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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,
vs.
A.T. CROSS COMPANY.; and DOES 1-150,
inclusive,
Defendants.

Case No. RG11573311
[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and A.T. Cross Company**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”
4 or “Plaintiff”) and defendant A.T. Cross Company (“A.T. Cross” or “Defendant”), with Plaintiff
5 and Defendant collectively referred to hereinafter 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 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Defendant**

11 A.T. Cross 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 &
13 Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that A.T. Cross has distributed and/or sold certain books/journals containing
16 lead in the State of California without the requisite health hazard warnings. Lead is known to cause
17 birth defects and other reproductive harm and is listed by its chemical nomenclatures pursuant to
18 Proposition 65. Lead listed by the State of California under Proposition 65 shall be referred to
19 hereinafter as the “Listed Chemical.”

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are books/journals containing lead
22 including, but not limited to, the *Cross Signature Journals, AC 210-2S (#0 73228 09341 3)*, which
23 A.T. Cross manufactured, distributed, and/or sold in the State of California. These books/journals
24 containing lead are referred to hereinafter as the “Products.”

25 **1.6 Notice of Violation**

26 On October 29, 2010, Brimer served A.T. Cross and the Office of the California Attorney
27 General, all California counties’ District Attorneys and all City Attorneys of California cities with
28 populations exceeding 750,000 (collectively, “Public Enforcers”) with a 60-Day Notice of

1 Violation (“Notice”) that alleged violations of Proposition 65 in connection with the sale of the
2 Products containing the Listed Chemical. To the best of the Parties’ knowledge, no Public
3 Enforcer has prosecuted any of the allegations set forth in the Notices.

4 **1.7 Complaint**

5 On or about April 28, 2011, Brimer filed a complaint (“Complaint” or “Action”) in the
6 Superior Court for the County of Alameda against A.T. Cross alleging violations of Proposition 65
7 based on A.T. Cross’s failure to give clear and reasonable warnings before allegedly causing
8 exposures to the Listed Chemical contained in the Products.

9 **1.8 No Admission**

10 A.T. Cross denies the material factual and legal allegations contained in the Notice and
11 Complaint and maintains that all Products that it has sold and distributed in California have been
12 and are in compliance with all laws, including, without limitation, Proposition 65. Nothing in this
13 Consent Judgment shall be construed as an admission by A.T. Cross of any fact, finding, issue of
14 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
15 construed as an admission by A.T. Cross of any fact, finding, conclusion, issue of law, or violation
16 of law, such being specifically denied by A.T. Cross. However, this Section shall not diminish or
17 otherwise affect A.T. Cross’s obligations, responsibilities, and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over A.T. Cross as to the allegations contained in the Complaint, that venue is proper in
21 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
22 this Consent Judgment as a full and binding resolution of all claims which were or could have been
23 raised in the Complaint against A.T. Cross based on the facts alleged therein and in the Notice.

24 **1.10 Effective Date**

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

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation Commitment**

3 As of the Effective Date, A.T. Cross shall not ship, sell or offer to be shipped for sale in
4 California any Products unless each accessible component that may be handled or touched during
5 reasonably foreseeable use or misuse contains less than 200 parts per million of lead when analyzed
6 pursuant to Environmental Protection Agency (“EPA”) testing methodologies 3050B and 6010B
7 for lead, or equivalent methods as may be allowed under Proposition 65.

8 **3. MONETARY PAYMENTS**

9 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

10 In settlement of all the claims referred to in this Settlement Agreement against it, A.T. Cross
11 shall make payments and receive credits totaling \$20,000, in civil penalties, as follows

12 3.1.1 A.T. Cross shall make an initial payment of \$4,000 to be apportioned in
13 accordance with Health & Safety Code § 25249.12 (c)(1) and (d), with 75% of these funds remitted
14 to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
15 remaining 25% of these penalty monies remitted to Brimer as provided by Health & Safety Code
16 § 25249.12(d). A.T. Cross shall issue two separate checks for the penalty payment: (a) one check
17 made payable to “The Chanler Group in Trust for Office of Environmental Health Hazard” in the
18 amount of \$3,000, representing 75% of the total penalty, and (b) one check to “The Chanler Group
19 in Trust for Russell Brimer” in the amount of \$1,000, representing 25% of the total penalty. Two
20 separate 1099s shall be issued for the above payments. The first 1099 shall be issued to Office of
21 Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
22 0284486) in the amount of \$3,000. The second 1099 shall be issued to Brimer in the amount of
23 \$1,000, whose address and tax identification number shall be furnished, upon request, at least five
24 (5) calendar days before payment is due. The payments shall be delivered within ten (10) days of
25 the Effective Date, at the address set forth in Section 3.4.

26 3.1.2 A.T. Cross shall receive an automatic credit of \$4,000, for its commitment to
27 reformulate its Products pursuant to Section 2.1, above.

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1 3.1.3 A.T. Cross shall pay a second civil penalty of \$12,000, on or before December
2 15, 2011, to be apportioned in accordance with Health & Safety Code § 25249.12 (c)(1) and (d) as
3 described above, which penalty shall be waived in its entirety, if, by December 15, 2011, A.T. Cross
4 certifies to Brimer that the Products contain no more than 100 ppm of lead when analyzed pursuant
5 to Environmental Protection Agency testing methodologies 3050B or equivalent methods and do not
6 exceed 1.0 micrograms (“ug”) of lead as applied to all coated portions of all surfaces of the Products
7 performed as outlined in NIOSH Test Method No. 9100.

8 3.1.4 All payments, unless waived, shall be delivered to the following address:

9 THE CHANLER GROUP
10 Attn: Proposition 65 Controller
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710

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

15 **4.1 Attorney’s Fees and Costs**

16 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
17 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
18 issue to be resolved after the material terms of the agreement had been settled. A.T. Cross then
19 expressed its preference to resolve the fee and cost issue shortly after the other settlement terms had
20 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
21 Brimer and his counsel under general contract principles and the private attorney general doctrine
22 codified at California Code of Civil Procedure (“CCP”) § 1021.5, for all work performed in this
23 matter. Under these legal principles, A.T. Cross shall pay the amount of \$40,000 for fees and costs
24 incurred as a result of investigating, bringing this matter to A.T. Cross’s attention, and negotiating a
25 settlement in the public interest. A.T. Cross shall issue a separate 1099 for fees and costs (EIN: 94-
26 3171522) and make the check payable to “The Chanler Group” which it shall deliver within ten
27 (10) days of 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

5. CLAIMS COVERED AND RELEASED

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations. This Consent Judgment is a full, final and binding resolution between Brimer, on behalf of himself and the public, and A.T. Cross, of any violation of Proposition 65 that was or could have been asserted by Brimer against A.T. Cross, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom A.T. Cross directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to the Listed Chemical contained in the Products that were sold by A.T. Cross.

5.2 Brimer’s Public Release of Proposition 65 Claims. In further consideration of the promises and agreements herein contained, Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses - including, but not limited to, investigation fees, expert fees, and attorneys’ fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to the Listed Chemical in the Products sold by A.T. Cross (collectively “claims”), against A.T. Cross and Releasees.

1 **5.3 Brimer's Individual Release of Claims.** Brimer also, in his individual capacity
2 only and *not* in his representative capacity, provides a release herein which shall be effective as a
3 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
4 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any nature,
5 character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out
6 of alleged or actual exposures to the Listed Chemical in the Products manufactured, distributed or
7 sold by A.T. Cross.

8 **5.4 A.T. Cross's Release of Brimer.** A.T. Cross on behalf of itself, its past and current
9 agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims
10 against Brimer, his attorneys and other representatives, for any and all actions taken or statements
11 made (or those that could have been taken or made) by Brimer and his attorneys and other
12 representatives, whether in the course of investigating claims or otherwise seeking to enforce
13 Proposition 65 against it in this matter with respect to the Products.

14 **6. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and
16 shall be null and void if, for any reason, it is not approved and entered by the Court within one (1)
17 year after it has been fully executed by all Parties, in which event any monies that have been
18 provided to Brimer or his counsel pursuant to Section 3 and/or Section 4 above shall be refunded
19 within fifteen (15) days after receiving written notice from A.T. Cross that the one-year period has
20 expired.

21 **7. SEVERABILITY**

22 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
23 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
24 provisions remaining 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, preempted, or
28 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then A.T.

1 Cross may provide written notice to Brimer of any asserted change in the law, and shall have no
2 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
3 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve A.T.
4 Cross from any obligation to comply with any pertinent state or federal toxics control laws.

5 **9. NOTICES**

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

10 For A.T. Cross:

11 David Whalen, President.
12 A.T. Cross Company
13 One Albion Road
14 Lincoln, RI 02865

For Brimer:

Proposition 65 Coordinator
THE CHANLER GROUP
2560 Ninth Street, Suite 214
Berkeley, CA 94710-2565

13 With a copy to:

14 Greg Benik, Esq.
15 Benik & Associates
16 128 Dorrance Street, Suite 450
17 Providence, RI 02903

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

20 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature,
22 each of which shall be deemed an original, and all of which, when taken together, shall constitute
23 one and the same document.

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

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

27 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

28 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
motion is required to obtain judicial approval of this Consent Judgment. In furtherance of

1 their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval
 2 of the Consent Judgment by the Court in a timely manner. For purposes of this section, best efforts
 3 shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the
 4 required motion for judicial approval.

5 **13. MODIFICATION**

6 This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon
 7 entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any
 8 party and entry of a modified consent judgment by the Court. The Attorney General shall be served
 9 with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in
 10 advance of its consideration by the Court. If A.T. Cross seeks to modify the terms of this Consent
 11 Judgment, Brimer shall be entitled to his reasonable fees and costs incurred in the modification
 12 process under CCP § 1021.5.

13 **14. AUTHORIZATION**

14 The undersigned are authorized to execute this Consent Judgment on behalf of themselves
 15 or their respective parties and have read, understood, and agree to all of the terms and conditions of
 16 this Consent Judgment.

17 **AGREED TO:**

18 By: 
 19 RUSSELL BRIMER

20 Date: 6-30-11

17 **AGREED TO:**

18 By: 
 19 Print Name: Charles S. Mellen

20 Print Title: President, CAD
 21 A.T. Cross Company

22 Date: 6/2/11

23
 24
 25 **IT IS SO ORDERED.**

26 Date: _____

27 _____
 28 Judge of the Superior Court