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17 Attorneys for Defendant  
18 THE HILLMAN GROUP, INC.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
20 FOR THE CITY AND COUNTY OF ALAMEDA  
21 UNLIMITED CIVIL JURISDICTION

22 RUSSELL BRIMER,

23 Plaintiff,

24 vs.

25 THE HILLMAN GROUP, INC.; and DOES 1-  
26 150, inclusive,

27 Defendants.

Case No. RG10544361

**[PROPOSED] CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and The Hillman Group, Inc.**

3 This Consent Judgment is entered into by and between Plaintiff Russell Brimer (hereinafter  
4 “Brimer” or “Plaintiff”) and Defendant The Hillman Group, Inc. (hereinafter “Hillman” or  
5 “Defendant”), with Brimer and Hillman collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Hillman 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 Section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Hillman has manufactured, distributed, and/or sold in the State of  
16 California tape measure key chains with lead on the exterior surface. Lead is listed pursuant to  
17 Proposition 65 as a chemical known to the State of California to cause birth defects and other  
18 reproductive harm. Lead is hereinafter referred to as the “Listed Chemical.”

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows: tape measure  
21 key chains containing the Listed Chemical on the exterior surface including, but not limited to, Tape  
22 Measure Key Chain (#701402) and its bulk refill options (#706618 and #706755). All such items  
23 shall hereinafter be referred to as the “Products.”

24 **1.6 Notice of Violation**

25 On June 17, 2010, Brimer served Hillman and various public enforcement agencies with a  
26 document entitled “60-Day Notice of Violation” (“Notice”) that provided Hillman and such public  
27 enforcers with notice alleging that Hillman was in violation of California Health & Safety Code  
28

1 Section 25249.6 for failing to warn consumers and customers that the Products exposed users in  
2 California to the Listed Chemical.

3 **1.7 Complaint**

4 On or about October 29, 2010, Brimer, who alleges that he was and is acting in the interest of  
5 the general public in California, filed a Complaint in the Superior Court in and for the County of  
6 Alameda, naming Hillman as a defendant and alleging violations of Proposition 65 by Hillman, based  
7 on the alleged exposures to the Listed Chemical contained in the Products manufactured, distributed,  
8 and/or offered for sale in California by Hillman (“Complaint”).

9 **1.8 No Admission**

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

19 **1.9 Consent to Jurisdiction/Enforcement**

20 For purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction  
21 over Hillman as to the allegations contained in the Complaint, that venue is proper in the County  
22 of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent  
23 Judgment pursuant to Code of Civil Procedure Section 664.6.

24 Brimer or Hillman may, after meeting and conferring, by motion or application for an order to  
25 show cause before this Court, enforce the terms and conditions contained in this Consent Judgment.

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27 \\\

28 \\\

1           **1.10     Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” shall mean five (5) business  
3 days after the court's order approving the Parties' Consent Judgment.

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

5           **2.1     Reformulation Commitment:** Hillman contends that commencing on August 1,  
6 2010, Hillman ceased shipping, selling and/or offering for sale in California any Products described  
7 and set forth in Paragraph 1.5 above. Hillman agrees that if it resumes shipping, selling or offering  
8 for sale the Products described and set forth in Paragraph 1.5 above without a clear and reasonable  
9 warning pursuant to Proposition 65, such Products will be “Lead Free.” For purposes of this Consent  
10 Judgment, “Lead Free” Products shall mean Products containing components that may be handled,  
11 touched, or mouthed by a consumer, and which components yield less than 1.0 microgram of lead  
12 when using a wipe test pursuant to NIOSH Test Method 9100 or contain less than 90 parts per million  
13 of the Listed Chemical when analyzed pursuant to EPA testing methodologies 3050B and 6010B or  
14 equivalent methodologies utilized by federal or state agencies for the purpose of determining the  
15 amount of the Listed Chemical in a solid substance. Products that are Lead Free are referred to  
16 hereinafter as “Reformulated Products.”

17           **3.     MONETARY PAYMENTS**

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

19           **3.1.1.** In settlement of all claims related to the Products and Listed Chemical referred  
20 to in the 60-Day Notice of Violation, the Complaint, and this Consent Judgment, pursuant to Health &  
21 Safety Code Section 25249.7(b), Hillman shall place \$3,000 in a trust account of its counsel, which  
22 Hillman shall verify within ten (10) calendar days of signing this Consent Judgment, and, upon the  
23 court's approval of the Consent Judgment, shall make a payment of said \$3,000 as follows and no later  
24 than the Effective Date. In accordance with Health & Safety Code § 25249.12 (c)(1) and (d), Hillman  
25 shall issue two separate checks: (a) one check made payable to The Chanler Group in Trust for the  
26 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount  
27 of \$2,250.00, representing 75% of the total; and (b) one check to The Chanler Group in Trust for  
28 Russell Brimer in the amount of \$750.00, representing 25% of the total. Two separate Forms 1099

1 shall be issued for the above payments. The first Form 1099 shall be issued to the Office of  
2 Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-  
3 0284486). The second Form 1099 shall be issued to Russell Brimer, whose address and tax  
4 identification number shall be furnished upon request. The payments shall be delivered to the  
5 following address:

6  
7 The Chanler Group  
8 Attn: Proposition 65 Controller  
9 2560 Ninth Street  
10 Parker Plaza, Suite 214  
11 Berkeley, CA 94710-2565

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

13 **4.1 Attorney Fees and Costs**

14 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without  
15 reaching terms on the amount of attorneys' fees and costs to be reimbursed to them, thereby leaving  
16 the fee issue to be resolved after the material terms of the agreement had been settled. Hillman 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  
19 Plaintiff and his counsel under general contract principles and the private attorney general doctrine  
20 codified at California Code of Civil Procedure section 1021.5, for all work performed through the  
21 mutual execution of this agreement. Hillman shall reimburse Brimer and his counsel the total of  
22 \$25,000 for fees and costs incurred as a result of investigating, bringing this matter to Hillman's  
23 attention, and litigating and negotiating a settlement in the public interest. Hillman shall issue a  
24 separate Form 1099 for fees and costs (EIN: 94-3171522) and shall make the check payable to "The  
25 Chanler Group." Hillman shall place said \$25,000 in the aforementioned trust account of its counsel,  
26 which Hillman shall verify within ten (10) calendar days of signing this Consent Judgment. The  
27 check shall be delivered no later than the Effective Date, to the following address:

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

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

3 This Consent Judgment is a full, final and binding resolution between Brimer, on behalf of  
4 himself and the public, and Hillman, of any violation of Proposition 65 that was or could have been  
5 asserted by Brimer against Hillman, its parents, subsidiaries, affiliated entities that are under  
6 common ownership, directors, officers, employees, attorneys, and each entity to whom Hillman  
7 directly or indirectly distributes or sells Products, including but not limited to downstream  
8 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and  
9 licensees ("Releasees"), based on their failure to warn about alleged exposures to lead contained in  
10 the Products that were sold by Hillman. This release shall also extend to Innovation Specialties, Inc.  
11 and Shamrock Graphics as additional Releasees but only with respect to the Products sold by  
12 Hillman containing the Listed Chemical.

13 **5.2 Brimer's Public Release of Proposition 65 Claims.**

14 In further consideration of the promises and agreements herein contained, Brimer on behalf  
15 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and  
16 in the interest of the general public, hereby waives all rights to institute or participate in, directly or  
17 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,  
18 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,  
19 fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees,  
20 and attorneys' fees, but exclusive of fees and costs on appeal -- limited to and arising under  
21 Proposition 65 with respect to lead in the Products sold by Hillman (collectively "claims"), against  
22 Hillman and Releasees.

23 **5.3 Brimer's Individual Release of Claims.**

24 Brimer also, in his individual capacity only and *not* in his representative capacity, provides a  
25 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
26 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
27 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,  
28

1 suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead in the  
2 Products manufactured, distributed or sold by Hillman and Releasees.

3 **5.4 Parties' Mutual Release.**

4 Hillman, on behalf of itself, its past and current agents, representatives, attorneys, successors,  
5 and/or assignees, hereby waives any and all claims against Brimer, his attorneys and other  
6 representatives, for any and all actions taken or statements made (or those that could have been  
7 taken or made) by Brimer and his attorneys and other representatives, whether in the course of  
8 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
9 respect to the Products.

10 Brimer, on behalf of himself, his past and current agents, representatives, attorneys,  
11 successors, and/or assignees, hereby waives any and all claims against Hillman, its attorneys and other  
12 representatives, for any and all actions taken or statements made (or those that could have been taken  
13 or made) by Hillman and its attorneys and other representatives, in defending against Brimer's  
14 enforcement of Proposition 65 against it in this matter with respect to the Products.

15 **6. COURT APPROVAL**

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

21 **7. SEVERABILITY**

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

25 **8. GOVERNING LAW**

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

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 sent by (i) personal delivery, (ii) first-class, registered  
6 or certified mail, return receipt requested, or (iii) overnight courier on any party by the other party at  
7 the following addresses:

8 For Hillman:

9 Daniel Smercina  
10 Director of Marketing  
11 The Hillman Group, Inc.  
12 10590 Hamilton Avenue  
13 Cincinnati, OH 45231-1764

12 and

13 David Schmitt, Esq.  
14 Cors & Bassett  
15 537 East Pete Rose Way  
16 Suite 400  
17 Cincinnati, OH 45202-3502

16 For Brimer:

17 Proposition 65 Coordinator  
18 The Chanler Group  
19 2560 Ninth Street  
20 Parker Plaza, Suite 214  
21 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.

23 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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



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

2 Brimer agrees to comply with the reporting form requirements referenced in California Health  
3 & Safety Code Section 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 Hillman and their respective counsel agree to mutually employ their best efforts  
8 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent  
9 Judgment by the Court in a timely manner.

10 **13. MODIFICATION**

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

14 Any party seeking to modify this Consent Judgment shall attempt in good faith to meet and  
15 confer with the other party prior to filing a motion to modify the Consent Judgment.

16 **14. AUTHORIZATION**

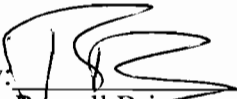
17 The undersigned are authorized to execute this Consent Judgment on behalf of their respective  
18 parties and have read, understood, and agree to all of the terms and conditions hereof.

19 **AGREED TO:**

**AGREED TO:**

20 Date: 8-4-11

Date: \_\_\_\_\_

21  
22 By:  \_\_\_\_\_  
23 Russell Brimer

24 By: \_\_\_\_\_  
25 Daniel Smercina, Director of Marketing  
26 The Hillman Group, Inc.

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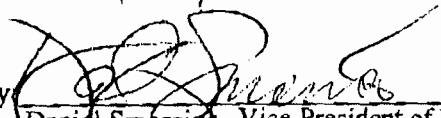
19  
20 **AGREED TO:**

21 Date: \_\_\_\_\_

22  
23 By: \_\_\_\_\_  
Russell Brimer

**AGREED TO:**

24 Date: 5/17/2011

25  
26 By:   
Daniel Simbrend, Vice President of Marketing  
The Hillman Group, Inc.