or after January 1, 2011.

26 **2.2 Detectable**

27 “Detectable” shall mean containing no more than 25 parts per million (“ppm”) (the  
28 equivalent of .0025%) of TDCPP or tris(2-chloroethyl) phosphate (“TCEP”) in any material,

1 component, or constituent of a subject product, when analyzed by a laboratory accredited by the  
2 State of California, a federal agency, American Association for Lab Accreditation (A2LA), ANSI-  
3 ASQ National Accreditation Board (ANAB) – ACLASS brand (an ANAB company), International  
4 Accreditation Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson  
5 Laboratory Accreditation, Inc. (PJLA), International Laboratory Accreditation Cooperation (ILAC),  
6 or similar nationally recognized accrediting organization (such laboratory referred hereinafter as an  
7 “Accredited Lab”) pursuant to EPA testing methodologies 3545 and 8270C, or equivalent  
8 methodologies utilized by federal or state agencies to determine the presence, and measure the  
9 quantity, of TDCPP and/or tris(2-chloroethyl) phosphate (“TCEP”) in a solid substance.

10 **2.3 Effective Date**

11 “Effective Date” shall mean January 15, 2014.

12 **2.4 “Reformulated Products” shall mean:**

- 13 (a) Ottomans containing no Detectable amount of TDCPP or TCEP; and  
14 (b) Media cases containing no more than 0.1 percent (1,000 ppm) DEHP, butyl  
15 benzyl phthalate (“BBP”) or Di-n-butyl phthalate (“DBP”) in each accessible component when  
16 analyzed by an Accredited Lab pursuant to U.S. Environmental Protection Agency testing  
17 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies  
18 for the purpose of determining DEHP content in a solid substance.

19 **3. INJUNCTIVE RELIEF: REFORMULATION STANDARD**

20 **3.1 Reformulation Commitment**

21 Commencing on March 31, 2014, Atlantic shall only manufacture, produce, assemble,  
22 import, distribute, ship, sell or offer to be shipped for sale in California Products that qualify as  
23 Reformulated Products.

24 **3.2 Vendor Notification/Certification**

25 On or before the Effective Date, Atlantic shall provide written notice to all of its then-  
26 current vendors of the Products that will be sold or offered for sale in California, or to California  
27 Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated  
28 Products for potential sale in California. In addressing the obligation set forth in the preceding

1 sentence, Atlantic shall not employ statements that will encourage a vendor to delay compliance  
2 with the Reformulation Standard. Atlantic shall subsequently obtain written certifications, no later  
3 than April 1, 2014, from such vendors, and any newly engaged vendors, that Ottomans  
4 manufactured by such vendors are in compliance with the Reformulation Standard. Certifications  
5 shall be held by Atlantic for at least two years after their receipt and shall be made available to  
6 Brimer upon request.

### 7 3.3 Products No Longer in Atlantic's Control

8 On the Effective Date, Atlantic shall send a letter, electronic or otherwise ("Notification  
9 Letter") to: (1) each California Customer and/or Retailer which it, after October 28, 2011, supplied  
10 the item for resale in California described as an exemplar in the TDCPP Notice Atlantic received  
11 from Brimer ("Exemplar Ottoman Product"); and (2) any California Customer and/or Retailer that  
12 Atlantic reasonably understands or believes had any inventory for resale in California of Exemplar  
13 Products as of, September 27, 2013, the TDCPP Notice date. The Notification Letter shall advise  
14 the recipient that the Exemplar Product "contains TDCPP, a chemical known to the State of  
15 California to cause cancer," and request that the recipient either: (a) label the Exemplar Products  
16 remaining in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or  
17 (b) return, at Atlantic's sole expense, all units of the Exemplar Product held for sale in California, or  
18 to California Customers, to Atlantic or a party Atlantic has otherwise designated. The Notification  
19 Letter shall require a response from the recipient within 20 days confirming whether the Exemplar  
20 Product will be labeled or returned. Atlantic shall maintain records of all correspondence or other  
21 communications generated pursuant to this Section for two years after the Effective Date and shall  
22 promptly produce copies of such records upon Brimer's written request.

### 23 3.4 Current Inventory

24 Any Products in, or manufactured and en route to, Atlantic's inventory as of or after  
25 December 31, 2013, that do not qualify as Reformulated Products and that Atlantic has reason to  
26 believe may be sold or distributed for sale in California, shall contain a clear and reasonable  
27 warning as set forth in Section 3.5 below unless Section 3.6 applies.  
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1           **3.5     Product Warnings**

2                   **3.5.1   Product Labeling**

3           Any warning provided under Sections 3.3 and 3.4 above shall be affixed to the packaging,  
4 labeling, or directly on each Product. Each warning shall be prominently placed with such  
5 conspicuousness as compared with other words, statements, designs, or devices as to render it likely  
6 to be read and understood by an ordinary individual under customary conditions before purchase.  
7 Each warning shall be provided in a manner such that the consumer or user understands to which  
8 specific Product the warning applies, so as to minimize the risk of consumer confusion.

9           A warning provided pursuant to this Consent Judgment shall state, as appropriate:

10                           **WARNING:** This product contains TDCPP, a  
11                                    flame retardant chemical known to  
  the State of California to cause  
  cancer.

12                            or

13                           **WARNING:** This product contains DEHP, a  
14                                    phthalate chemical known to the State  
  of California to cause birth defects  
  and other reproductive harm.<sup>1</sup>

15  
16           Attached as Exhibit B are template warnings developed by Brimer that are deemed to be  
17 clear and reasonable for purposes of this Consent Judgment.<sup>2</sup> Provided that the other requirements  
18 set forth in this Section are addressed, including as to the required warning statement and method of  
19 transmission as set forth above, Atlantic remains free not to utilize the template warnings.

20  
21 \_\_\_\_\_  
22 <sup>1</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if Atlantic had begun  
23 to use it, prior to December 31, 2013. If Atlantic seeks to use alternative warning language, other than the language  
24 specified above or the safe harbor warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of  
25 transmission of the warning, it must obtain the Court’s approval of its proposed alternative and provide all parties and  
the Office of the Attorney General of the State of California with timely notice and the opportunity to comment or  
object before the Court acts on the request. The parties agree that the following warning language shall not be deemed  
to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant to this Consent Judgment: (a)  
“cancer or birth defects or other reproductive harm”; and (b) “cancer, birth defects or other reproductive harm.”

26 <sup>2</sup> The characteristics of the template warnings are as follows: (a) a yellow hang tag measuring 3” x 5”, with no less  
27 than 12 point font, with the warning language printed on each side of the hang tag, which shall be affixed directly to  
28 Ottomans; (b) a yellow warning sign measuring 8.5” x . 11”, with no less that 32 point font, with the warning language  
printed on each side, which shall be affixed directly to the Ottomans; and (c) for Ottomans sold at retail in a box or  
packaging, a yellow warning sticker measuring 3” x 3”, with no less than 12 point font, which shall be affixed directly  
to the product packaging.

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**3.5.2 Internet Website Warning**

A warning shall be given in conjunction with Atlantic’s sale of the Products to California, or California Customers, via the internet, which warning shall appear on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall: (a) appear adjacent to or immediately following the display, description, or price of the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer. The warning text shall be the same type size or larger than the Product description text, as appropriate:

**WARNING:** This product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer.

or

**WARNING:** This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.<sup>3</sup>

**3.6 Alternatives to Interim Product Labeling**

The obligations of Atlantic under Section 3.3 shall be relieved provided Atlantic certifies on or before the Effective Date that only Exemplar Products meeting the Reformulation Standard have been and will continue to be offered for sale in California, or to California Customers, after December 31, 2013. The obligations of Atlantic under Section 3.4 shall be relieved provided Atlantic certifies on or before the Effective Date that, after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in, California, only Products (i.e., Products beyond those described as an exemplars in the Notices) meeting the Reformulation Standard. The certifications provided by this Section are material terms and time is of the essence.

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<sup>3</sup>Footnote 1, *supra*, applies in this context as well.

1       **4.       MONETARY PAYMENTS**

2               **4.1       Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

3               In settlement of all the claims referred to in this Consent Judgment, Atlantic shall pay the  
4       civil penalties shown on Exhibit A in accordance with this Section. Each penalty payment will be  
5       allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75%  
6       of the funds remitted to the California Office of Environmental Health Hazard Assessment  
7       (“OEHHA”) and the remaining 25% of the penalty remitted to “The Chanler Group in Trust for  
8       Russell Brimer.” Each penalty payment shall be delivered to the addresses listed in Section 4.5  
9       below. Atlantic shall be liable for payment of interest, at a rate of 10% simple interest, for all  
10       amounts due and owing under this Section that are not received within two business days of the  
11       due date.

12                       4.1.1   Initial Civil Penalty. On or before the Effective Date, Atlantic shall make an  
13       initial civil penalty payment in the amount identified on Exhibit A.

14                       4.1.2   Second Civil Penalty. On or before February 15, 2014, Atlantic shall make a  
15       second civil penalty payment in the amount identified on Exhibit A. The amount of the second  
16       penalty may be reduced according to any penalty waiver for which Atlantic is eligible under  
17       Sections 4.1.4(i) and 4.1.4(iii), below.

18                       4.1.3   Third Civil Penalty. On or before November 30, 2014, Atlantic shall make a  
19       third civil penalty payment in the amount identified on Exhibit A. The amount of the third penalty  
20       may be reduced according to any penalty waiver for which Atlantic is eligible under Sections  
21       4.1.4(ii) and 4.1.4(iv), below.

22                       4.1.4   Reductions to Civil Penalty Payment Amounts. Atlantic may reduce the  
23       amount of the second and/or third civil penalty payments identified on Exhibit A by providing  
24       Brimer with certification of certain efforts undertaken to reformulate its Products or limit the  
25       ongoing sale of non-reformulated Products in California. The options to provide a written  
26       certification in lieu of making a portion of the civil penalty payment constitute material terms of this  
27       Consent Judgment, and with regard to such terms, time is of the essence.  
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**4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of Products Sold or Offered for Sale in California.**

As shown on Exhibit A, a portion of the second civil penalty shall be waived, to the extent that it has agreed that, as of December 31, 2013, and continuing into the future, it has and shall only manufacture or import for distribution or sale to consumers in California or cause to be manufactured or imported for distribution or sale to consumers in California, Products that are Reformulated Products. An officer or other authorized representative of Atlantic that has exercised this election shall provide Brimer with a written certification confirming compliance with such conditions, which certification must be received by Brimer’s counsel on or before February 15, 2014.

**4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that Atlantic has agreed that, as of March 31, 2014, and continuing into the future, it shall only manufacture or import for distribution or sale in California or cause to be manufactured or imported for distribution or sale in California, Ottomans that are Reformulated Products, which also do not contain tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 ppm (the equivalent of .0025%) in any material, component, or constituent of a subject product, when analyzed by an Accredited Lab pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence, and measure the quantity of TDBPP in a solid substance. An officer or other authorized representative of Atlantic that has exercised this election shall provide Brimer with a written certification confirming compliance with such conditions, which certification must be received by Brimer’s counsel on or before November 15, 2014.

**4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated Exemplar Products from the California Market.**

As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or other authorized representative of Atlantic provides Brimer with written certification, by February 15, 2014, confirming that each California Customer to which it supplied the Exemplar Ottoman

1 Product after October 28, 2011, has elected, pursuant to Section 3.3, to return all Exemplar Ottoman  
2 Products held for sale in California.

3 4.1.4(iv) **Partial Penalty Waiver for Termination of Distribution to**  
4 **California of Unreformulated Inventory.**

5 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or  
6 other authorized representative of Atlantic provides Brimer with written certification, on or before  
7 November 15, 2014, confirming that, as of July 1, 2014, it has and will continue to distribute, offer  
8 for sale, or sell in California, or to California Customers, only Reformulated Products.

9 4.2 **Representation**

10 Atlantic represents that the sales data and other information concerning its size, knowledge  
11 of TDCPP and DEHP, and prior reformulation and/or warning efforts, it provided to Brimer was  
12 truthful to its knowledge and a material factor upon which Brimer has relied to determine the  
13 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent  
14 Judgment. If, within nine months of the Effective Date, Brimer discovers and presents to Atlantic  
15 evidence demonstrating that the preceding representation and warranty was materially inaccurate,  
16 then Atlantic shall have 30 days to meet and confer regarding the Brimer's contention. Should this  
17 30 day period pass without any such resolution between the Brimer and Atlantic, Brimer shall be  
18 entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of  
19 contract.

20 Atlantic further represents that in implementing the requirements set forth in Sections 3.1  
21 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve  
22 reformulation of its Products on a nationwide basis and not employ statements that will encourage a  
23 vendor to limit its compliance with the Reformulation Standard to goods intended for sale to  
24 consumers in California.

25 4.3 **Stipulated Penalties for Certain Violations of the Reformulation Standard.**

26 If Brimer provides notice and appropriate supporting information to Atlantic that levels of  
27 TDCPP, TCEP, DEHP, BBP or DBP in excess of the Reformulation Standard have been detected in  
28 one or more Products labeled or otherwise marked in an identifiable manner as manufactured or

1 imported after a deadline for meeting the Reformulation Standard has arisen for Atlantic under  
2 Sections 3.1 or 3.6 above, Atlantic may elect to pay a stipulated penalty to relieve any further  
3 potential liability under Proposition 65 or sanction under this Consent Judgment as to Products  
4 sourced from the vendor in question.<sup>4</sup> The stipulated penalty shall be \$1,500 if the violation level is  
5 below 100 ppm TDCPP or TCEP and/or above 1000 ppm DEHP, BBP or DBP; and \$3,000 if the  
6 violation level is between 100 ppm and 249 ppm TDCPP or TCEP and/or above 2500 ppm DEHP,  
7 BBP or DBP.<sup>5</sup> Brimer shall further be entitled to reimbursement of their associated expense in an  
8 amount not to exceed \$5,000 regardless of the stipulated penalty level. Atlantic under this Section  
9 must provide notice and appropriate supporting information relating to the purchase (e.g. vendor  
10 name and contact information including representative, purchase order, certification (if any)  
11 received from vendor for the exemplar or subcategory of products), test results, and a letter from a  
12 company representative or counsel attesting to the information provided, to Brimer within 30  
13 calendar days of receiving test results from Brimer's counsel. Any violation levels at or above 250  
14 ppm TDCPP or TCEP and/or above 2500 ppm DEHP, BBP or DBP shall be subject to the full  
15 remedies provided pursuant to this Consent Judgment and at law.

#### 16 4.4 Reimbursement of Fees and Costs

17 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
19 issue to be resolved after the material terms of the agreement had been settled. Atlantic then  
20 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
21 negotiated. The parties then attempted to (and did) reach an accord on the compensation due to  
22 Brimer and his counsel under general contract principles and the private attorney general doctrine  
23 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual  
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25 <sup>4</sup> This Section shall not be applicable where the vendor in question had previously been found by Atlantic to have  
26 provided unreliable certifications as to meeting the Reformulation Standard in its Products on more than one occasion.  
27 Notwithstanding the foregoing, a stipulated penalty for a second exceedance by Atlantic's vendor at a level between  
28 100 ppm and 249 ppm TDCPP, TDBPP or TCEP and/or 2500 ppm or below DEHP, BBP or DBP and shall not be  
available after July 1, 2015.

<sup>5</sup> Any stipulated penalty payments made pursuant to this Section should be allocated and remitted in the same manner  
as set forth in Sections 4.1 and 4.5, respectively.

1 execution of this agreement including fees and costs incurred as a result of investigating, bringing  
2 this matter to Atlantic's attention, and negotiating a settlement in the public interest. Atlantic more  
3 specifically agreed, upon the Court's approval and entry of this Consent Judgment, to pay Brimer's  
4 counsel the amount of fees and costs indicated on Exhibit A. Atlantic has already reimbursed  
5 Brimer \$2,500 of this amount. Atlantic shall tender \$27,500 of amount indicated on Exhibit A to a  
6 trust account at The Chanler Group (made payable "In Trust for The Chanler Group") within two  
7 business days of the Effective Date. Atlantic shall tender the remaining \$30,000 of amount  
8 indicated on Exhibit A to The Chanler Group (made payable to "The Chanler Group") within five  
9 business days of the date the Court's approves this Consent Judgment.

10 **4.5 Payment Procedures**

11 **4.5.1. Issuance of Payments.** Payments shall be delivered as follows:

12 (a) All payments owed to Brimer and his counsel, pursuant to Sections  
13 4.1, 4.3 and 4.4, shall be delivered to the following payment address:

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

19 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to  
20 Sections 4.1 and 4.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at  
21 the following addresses:

22 For United States Postal Service Delivery:

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

28 For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

1                   4.5.2 **Proof of Payment to OEHHA.** A copy of each check payable to OEHHA  
2 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in  
3 Section 4.5.1(a) above, as proof of payment to OEHHA.

4                   4.5.3 **Issuance of 1099 Forms.** After each penalty payment, Atlantic shall issue a  
5 separate 1099 form for each payment required by this Section to: (a) Russell Brimer, whose  
6 address and tax identification number shall be furnished upon request after this Consent Judgment  
7 has been fully executed by the parties; (b) OEHHA, who shall be identified as “California Office  
8 of Environmental Health Hazard Assessment” (EIN: 68-0284486) in the 1099 form, to be delivered  
9 directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814, and (c) “The Chanler Group” (EIN:  
10 94-3171522) to the address set forth in Section 4.5.1(a) above.

11 **5. CLAIMS COVERED AND RELEASED**

12 **5.1 Brimer’s Release of Atlantic**

13 Plaintiff, acting on his own behalf and in the public interest, releases Atlantic, its parents,  
14 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,  
15 attorneys, and each entity to whom Atlantic directly or indirectly distributes or sells Products,  
16 including, but not limited to, downstream distributors, wholesalers, customers, retailers,  
17 franchisees, cooperative members, licensors, and licensees (“Releasees”), from all claims for  
18 violations of Proposition 65 up through the date on which this Consent Judgment is signed by both  
19 parties based on exposure to DEHP and/or TDCPP from the Products as set forth in the Notices.  
20 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
21 with respect to exposures to DEHP and/or TDCPP from the Products as set forth in the Notices.

22 Brimer, also, in his individual capacity only and *not* in his representative capacity, provides  
23 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
24 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,  
25 liabilities and demands of Brimer of any nature, character or kind, whether known or unknown,  
26 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,  
27 TCEP, TDBPP, DEHP, BBP and/or DBP in the Products manufactured, distributed or sold by  
28 Atlantic prior to the Effective Date. The parties further understand and agree that this Section 5.1



1 release shall not extend upstream to any entities that manufactured the Products, or any component  
2 parts thereof, or any distributors or suppliers who sold the Products, or any component parts  
3 thereof to Atlantic.

4 **5.2 Atlantic’s Release of Brimer**

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

11 **6. 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 one year  
14 after it has been fully executed by all parties. If the Court does not approve the Consent Judgment,  
15 the parties shall meet and confer as to whether to modify the language or appeal the ruling. If the  
16 parties do not jointly agree on a course of action to take, then the case shall proceed in its normal  
17 course on the Court’s trial calendar. If the Court’s approval is ultimately overturned by an  
18 appellate court, the parties shall meet and confer as to whether to modify the terms of this Consent  
19 Judgment. If the parties do not jointly agree on a course of action to take, then the case shall  
20 proceed in its normal course on the Court’s trial calendar. In the event that this Consent Judgment  
21 is entered by the Court and subsequently overturned by any appellate court, any monies that have  
22 been provided to OEHHA, Brimer or his counsel pursuant to Section 4, above, shall be refunded  
23 within 15 days of the appellate decision becoming final. In the event the Court does not approve  
24 this Consent Judgment within one year of the Effective Date, the funds paid pursuant to Section 4  
25 of this Consent Judgment shall be returned to Atlantic.

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**7. SEVERABILITY**

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

**8. GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California and the obligations of Atlantic hereunder as to the Products apply only within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, including, without limitation, the removal of DEHP from OEHHHA’s list of Proposition 65 chemicals, then Atlantic shall notify Brimer and his counsel and may have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

**9. NOTICES**

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

To Atlantic:

At the addresses shown on Exhibit A.

To Brimer:

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

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.

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**10. COUNTERPARTS; FACSIMILE/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. A facsimile or pdf signature shall be as valid as the original.

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

Brimer and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**12. ADDITIONAL POST EXECUTION ACTIVITIES**

Brimer and Atlantic agree to mutually employ their, and their counsel’s, 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. The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Brimer shall draft and file, and Atlantic shall not oppose. If any third party objection to the noticed motion is filed, Brimer and Atlantic shall work together to file a joint reply or separate replies if the parties so desire and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach. If the Court does not grant the motion to approve this Consent Judgment, and if the parties choose not to pursue a modified Consent Judgment within 30 days after the Court’s denial of the motion to approve, then, upon remittitur, any and all payments made pursuant to Section 3 of this Consent Judgment will be returned to Atlantic.

**13. 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.

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14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: December 31, 2013

Date: 12/31/13

By:   
Plaintiff, Russell Brimer

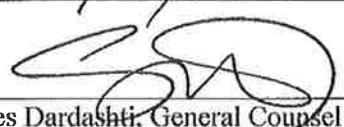
By:   
James Dardashti, General Counsel  
Defendant Atlantic Representations, Inc.

EXHIBIT A

I. Name of Settling Defendant (Mandatory)

Atlantic Representations, Inc.  
10018 Santa Fe Springs Road  
Santa Fe Springs, CA 90670

II. Name of Releasee:

Target Corporation  
1000 Nicollet Mall  
Minneapolis, MN 55403

III. Atlantic's Required Settlement Payments

A. Penalties:

\$20,000 initial payment due on or before the Effective Date;

\$19,000 second payment due on or before February 15, 2014, of which \$14,000 may be waived pursuant to Section 4.1.4(i) and \$5,000 may be waived pursuant to Section 4.1.4(iii); and

\$14,000 third payment due on or before November 30, 2014, of which \$8,000 may be waived pursuant to Section 4.1.4(ii) and \$6,000 may be waived pursuant to Section 4.1.4(iv).

B. Fees and Costs for Atlantic: \$56,000

C. Additional Fees and Costs:

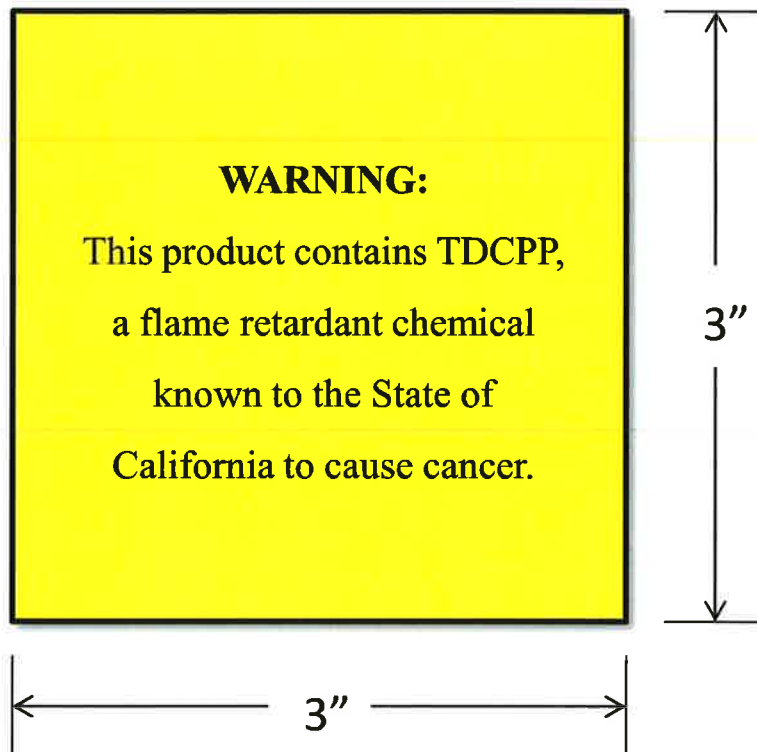
\$4,000 supplemental fee for Target Corporation who received a 60-Day Notice of Violation partially released by the Consent Judgment.

IV. Person(s) to receive notices on behalf of Atlantic pursuant to Section 9:

James Dardashti, General Counsel  
Atlantic Representations, Inc.  
10018 Santa Fe Springs Road  
Santa Fe Springs, CA 90670

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EXHIBIT B



**INSTRUCTIONS:** The background must be yellow, a minimum of 12 pt. font, "WARNING:" text must be bold.