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12 TOPCO ASSOCIATES, LLC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
15 UNLIMITED CIVIL JURISDICTION

17 RUSSELL BRIMER,  
18 Plaintiff,  
19 v.  
20 ACCO BRANDS CORPORATION, et al.,  
21 Defendants.

Case No. CGC-09-485784

**STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **Plaintiff and Topco Associates, LLC.** This Consent Judgment is entered into by and  
3 between plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”) and defendant Topco  
4 Associates, LLC (hereinafter “Topco” or “Defendant”), with Plaintiff and Defendant collectively  
5 referred to as the “Parties” and Brimer and Topco each being a “Party.”

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

9 **Defendant.** Topco employs ten or more persons and is a person in the course of doing  
10 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
11 Health & Safety Code §25249.6 *et seq.* (“Proposition 65”).

12 **General Allegations.** Plaintiff alleges that Defendant has manufactured, distributed  
13 and/or sold in the State of California vinyl-coated paper fastener products containing lead on the  
14 exterior surface. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act  
15 of 1986, California Health & Safety Code §§25249.5 *et seq.* and is known to be a reproductive  
16 toxicant. Lead (and/or lead compounds) shall be referred to herein as the “Listed Chemical.”

17 **Product Description.** The products that are covered by this Consent Judgment are  
18 defined as follows: vinyl-coated paper fasteners containing lead, manufactured, imported,  
19 distributed and/or otherwise sold by Defendant in California. Such products collectively are  
20 referred to herein as the “Products.”

21 **Notices of Violation.** On or about December 23, 2008, Brimer served Topco and various  
22 public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”),  
23 that provided Topco and such public enforcers with notice that alleged that Topco was in  
24 violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain Products  
25 that they sold expose users in California to the Listed Chemical. No public enforcer has diligently  
26 prosecuted the allegations set forth in the Notice.

27 **Complaint.** On March 5, 2009, Brimer, who was and is acting in the interest of the  
28 general public in California, filed a complaint (hereafter referred to as the “Complaint” or the

1 “Action”) in the Superior Court for the County of San Francisco against Topco, other defendants,  
2 and Does 1 through 600, alleging violations of Health & Safety Code §25249.6 based on the  
3 alleged exposures to lead contained in certain Products sold by Defendant without the requisite  
4 health hazard warnings. On March 12, 2009, Brimer filed an Amended Complaint in the Superior  
5 Court for the County of San Francisco.

6 **No Admission.** Topco denies the material factual and legal allegations contained in  
7 Brimer’s Notice and Complaint and maintains that all products that it has sold and distributed in  
8 California including the Products have been and are in compliance with all laws. Nothing in this  
9 Consent Judgment shall be construed as an admission by Topco of any fact, finding, issue of law,  
10 or violation of law, nor shall compliance with this Agreement constitute or be construed as an  
11 admission by Topco of any fact, finding, conclusion, issue of law, or violation of law. However,  
12 this section shall not diminish or otherwise affect the obligations, responsibilities and duties of  
13 Topco under this Consent Judgment.

14 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties  
15 stipulate that this Court has jurisdiction over the Parties and concerning the alleged violations at  
16 issue and personal jurisdiction over Topco as to the acts alleged in the Complaint, that venue is  
17 proper in the County of San Francisco, and that this Court has jurisdiction to enter and enforce the  
18 provisions of this Consent Judgment.

19 **Effective Date.** For purposes of this Consent Judgment, the “Effective Date” shall be  
20 October 23, 2009.

21 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS AND**  
22 **REFORMULATION**

23 **2.1 Reformulation Commitment.** Commencing on the Effective Date, Topco shall  
24 not knowingly (as defined by 27 C.C.R. §25102(n)) ship, sell or offer to be shipped for sale in  
25 California any vinyl coated paper fastener with a vinyl coating that is not “Lead Free.” For  
26 purposes of this Consent Judgment, “Lead Free” Products shall mean Products containing  
27 components that may be handled, touched or mouthed by a consumer, and which components  
28 have less than 300 parts per million (“ppm”) of lead, when using a method of detection and

1 analysis authorized under 27 C.C.R. §25900. Products that are Lead Free are referred to  
2 hereinafter as “Reformulated Products.”

3 **3. MONETARY PAYMENTS**

4 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b).** Pursuant to Health  
5 & Safety Code §25249.7(b), the total civil penalty assessed shall be \$11,000. Civil penalties are  
6 to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these  
7 funds remitted to the State of California’s Office of Environmental Health Hazard Assessment  
8 (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer as provided by California  
9 Health & Safety Code §25249.12(d).

10 Topco shall issue two separate checks for each of the penalty payments: (a) one check  
11 made payable to Hirst & Chanler LLP in Trust for the State of California’s Office of  
12 Environmental Health Hazard Assessment (OEHHA) in the amount of \$8,250 representing  
13 75% of the total penalty; and (b) one check to Hirst & Chanler LLP in Trust for Brimer in the  
14 amount of \$2,750, representing 25% of the total penalty. Two separate 1099s shall be issued  
15 for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010,  
16 Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$8,250. The second 1099 shall be  
17 issued to Brimer in the amount of \$2,750, whose address and tax identification number shall be  
18 furnished, upon request, five calendar days before payment is due. The payment shall be made  
19 payable to Hirst & Chanler LLP and shall be delivered within ten (10) days of the Effective  
20 Date, at the following address:

21 Hirst & Chanler LLP  
22 Attn: Proposition 65 Controller  
23 2560 Ninth Street  
24 Parker Plaza, Suite 214  
25 Berkeley, CA 94710-2565

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1 **4. REIMBURSEMENT OF FEES AND COSTS**

2 **4.1 Attorney Fees and Costs.**

3 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute  
4 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
5 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
6 Topco then expressed a desire to resolve the fee and cost issue shortly after the other settlement  
7 terms had been finalized. The Parties then attempted to (and did) reach an accord on the  
8 compensation due to Brimer and his counsel under general contract principles and the private  
9 attorney general doctrine codified at California Code of Civil Procedure (C.C.P.) §1021.5, for  
10 all work performed through the mutual execution of this agreement. Topco shall reimburse Dr.  
11 Held and his counsel a total of \$49,500 for fees and costs incurred as a result of investigating,  
12 bringing this matter to Topco's attention, and litigating and negotiating a settlement in the  
13 public interest. Topco shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and  
14 shall make the check payable to "Hirst & Chanler LLP" and shall be delivered within ten (10)  
15 days of the Effective Date, at the following address:

16 Hirst & Chanler LLP  
17 Attn: Proposition 65 Controller  
18 2560 Ninth Street  
19 Parker Plaza, Suite 214  
20 Berkeley, CA 94710-2565

21 **5. RELEASE OF ALL CLAIMS**

22 **5.1 Brimer's Release of Topco.** In further consideration of the promises and  
23 agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4,  
24 Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors,  
25 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or  
26 participate in, directly or indirectly, any form of legal action and releases all claims including,  
27 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,  
28 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,  
investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or

1 unknown, fixed or contingent (collectively “Claims”), that were brought or could have been  
2 brought against Topco or its parents, subsidiaries or affiliates (including Kingston Marketing),  
3 and all of their customers, members, distributors, wholesalers, retailers, licensors, licensees, or  
4 any other person in the course of doing business, and the successors and assigns of any of them,  
5 who may use, maintain, manufacture, distribute, advertise, market or sell Products, and the  
6 officers, directors, managers, employees, members, shareholders, agents, insurers and  
7 representatives of each of them (collectively “Defendant Releasees”) in this Action. This release  
8 is limited to, but is intended to be a full, final, and binding resolution of, those Claims that arise  
9 under Proposition 65, as against Topco and Defendant Releasees, as such Claims relate to  
10 Topco’s alleged failure to warn about exposures to the Listed Chemical contained in the Products.  
11 Topco’s compliance with this Consent Judgment shall constitute compliance with Proposition 65  
12 for Topco and its Releasees with respect to the Listed Chemical in such items after the Effective  
13 Date.

14 Brimer also, in his individual capacity only and *not* in his representative capacity, provides  
15 a general release herein which shall be effective as a full and final accord and satisfaction, as a bar  
16 to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,  
17 claims, liabilities and demands of Brimer of any nature, character or kind, known or unknown,  
18 suspected or unsuspected, relating to any chemical listed under Proposition 65 and contained in  
19 any product sold by Topco. Brimer acknowledges that he is familiar with Section 1542 of the  
20 California Civil Code, which provides as follows:

21 A general release does not extend to claims which the creditor does not know or  
22 suspect to exist in his or her favor at the time of executing the release, which if  
known by him or her must have materially affected his settlement with the debtor.

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

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         The Parties further understand and agree that this release shall not extend upstream to any  
4 entities that manufactured the Products for Topco or any component parts thereof or to any  
5 distributors or suppliers who sold the Products or any component parts thereof to Topco.

6         **5.2 Topco's Release of Brimer.** Topco waives any and all claims against Brimer, his  
7 attorneys, and other representatives for any and all actions taken or statements made (or those that  
8 could have been taken or made) by Brimer and his attorneys and other representatives, whether in  
9 the course of investigating claims or otherwise seeking enforcement of Proposition 65 against  
10 them in this matter, and/or with respect to the Products.

11         Topco also provides a general release to Brimer, his attorneys and other representatives  
12 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of  
13 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and  
14 demands of Topco of any nature, character or kind, known or unknown, suspected or  
15 unsuspected, arising out of the subject matter of the Action. Topco acknowledges that it is  
16 familiar with Section 1542 of the California Civil Code, which provides as follows:

17             A general release does not extend to claims which the creditor does not know or  
18             suspect to exist in his or her favor at the time of executing the release, which if  
19             known by him or her must have materially affected his settlement with the debtor.

20         Topco expressly waives and relinquishes any and all rights and benefits which it may  
21 have under, or which may be conferred on it by the provisions of Section 1542 of the California  
22 Civil Code as well as under any other state or federal statute or common law principle of similar  
23 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the  
24 released matters. In furtherance of such intention, the release hereby given shall be and remain in  
25 effect as a full and complete release notwithstanding the discovery or existence of any such  
26 additional or different claims or facts arising out of the released matters.

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1 **6. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and  
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
4 year after it has been fully executed by all Parties, in which event any monies that have been  
5 provided to Plaintiff or his counsel pursuant to section 3 and section 4 above, shall be refunded  
6 within fifteen (15) days.

7 **7. SEVERABILITY**

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

11 **8. ENTIRE AGREEMENT**

12 This Consent Judgment contains the sole and entire agreement and understanding of the  
13 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
14 negotiations, commitments, and understandings related hereto. No representations, oral or  
15 otherwise, express or implied, other than those contained herein have been made by any party  
16 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
17 to exist or to bind any of the parties.

18 **9. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of  
20 California and apply within the State of California. In the event that Proposition 65 is repealed  
21 or is otherwise rendered inapplicable by reason of law generally, or as to the Products  
22 specifically, then Topco shall have no further injunctive obligations pursuant to this Consent  
23 Judgment with respect to, and to the extent that, those Products are so affected.

24 **10. NOTICES**

25 All correspondence and notices required to be provided pursuant to this Consent  
26 Judgment shall be in writing and personally delivered or sent by: (i) first-class, registered,  
27 certified mail, return receipt requested, or (ii) overnight courier on either Party by the other at

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1 the addresses listed below. Either Party, from time to time, may specify a change of address to  
2 which all notices and other communications shall be sent.

3 For Plaintiff:

4 Russell Brimer  
5 c/o Hirst & Chanler LLP  
6 Attn: Proposition 65 Controller  
7 2560 Ninth Street  
8 Parker Plaza, Suite 214  
9 Berkeley, CA 94710-2565

For Defendant:

Topco Associates LLC  
c/o Frank Muschetto  
7711 Gross Point Road  
Skokie, Illinois 60077-2697

With a copy to:  
Edward P. Sangster  
Ramiz I. Rafeedie  
K&L Gates LLP  
4 Embarcadero Center, Suite 1200  
San Francisco, CA 94111

10 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

11 This Consent Judgment may be executed in counterparts and by facsimile, each of which  
12 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
13 same document.

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

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

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

18 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed  
19 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of  
20 obtaining such approval, Brimer agrees to employ his best efforts to support the entry of this  
21 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in  
22 a timely manner. Topco agrees to support and join in such motion.

23 **14. MODIFICATION**

24 This Consent Judgment may be modified only by: (1) written agreement of the Parties  
25 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any  
26 Party as provided by law and upon entry of a modified Consent Judgment by the Court.  
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**15. 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:**

**AGREED TO:**

Date: 10-22-09

Date: \_\_\_\_\_

By:   
Plaintiff RUSSELL BRIMER

By: \_\_\_\_\_  
Defendant TOPCO ASSOCIATES, LLC

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1 **15. AUTHORIZATION**

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

5  
6 **AGREED TO:**

**AGREED TO:**

7 Date: \_\_\_\_\_

8 Date: 10/24/09

9 By: \_\_\_\_\_  
10 Plaintiff RUSSELL BRIMER

11 By:   
12 Defendant TOPCO ASSOCIATES, LLC

13  
14 **IT IS SO ORDERED.**

15  
16 Date: \_\_\_\_\_

17 \_\_\_\_\_  
18 JUDGE OF THE SUPERIOR COURT