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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: [illegible], Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER, Plaintiff, v. HORNBY AMERICA INC., *et al.*, Defendants.	Case No. CIV1502258 **[PROPOSED] JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT** Date: Time: 9 AM Dept.: E Judge: Hon. Paul M. Haakenson

In the above-entitled action, plaintiff Russell Brimer and defendant Hornby America Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a [Proposed] Consent Judgment ("Consent Judgment"), and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment on 1-29-16;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit 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: 1-29-16

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

Chris Tuttle, State Bar No. 264545
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RUSSELL BRIMER,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER, Plaintiff, v. HORNBY AMERICA INC., *et al.*, Defendants.	Case No. CIV1502258 **[PROPOSED]CONSENT JUDGMENT** (Health & Safety Code § 25249.6 *et seq.* and Code of Civil Procedure § 664.6)

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Russell Brimer ("Brimer") and defendant Hornby America Inc. ("Hornby"), with Brimer and Hornby each referred to individually as a "Party" and collectively as the "Parties."

1.2 Plaintiff

Brimer is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer and commercial products.

1.3 Defendant

Hornby 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 and Safety Code section 25249.5 *et seq.* ("Proposition 65").

1.4 General Allegations

Brimer alleges that Hornby manufactures, imports, sells and/or distributes for sale in California, vinyl/PVC tool grips containing di(2-ethylhexyl)phthalate ("DEHP"), and that it does so without providing the warning that Brimer alleges is required by Proposition 65.

1.5 Product Description

The products covered by this Consent Judgment are vinyl/PVC tool grips containing DEHP, including, but not limited to, the *Humbrol The Modeller's Tool Set, AG9159, UPC #5 010279 391599* that Hornby has manufactured, or distributed or sold and which have been sold or offered for sale to California consumers (collectively, "Products").

1.6 Notice of Violation

On March 31, 2015, Brimer served Hornby and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Hornby violated Proposition 65 when it failed to warn its customers and consumersin, California that the Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.7 Complaint

On June 18, 2015, Brimer commenced the instant action, naming Hornby, among others, as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 No Admission

Hornby denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission against interest by Hornby of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission against interest by Hornby of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Hornby's obligations, responsibilities, and duties under this Consent Judgment. Excepting compliance with this Consent Judgment, nothing in this Consent Judgment shall preclude Hornby from asserting any and all applicable defenses available to it in any future proceeding by any person under Proposition 65 or otherwise.

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Hornby as to the allegations contained in the Complaint, that venue is proper in the County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that Brimer serves notice on Hornby that the Court has granted the motion for approval of this Consent Judgment contemplated by Section 5.

2. INJUNCTIVE SETTLEMENT TERMS

Commencing on the Effective Date, and continuing thereafter, Hornby shall only (i) manufacture for sale in California, or (ii) distribute for sale in California, Reformulated Products.

For purposes of this Consent Judgment "Reformulated Products" are defined as Products with a maximum DEHP concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Consent Judgment, Hornby shall pay $2,500 in civil penalties in accordance with this Section. The civil penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Brimer. Hornby shall provide its payment in a single check made payable to "Russell Brimer, Client Trust Account", to be delivered to the address provided in Section 3.4, below. Brimer's counsel shall be responsible for remitting Hornby's penalty payment under this Consent Judgment to OEHHA within five (5) business days of receipt.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Hornby expressed a desire to resolve Brimer's fees and costs. The Parties then negotiated a resolution of the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed through the mutual execution of this agreement and the Court's approval of the same, but exclusive of fees and costs on appeal, if any, Hornby shall reimburse Brimer and his counsel $27,500. Hornby's payment shall be delivered to the address in Section 3.4 in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Brimer investigating, bringing this matter to Hornby's

attention, litigating, and negotiating a settlement of the matter in the public interest. Brimer shall cooperate in the processing of the payments by providing upon request W-9, account number, and any related information necessary for timely processing of the civil penalty and reimbursement payments.

3.3 Payment Timing

Hornby shall deliver all payments required by this Consent Judgment to The Chanler Group within five (5) business days of the Effective Date, provided Brimer timely has provided any necessary information Hornby requested for processing of the payments.

3.4 Payment Address

All payments required by this Consent Judgment shall be delivered to the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710.

4. CLAIMS COVERED AND RELEASED

4.1 Brimer's Release of Proposition 65 Claims

Brimer, acting on his own behalf and in the public interest, releases Hornby and their parents, subsidiaries, affiliated entities (including Hornby Hobbies Ltd.) under common ownership, directors, officers, employees, and attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the Products including, but not limited to, their downstream distributors, wholesalers, customers, retailers (including RC Country Hobbies), franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products manufactured, imported, distributed or sold by Hornby or by any Releasee or Downstream Releasee prior to the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Hornby and its Releasees and Downstream Releasees with respect to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed

for sale by Hornby or any Releasee on and after the Effective Date. For the avoidance of doubt, the release of claims in this Section 4.1 covers and extends to all Products Hornby manufactured, or distributed or sold prior to the Effective Date, regardless of the date such Products are sold to California consumers.

4.2 Brimer's Individual Release of Claims

Brimer, in his individual capacity only and *not* in his representative capacity, also provides a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold by Hornby before the Effective Date.

4.3 Hornby's Release of Brimer

Hornby, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Brimer and his attorneys and other representatives, for any and all actions taken or statements made by Brimer and his attorneys and other representatives in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products, up through the Effective Date.

5. <u>COURT APPROVAL</u>

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by the Parties, or by such time as the Parties have agreed in writing to extend this period. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion Brimer shall draft and file. Hornby agrees to support entry of an order approving this Consent Judgment.

6. SEVERABILITY

If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply 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 as to the Products, then Hornby may provide Brimer with written notice of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Hornby from its obligation to comply with any pertinent state or federal law or regulation.

8. NOTICE

Unless specified herein, all correspondence and notice required by this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the following addresses:

To Hornby:

Frank Martin, President
Hornby America Inc.
3900 Industry Drive East, Suite C2
Fife, WA 98424

with a copy to:

Judith M. Praitis, Esq.
Sidley Austin, LLP
555 West 5th Street, 39th Floor
Los Angeles, California 90013

To Brimer:

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

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

10. COMPLIANCE WITH REPORTING REQUIREMENTS

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

11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any party and the entry of a modified Consent Judgment by the Court thereon. Any motion to modify shall be served on the Office of the Attorney General. The Parties shall meet and confer in good faith prior to one Party seeking a modification.

12. DISPUTE RESOLUTION

If either Party determines at a future date that a violation of this Consent Judgment has occurred, such Party shall provide notice to the other Party. Prior to bringing any action to enforce any requirement of this Consent Judgment, the Party alleging a violation shall provide the other Party with written notice of the grounds for such allegation together with credible supporting information as well as a demand for the relief sought. The Parties shall then meet and confer regarding in an attempt to resolve the matter informally within a period not less than thirty (30) days in an effort to resolve the allegations or alleged breach, if any. . Should such attempts at informal resolution fail, the Party alleging a violation may seek the proposed relief or other relief authorized by law.

13. AUTHORIZATION

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

AGREED TO:

RUSSELL BRIMER.

Dated: 9/29/15

AGREED TO:

HORNBY AMERICA INC.

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

13. AUTHORIZATION

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

AGREED TO:

RUSSELL BRIMER.

Dated: _____

AGREED TO:

HORNBY AMERICA INC.

By: STEPHEN COOKE
(Print Name)

Its: DIRECTOR
(Title)

Dated: 10/15/2015