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GOSSI, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF CONTRA COSTA
13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 WALGREEN CO., GOSSI, INC., *et al.*,

18 Defendants.
19
20

Case No. CGC-09-485784

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code §25249.6

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer, Walgreen Co., and Gossi, Inc.**

3 This Consent Judgment is entered into by and between Russell Brimer (“Brimer”) and Gossi,
4 Inc. (“Gossi”) only, with Brimer and Gossi collectively referred to as the “Parties.”

5 **1.2 Plaintiff**

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

9 **1.3 Defendants**

10 After conducting his own investigation and upon receipt of certain documentation, Brimer
11 reasonably believes and alleges that Gossi employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6, et seq. (“Proposition 65”). Gossi contends that it is not a
14 person in the course of doing business for purposes of Proposition 65. Walgreen Co. (“Walgreen”) is a
15 retailer that sells flashlights distributed by Gossi that are alleged to contain lead that would cause a
16 Proposition 65 exposure, and is a person in the course of doing business for purposes of Proposition 65.
17 In order to avoid the uncertainty of litigation, Gossi desires to enter into a settlement agreement with
18 Brimer in exchange for a release for products sold by Gossi to Walgreen and a downstream release for
19 Walgreen’s sales of Gossi flashlights (as defined below in paragraph 1.5) and dismissal of Brimer’s
20 enforcement action against Walgreen.

21 **1.4 General Allegations**

22 Brimer alleges that Gossi has distributed flashlights that contain lead (hereinafter the “Listed
23 Chemical”), without the requisite Proposition 65 warnings. The Listed Chemical is on the Proposition
24 65 list as a chemical known to cause birth defects and other reproductive harm.

25 **1.5 Product Description**

26 The products that are covered by this Settlement Agreement are defined as follows: flashlights
27 containing the Listed Chemical on the exterior surface, including but not limited to, *Rugged*

1 *Multi-Purpose Flashlight, Item 709486 (#0 49022 18454 1)*. All such flashlights containing the Listed
2 Chemical are referred to hereinafter as the "Products".

3 **1.6 Notice of Violation**

4 On or about August 14, 2009 and September 27, 2010, Brimer served Walgreen, Gossi and
5 various public enforcement agencies with documents entitled "60-Day Notice of Violation" and
6 "Supplemental 60-Day Notice of Violation" (collectively, the "Notices") that provided Walgreen,
7 Gossi and public enforcers with notice of alleged violations of California Health & Safety Code
8 § 25249.6 for failing to warn consumers that the Products that Gossi distributed, and that Walgreen
9 sold, allegedly exposed users in California to the Listed Chemical. To the best of the parties'
10 knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notices.

11 **1.7 Complaint**

12 On or about November 23, 2009, Brimer, who was and is acting in the interest of the general public in
13 California, in the Superior Court in and for the County of Contra Costa, filed a complaint against
14 Walgreen and Does 1-50 alleging violations of Proposition 65 by Walgreen based on the alleged
15 exposures to the Listed Chemical contained in the Products distributed by Gossi and offered for sale in
16 California by Walgreen ("Complaint"). Upon entry of this Consent Judgment, the Complaint shall be
17 deemed amended, *nunc pro tunc* as of December 6, 2010, to allege that Gossi manufactured,
18 distributed, and/or sold the Products to consumers in California, and the Complaint shall be deemed
19 amended, *nunc pro tunc* as of December 6, 2010, to name Gossi, Inc. as Doe Number 1 and to allege
20 that the Products distributed and/or sold by Walgreen were manufactured and/or distributed by Gossi.

21 **1.8 No Admission**

22 Gossi denies the material, factual and legal allegations contained in Brimer's Notice and
23 maintains that all Products that it has manufactured, sold and/or distributed in California have been and
24 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
25 by Gossi or Walgreen of any fact, finding, issue of law, or violation of law; nor shall compliance with
26 this Consent Judgment constitute or be construed as an admission by Gossi of any fact, finding,
27 conclusion, issue of law, or violation of law, such being specifically denied by Gossi. However, this

1 section shall not diminish or otherwise affect Gossi's obligations, responsibilities, or duties under this
2 Consent Judgment.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction
5 over Gossi as to the allegations contained in the Complaint, that venue is proper in the County of Contra
6 Costa, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

7 **1.10 Effective Date**

8 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 1, 2010.

9 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

10 **2.1 Product Warnings**

11 Commencing on the Effective Date, Gossi shall not sell, ship, or offer to be shipped for sale in
12 California any Product unless such Products are sold or shipped with one of the clear and reasonable
13 warnings set forth in subsection 2.1, or comply with the reformulation standards set forth in Sections
14 2.2 and 2.3..

15 Each warning shall be prominently placed with such conspicuousness as compared with other
16 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
17 individual under customary conditions before purchase or use. Each warning shall be provided in a
18 manner such that the consumer or user understands to which *specific* Product the warning applies, so as
19 to minimize the risk of consumer confusion.

20 **(a) Retail Store Sales.**

21 **(i) Product Labeling.** Gossi may affix a warning to the packaging,
22 labeling, or directly on each Product sold or distributed for sale by Gossi or its agents for sale in
23 California., that states:

24 **WARNING:** This product contains lead, a chemical known to
25 the State of California to cause birth defects and
26 other reproductive harm.

27 **(b) Mail Order Catalog and Internet Sales.** In the event that Gossi sells Products

1 via mail order catalog or internet to customers located in California after the Effective Date that are not
2 Reformulated Products, Gossi shall provide a warning for Products sold via mail order catalog or the
3 Internet to California residents: (1) in the mail order catalog; or (2) on the website. Warnings given in
4 the mail order catalog or on the website shall identify the specific Product to which the warning applies
5 as further specified in Sections 2.1(b)(i) and (ii).

6 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order
7 catalog must be in the same type size or larger than the Product description text within the catalog. The
8 following warning shall be provided on the same page and in the same location as the display and/or
9 description of the Product:

10 **WARNING:** This product contains lead, a chemical known to
11 the State of California to cause birth defects and
other reproductive harm.

12 Where it is impracticable to provide the warning on the same page and in the same location as
13 the display and/or description of the Product, Gossi may utilize a designated symbol to cross reference
14 the applicable warning and shall define the term "designated symbol" with the following language on
15 the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

16 **WARNING:** Certain products identified with this symbol ▼
17 and offered for sale in this catalog contain lead,
18 a chemical known to the State of California to
cause birth defects and other reproductive
harm.

19 The designated symbol must appear on the same page and in close proximity to the display
20 and/or description of the Product. On each page where the designated symbol appears, Gossi must
21 provide a header or footer directing the consumer to the warning language and definition of the
22 designated symbol.

23 If Gossi elects to provide warnings in the mail order catalog, then the warnings must be
24 included in all catalogs offering to sell one or more Products printed after the Effective Date.

25 (ii) **Internet Website Warning.** A warning may be given in conjunction
26 with the sale by Gossi of the Products via the Internet, provided it appears either: (a) on the same web
27 page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on

1 the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
2 during the checkout process. The following warning statement shall be used and shall appear in any of
3 the above instances adjacent to or immediately following the display, description, or price of the
4 Product for which it is given in the same type size or larger than the Product description text:

5 **WARNING:** This product contains lead, a chemical known to
6 the State of California to cause birth defects and
 other reproductive harm.

7 Alternatively, the designated symbol may appear adjacent to or immediately following the
8 display, description, or price of the Product for which a warning is being given, provided that the
9 following warning statement also appears elsewhere on the same web page, as follows:

10 **WARNING:** Products identified on this page with the
11 following symbol ▼ contain lead, a chemical
12 known to the State of California to cause birth
 defects and other reproductive harm.

13 **2.2 Exceptions To Warning Requirements**

14 The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as
15 defined in Section 2.3 below.).

16 **2.3 Reformulation Standards**

17 Reformulated Products are defined as those Products containing components that may be
18 handled, touched or mouthed by a consumer, which yield less than 100 parts per million (“ppm”) of
19 lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent
20 methodologies utilized by federal or state agencies for the purpose of determining lead content in a
21 solid substance, and which components yield less than 1.0 microgram of lead when using a wipe test
22 pursuant to NIOSH Test Method 9100.

23 **3. MONETARY PAYMENTS**

24 **3.1.1.** In settlement of all claims related to the Products and Listed Chemical referred
25 to in the Complaint, and this Consent Judgment, pursuant to Health & Safety Code § 25249.7(b), Gossi
26 shall pay a civil penalty of \$2,000 as follows: Gossi shall issue two separate checks for the civil penalty
27

OM

1 payment pursuant to Health & Safety Code § 25192: (a) one check made payable to "The Chanler
2 Group in Trust For The State of California's Office of Environmental Health Hazard Assessment
3 (OEHHA)" in the amount of \$1,500, representing 75% of the total penalty; and (b) one check to "The
4 Chanler Group in Trust for Russell Brimer" in the amount of \$500, representing 25% of the total
5 penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010,
6 Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose information shall be
7 provided five (5) calendar days before the payment is due.

8 Payment shall be delivered to Brimer's counsel on or before October ^{8 OJ} 2010 at the following
9 address:

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710

13 REIMBURSEMENT OF FEES AND COSTS

14 3.1 Attorney Fees and Costs

15 The parties reached an accord on the compensation due to Brimer and his counsel under the
16 private attorney general doctrine and principles of contract law. Under these legal principles, Gossi
17 shall reimburse Brimer's counsel for fees and costs, incurred as a result of investigating, bringing this
18 matter to Gossi's attention, and negotiating a settlement in the public interest. Gossi shall pay Brimer
19 and his counsel \$43,000 for all attorneys' fees, expert and investigation fees, and related costs. The
20 payment shall be issued in a third separate check made payable to "The Chanler Group" and shall be
21 delivered on or before October ^{8 OJ} 2010, at the following address:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

25 Gossi shall issue a separate 1099 for fees and cost paid in the amount of \$43,000 to The Chanler
26 Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California, 94710 (EIN: 20-3929984).
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1 **4. RELEASE OF ALL CLAIMS**

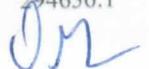
2 **4.1 Brimer's Release of Gossi and Walgreen**

3 In further consideration of the promises and agreements herein contained, and for the payments
4 to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself and in his representative
5 capacity, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the
6 interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly,
7 any form of legal action and releases all claims, including, without limitation, all actions, and causes of
8 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
9 losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of
10 any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"),
11 against Gossi and each of its affiliated and/or downstream wholesalers, licensors, licensees,
12 auctioneers, retailers, distributors, franchisees, dealers, customers, owners, purchasers, users, parent
13 companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,
14 representatives, shareholders, agents, and employees, and sister and parent entities, including
15 specifically, Walgreen (collectively "Releasees") that arise under Proposition 65, as such claims relate
16 to Walgreen's and/or Gossi's distribution and sales of the Products and Walgreen's and/or Gossi's
17 alleged failure to warn about exposures to the Listed Chemical contained in the Products.

18 The Parties further understand and agree that this release shall not extend upstream to any
19 entities that manufactured the Products or any component parts thereof, or any distributors or suppliers
20 who sold the Products or any component parts thereof to Gossi.

21 Brimer, in his individual capacity and *not* his representative capacity, hereby releases all claims
22 which he now has or may have in the future against Gossi, irrespective of the subject matter, of all
23 character, kind and nature, whether said claims are known or unknown or are suspected or unsuspected
24 and Brimer expressly waives any and all rights and benefits which he now has, or in the future may
25 have, under California Civil Code § 1542, which provides as follows:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
27 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR**



1 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY**
2 **HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT**
3 **WITH THE DEBTOR.**

4 **4.2 Gossi's Release of Brimer**

5 Gossi, on behalf of itself and its Releasees, waives any and all claims against Brimer, his
6 attorneys, and other representatives for any and all actions taken by Brimer and his attorneys and other
7 representatives, whether in the course of investigating claims or otherwise seeking enforcement of
8 Proposition 65 against them in this matter, and/or with respect to the Products.

9 Gossi also hereby releases all claims which it now has or may have in the future against Brimer,
10 irrespective of the subject matter, of all character, kind and nature, whether said claims are known or
11 unknown or are suspected or unsuspected and Gossi expressly waives any and all rights and benefits
12 which it now has, or in the future may have, under California Civil Code § 1542, which provides as
13 follows:

14 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
15 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR**
16 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY**
17 **HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT**
18 **WITH THE DEBTOR.**

19 **5. COURT APPROVAL**

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

25 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California and
3 apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
4 otherwise rendered inapplicable by reason of law generally, or as to the Products specifically, then
5 Gossi may provide written notice to Brimer of any asserted change in the law, and shall have no further
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
7 affected.

8 **8. NOTICES**

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

13 For Gossi:

14 Hany Fangary, Esq.
15 Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
16 11400 W. Olympic Blvd., 9th Floor
Los Angeles, California 90064

17 For Brimer:

18 Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

21 Any party, from time to time, may specify in writing to the other party a change of address to
22 which all notices and other communications shall be sent. The Parties intend and agree that this
23 Consent Judgment shall be given full effect for purposes of precluding claims regarding the Products
24 against Gossi or the Releasees under Proposition 65 as covered under the release in Section 5 of this
25 Agreement.

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

27 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall

1 be deemed an original, and all of which, when taken together, shall constitute one and the same
2 document.

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

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

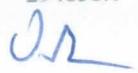
6 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

7 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is
8 required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
9 approval, Brimer, Gossi, and their respective counsel, agree to mutually employ their best efforts to
10 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
11 Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include, at
12 a minimum, cooperating on the drafting and filing any papers in support of the required motion for
13 judicial approval. Within five business days of entry of this Consent Judgment, Brimer shall dismiss
14 his complaint in the above-entitled action without prejudice as to defendant Walgreen.

15 **12. MODIFICATION**

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

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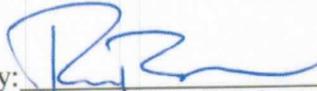


1 **13. AUTHORIZATION**

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

5 **AGREED TO:**

6 Date: 10.1.10

7
8 By: 
9 Plaintiff Russell Brimer

AGREED TO:

Date: 10/4/10

Gossi, Inc.
By: 
Name: David Goss
Title: President

10
11
12 **IT IS SO ORDERED.**

13
14 Date: _____

15 JUDGE OF THE SUPERIOR COURT
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