

1 Clifford A. Chanler, State Bar No. 135534  
Brian C. Johnson, State Bar No. 235965  
2 Josh Voorhees, State Bar No. 241436  
THE CHANLER GROUP  
3 2560 Ninth Street  
Parker Plaza, Suite 214  
4 Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff  
RUSSELL BRIMER  
7  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION  
12

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 DOLLAR EMPIRE, LLC; and DOES 1-150,  
inclusive,

17 Defendants.  
18

Case No. CGC-10-503371

**[PROPOSED] CONSENT JUDGMENT**

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff, Russell Brimer,  
4 (“Brimer” or “Plaintiff”) and defendant, Dollar Empire, LLC (“Dollar Empire” or “Defendant”),  
5 with Plaintiff and Defendant collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Dollar Empire**

11 Dollar Empire employs 10 or more persons and 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 Brimer alleges that Dollar Empire has manufactured, distributed, and/or sold in the State  
16 of California, colored, vinyl-coated paper fasteners, specifically, those offered in connection with  
17 the *Family Maid Stationery Set, #1644 (#8 27680 16644 0)* (“Products”) that expose users to lead  
18 without first providing the “clear and reasonable warning” required by Proposition 65. Lead is  
19 listed as a reproductive and developmental toxicant pursuant to Proposition 65 and shall be  
20 referred to hereinafter as the “Listed Chemical.”

21 **1.5 Notices of Violation**

22 On February 12, 2010, Brimer served Dollar Empire and various public enforcement  
23 agencies with a document entitled “60-Day Notice of Violation” that alleged violations of Health  
24 & Safety Code § 25249.6 for failing to warn consumers that the Products Dollar Empire  
25 manufactured, distributed and/or sold exposed users in California to excessive amounts of the  
26 Listed Chemical.

27  
28

1           **1.6 Complaint**

2           On September 9, 2010, Brimer, acting in a representative capacity in the interest of the  
3 general public in California filed the instant action (“Complaint”) in the Superior Court for the  
4 County of San Francisco alleging violations of Health & Safety Code § 25249.6 based on the  
5 exposures to the Listed Chemical contained in the Products manufactured, distributed, and/or sold  
6 by Dollar Empire.

7           **1.7 No Admission**

8           Dollar Empire denies the material, factual, and legal allegations contained in the Notice  
9 and Complaint, and maintains that all of the products it has manufactured, distributed, and/or sold  
10 in California, including the Products, have been, and are, in compliance with all laws. Nothing in  
11 this Consent Judgment shall be construed as an admission by Dollar Empire of any fact, finding,  
12 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
13 constitute or be construed as an admission by Dollar Empire of any fact, finding, conclusion,  
14 issue of law, or violation of law, the same being specifically denied by Dollar Empire. The  
15 Parties enter into this Consent Judgment as a full and final settlement of any and all claims either  
16 may have regarding the allegations contained in the Complaint. However, this Section shall not  
17 diminish or otherwise affect the Parties’ obligations, responsibilities, and/or duties under this  
18 Consent Judgment.

19           **1.8 Consent to Jurisdiction**

20           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
21 jurisdiction over Dollar Empire as to the allegations contained in the Complaint, that venue is  
22 proper in the County of San Francisco, and that this Court has jurisdiction to enter and enforce the  
23 provisions of this Consent Judgment pursuant to California Code of Civil Procedure § 664.6.

24           **1.9 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean May 1, 2011.

26 ///

27 ///

28 ///

1 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

2 **2.1 Product Reformulation**

3 As of the Effective Date, Dollar Empire shall only distribute, sell, or offer for sale in  
4 California, Products that are Lead Free. For purposes of this Consent Judgment, "Lead Free"  
5 shall mean Products which yield a result of no more than 1.0 micrograms of residual lead when  
6 analyzed pursuant to NIOSH 9100 testing protocol and which contain less than 90 parts per  
7 million lead content when analyzed pursuant to Environmental Protection Agency testing  
8 methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state  
9 agencies for the purpose of determining lead content in a solid substance.

10 **3. MONETARY PAYMENTS**

11 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

12 In settlement of all the claims referred to in this Consent Judgment, Dollar Empire shall  
13 pay \$2,500 in civil penalties to be apportioned in accordance with California Health & Safety  
14 Code §§ 25249.12(c)(1) & (d) with 75% of the funds paid to the State of California's Office of  
15 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty  
16 remitted to Brimer.

17 Payment shall be made as follows: On or before May 1, 2011, Dollar Empire shall issue  
18 two checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust  
19 for OEHHA" in the amount of \$1,875; and (b) one check made payable to "The Chanler Group in  
20 Trust for Russell Brimer" in the amount of \$625.

21 The penalty payments are to be delivered to Brimer's counsel 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

27 Two 1099 forms shall be issued for the above penalty payments to: (a) Office of  
28 Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-  
0284486); and (b) Russell Brimer, whose address and tax identification number shall be  
provided upon request five days before payment is due.

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 attorney fees and costs to be reimbursed to them, thereby  
5 leaving the fee issue to be resolved after the material terms of the agreement had been settled.  
6 Dollar Empire then expressed a desire to resolve the fee and cost issue shortly after the other  
7 settlement terms had been finalized. The parties then attempted to (and did) reach an accord on  
8 the 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 § 1021.5, for all work  
10 performed through the mutual execution of this agreement and entry of this Consent Judgment.  
11 Dollar Empire shall pay the total amount of \$16,000 for fees and costs relating to the Notice,  
12 Complaint, and this Consent Judgment, including, without limitation, investigating, bringing this  
13 matter to Dollar Empire's attention, and litigating and negotiating a settlement in the public  
14 interest.

15 Dollar Empire shall issue a total of four checks for Brimer's fees and costs paid in four  
16 monthly installments. Payments shall be made as follows: (a) on or before May 1, 2011, Dollar  
17 Empire shall issue a check payable to "The Chanler Group" in the amount of \$2,500; (b) on or  
18 before June 1, 2011, Dollar Empire shall issue a check payable to "The Chanler Group" in the  
19 amount of \$5,000; (c) on or before July 1, 2011, Dollar Empire shall issue a check payable to  
20 "The Chanler Group" in the amount of \$5,000; and (d) on or before August 1, 2011, Dollar  
21 Empire shall issue a check payable to the "The Chanler Group" in the amount of \$3,500.

22 Each of the four payments for attorneys' fees shall be delivered to the following address:

23 The Chanler Group  
24 Attn: Proposition 65 Controller  
25 2560 Ninth Street  
26 Parker Plaza, Suite 214  
27 Berkeley, CA 94710-2565

28 Dollar Empire shall issue a single 1099 for all payments made pursuant to this Section to The  
Chanler Group (EIN: 94-3171522).

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Brimer's Release of Defendant**

3 In further consideration of the promises and agreements herein contained, and for the  
4 payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, his past  
5 and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of  
6 the general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
7 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 of any nature whatsoever, whether known or unknown, fixed or contingent  
10 (collectively "Claims"), against Dollar Empire and each of its downstream distributors,  
11 wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners,  
12 purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective  
13 officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and  
14 parent entities (collectively "Releasees"). This release is limited to those Claims that arise under  
15 with respect to Dollar Empire's alleged failure to warn about exposures to or identification of the  
16 Listed Chemical contained in the Products, as defined in Section 1.4.

17 **5.2 Dollar Empire's Release of Brimer**

18 Dollar Empire waives any and all claims against Brimer, his attorneys, and other  
19 representatives for any and all actions taken or statements made (or those that could have been  
20 taken or made) by Brimer and his attorneys and other representatives, whether in the course of  
21 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this  
22 matter, and/or with respect to the Products.

23 **6. SEVERABILITY**

24 If, subsequent to court approval of this Consent Judgment, any of the provisions of this  
25 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
26 provisions remaining shall not be adversely affected, unless the Court finds that any  
27 unenforceable provision is not severable from the remainder of the Consent Judgment.  
28

1 **7. 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 twelve  
4 months after it has been fully executed by all Parties. If the Court does not grant its approval of  
5 this Consent Judgment within one year of execution, all payments made by Defendant shall be  
6 returned within fifteen days of receipt by Plaintiff's counsel of Defendant's written request for  
7 reimbursement indicating that the one-year period has ended.

8 **8. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of  
10 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by  
11 reason of law generally, or as to the Products, then Defendant shall provide written notice to  
12 Brimer of any asserted change in the law, and shall have no further obligations pursuant to this  
13 Consent Judgment with respect to, and to the extent that, the Products are so affected.

14 **9. NOTICES**

15 When any Party is entitled to receive any notice under this Consent Judgment, the notice  
16 shall be sent in writing by certified mail, return receipt requested, to the persons identified below:

17 To Dollar Empire:

18 Wei Kai "Kelly" Wu  
19 Dollar Empire, LLC  
4423 Bandini Boulevard  
20 Vernon, CA 90058

21 To Brimer:

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

24 Any Party may modify the person and address to whom the notice is to be sent by sending each  
25 other Party notice by certified mail and/or other verifiable form of written communication.  
26  
27  
28

1 **10. ADDITIONAL POST-EXECUTION ACTIVITIES**

2 Brimer agrees to comply with the reporting form requirements referenced, in California  
3 Health & Safety Code §25249.7(f). The parties acknowledge that, pursuant to Health & Safety  
4 Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent  
5 Judgment. In furtherance of obtaining such approval, Brimer and Dollar Empire agree to  
6 mutually employ their best efforts to support the entry of this Agreement as a Consent Judgment  
7 and to obtain approval of the Consent Judgment by the Court in a timely manner.

8 **11. MODIFICATION**

9 This Consent Judgment may be modified only: (1) by written agreement of the Parties; or  
10 (2) upon a successful motion of any party and entry of a modified Consent Judgment by the  
11 Court.

12 **12. ENTIRE AGREEMENT**

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

19 **13. COUNTERPARTS, FACSIMILE SIGNATURES**

20 This Consent Judgment may be executed in counterparts and by facsimile or portable  
21 document format (PDF), each of which shall be deemed an original, and all of which, when taken  
22 together, shall constitute one and the same documents.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

APR. 8. 2011 1:00PM

CHANLER LAW GROUP 510-848-8118

NO. 746 P. 2

Attw. BRIAN,  
510-848-8118

1 14. 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.

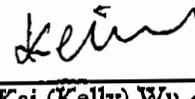
5  
6 AGREED TO:

AGREED TO:

7 Dated: 4-8-11

Dated: 4/4/11

8  
9 By:   
10 Russell Erimer

By:   
Wei Kai (Kelly) Wu  
Dollar Empire, LLC

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28