

1 Clifford A. Chanler, State Bar No. 135534
Brian C. Johnson, State Bar No. 235965
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

6 Attorneys for Plaintiff
RUSSELL BRIMER

7 Travis J. Tom, State Bar No. 198711
Audrey L. Khoo, State Bar No. 254007
8 CHANG & COTÉ, LLP
19138 Walnut Drive, Suite 100
9 Rowland Heights, CA 91748
Telephone: (626) 854-2112
10 Facsimile: (626) 854-2120

11 Attorneys for Defendant
COMPTREE INC.
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF ALAMEDA
15 UNLIMITED CIVIL JURISDICTION
16

17 RUSSELL BRIMER,

18 Plaintiff,

19 v.

20 COMPTREE INC.; and DOES 1-150,
21 inclusive

22 Defendants.
23

Case No. RG10522420

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

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Comptree Inc.**

3 This Stipulation and [Proposed] Order Re: Consent Judgment (“Consent Judgment”) is entered
4 into by and between Plaintiff Russell Brimer (“Brimer” or “Plaintiff”) and Defendant Comptree Inc.
5 (“Comptree” or “Defendant”), with Brimer and Comptree collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Brimer alleges that Comptree has manufactured, distributed, and/or sold in the State of
16 California, color coated metal fasteners; colored, vinyl-coated paper fasteners; and TV tuner cards,
17 each containing lead. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act
18 of 1986, California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”), as a chemical known
19 to the State of California to cause birth defects and other reproductive harm. Lead is referred to
20 herein as the “Listed Chemical.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: (a) color
23 coated metal fasteners, and vinyl-coated paper fasteners including, but not limited to, those items
24 contained in the *Merax Clip Pack, #210-249 (#8 34784 01394 5) and #210-248*; and (b) TV tuner
25 cards with solder, including, but not limited to, the *Geniatech ATSC HDTV Thriller PCI NTSC/ATSC*
26 *HDTV Hybrid TV Card, #C-72315, Item Numbers 201-116-001 and 201-117*. All such items
27 containing lead are referred to herein as “Products.”
28

1 **1.6 Notices of Violation**

2 On September 30, 2009, Brimer served Comptree and various public enforcement agencies
3 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Comptree and such
4 public enforcers with notice that alleged that Comptree was in violation of California Health & Safety
5 Code § 25249.6 for failing to warn consumers and customers that the color coated metal fasteners
6 exposed users in California to lead. To the best of the Parties’ knowledge, no public enforcer has
7 diligently prosecuted the allegations set forth in the Notice.

8 On June 9, 2010, Brimer served Comptree and various public enforcement agencies with a
9 document entitled “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that provided
10 Comptree and such public enforcers with notice that alleged that Comptree was in violation of
11 California Health & Safety Code § 25249.6 for failing to warn consumers and customers that colored,
12 vinyl-coated paper fasteners sold or offered for sale or use in conjunction with the color coated metal
13 fasteners subject to the September 30, 2009 Notice, also exposed users in California to lead. To the
14 best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in
15 the Supplemental Notice.

16 On June 9, 2010, Brimer also served Comptree and various public enforcement agencies with
17 an additional 60-Day Notice of Violation (“TV Tuner Notice”) that provided Comptree and such
18 public enforcers with notice that alleged that Comptree was in violation of California Health & Safety
19 Code § 25249.6 for failing to warn consumers and customers that the TV tuner cards exposed users in
20 California to lead. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted
21 the allegations set forth in the TV Tuner Notice. (Collectively, the Notice, TV Tuner Notice, and
22 Supplemental Notice are referred to as “Notices.”)

23 **1.7 Complaint**

24 On June 25, 2010, Brimer, acting in the interest of the general public in California, filed a
25 Proposition 65 enforcement action against Comptree in the Superior Court for the County of
26 Alameda, alleging violations by Comptree of Health & Safety Code § 25249.6 for exposures to lead
27 contained in the color coated metal fasteners manufactured, distributed, and/or sold in California by
28 Comptree (“Complaint”).

1 Upon entry of this Consent Judgment, the Complaint shall be deemed amended, *nunc pro tunc*,
2 as of September 1, 2010, to include all Products and the TV tuner cards and colored, vinyl-coated
3 paper fasteners which may also be identified in the TV Tuner Notice and Supplemental Notice,
4 respectively, and to allege that Comptree manufactured, distributed, and/or sold those products to
5 users in California without clear and reasonable warnings in violation of Health & Safety Code §
6 25249.6.

7 **1.8 No Admission**

8 Comptree denies the material, factual, and legal allegations contained in the Notices, and
9 expressly denies any wrongdoing whatsoever. Comptree further maintains that the Products have
10 been, and are in compliance with Proposition 65. Nothing in this Consent Judgment shall be
11 construed as an admission by Comptree of any fact, finding, issue of law, or violation of law; nor shall
12 compliance with this Consent Judgment constitute or be construed as an admission by Comptree of
13 any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
14 Comptree. However, this section shall not diminish or otherwise affect the obligations,
15 responsibilities and duties of Comptree under this Consent Judgment.

16 **1.9 Consent to Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date upon
23 which this Consent Judgment is approved and entered by the court.

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

25 **2.1 Reformulation Commitment**

26 Commencing on the Effective Date, Comptree shall not ship, sell, or offer to ship for sale in
27 California, any Products unless such items are Lead Free, or qualify as existing inventory pursuant to
28 section 2.2 and sold with warnings according to section 2.2(a). For purposes of this Consent

1 Judgment, "Lead Free" shall mean Products containing less than or equal to 0.009% lead content
2 when analyzed pursuant to Environment Protection Agency ("EPA") testing methodologies 3050B
3 and 6010B ("Digest Test"). In addition to the Digest Test, as of the Effective Date, Comptree shall
4 not ship, sell, or offer to be shipped for sale in California, any Products that yield more than 1.0
5 micrograms of the Listed Chemical when analyzed pursuant to NIOSH Test Method 9100 ("Wipe
6 Test"). Products that are Lead Free are referred to as "Reformulated Products."

7 **2.2 Requirements for Products Remaining in Inventory in California**

8 For Products manufactured, distributed, or sold before the Effective Date that are not Lead
9 Free and remain in inventory and are reasonably likely to be sold in California, Comptree must either
10 provide Proposition 65 warnings or request that its customer return the unsold Products. Comptree
11 hereby agrees that, within thirty days of the Effective Date, it will send a letter, via certified mail with
12 a copy to counsel for Plaintiff, to each of its California customers that is known or believed to have
13 any inventory of the Products. The letter shall explain, in detail, the duty of Comptree's customer to
14 provide clear and reasonable warnings for the Products, in compliance with Proposition 65, and
15 either:

16 (a) include a sufficient number of warning stickers containing the following
17 language:

18 **WARNING:** This product contains a chemical known to
19 the State of California to cause birth defects
and other reproductive harm.

20 with instructions that the stickers be placed on the product packaging for those Products that
21 remain on the sales floor of the retailer or are otherwise in inventory at the store or distribution
22 facility. The instructions shall advise retailers and distributors that warning stickers issued for
23 Products shall be prominently placed with such conspicuousness as compared with other
24 words, statements, designs, or devices as to render it likely to be read and understood by an
25 ordinary individual under customary conditions before purchase; or

26 (b) request that Comptree's customer return Products remaining in inventory in
27 California, if any, to Comptree, and state that Comptree will pay for shipping of the returned
28 product.

1 As part of the instructions under either options (a) or (b), Comptree must specify the product name,
2 product number, and SKU number, if available, for each Product covered by the instruction letter.

3 **3. MONETARY PAYMENTS**

4 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

5 Pursuant to Health & Safety Code § 25249.7(b), Comptree shall pay \$8,000 in settlement of
6 this claim. This payment shall be apportioned in accordance with California Health & Safety Code
7 § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health
8 Hazard Assessment ("OEHHA") and the remaining 25% remitted to Brimer as provided by California
9 Health & Safety Code § 25249.12(d).

10 Comptree shall issue two separate checks for each of these payments pursuant to § 25192:

11 (a) one check made payable to "The Chanler Group in Trust for the State of California's OEHHA"
12 (Office of Environmental Health Hazard Assessment) in the amount of \$6,000, representing 75% of
13 the total; and (b) one check to "The Chanler Group in Trust for Russell Brimer" in the amount of
14 \$2,000, representing 25% of the total. A separate 1099 shall be issued for each of the above
15 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN:
16 68-0284486) in the amount of \$6,000. The second 1099 shall be issued in the amount of \$2,000 to
17 Brimer, whose address and tax identification number shall be furnished, upon execution of this
18 Agreement. The payment shall be delivered on or before September 10, 2010, at the following
19 address:

20 The Chanler Group
21 Attn: Proposition 65 Controller
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710-2565

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

24 **4.1 Attorney Fees and Costs**

25 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
26 reaching terms on the amount of attorney fees and costs to be reimbursed to them, thereby leaving the
27 fee issue to be resolved after the material terms of the agreement had been settled. Comptree then
28 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been

1 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Brimer
2 and his counsel under general contract principles and the private attorney general doctrine codified at
3 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of
4 this agreement and entry of this Consent Judgment. Comptree shall reimburse Brimer and his counsel
5 the total of \$29,500 for fees and costs relating to the Notices, Complaint, and this Consent Judgment,
6 including, without limitation, investigating, bringing this matter to Comptree's attention, and litigating
7 and negotiating a settlement in the public interest. Comptree shall issue a separate 1099 for fees and
8 costs (EIN: 94-3171522) and shall make the check payable to "The Chanler Group" and shall be
9 delivered on or before September 10, 2010, to the following address:

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

13 **5. RELEASE OF ALL CLAIMS**

14 **5.1 Brimer's Release of Comptree**

15 In further consideration of the promises and agreements herein contained, and for the
16 payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, his past and
17 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
18 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
19 legal action and releases all claims, including, without limitation, all actions, and causes of action, in
20 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
21 expenses of any nature whatsoever, whether known or unknown, fixed or contingent (collectively
22 "Claims"), against Comptree and each of its downstream distributors, wholesalers, licensors,
23 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent
24 companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,
25 representatives, shareholders, agents, and employees, and sister and parent entities (collectively
26 "Releasees"). This release is limited to those claims that arise under Proposition 65 including,
27 without limitation, such claims relating to Comptree's alleged failure to warn about exposures to or
28 identification of lead contained in the Products.

1 Brimer also, on behalf of himself and his agents, attorneys, representatives, successors and
2 assigns, in his individual capacity only and *not* in his representative capacity, provides a general
3 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
4 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
5 liabilities and demands of Brimer of any nature, character, or kind, known or unknown, suspected or
6 unsuspected, and agrees not to initiate, participate in, or maintain any further legal action in any
7 judicial or administrative forum, including any Claim against Comptree and Releasees arising from
8 any alleged violations of Proposition 65. Brimer acknowledges that he is familiar with Section 1542
9 of the California Civil Code, which provides as follows:

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

12 Brimer, in his individual capacity only and *not* in his representative capacity, on behalf of
13 himself and his agents, attorneys, representatives, successors and assigns, expressly waives and
14 relinquishes any and all rights and benefits that he may have under, or that may be conferred on him
15 by, the provisions of Section 1542 of the California Civil Code as well as under any other state or
16 federal statute or common law principle of similar effect, to the fullest extent that he may lawfully
17 waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the
18 release hereby given shall be and remain in effect as a full and complete release notwithstanding the
19 discovery or existence of any such additional or different claims or facts arising out of the released
20 matters.

21 **5.2 Comptree's Release of Brimer**

22 Comptree waives any and all claims against Brimer, his attorneys, and other representatives
23 for any and all actions taken or statements made (or those alleged to have been taken or made) by
24 Brimer and his attorneys and other representatives in the course of investigating claims or otherwise
25 seeking enforcement of Proposition 65 against them in this matter with respect to the Products and the
26 Complaint.

27 Comptree also provides a general release herein which shall be effective as a full and final
28 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys'

1 fees, damages, losses, claims, liabilities and demands of Comptree of any nature, character or kind,
2 known or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint.

3 Comptree acknowledges that it is familiar with Section 1542 of the California Civil Code,
4 which provides as follows:

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

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

14 **6. COURT APPROVAL**

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

20 **7. SEVERABILITY**

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

24 **8. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of California
26 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
27 rendered inapplicable by reason of law generally, or as to the Products, then Comptree shall provide
28

1 written notice to Brimer of any asserted change in the law, and shall have no further obligations
2 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

3 **9. NOTICES**

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

8 For Comptree:

9 Lian Ya Pan, President
10 Comptree Inc.
11 18961 Arenth Avenue
12 City of Industry, CA 91748

13 with a copy to:

14 Audrey L. Khoo, Esq.
15 Chang & Coté, LLP
16 19138 Walnut Drive, Suite 100
17 Rowland Heights, CA 91748

18 For Brimer:

19 Proposition 65 Coordinator
20 The Chanler Group
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

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

26 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

4 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

5 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion
6 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
7 approval, Brimer and Comptree and their respective counsel agree to mutually employ their best
8 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the
9 Consent Judgment by the Court in a timely manner. Brimer further agrees to prepare and file the
10 motion for approval, including all moving papers, as soon as is practicable and to serve counsel for
11 Comptree with copies of the same.

12 **13. MODIFICATION**

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

16 **14. AUTHORIZATION**

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

19 **AGREED TO:**

AGREED TO:

20 Date: 9.2.10

Date: _____

21
22 By: 
23 RUSSELL BRIMER

By: _____
Lian Ya Pan, President
COMPTREE INC.

24
25 **IT IS SO ORDERED.**

26
27 Date: _____

JUDGE OF THE SUPERIOR COURT

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

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

4 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

5 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion
6 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
7 approval, Brimer and Comptree and their respective counsel agree to mutually employ their best
8 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the
9 Consent Judgment by the Court in a timely manner. Brimer further agrees to prepare and file the
10 motion for approval, including all moving papers, as soon as is practicable and to serve counsel for
11 Comptree with copies of the same.

12 **13. MODIFICATION**

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

16 **14. AUTHORIZATION**

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

19 **AGREED TO:**

AGREED TO:

20 Date: _____

20 Date: 09/03/2010

21
22 By: _____
23 RUSSELL BRIMER

21
22 
23 By: _____
24 Lian Ya Pan, President
25 COMPTREE INC.

26 **IT IS SO ORDERED.**

27 Date: _____

28 _____
JUDGE OF THE SUPERIOR COURT