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FOREVER 21, INC.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,
16 Plaintiff,
17 vs.
18 FOREVER 21, INC.; and DOES 1 through
19 150, inclusive,
20 Defendant.

Case No. RG10492983
STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT
Health & Safety Code § 25249.6, et seq.

21 **1. INTRODUCTION**

22 **1.1** On January 8, 2010, plaintiff Russell Brimer ("Plaintiff") filed the original
23 complaint for civil penalties and injunctive relief in this Court ("Complaint"). The
24 Complaint alleged that defendants violated the Safe Drinking Water and Toxic
25 Enforcement Act of 1986 ("Proposition 65") by selling belts containing lead. Lead is a
26 chemical known to the State of California to cause birth defects and other reproductive
27 harm.
28

1 **1.2** The parties to this Stipulation and [Proposed] Order re: Consent Judgment
2 ("Consent Judgment") are Plaintiff and defendant Forever 21, Inc. ("Forever 21"). Forever
3 21 is referred to herein as the "Settling Defendant" with Plaintiff and Settling Defendant
4 collectively referred to as the "Parties."

5 **1.3** Plaintiff is an individual residing in California who seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer products.

8 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this
9 Court has jurisdiction over the allegations contained in the Complaint and personal
10 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, venue is proper
11 in the County of Alameda, and that this Court has jurisdiction to enter this Consent
12 Judgment as a full and final resolution of all claims which were or could have been raised
13 in the Complaint based on the facts alleged therein.

14 **1.5** The Parties enter into this Consent Judgment as a full and final settlement of
15 all claims that were raised in the Complaint, or which could have been raised in the
16 Complaint, arising out of the facts or conduct alleged therein. The Parties do not admit
17 any facts or conclusions of law, including, but not limited to, any facts or conclusions of
18 law suggesting or demonstrating any violations of Proposition 65 or any other statutory,
19 common law or equitable requirements relating to lead in Covered Products. Nothing in
20 this Consent Judgment shall be construed as an admission by the Parties of any fact,
21 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent
22 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion
23 of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice,
24 waive or impair any right, remedy, argument or defense the Parties may have in this or any
25 other or future legal proceedings. This Consent Judgment is the product of negotiation and
26 compromise and is accepted by the Parties for purposes of settling, compromising and
27 resolving issues disputed in this action.

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1 **2. DEFINITIONS**

2 **2.1** "Accessible Component" means a functional or decorative part of a Covered
3 Product that could be touched by a person during normal and reasonably foreseeable use.

4 **2.2** "Covered Products" means belts made of any fabric or material that are worn
5 as fashion accessories on garments either for functional use or as decorative elements and
6 that are offered for sale in California either separately or as part of the garment itself.

7 **2.3** "Lead Limits" means the maximum concentrations of lead by weight
8 specified in Section 3.2.

9 **2.4** "Execution Date" means the date on which this Consent Judgment is signed
10 by the Parties.

11 **2.5** "Effective Date" means the date on which this Consent Judgment is entered by
12 the Court.

13 **2.6** "Paint or Surface Coatings" has the meaning defined in 16 C.F.R.
14 § 1303.2(b),¹ as amended from time to time.

15 **3. INJUNCTIVE RELIEF**

16 **3.1 Specification Compliance Date.** To the extent is has not already done so,
17 no more than thirty (30) days after the Execution Date, Settling Defendant shall provide
18 the Lead Limits to its Vendors of Covered Products that will be sold or offered for sale to
19 California consumers and shall instruct each Vendor to use reasonable efforts to provide
20 Covered Products that comply with the Lead Limits on a nationwide basis.

21 **3.2 Lead Limits.** Commencing on December 1, 2010, Settling Defendant shall
22 not purchase, import, manufacture, or supply to an unaffiliated third party any Covered
23 Product that will be sold or offered for sale to California consumers that exceeds the
24 following Lead Limits:

25 _____
26 ¹ As of the Effective Date, "Paint or other Surface Coatings" means a fluid, semi-fluid, or
27 other material, with or without a suspension of finely divided coloring matter, which changes to a
28 solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or
other surface. This term does not include printing inks or those materials which actually become a
part of the substrate, such as the pigment in a plastic article, or those materials which are actually
bonded to the substrate, such as by electroplating or ceramic glazing.

1 **3.2.1** Paint or other Surface Coatings on Accessible Components: 90 parts
2 per million ("ppm");

3 **3.2.2** Leather (including composited leather) Accessible Components: 300
4 ppm;

5 **3.2.3** Polyvinyl chloride ("PVC") Accessible Components: 200 ppm; and

6 **3.2.4** For all other Accessible Components other than cubic zirconia
7 (sometimes called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

8 **3.3 Final Retail Compliance Date.** Commencing on December 1, 2011, (the
9 "Final Retail Compliance Date"), Settling Defendant shall not sell or offer for sale in
10 California any Covered Product that exceeds the Lead Limits specified in Section 3.2 as
11 being effective on December 1, 2010, and, if applicable, the Additional Lead Limit
12 specified in Section 5.1.1.1. For purposes of this Section 3.3, when a Settling Defendant's
13 direct customer sells or offers for sale to California consumers a Covered Product after the
14 applicable Final Retail Compliance Date, the Settling Defendant is deemed to "offer for
15 sale in California" that Covered Product.

16 **4. ENFORCEMENT**

17 **4.1** Any Party may, after meeting and conferring, by motion or application for an
18 order to show cause before this Court, enforce the terms and conditions contained in this
19 Consent Judgment. Any action to enforce the terms of Sections 3.2, 3.3 and 5.1.1.3 of this
20 Consent Judgment shall first comply with the terms of this Section 4.

21 **4.2** In the event, after the Effective Date, Plaintiff identifies one or more
22 Covered Products that he believes in good faith do not meet the Lead Limits and/or, if
23 applicable, the Additional Lead Limit, and are not otherwise exempt from the Lead Limits
24 under Section 3 or Section 5.1.1.3, Plaintiff may issue a Notice of Violation to enforce the
25 Lead Limits or the Additional Lead Limit. The Notice of Violation shall be served on the
26 Settling Defendant and on the Supplier of each noticed Covered Product that Plaintiff
27 knows has offered the noticed Covered Product for sale in California.

28

1 **4.3** Any Notice of Violation shall be sent to the person(s) identified in Section 8
2 to receive notices for Settling Defendant and must be served within forty-five (45) days of
3 the date the alleged violation is observed.

4 **4.4** The Settling Defendant shall provide to Plaintiff within forty-five (45) days
5 written notice whether it elects to contest the allegations contained in a Notice of Violation
6 ("Notice of Election").

7 **4.5** If a Notice of Violation is contested, the Notice of Election shall include all
8 then-available documentary evidence regarding the alleged violation, including all test
9 data, if any. Any Party may file a motion or application pursuant to Section 4.1 above
10 should the contested Notice of Violation not be resolved through the meet and confer
11 process.

12 If a Notice of Violation is not contested, the Notice of Election delivered by Settling
13 Defendant shall include a detailed description of the corrective action that Settling
14 Defendant has taken or proposes to undertake to address the alleged violation with respect to
15 the Covered Product. Any such corrective action shall, at a minimum, provide reasonable
16 assurance that the Covered Product will no longer be offered by the Settling Defendant for
17 sale in California and such corrective action shall be initiated within thirty (30) days after
18 serving its Notice of Election. In addition to the corrective action, the Settling Defendant
19 shall reimburse Plaintiff for his attorneys' fees and costs in the amount of \$10,000 unless
20 the Settling Defendant, prior to receiving and accepting for distribution or sale the Covered
21 Product identified in the Notice of Violation, obtained test results demonstrating that all of
22 the Accessible Components in the Covered Product identified in the Notice of Violation
23 complied with the applicable Lead Limits and, if applicable, the Additional Lead Limit.

24 **4.6** If there is a dispute over the corrective action, the Parties shall meet and
25 confer before seeking any remedy in Court for a period of no more than thirty (30) days.

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1 **5. PAYMENTS**

2 **5.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

3 **5.1.1** In settlement of all claims related to the Covered Products and Listed
4 Chemical referred to in the Complaint and this Consent Judgment pursuant to Health &
5 Safety Code § 25249.7(b), Settling Defendant shall pay civil penalties as follows:

6 **5.1.1.1 Initial Civil Penalty.** Settling Defendant shall pay an
7 initial civil penalty of \$8,000 on or before September 14, 2010. Settling Defendant shall
8 issue two separate checks for the Initial Civil Penalty payment pursuant to Health & Safety
9 Code § 25192: (a) one check made payable to The Chanler Group in Trust for the State of
10 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the
11 amount of \$6,000, representing 75% of the total; and (b) one check to The Chanler Group
12 in Trust for Russell Brimer in the amount of \$2,000, representing 25% of the total. Two
13 separate 1099s shall be issued for the above payments. The first 1099 shall be issued to
14 OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
15 \$6,000. The second 1099 shall be issued in the amount of \$2,000 to Russell Brimer,
16 whose address and tax identification number shall be furnished, upon the execution of this
17 Agreement.

18 **5.1.1.2 Second Civil Penalty.** Settling Defendant shall pay a
19 second civil penalty of \$6,000 no later than fifteen (15) days after the Effective Date.
20 Settling Defendant shall issue two separate checks pursuant to Health & Safety Code
21 § 25192: (a) one check made payable to The Chanler Group in Trust for the State of
22 California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount
23 of \$4,500, representing 75% of the total; and (b) one check to The Chanler Group in Trust
24 for Russell Brimer in the amount of \$1,500, representing 25% of the total. As an incentive
25 for achievement of early reformulation of the Covered Products however, the Second Civil
26 Penalty shall be waived in its entirety for each Settling Defendant whose Officer certifies
27 in Writing that the Settling Defendant has, as of September 1, 2010, not purchased,
28 imported, manufactured, or supplied to an unaffiliated third party any Covered Product that

1 will be sold or offered for sale to California consumers that exceeds the Lead Limits and
2 that the Settling Defendant will not thereafter purchase, import, manufacture, or supply to
3 an unaffiliated third party any Covered Product that will be sold or offered for sale to
4 California consumers that exceeds the Lead Limits. In order for this waiver of the Second
5 Civil Penalty to take effect, such certification must be received by The Chanler Group on
6 or before the Effective Date.

7 **5.1.1.3 Final Civil Penalty.** Each Settling Defendant shall pay a
8 final civil penalty of \$6,000 on or before July 31, 2011. Settling Defendant shall issue two
9 separate checks pursuant to Health & Safety Code § 25192: (a) one check made payable to
10 The Chanler Group in Trust for the State of California's Office of Environmental Health
11 Hazard Assessment (OEHHA) in the amount of \$4,500, representing 75% of the total; and
12 (b) one check to The Chanler Group in Trust for Russell Brimer in the amount of \$1,500,
13 representing 25% of the total. As an incentive for achievement of further reformulation of
14 the Covered Products however, the Final Civil Penalty shall be waived in its entirety for
15 the Settling Defendant whose Officer certifies in Writing that the Settling Defendant has,
16 as of July 1, 2011, not purchased, imported, manufactured, or supplied to an unaffiliated
17 third party any Covered Product that will be sold or offered for sale to California consumers
18 that exceeds the Additional Lead Limit of 1.0 micrograms ("ug") of lead as applied to all
19 painted or coated portions of all surfaces of the Covered Products performed as outlined in
20 NIOSH Test Method No. 9100 and that the Settling Defendant will continue to not
21 purchase, import, manufacture, or supply to an unaffiliated third party any Covered
22 Product that will be sold or offered for sale to California consumers that exceeds the
23 Additional Lead Limit. In order for this waiver of the Final Civil Penalty to take effect,
24 such certification must be received by The Chanler Group on or before July 15, 2011.

25 **5.2 Reimbursement of Attorneys' Fees and Costs.**

26 **5.2.1** Settling Defendant shall pay a total of \$40,750 to Plaintiff in
27 reimbursement of his attorneys' fees and costs. Such payment shall be made to counsel for
28 the Settling Defendant, to be held in a Trust Account, on or before September 14, 2010.

1 Counsel for the Settling Defendant will provide to The Chanler Group, in writing,
2 confirmation that such payment has been received. No later than five (5) business days
3 after the Effective Date, counsel for the Settling Defendant shall then deliver the payment
4 to The Chanler Group.

5 **5.2.2** Settling Defendant shall issue a separate 1099 for fees and costs paid
6 in the amount of \$40,750 to The Chanler Group, 2560 Ninth Street, Suite 214, Berkeley,
7 CA 94710-2565 (EIN: 94-3171522).

8 **5.2.3** The payments made pursuant to this Section 5 shall be delivered to
9 The Chanler Group at the following address:

10 The Chanler Group
11 Attn : Proposition 65 Controller
12 Re: *Russell Brimer v. Forever 21, Inc. et al.* Matter
13 Parker Plaza
14 2560 Ninth Street, Suite 214
15 Berkeley, CA 94710

14 **6. MODIFICATION AND DISPUTE RESOLUTION**

15 **6.1** This Consent Judgment may be modified from time to time by express
16 written agreement of the Parties with the approval of the Court, or by an order of this Court
17 upon motion and in accordance with law.

18 **6.2** Any Party seeking to modify this Consent Judgment shall attempt in good
19 faith to meet and confer with all affected Parties prior to filing a motion to modify the
20 Consent Judgment. A party who unsuccessfully brings or contests a motion to modify this
21 Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees
22 and costs.

23 **7. CLAIMS COVERED AND RELEASED**

24 **7.1** This Consent Judgment is a full, final, and binding resolution between
25 Plaintiff, acting on his own behalf and in the public interest and on behalf of the general
26 public, and Settling Defendant, their parents, shareholders, divisions, subdivisions,
27 subsidiaries, partners, sister companies and their successors and assigns ("Releasees") of
28 any violation of Proposition 65, or any other statutory or common law claims that were or

1 could have been asserted in the Complaint against Settling Defendant regarding the failure
2 to warn about exposure to Lead arising in connection with Covered Products
3 manufactured, distributed, or sold by Settling Defendant prior to the Effective Date, or any
4 claim based on the facts or conduct alleged in the Complaint whether based on actions
5 committed by Settling Defendant or Releasees prior to the Effective Date.

6 **7.2** Plaintiff on his own behalf and on behalf of the public interest pursuant to
7 Health and Safety Code § 25249.7(d), releases, waives, and forever discharges any and all
8 claims against Settling Defendant and Releasees, arising from any violation of Proposition
9 65, or any other statutory or common law claims that have been or could have been
10 asserted in the public interest or on behalf of the general public regarding the failure to
11 warn about exposure to Lead arising in connection with Covered Products manufactured,
12 distributed or sold by Settling Defendant prior to or after the Effective Date, or any claim
13 based on the facts or conduct alleged in the Complaint.

14 **7.3** Settling Defendant waives any and all claims against Plaintiff, his attorneys
15 and other representatives, for any and all actions taken or statements made (or those that
16 could have been taken or made) by Plaintiff and his attorneys and other representatives,
17 whether in the course of investigating claims or otherwise seeking enforcement of
18 Proposition 65 against it in this matter, and/or with respect to the Covered Products.

19 **7.4** Compliance with the terms of this Consent Judgment by Settling Defendant
20 constitutes Compliance with Proposition 65 with respect to lead in Settling Defendant's
21 Covered Products.

22 **8. NOTICE**

23 **8.1** Unless otherwise specified herein, all correspondence and notices required
24 by this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
25 class, registered or certified mail, return receipt requested; or (ii) overnight courier on any
26 party by the other party at the following addresses:

27 ///

28 ///

1 **To Forever 21:**

2 John J. Allen, Esq.
3 Allen Matkins Leck Gamble Mallory & Natsis LLP
4 515 South Figueroa, 9th Floor
5 Los Angeles, CA 90071-3309

5 **To Brimer:**

6 Proposition 65 Coordinator
7 The Chanler Group
8 2560 Ninth Street, Suite 214
9 Berkeley, CA 94710-2565

9 **9. COURT APPROVAL**

10 **9.1** This Consent Judgment shall become effective upon entry by the Court.

11 **9.2** The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7,
12 a noticed motion is required to obtain judicial approval of this Consent Judgment. The
13 Parties shall mutually employ their best efforts to obtain approval of the Consent Judgment
14 by the Court in a timely manner and support the entry of the Consent Judgment.
15 Accordingly, the Parties agree that Plaintiff will file a Motion to Approve the Consent
16 Judgment (“Motion for Approval”), the first draft of which Settling Defendant’s counsel
17 shall prepare and provide to Plaintiff’s counsel on or before September 14, 2010.

18 **9.3** If this Consent Judgment is not entered by the Court, it shall be of no force
19 or effect and shall never be introduced into evidence or otherwise used in any proceeding
20 for any purpose.

21 **10. ATTORNEYS FEES**

22 **10.1** A party who unsuccessfully brings or contests an action arising out of this
23 Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees
24 and costs unless the unsuccessful party has acted with substantial justification. For
25 purposes of this Consent Judgment, the term substantial justification shall carry the same
26 meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et*
27 *seq.*

28 *///*

1 **10.2** Notwithstanding Section 10.1, a party who prevails in a contested
2 enforcement action brought pursuant to Section 4 may seek an award of attorney's fees
3 pursuant to Code of Civil Procedure § 1021.5 against a party that acted with substantial
4 justification. The party seeking such an award shall bear the burden of meeting all of the
5 elements of § 1021.5, and this provision shall not be construed as altering any procedural
6 or substantive requirements for obtaining such an award.

7 **10.3** Except as otherwise provided in this Consent Judgment, each Party shall bear
8 its own attorney's fees and costs.

9 **10.4** Nothing in this Section 10 shall preclude a Party from seeking an award of
10 sanctions pursuant to law.

11 **11. OTHER TERMS**

12 **11.1** The terms of this Consent Judgment shall be governed by the laws of the
13 State of California.

14 **11.2** This Consent Judgment contains the sole and entire agreement and
15 understanding of the Parties with respect to the entire subject matter hereof, and any and
16 all prior discussions, negotiations, commitments, or understandings related thereto, if any,
17 are hereby merged herein and therein. There are no warranties, representations, or other
18 agreements between the Parties except as expressly set forth herein. No representations,
19 oral or otherwise, express or implied, other than those specifically referred to in this
20 Consent Judgment have been made by any Party hereto. No other agreements not
21 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to
22 bind any of the Parties hereto. No supplementation, modification, waiver, or termination
23 of this Consent Judgment shall be binding unless executed in writing by the Party to be
24 bound thereby. No waiver of any of the provisions of this Consent Judgment shall be
25 deemed or shall constitute a waiver of any of the other provisions hereof whether or not
26 similar, nor shall such waiver constitute a continuing waiver.

27 **11.3** This Court shall retain jurisdiction of this matter to implement or modify the
28 Consent Judgment.

1 **11.4** The stipulations to this Consent Judgment may be executed in counterparts
2 and by means of facsimile, which taken together shall be deemed to constitute one
3 document

4 **11.5** Each signatory to this Consent Judgment certifies that he or she is fully
5 authorized by the Party he or she represents to stipulate to this Consent Judgment and to
6 enter into and execute the Consent Judgment on behalf of the Party represented and legally
7 to bind that Party.

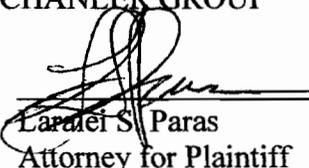
8 **11.6** The Parties, including their counsel, have participated in the preparation of
9 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the
10 Parties. This Consent Judgment was subject to revision and modification by the Parties
11 and has been accepted and approved as to its final form by all Parties and their counsel.
12 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
13 interpreted against any Party as a result of the manner of the preparation of this Consent
14 Judgment. Each Party to this Consent Judgment agrees that any statute or rule of
15 construction providing that ambiguities are to be resolved against the drafting Party should
16 not be employed in the interpretation of this Consent Judgment and, in this regard, the
17 Parties hereby waive California Civil Code § 1654.

18 **IT IS SO STIPULATED:**

19 DATED: August 26, 2010

THE CHANLER GROUP

20
21 By: _____


Lamar S. Paras
Attorney for Plaintiff
Russell Brimer

22
23
24 DATED: August ____, 2010

ALLEN MATKINS
LECK GAMBLE MALLORY & NATSIS, LLP

25
26 By: _____

John J. Allen
Attorney for Defendant
Forever 21, Inc.

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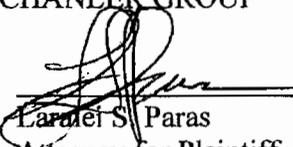
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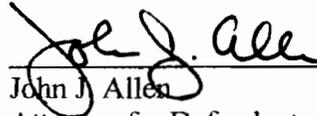
19 DATED: August 26, 2010

THE CHANLER GROUP

20
21 By: 
22 Laramie S. Paras
23 Attorney for Plaintiff
Russell Brimer

24 DATED: August 27, 2010

ALLEN MATKINS
LECK GAMBLE MALLORY & NATSIS, LLP

25
26 By: 
27 John J. Allen
28 Attorney for Defendant
Forever 21, Inc.