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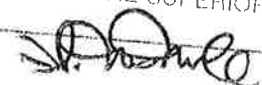
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Clifford A. Chanler, State Bar No. 135534
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone:(510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
RUSSELL BRIMER

FILED
ALAMEDA COUNTY

SEP 17 2014

CLERK OF THE SUPERIOR COURT
By  Deputy

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

RUSSELL BRIMER,
Plaintiff,
v.
REGENT PRODUCTS CORP., *et al.*,
Defendants.

Case No. RG13675862

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

Date: September 17, 2014
Time: 9:00 a.m
Dept. 18
Judge: Hon. Kimberly E. Colwell

Reservation No. R-1530640


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Plaintiff Russell Brimer and Defendant Regent Products Corp., 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 their Proposition 65 settlement and Consent Judgment.

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

IT IS SO ORDERED.

Dated: 9/17/14



JUDGE OF THE SUPERIOR COURT

Exhibit 1
(To Judgment)

1 Daniel Bornstein, State Bar No. 181711
Laralei Paras, State Bar No. 203319
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, California 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5 Attorneys for Plaintiff
6 RUSSELL BRIMER

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 REGENT PRODUCTS CORP.; INVENTORY
16 LIQUIDATORS, CORP.; and DOES 1-150,
inclusive,

17 Defendants.
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Case No. RG 13675862

**[PROPOSED] CONSENT TO JUDGMENT
AS TO DEFENDANT REGENT
PRODUCTS CORP.**

Date:

Time:

Dept: 18

Judge: Hon. Kimberly E. Colwell

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”) and Regent Products Corp., (“Regent” or “Defendant”), with Brimer and Regent 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. Regent 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 Brimer alleges that Regent has manufactured, imported, distributed and/or sold planners with vinyl/PVC covers containing 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.

16 **1.3 Product Description**

17 As used in this Consent Judgment, “Products” shall mean planners with vinyl/PVC covers containing DEHP including, but not limited to, *Planner 2012 Monthly Page Format, Item No. G2065N (#7 2100302065 8)*, manufactured, imported, distributed and/or sold by Regent for sale in the State of California.

21 **1.4 Notice of Violation**

22 On December 21, 2012, Brimer served Regent and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with notice alleging that Regent was in violation of Proposition 65 for failing to warn consumers and customers that its planners with vinyl/PVC covers exposed users in State of California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

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1.5 Complaint

On or about April 17, 2013, Brimer filed a complaint in the Superior Court in the County of Alameda against Regent and Does 1 through 150, *Brimer v. Regent Products Corp., et al.*, Case No. RG13675862, alleging violations of Proposition 65, based on the alleged exposures to DEHP contained in certain planners with vinyl/PVC covers containing DEHP sold by Regent (“Complaint”).

1.6 No Admission

Regent denies the material, factual and legal allegations contained in Brimer’s Notice and Complaint and maintains that all products that it has sold, manufactured, imported and/or distributed in the State of California, including the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Regent of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Regent of any fact, finding, conclusion, issue of law, or violation of law. However, this Section shall not diminish or otherwise affect Regent’s obligations, responsibilities and duties under this Consent Judgment.

1.7 Consent to Jurisdiction

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

1.8 Execution Date

For purposes of this Consent Judgment, the term “Execution Date” shall mean the date this Consent Judgment is signed by both parties.

1.9 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the Court enters Judgment pursuant to the terms of this Consent Judgment.

1 **1.10 Accessible Component**

2 For purposes of this Consent Judgment, the term “Accessible Component” means a
3 component of the Products that could be touched by a person during reasonably foreseeable use.

4
5 **2. INJUNCTIVE RELIEF: REFORMULATION**

6 **2.1 Reformulation Standard**

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

12 **2.2 Reformulation Commitment**

13 Commencing on March 1, 2014, all Products manufactured, produced, assembled, imported,
14 distributed, shipped, sold and/or offered by Regent for sale in the State of California shall qualify as
15 Reformulated Products as defined in Section 2.1 above.

16 **3. MONETARY PAYMENTS**

17 **3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

18 In settlement of all the claims referred to in this Consent Judgment, Regent shall pay a total
19 of \$12,100 in accordance with this Section. Each penalty payment will be allocated in accordance
20 with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to
21 the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
22 25% of the penalty remitted to Brimer, as follows:

23 **3.1.1 Initial Civil Penalty.** Regent shall pay an initial civil penalty in the amount
24 of \$7,100. Regent shall issue two separate checks made payable as follows: (a) the first to
25 “OEHHA” in the amount of \$5,325 due within five (5) days of the Execution Date; and (b) the
26 second to “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,775 due within
27 five (5) days of the Execution Date and to be held in trust until Court approval of this Consent
28 Judgment. All penalty payments shall be delivered to the addresses listed in Section 3.4 below.

1 **3.1.2 Final Civil Penalty.** Regent shall pay a final civil penalty of \$5,000 on or
2 before December 1, 2014. The final civil penalty shall be waived in its entirety if an officer of
3 Regent provides Brimer with written certification that, as of the date of the certification and
4 continuing into the future, Regent has met the Reformulation Standard specified in Section 2.1
5 above such that pursuant to Section 2.2 above all Products manufactured, produced, assembled,
6 imported, distributed, shipped, sold or offered for sale in State of California as of March 1, 2014 and
7 continuing into the future are Reformulated Products. Brimer must receive any such certification on
8 or before November 15, 2014, and time is of the essence. Unless waived in its entirety, Regent shall
9 issue two separate checks for any remaining portion of the final civil penalty, with 75% of the funds
10 remitted to OEHHA and 25% of the funds remitted to "The Chanler Group in Trust for Russell
11 Brimer." Regent shall be liable for payment of interest, at a rate of 10% simple interest, for all
12 amounts due and owing under this Section that are not received within two business days of the due
13 date.

14 **3.2 Representation**

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

25 **3.3 Reimbursement of Fees and Costs**

26 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
27 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
28 issue to be resolved after the material terms of the agreement had been settled. Regent then

1 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
2 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
3 Brimer and his counsel under general contract principles and the private attorney general doctrine
4 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
5 execution of this agreement, except fees that may be incurred on appeal. Regent shall pay \$32,000
6 for fees and costs incurred as a result of investigating, bringing this matter to Regent's attention,
7 and negotiating a settlement in the public interest, as well as the fees and costs incurred (and to be
8 incurred) obtaining the Court's approval of this Consent Judgment in the public interest. Regent
9 shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to
10 "The Chanler Group" to be held in its trust account until Court approval of this Consent Judgment
11 and shall deliver payment within five (5) business days of the Execution Date

12 **3.4 Payment Procedures**

13 **3.4.1. Issuance of Payments.** Payments shall be delivered as follows:

14 (a) All payments owed to Brimer and his counsel, pursuant to Sections
15 3.1 through 3.3, shall be delivered to the following payment address:

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

21 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
22 Section 3.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the
23 following addresses:

24 For United States Postal Service Delivery:

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

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

3 **3.4.2 Proof of Payment to OEHHA.** Regent shall mail a copy of each check
4 payable to OEHHA, simultaneous with payment, to The Chanler Group at the address set forth in
5 Section 3.4.1(a) above, as proof of payment to OEHHA.

6 **3.4.3 Tax Documentation.** Regent shall issue a separate 1099 form for each
7 payment required by this Section to: (a) Russell Brimer, whose address and tax identification
8 number shall be furnished upon request after this Consent Judgment has been fully executed by the
9 Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard
10 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
11 4010, Sacramento, CA 95814; and (c) "The Chanler Group" (EIN: 94-3171522) to the address set
12 forth in Section 3.4.1(a) above.

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 Brimer's Release of Regent**

15 Brimer, acting on his own behalf and in the public interest, waives all rights to institute or
16 participate in, directly or indirectly, any form of legal action and releases Regent, its parents,
17 subsidiaries, affiliated entities, successors, and/or assignees, that are under common ownership,
18 directors, officers, employees, shareholders, attorneys, and each entity to whom Regent directly or
19 indirectly distributes or sells Products, including, but not limited to, downstream distributors,
20 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
21 ("Releasees"), from all claims including, without limitation, all actions and causes of action in law
22 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
23 expenses, investigation fees, expert fees, and attorneys' fees of any nature whatsoever arising from
24 any violation of Proposition 65 up through the Effective Date based on exposure to DEHP from the
25 Products. Compliance with the terms of this Consent Judgment constitutes compliance with
26 Proposition 65 with respect to exposures to DEHP from the Products as set forth in the Notice.

27 Brimer, also, in his individual capacity only and *not* in his representative capacity, provides a
28 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all

1 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
2 liabilities and demands of Brimer of any nature, character or kind, whether known or unknown,
3 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the DEHP in
4 the Products manufactured, imported, distributed and/or sold by Releasees for sale in the State of
5 California prior to the Effective Date.

6 **4.2 Regent's Release of Brimer**

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

13 **5. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and shall
15 be null and void if, for any reason, it is not approved and entered by the Court within one year after
16 it has been fully executed by all parties. In the event the Court does not approve this Consent
17 Judgment within one year, the funds paid pursuant to Section 3 of this Consent Judgment shall be
18 returned to Regent.

19 Brimer and Regent agree to support the entry of this agreement as a Consent Judgment and
20 obtain approval of the Consent Judgment by the Court in a timely manner. The Parties
21 acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is
22 required to obtain judicial approval of this Consent Judgment, which Brimer shall draft and file. If
23 any third-party objection to the noticed motion is filed, Brimer and Regent shall work together to
24 file a reply and appear at any hearing before the Court. This provision is a material component of
25 the Consent Judgment and shall be treated as such in the event of a breach.

26 **6. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California
28 and the obligations of Regent hereunder as to the Products apply only within the State of California.

1 In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by
2 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
3 inapplicable or no longer required as a result of any such repeal or preemption or rendered
4 inapplicable by reason of law generally as to the Products, then Regent shall notify Brimer and his
5 counsel and may have no further obligations pursuant to this Consent Judgment with respect to, and
6 to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
7 interpreted to relieve Regent from any obligation to comply with any pertinent state or federal
8 toxics control law.

9 **7. NOTICES**

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

14 To Brimer:

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

18 To Regent:

19 Michael De Paul, President
20 Regent Products Corp.
8999 Palmer St.
21 River Grove, IL 60171

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

24 **8. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

25 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
26 each of which shall be deemed an original, and all of which, when taken together, shall constitute
27 one and the same document. A facsimile or pdf signature shall be as valid as the original.
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9. **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).

10. **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.

11. **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 18, 2013

Date: DECEMBER 18, 2013

By: 
Plaintiff, Russell Brimer

By: 
Michael DePaul, President
Defendant, Regent Products Corp.