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9 RUSSELL BRIMER

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE CITY AND COUNTY OF SAN FRANCISCO
12 UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 UTRECHT MANUFACTURING
17 CORPORATION; and DOES 1 through 150,

18 Defendants.

) Case No.

)
) **STIPULATION AND [PROPOSED]**
) **CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff Russell Brimer (“Brimer”
4 or “Plaintiff”) and Defendant Utrecht Manufacturing Corporation and Utrecht Manufacturing
5 Corp. of California (“Utrecht” or “Defendant”), with Plaintiff and Defendant collectively referred
6 to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Defendant employs 10 or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code § 25249.6, *et seq.* (“Proposition 65”).¹ Defendant is a company that sells art
15 products and bags designed for carrying or displaying art work and/or art products.

16 **1.4 General Allegations**

17 Brimer alleges that Defendant has manufactured, distributed and/or sold, in the State of
18 California, messenger bags and carriers that expose users to lead, di(2-ethylhexyl)phthalate
19 (“DEHP”) and other phthalates, such as di-n-butyl phthalate (“DBP”) and di-isodecyl phthalate
20 (“DIDP”), without first providing “clear and reasonable warning” under Proposition 65. Lead is
21 listed as a reproductive and developmental toxicant pursuant to Proposition 65. Di(2-
22 ethylhexyl)phthalate (“DEHP”), di-n-butyl phthalate (“DBP”) and di-isodecyl phthalate (“DIDP”)
23 are listed as reproductive toxicants under Proposition 65. Messenger bags and carriers that
24 allegedly expose users to Lead, DEHP, DBP and/or DIDP are referred to herein as the
25 “Products.” Lead, DEHP, DBP and DIDP shall be collectively referred to herein as the “Listed
26 Chemicals.”

27 _____
28 ¹ All statutory references contained herein are to California law.

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1.5 Notices of Violation

On October 15, 2010, Brimer served Defendant and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided such public enforcers and Defendant with notice of alleged violations of Proposition 65 for failing to warn consumers that messenger bags exposed users in California to Lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

On or about February 24, 2011, Brimer also served Defendant and public enforcers with a document entitled “Supplemental 60-Day Notice of Violation” (the “Supplemental Notice”) that provided Defendant and such public enforcers with notice of alleged violations of Proposition 65 for failing to warn consumers that messenger bags and carriers exposed users in California to DEHP, DBP, DIDP and/or lead. Until the sixty-sixth (66th) day after the date of issuance of the Supplemental Notice, the definition of Products herein shall only include messenger bags containing Lead, and the definition of “Defendant and “Utrecht” shall only include defendant Utrecht Manufacturing Corporation. After sixty-six (66) days have passed from the date of the Supplemental Notice, the definition of Products herein shall be deemed to also include messenger bags and carriers containing Lead, DEHP, DBP and/or DIDP, and the definition of Defendant and Utrecht herein shall be deemed to also include Utrecht Manufacturing Corp. of California, provided that no authorized public prosecutor has, prior to that date, filed a Proposition 65 enforcement action based on the Supplemental Notice. The Notice and Supplemental Notice are referred to collectively herein as the “Notices.”

1.6 Complaint

On or about February 22, 2011, Brimer, acting in the interest of the general public in California, filed a complaint in the Superior Court for the County of San Francisco, alleging violations of Proposition 65 based on the alleged exposures to lead contained in Products distributed and/or sold by Defendant. This action shall hereinafter be referred to as the “Action.” Following the expiration of the 66 days after Plaintiff’s issuance of the Supplemental Notice

1 referred to in Section 1.5 above, the Complaint in the Action shall be deemed amended to include
2 allegations that the Products herein described contained the Listed Chemicals.

3 **1.7 No Admission**

4 This Consent Judgment resolves claims that are denied and disputed by Defendant. The
5 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
6 claims between the Parties for the purpose of avoiding prolonged litigation. Defendant denies the
7 material factual and legal allegations contained in the Notices and Complaint and maintains that
8 all Products it has manufactured, distributed and/or sold in California have been and are in
9 compliance with all applicable laws. Nothing in this Consent Judgment shall be construed as an
10 admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall
11 compliance with this Consent Judgment constitute or be construed as an admission by Defendant
12 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied
13 by Defendant. However, this section shall not diminish or otherwise affect Defendant's
14 obligations, responsibilities, and duties under this Consent Judgment.

15 **1.8 Consent to Jurisdiction**

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

20 **2. INJUNCTIVE RELIEF: REFORMULATION COMMITMENT**

21 Commencing on February 28, 2011 (the "Effective Date"), Defendant shall not have
22 manufactured or shipped to it Products for sale in California unless such Products are Lead Free
23 and Phthalate Free, as further defined below. For purposes of this Consent Judgment, "Lead
24 Free" Products shall mean Products containing components that may be handled, touched or
25 mouthed by a consumer, and which components yield less than 1.0 microgram of lead when using
26 a wipe test pursuant to NIOSH Test Method 9100, and yield less than 100 parts per million
27 ("ppm") lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or
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1 equivalent methodologies utilized by federal or state agencies for the purpose of determining lead
2 content in a solid substance. Additionally, for purposes of this Consent Judgment, “Phthalate
3 Free” shall mean Products containing less than or equal to 1,000 ppm of DEHP, DBP and DIDP,
4 when analyzed pursuant to any testing methodology selected by Defendant that is acceptable to
5 state or federal government agencies for purposes of determining phthalate content by weight in a
6 solid substance. Products that are Lead Free and Phthalate Free are referred to hereinafter as
7 “Reformulated Products.”

8 Defendant hereby commits that 100% of the Products that it has manufactured or shipped
9 to it for sale in California after the Effective Date shall be Reformulated Products.

10 **3. MONETARY PAYMENTS**

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

12 Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all the claims
13 referred to in this Consent Judgment, Utrecht shall pay a total of \$12,000 in civil penalties in two
14 installments. The first payment of the penalty shall be \$5,000, to be apportioned in accordance
15 with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of
16 California’s Office of Environmental Health Hazard Assessment and the remaining 25% remitted
17 to Brimer as provided by Health & Safety Code § 25249.12(d).

18 Utrecht shall issue two separate checks for the penalty payment: (a) one check made
19 payable to “The Chanler Group in Trust for Office of Environmental Health Hazard
20 Assessment” in the amount of \$3,750, representing 75% of the total; and (b) one check to “The
21 Chanler Group in Trust for Brimer” in the amount of \$1,250, representing 25% of the total.

22 Two separate Forms 1099 shall be issued for the above payments: The first Form 1099 shall be
23 issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA
24 95184 (EIN: 68-0284486) in the amount of \$3,750. The second Form 1099 shall be issued in
25 the amount of \$1,250 to Brimer, whose address and tax identification number shall be
26 furnished, upon execution of this Agreement. The payment shall be delivered by March 3,
27 2011, at the following address:

1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565

6 The second payment of \$7,000 in civil penalties is due on March 30, 2011; however, this
7 amount shall be waived in its entirety if Utrecht certifies (in writing to Brimer by March 15,
8 2011) that it has met the Reformulation Commitment set forth above in Section 2 as of the
9 Effective Date. If the certification is not received, then the additional penalty payments shall be
10 apportioned in the same manner outlined above in this Paragraph.

11 3.2 Attorney's Fees and Costs

12 The parties reached an accord on the compensation due to Brimer and his counsel under
13 general contract principles and the private attorney general doctrine codified at California Code of
14 Civil Procedure (CCP) §1021.5, for all work performed through the mutual execution of this
15 agreement and for Brimer's anticipated future fees and costs including attorneys' fees to be
16 incurred in seeking judicial approval of this Consent Judgment as well as any other legal work
17 performed after the execution of this Consent Judgment in an effort to obtain finality of the
18 Action. Defendant shall pay Brimer and his counsel a total of \$32,800 for fees and costs incurred
19 as a result of investigating, bringing this matter to Defendant's attention, and litigating and
20 negotiating a settlement in the public interest through the execution of this Agreement. Utrecht
21 shall also reimburse Brimer and his counsel the total of 5,000 for all anticipated post-execution
22 work, such as fulfilling reporting requirements, preparation and filing of the motion to approve
23 this proposed Consent Judgment, and the preparation, service and filing of the notice of entry of
24 judgment.

25 Utrecht shall issue a separate Form 1099 for fees and costs (EIN: 94-3171522) and shall
26 make the check in the amount of \$37,800 payable to "The Chanler Group" and shall deliver the
27 check by March 3, 2011, to the following address:

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

1 **4. CLAIMS COVERED AND RELEASE**

2 **4.1 Brimer’s Release of Defendant and its Chain of Distribution**

3 This Consent Judgment is a full, final, and binding resolution between Brimer, acting on
4 behalf of himself and in the interest of the general public, and Defendant, its owners, subsidiaries,
5 affiliates, sister and related companies (including without limitation Utrecht Manufacturing Corp.
6 of California), employees, shareholders, directors, insurers, attorneys, successors, and assigns
7 (“Defendant Releasees”), and all entities to whom they directly or indirectly distribute or sell
8 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,
9 cooperative members, and licensees (“Downstream Defendant Releasees”) of any violation of
10 Proposition 65 or any statutory or common law claim that has been or could have been asserted
11 against Defendant Releasees and Downstream Defendant Releasees individually or in the public
12 interest regarding the failure to warn about exposure to the Listed Chemicals arising in
13 connection with Products manufactured and/or shipped prior to the Effective Date even if sold by
14 Downstream Defendant Releasees after the Effective Date. Defendant’s compliance with this
15 Consent Judgment shall constitute compliance with Proposition 65 with respect to the Listed
16 Chemicals in Products for both Defendant Releasees and Downstream Defendant Releasees for
17 Products distributed and/or sold by Defendant after the Effective Date.

18 Brimer on behalf of himself, his past and current agents, representatives, attorneys,
19 successors, and/or assignees, and in the interest of the general public, hereby waives with respect
20 to Products all rights to institute or participate in, directly or indirectly, any form of legal action
21 and releases all claims, including, without limitation, all actions, and causes of action, in law or in
22 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses
23 (including, but not limited to, investigation fees, expert fees, and attorneys’ fees) of any nature
24 whatsoever, whether known or unknown, fixed or contingent (collectively “claims”), against
25 Defendant Releasees and Downstream Defendant Releasees that arise under Proposition 65 or
26 any other statutory or common law claims that were or could have been asserted in the public
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1 interest, as such claims relate to Defendant Releasees' and Downstream Defendant Releasees'
2 alleged failure to warn about exposures to the Listed Chemicals contained in the Products.

3 Brimer also, on behalf of himself, his past and current agents, representatives, attorneys,
4 successors, and/or assignees and not in his representative capacity, provides a general release
5 herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions,
6 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities
7 and demands of any nature, character or kind, known or unknown, suspected or unsuspected,
8 against Defendant Releasees and Downstream Defendant Releasees arising under Proposition 65,
9 as such claims relate to Defendant Releasees' alleged failure to warn about exposures to or
10 identification of any chemicals listed under Proposition 65 contained in any products sold by
11 Defendant Releasees. Brimer acknowledges that he is familiar with Civil Code § 1542, which
12 provides as follows:

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

18 Brimer, in his individual capacity only and *not* in his representative capacity, and on behalf of
19 himself, his past and current agents, representatives, attorneys, successors, and/or assignees
20 expressly waives and relinquishes any and all rights and benefits which he may have under, or
21 which may be conferred on him by the provisions of Civil Code § 1542 of the California as well
22 as under any other state or federal statute or common law principle of similar effect, to the fullest
23 extent that he may lawfully waive such rights or benefits pertaining to the released matters.

24 Upon court approval of the Consent Judgment, the Parties waive their respective rights to
25 a hearing or trial on the allegations of the Complaint.

26 The Parties further understand and agree that, except as provided for above, this release
27 shall not extend upstream to any third parties that manufactured the Products or any component
28 parts thereof, or any distributors or suppliers who sold the Products or any component parts
thereof to Defendant.

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4.2 Defendant’s Release of Brimer

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

Defendant also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Defendant of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Defendant acknowledges that it is familiar with Civil Code § 1542, which provides as follows:

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

Defendant expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

5. SEVERABILITY

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

6. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and

1 shall be null and void if, for any reason, it is not approved and entered by the Court within nine
2 months after it has been fully executed by all Parties. In the event this consent judgment is (a) not
3 entered by this Court within nine months (or thereafter) for any reason whatsoever, or (b) is
4 entered by the Court and subsequently overturned by any appellate court, any monies that have
5 been provided to Brimer, or his counsel pursuant to Section 3 above, together with interest at the
6 prevailing federal rate accruing from the date of payment by Defendant, shall be refunded within
7 fifteen (15) days after receiving written demand from Defendant for return of such funds.

8 **7. 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, preempted, or is otherwise rendered
11 inapplicable by reason of law generally, or as to the Listed Chemicals and/or the Products, then
12 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to,
13 and to the extent that, the Products are so affected.

14 **8. NOTICES**

15 When any Party is entitled to receive any notice under this Consent Judgment, the notice
16 shall be sent by certified mail and/or other verifiable form of written communication to the
17 person(s) identified below:

<p>18 To Defendant: 19 Tom Becker, V.P. Finance & 20 Administration 21 Utrecht Manufacturing Corporation and 22 Utrecht Manufacturing Corp. of 23 California 24 6 Corporate Drive, Suite 1 25 Cranbury, NJ 08512</p> <p>26 With copy to: 27 James Robert Maxwell, Esq. 28 Rogers Joseph O'Donnell 311 California Street San Francisco, CA 94104</p>	<p>To Brimer: The Chanler Group Attn: Proposition 65 Coordinator 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565</p>
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1 Any Party may modify the person and address to whom the notice is to be sent by sending
2 each other Party notice by certified mail and/or other verifiable form of written communication.

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

4 Brimer agrees to comply with the reporting form requirements referenced, in Health &
5 Safety Code § 25249.7(f) and to file a motion for approval of this Consent Judgment. Utrecht
6 agrees that its counsel shall provide Brimer with a complete first draft of the moving papers
7 within fourteen days of its execution of this Consent Judgment.

8 **10. 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 **11. ADDITIONAL POST-EXECUTION ACTIVITIES**

13 The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
14 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
15 obtaining such approval, Brimer and Defendant and their respective counsel agree to mutually
16 employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain
17 approval of the Consent Judgment by the Court in a timely manner.

18 **12. ENTIRE AGREEMENT**

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

25 **13. ATTORNEY'S FEES**

26 Should either Party prevail on any motion, application for an order to show cause or other
27 proceeding to enforce a violation of this Consent Judgment, it may be awarded its reasonable
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1 attorneys' fees and costs as a result of such motion or application upon a finding by the Court that
2 the other Party's opposition lacked substantial justification. For purposes of this Consent
3 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
4 Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

5 Except as specifically provided in the above paragraph and in Section 3.2 above, each
6 Party shall bear its own costs and attorney's fees in connection with this action.

7 **14. COUNTERPARTS, SIGNATURES**


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

11 **15. AUTHORIZATION**

12 The undersigned are authorized to execute this Consent Judgment and have read,
13 understood, and agree to all of the terms and conditions of this Consent Judgment.

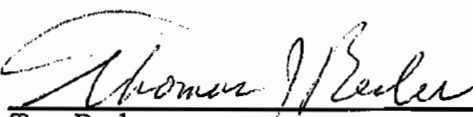
14 **AGREED TO:**

15 Date: 2-23-11

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18 By: 
19 Plaintiff Russell Brimer

AGREED TO:

15 Date: 2/18/11

16
17
18 By: 
19 Tom Becker
20 Utrecht Manufacturing Corporation and
21 Utrecht Manufacturing Corp. of
22 California