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

RUSSELL BRIMER,

Plaintiff,

v.

STAEDTLER, INC.; and DOES 1 through 150,
inclusive,

Defendants.

Case No. RG09470427

[PROPOSED] CONSENT
JUDGMENT

HEALTH & SAFETY CODE §25249.6

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Staedtler, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer” or
4 “Plaintiff”) and defendant Staedtler, Inc. (“Staedtler”), with Plaintiff and Staedtler collectively
5 referred to as the “parties.”

6 **1.2 Plaintiff**

7 Mr. Brimer is an individual residing in the State of California who seeks to promote
8 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer products.

10 **1.3 Defendants**

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

14 **1.4 General Allegations**

15 Mr. Brimer generally alleges that Staedtler has manufactured, distributed and/or sold certain
16 flexible curve drawing products containing lead without the requisite health hazard warnings
17 allegedly required by Proposition 65. Lead is listed as a reproductive and developmental toxicant
18 pursuant to Proposition 65. In addition, di(2-ethylhexyl)phthalate (“DEHP”) and other phthalates
19 such as butyl benzyl phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”) are listed as reproductive
20 toxicants under Proposition 65. Lead and DEHP, BBP, and DBP shall be collectively referred to
21 hereinafter as “Listed Chemicals.”

22 **1.5 Product Description**

23 The products that are addressed in this Consent Judgment are flexible curve drawing products
24 (“Products”).

25 **1.6 Notice of Violation**

26 On May 22, 2009, Brimer served Staedtler and various public enforcement agencies with a
27 “60-Day Notice of Violation” (“Notice”) that provided Staedtler and public enforcers with notice of
28 alleged violations of Health & Safety Code §25249.6 for failing to warn consumers that Products that

1 Staedtler sold exposed users in California to lead. No public enforcer has of the Effective Date
2 diligently prosecuted the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On August 25, 2009, Brimer, who was and is acting in the interest of the general public in
5 California, filed an amendment to a complaint in the Superior Court in and for the County of
6 Alameda alleging violations of Health & Safety Code §25249.6 by Staedtler based on the alleged
7 exposures to lead contained in the Products distributed for sale in California by Staedtler. The case
8 number for the action is RG09470427 (“Complaint”).

9 **1.8 No Admission**

10 Staedtler denies the material, factual and legal allegations contained in the Notice and
11 Complaint and maintains that all Products that it has sold and distributed in California have been and
12 are in compliance with all applicable laws. Nothing in this Consent Judgment shall be construed as
13 an admission by Staedtler of any fact, finding, issue of law, or violation of law; nor shall compliance
14 with this Consent Judgment constitute or be construed as an admission by Staedtler of any fact,
15 finding, conclusion, issue of law, or violation of law, such being specifically denied by Staedtler.
16 However, this Section shall not diminish or otherwise affect Staedtler’s obligations, responsibilities,
17 and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean August 31,
25 2009.

1 **2. INJUNCTIVE RELIEF: REFORMULATION IN LIEU OF WARNINGS**

2 **2.1 Reformulation Definitions, Representations, and Commitments**

3 For purposes of this section, “Lead Free” Products shall mean Products containing accessible
4 components that have less than 300 ppm lead when analyzed pursuant to EPA method 3050B. For
5 purposes of this section “Phthalate Free” Products shall mean Products containing less than or equal
6 to 1,000 parts per million (“ppm”) of each of DEHP, BBP, and DBP, when analyzed by any testing
7 methodology selected by Staedtler that is acceptable to state or federal government agencies in
8 determining compliance with phthalate standards. Products that are both Lead Free and Phthalate
9 Free are referred to hereinafter as “Reformulated Products.”

10 Following its receipt of Brimer’s Notice, Staedtler: (a) immediately conducted an
11 investigation concerning the potential presence of Listed Chemicals in the Products, (b) implemented
12 a reformulation process to terminate the use of Listed Chemicals in the manufacture of all Products,
13 and (c) has only shipped, for sale in California, Products which constitute Reformulated Products.

14 In lieu of providing Proposition 65 warnings for them, Staedtler agrees to continue to only
15 ship Products that constitute Reformulated Products. In addition, as of the Effective Date, Staedtler
16 shall cause all Products to be manufactured such that they also constitute Reformulated Products.

17 **3. MONETARY PAYMENTS**

18 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

19 Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be
20 \$4,000. The foregoing amount of civil penalties was calculated in light of Staedtler’s prompt
21 cooperation with Brimer in resolving this matter, their volunteering to expand the scope of this
22 Consent Judgment to cover a wider range of Listed Chemicals, and its reformulation representations
23 and commitments as set forth in Section 2.1 above.

24 Civil penalties are to be apportioned in accordance with California Health & Safety Code
25 §25192, with 75% of these funds remitted to the State of California’s Office of Environmental Health
26 Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Russell Brimer as
27 provided by California Health & Safety Code §25249.12(d). Staedtler shall issue two separate
28 checks for the penalty payment: (a) one check made payable to “Hirst & Chanler LLP in Trust For

1 OEHHA” in the amount of \$3,000, representing 75% of the total penalty; and (b) one check to “Hirst
2 & Chanler LLP in Trust for Russell Brimer” in the amount of \$1,000 representing 25% of the total
3 penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010,
4 Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose information shall be
5 provided to Staedtler at least ten calendar days before the payment is due.

6 Payment shall be delivered to Brimer’s counsel within fifteen days of the Effective Date at the
7 following address:

8 Proposition 65 Coordinator
9 HIRST & CHANLER LLP
10 2560 Ninth Street
11 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

13 **4.1 Attorney Fees and Costs.**

14 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
16 issue to be resolved after the material terms of the agreement had been settled. Staedtler then
17 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
18 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Brimer
19 and his counsel under general contract principles and the private attorney general doctrine codified at
20 California Code of Civil Procedure (CCP) §1021.5 for all work performed in conjunction with this
21 matter, including, but not limited to corresponding with opposing counsel, negotiating and drafting
22 this Consent Judgment and associated motion to approve papers, fulfilling the reporting requirements
23 referenced in Health & Safety Code §25249.7(f), and appearing before the Court. Accordingly,
24 Staedtler shall reimburse Brimer and his counsel a total of \$33,000 for fees and costs incurred as a
25 result of investigating, bringing this matter to Staedtler’s attention, and litigating and negotiating a
26 settlement in the public interest. Staedtler shall issue a separate 1099 for fees and costs (tax
27 identification number to be provided to Staedtler at least ten days prior to when this payment is due)
28

1 and shall make the check payable to “Hirst & Chanler LLP.” Said check shall be delivered within
2 fifteen days of the Effective Date to the following address:

3 Proposition 65 Coordinator
4 HIRST & CHANLER LLP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565

7 **5. RELEASE OF ALL CLAIMS**

8 **5.1 Release of Staedtler**

9 In further consideration of the promises and agreements herein contained, the injunctive relief
10 commitments set forth in Section 2.1, and for the payments to be made pursuant to Sections 3 and 4,
11 Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
12 assignees, and in the interest of the general public, hereby waives all rights to institute or participate
13 in, directly or indirectly, any form of legal action and releases all claims, including, without
14 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
15 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees,
16 expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or
17 contingent (collectively “claims”), against Staedtler and each of its wholesalers, licensors, licensees,
18 import partners, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users,
19 parent companies, corporate affiliates, and subsidiaries, and their respective officers, directors,
20 attorneys, representatives, shareholders, agents, and employees, and sister and parent entities
21 (collectively “Releasees”). This release is limited pursuant to the Notice to those claims that arise
22 under Proposition 65 with respect to lead in the Products, as such claims relate to the alleged failure
23 to warn under Health & Safety Code §25249.6. Nevertheless, Brimer on behalf of himself, his past
24 and current agents, representatives, attorneys, successors, and/or assignees, but not on behalf of the
25 general public, hereby also waives all claims for failure to warn under Proposition 65 with respect to
26 the additional Listed Chemicals (as defined in Section 1.4 above) in the Products. In addition, with
27 respect to respect to the presence of the additional Listed Chemicals in Products sold in the future,
28

1 Staedtler's compliance with the terms of injunctive relief set forth in Section 2 of this Consent
2 Judgment shall be deemed to constitute compliance with Health & Safety Code §25249.6.

3 **5.2 Staedtler's Release of Brimer**

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

9 **6. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved and entered by the Court and shall
11 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
12 has been fully executed by all parties, in which event any monies that have been provided to Brimer,
13 or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days
14 after receiving written notice from Staedtler that the one year period has expired.

15 **7. SEVERABILITY**

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

19 **8. GOVERNING LAW**

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

25 **9. NOTICES**

26 Unless specified herein, all correspondence and notices required to be provided pursuant to
27 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
28

1 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
2 other party at the following addresses:

3 To Staedtler:

4 Michael H. Wiesmann, President
5 Staedtler, Inc.
6 21900 Plummer Street
7 Chatsworth, CA 91311

8 With a copy to:

9 Robert L. Falk
10 MORRISON & FOERSTER LLP
11 425 Market Street, 32nd Floor
12 San Francisco, California 94105

13 To Brimer:

14 Proposition 65 Coordinator
15 HIRST & CHANLER LLP
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710-2565

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

21 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

26 Brimer agrees to comply with the reporting form requirements referenced in California Health
27 & Safety Code §25249.7(f).

28 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
approval, Brimer and Staedtler and their respective counsel agree to mutually employ their best
efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the

1 Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall
2 include, at a minimum, cooperating on the drafting and filing any papers in support of the required
3 motion for judicial approval.

4 **13. MODIFICATION**

5 This Consent Judgment may be modified only: (1) by written agreement of the parties and
6 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
7 any party and entry of a modified consent judgment by the Court.

8 **14. AUTHORIZATION**

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

11
12 **AGREED TO:**

13 Date: 8-25-09

14 
15 By: Plaintiff, RUSSELL BRIMER

AGREED TO:

Date: _____

By: _____
Defendant, STAEDTLER, INC.

16
17
18 **IT IS SO ORDERED.**

19 Date: _____

JUDGE OF THE SUPERIOR COURT

1 Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall
2 include, at a minimum, cooperating on the drafting and filing any papers in support of the required
3 motion for judicial approval.

4 **13. MODIFICATION**

5 This Consent Judgment may be modified only: (1) by written agreement of the parties and
6 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
7 any party and entry of a modified consent judgment by the Court.

8 **14. AUTHORIZATION**

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

11
12 **AGREED TO:**

AGREED TO:

13 Date: _____

Date: 8-26-2009

14 By: _____
15 Plaintiff, RUSSELL BRIMER

By: [Signature]
Defendant, STAEDTLER, INC.

16
17
18 **IT IS SO ORDERED.**

19 Date: _____

JUDGE OF THE SUPERIOR COURT