

1 Daniel Bornstein, State Bar No. 235965
THE CHANLER GROUP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
RUSSELL BRIMER
6

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO - UNLIMITED CIVIL JURISDICTION
10

11 RUSSELL BRIMER,) Case No. 34-2011-00106090
12)
Plaintiff,) **CONSENT JUDGMENT**
13)
v.)
14)
26 INTERNATIONAL, INC.; and DOES 1)
15 through 150, inclusive,)
16 Defendants.)
17)

18
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 26 International, Inc. (“26” or “Defendant”), with
5 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
8 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Defendant 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 Defendant has manufactured, distributed and/or sold, in the State of
16 California, belts that expose users to lead, without first providing “clear and reasonable
17 warnings” under Proposition 65. Lead is listed as a reproductive and developmental toxicant
18 pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.” All such belts
19 containing the Listed Chemical are referred to herein as the “Products.”

20 **1.5 Notice of Violation**

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

26 **1.6 Complaint**

27 On May 27, 2011, Brimer, acting in the interest of the general public in California, filed
28 the instant action in the Superior Court for the County of Sacramento, alleging violations of

1 Health & Safety Code § 25249.6 based on the exposures to the Listed Chemical contained in
2 Products manufactured, distributed, and/or sold by Defendant (“Complaint”).

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

16 **1.8 Consent to Jurisdiction**

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

21 **1.9 Effective Date**

22 For the purposes of this Consent Judgment, the term “Effective Date” shall mean the date
23 the Court approves this Consent Judgment.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 Beginning no later than sixty days after the Effective Date, 26 shall not purchase,
26 import, manufacture, or supply to an unaffiliated third party any Product that will be sold or
27 offered for sale to consumers in California unless such Product contains no more than to 100
28 parts per million (“ppm”) of the Listed Chemical when analyzed pursuant to Environmental

1 Protection Agency testing methodologies 3050B and 6010B (“Digest Test”), or equivalent
2 methodologies utilized by federal or state agencies for the purpose of determining the Listed
3 Chemical content in a solid substance and yields no more than 1.0 micrograms per sample
4 (“µg/s”) when any surface is tested according to NIOSH 9100 testing methodology (“Wipe
5 Test”) applied to the Products.

6 **3. MONETARY PAYMENTS**

7 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

8 Pursuant to Health & Safety Code § 25249.7(b), 26 shall pay \$3,500 in civil penalties.
9 26 shall pay an initial civil penalty of \$1,000 and a final civil penalty of \$2,500 on the dates
10 provided in Section 3.3. However, the final civil penalty shall be waived in its entirety if an
11 officer of 26 provides Brimer with a written certification that, as of the Effective Date, and
12 continuing on into the future, 26 has sold and will continue to sell only products in compliance
13 with the reformulation set forth in Section 2 of this Consent Judgment. Brimer must receive
14 any such certification no later than March 15, 2013, and time is of the essence. Payments
15 pursuant to this subsection shall be apportioned in accordance with Health & Safety Code §
16 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the State of
17 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
18 remaining 25% of these penalty monies earmarked for Brimer.

19 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

20 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
21 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
22 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
23 26 then expressed a desire to resolve the fee and cost issue shortly after the other settlement
24 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
25 compensation due to Brimer and his counsel under general contract principles and the private
26 attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work
27 performed in this matter, except fees that may be incurred on appeal. Under these legal
28 principles, 26 shall pay the amount of \$26,500 for fees and costs incurred investigating,

1 litigating and enforcing this matter, including the fees and costs incurred (and yet to be
2 incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in
3 the public interest.

4 **3.3 Payment Procedures**

5 **3.3.1 Funds Held In Trust:** The initial civil penalty payments required by
6 Section 3.1 and the payment required by Section 3.2 shall delivered on or before the February
7 15, 2013 to The Chanler Group and shall be held in trust pending the Court's approval of this
8 Consent Judgment.

9 Payments delivered to The Chanler Group shall be made payable, as follows:

- 10 (a) One check made payable to "The Chanler Group in Trust for
11 OEHHA" in the amount of \$750;
12 (b) One check made payable to "The Chanler Group in Trust for
13 Russell Brimer" in the amount of \$250; and
14 (c) One check made payable to "The Chanler Group in Trust" in the
15 amount of \$4,000.

16 **3.3.2 Final Civil Penalty.** If the final civil penalty of \$2,500 referenced in
17 Section 3.1 above is not waived, payments shall be delivered on or before March 29, 2013, to
18 The Chanler Group and made payable, as follows:

- 19 (a) One check made payable to "The Chanler Group in Trust for
20 OEHHA" in the amount of \$1,875;
21 (b) One check made payable to "The Chanler Group in Trust for
22 Russell Brimer" in the amount of \$625.

23 **3.3.2 Reimbursement of Plaintiff's Fees and Costs.** Beginning on March 15,
24 2013, 26 shall deliver to The Chanler Group payments in the amount of \$4,000 to reimburse
25 plaintiff for fees and costs incurred in this matter. Such payments in the same amount shall be
26 made on (and delivered by) the 15th of every month thereafter with the final payment of \$6,500
27 occurring on July 15, 2013.
28

1 **3.3.4 Issuance of 1099 Forms.** After the Consent Judgment has been
2 approved and the settlement funds have been transmitted to plaintiff's counsel, 26 shall issue
3 three separate 1099 forms, as follows:

4 (a) The first 1099 shall be issued to the Office of Environmental Health
5 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
6 0284486)) in the amount paid pursuant to Section 3.3.1.(a) and, if
7 applicable, Section 3.3.2(a) above;

8 (b) The second 1099 shall be issued to Russell Brimer in the amount paid
9 pursuant to Section 3.3.1.(b) and, if applicable, Section 3.3.2(b) above;
10 and

11 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522)
12 in the amount of \$26,500.

13 **3.3.4 Payment Address:** All payments to The Chanler Group shall be
14 delivered to the following payment address:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 **5. CLAIMS COVERED AND RELEASE CLAIMS COVERED AND RELEASED**

21 **5.1 Plaintiff's Public Release of Proposition 65 Claims.** Plaintiff acting on his
22 own behalf and in the public interest releases Defendant from all claims for violations of
23 Proposition 65 up through the Effective Date based on exposure to the Listed Chemical from the
24 Products as set forth in the Notice. Compliance with the terms of this Consent Judgment
25 constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemical
26 from the Products as set forth in the Notice.

27 **5.2 Plaintiff's Individual Release of Claims.** Plaintiff also, in his individual
28 capacity only and *not* in his representative capacity, provides a 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

1 plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected,
2 limited to and arising out of alleged or actual exposures to the Listed Chemical in the Products
3 manufactured, distributed or sold by Defendant.

4 **5.3 Defendant's Release of Plaintiff.** Defendant on behalf of itself, its past and
5 current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and
6 all claims against Plaintiff, his attorneys and other representatives, for any and all actions taken
7 or statements made (or those that could have been taken or made) by Plaintiff and his attorneys
8 and other representatives, whether in the course of investigating claims or otherwise seeking to
9 enforce Proposition 65 against it in this matter with respect to the Products.

10 **6. SEVERABILITY**

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

15 **7. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and
17 shall be null and void if, for any reason, it is not approved and entered by the Court within nine
18 months after it has been fully executed by all Parties. In the event this Consent Judgment is (a)
19 not entered by this Court within nine months (or thereafter) of the Effective Date for any reason
20 whatsoever; or (b) is entered by the Court and subsequently overturned by any appellate court,
21 any monies that have been provided to Brimer or his counsel pursuant to Sections 3 and/or 4
22 above shall be refunded within fifteen (15) days after receiving a written demand from
23 Defendant requesting the return of such funds.

24 **8. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
27 inapplicable by reason of law generally, or as to the Listed Chemical and/or the Products, then
28 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to,

1 and to the extent that, the Products are so affected.

2 **9. NOTICES**

3 When any Party is entitled to receive any notice under this Consent Judgment, the notice
4 shall be sent by certified mail and electronic mail to the person(s) identified below:

5 To Defendant:

6 Mordechay Reuben, President
7 29 International, Inc.
8 1500 South Griffith Avenue
9 Los Angeles, CA 90021

To Brimer:

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

9 With Copy to:

10 Michael B. Fisher, Esq.
11 Buchalter Nemer
12 A Professional Corporation
13 1000 Wilshire Boulevard, Suite 1500
14 Los Angeles, CA 90017-2457

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

16 **10. POST EXECUTION ACTIVITIES**

17 Brimer agrees to comply with the reporting form requirements referenced, in California
18 Health & Safety Code § 25249.7(f). The parties acknowledge that, pursuant to Health & Safety
19 Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent
20 Judgment. In furtherance of obtaining such approval, Brimer and Defendant, and their
21 respective counsel agree to mutually employ their best efforts to support the entry of this
22 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in
23 a timely manner. For purposes of this paragraph, “best efforts” shall include, at a minimum,
24 cooperating on the drafting and filing of any papers in support of the requisite motion for judicial
25 approval.

26 **11. MODIFICATION**

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

1 Court.

2 **12. ENTIRE AGREEMENT**

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

9 **13. ATTORNEY'S FEES**

10 **13.1** A Party who unsuccessfully brings or contests an action arising out of this
11 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and
12 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this
13 Consent Judgment, the term "substantial justification" shall carry the same meaning as used in
14 the Civil Discovery Act, Code of Civil Procedure § 2016.010 *et seq.*

15 **13.2** Except as specifically provided in the above paragraph and in Section 4.1 above,
16 each Party shall bear its own costs and attorney's fees in connection with this action.

17 **14. COUNTERPARTS, FACSIMILE SIGNATURES**

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

21 **15. AUTHORIZATION**

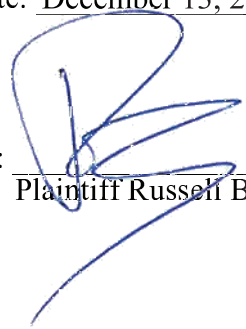
22 The undersigned are authorized to execute this Consent Judgment and have read,
23 understood, and agree to all of the terms and conditions of this Consent Judgment.

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Date: December 13, 2012

By: 
Plaintiff Russell Brimer

AGREED TO:

Date: _____

By: _____
Mordechay Reuben, President
26 International, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


AGREED TO:

Date: _____

By: _____
Plaintiff Russell Brimer

AGREED TO:

Date: 12/10/2012

By: 
Mordechay Reuben, President
26 International, Inc.