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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 RUSSELL BRIMER,
13 Plaintiff,
14 v.
15 THE MANUAL WOODWORKERS &
16 WEAVERS, INC.; and DOES 1-150,
inclusive,
17 Defendants.

Case No. RG11580915

[PROPOSED] CONSENT JUDGMENT

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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, The Manual Woodworkers & Weavers, Inc. ("Manual
5 Woodworkers" or "Defendant"), with Plaintiff and Defendant collectively referred to as the
6 "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 to improve human health by reducing or eliminating
10 hazardous substances contained in consumer products.

11 **1.3 Defendants**

12 Defendant Manual Woodworkers employs ten or more individuals and is a person in the
13 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
14 1986, California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65").

15 **1.4 General Allegations**

16 Brimer alleges that Manual Woodworkers has manufactured, distributed, and/or sold in
17 the State of California, tote bags (hereinafter referred to as "Products") that expose users to lead
18 without first providing a "clear and reasonable warning," as 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 1, 2011, Brimer served Manual Woodworkers and various public
23 enforcement agencies with a document entitled "60-Day Notice of Violation" that provided the
24 public enforcers and Manual Woodworkers with notice of alleged violations of Health & Safety
25 Code § 25249.6 for failing to warn consumers that the Products Manual Woodworkers
26 manufactured, distributed and/or sold exposed users in California to excessive amounts of the
27 Listed Chemical.

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1 **1.6 Complaint**

2 On or about June 15, 2011, Brimer, acting in a representative capacity in the interest of the
3 general public in California, filed the instant action in the Superior Court for the County of
4 Alameda alleging violations of Health & Safety Code § 25249.6 based on the exposures to the
5 Listed Chemical contained in the Products manufactured, distributed, and/or sold by Manual
6 Woodworkers (“Complaint”).

7 **1.7 No Admission**

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

17 **1.8 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Manual Woodworkers as to the allegations contained in the Complaint, that
20 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce
21 the provisions of this Consent Judgment pursuant to California Code of Civil Procedure § 664.6.

22 **1.9 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” shall mean June 30,
24 2011.

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

26 **2.1 Product Warnings**

27 Commencing on the Effective Date, Manual Woodworkers shall not sell, ship, or offer to
28 be shipped for sale in California any Product unless such Products are sold or shipped with one of

1 the clear and reasonable warnings set forth in subsection 2.1, or, in the alternative, comply with
2 the reformulation standards set forth in Sections 2.2 and 2.3.

3 Each warning shall be prominently placed with such conspicuousness, as compared with
4 other words, statements, designs, or devices as to render it likely to be read and understood by an
5 ordinary individual under customary conditions before purchase or use. Each warning shall be
6 provided in a manner such that the consumer or user understands to which *specific* Product the
7 warning applies, so as to minimize the risk of consumer confusion.

8 (a) **Retail Store Sales.**

9 (i) **Product Labeling.** Manual Woodworkers may affix a warning to
10 the packaging, labeling, or directly on each Product sold or distributed for sale by Manual
11 Woodworkers or its agents for sale in California., that states:

12 **WARNING:** This product contains lead, a chemical known
13 to the State of California to cause birth defects
and other reproductive harm.

14 (b) **Mail Order Catalog and Internet Sales.** In the event that Manual
15 Woodworkers sells Products via mail order catalog or internet to customers located in California
16 after the Effective Date that are not Reformulated Products, Manual Woodworkers shall provide a
17 warning for Products sold via mail order catalog or the Internet to California residents: (1) in the
18 mail order catalog; or (2) on the website. Warnings given in the mail order catalog or on the
19 website shall identify the specific Product to which the warning applies as further specified in
20 Sections 2.1(b)(i) and (ii).

21 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
22 order catalog must be in the same type size or larger than the Product description text within the
23 catalog. The following warning shall be provided on the same page and in the same location as
24 the display and/or description of the Product:

25 **WARNING:** This product contains lead, a chemical known
26 to the State of California to cause birth defects
and other reproductive harm.

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1 Where it is impracticable to provide the warning on the same page and in the same
2 location as the display and/or description of the Product, Manual Woodworkers may utilize a
3 designated symbol to cross reference the applicable warning and shall define the term “designated
4 symbol” with the following language on the inside of the front cover of the catalog or on the same
5 page as any order form for the Product(s):

6 **WARNING:** Certain products identified with this
7 symbol ▼ and offered for sale in this
8 catalog contain lead, a chemical known to
 the State of California to cause birth
 defects and other reproductive harm.

9 The designated symbol must appear on the same page and in close proximity to the
10 display and/or description of the Product. On each page where the designated symbol appears,
11 Manual Woodworkers must provide a header or footer directing the consumer to the warning
12 language and definition of the designated symbol.

13 If Manual Woodworkers elects to provide warnings in the mail order catalog, then the
14 warnings must be included in all catalogs offering to sell one or more Products printed after the
15 Effective Date.

16 (ii) **Internet Website Warning.** A warning may be given in
17 conjunction with the sale by Manual Woodworkers of the Products via the Internet, provided it
18 appears either: (a) on the same web page on which a Product is displayed; (b) on the same web
19 page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on
20 one or more web pages displayed to a purchaser during the checkout process. The following
21 warning statement shall be used and shall appear in any of the above instances adjacent to or
22 immediately following the display, description, or price of the Product for which it is given in the
23 same type size or larger than the Product description text:

24 **WARNING:** This product contains lead, a chemical known
25 to the State of California to cause birth defects
 and other reproductive harm.

26 Alternatively, the designated symbol may appear adjacent to or immediately following the
27 display, description, or price of the Product for which a warning is being given, provided that the
28 following warning statement also appears elsewhere on the same web page, as follows:

1 **WARNING:** Products identified on this page with the
2 following symbol ▼ contain lead, a
3 chemical known to the State of California
 to cause birth defects and other
 reproductive harm.

4 **2.2 Exceptions To Warning Requirements**

5 The warning requirements set forth in Section 2.1 shall not apply to Reformulated
6 Products (as defined in Section 2.3 below.)

7 **2.3 Reformulation Standards**

8 Reformulated Products are defined as those Products containing components that may be
9 handled, touched or mouthed during reasonably foreseeable use or misuse, which yield less than
10 100 parts per million (“ppm”) of lead when analyzed pursuant to EPA testing methodologies
11 3050B and 6010B (“digest test”), or equivalent methodologies utilized by federal or state agencies
12 for the purpose of determining lead content in a solid substance, and which components yield a
13 result of no more than 1.0 microgram (“µg”) of lead when analyzed pursuant to NIOSH Test
14 Method 9100 (“wipe test”). Although the Parties disagree as to whether any of the Products
15 which yield more than 100 ppm of lead in a wipe test and yield more than 1.0 µg of lead in a wipe
16 test may result in exposure of lead to the average consumer in excess of the applicable Maximum
17 Allowable Dose Levels, the Parties agree that exposures to Reformulated Products will not
18 require a Proposition 65 warning, as such exposures will not result in an exposure of more than
19 the Maximum Allowable Dose Level for lead as a chemical known to cause reproductive toxicity.

20 **3. MONETARY PAYMENTS**

21 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

22 In settlement of all the claims referred to in the Complaint against it and this Consent
23 Judgment, Manual Woodworkers shall make payments and receive credits totaling \$3,700, in civil
24 penalties, as follows

25 **3.1.1** Manual Woodworkers shall make an initial payment of \$1,700 to be
26 apportioned in accordance with Health & Safety Code § 25249.12 (c)(1) and (d), with 75% of
27 these funds remitted to the State of California’s Office of Environmental Health Hazard
28 Assessment (“OEHHA”) and the remaining 25% of these penalty monies remitted to Brimer as

1 provided by Health & Safety Code § 25249.12(d). Manual Woodworkers shall issue two separate
2 checks for the penalty payment: (a) one check made payable to “The Chanler Group in Trust for
3 OEHHA” in the amount of \$1,275, representing 75% of the total penalty, and (b) one check to
4 “The Chanler Group in Trust for Russell Brimer” in the amount of \$425, representing 25% of the
5 total penalty. Two separate 1099s shall be issued for the above payments. The first 1099 shall be
6 issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA
7 95814 (EIN: 68-0284486). The second 1099 shall be issued to Brimer, whose address and tax
8 identification number shall be furnished, upon request, at least five (5) calendar days before
9 payment is due. The payments shall be delivered within ten (10) days of the Effective Date, at the
10 address set forth in Section 3.4.

11 **3.1.2** Manual Woodworkers shall pay a second civil penalty of \$2,500, on or
12 before December 15, 2011, to be apportioned in accordance with Health & Safety Code
13 § 25249.12 (c)(1) and (d) as described above, which penalty shall be waived in its entirety, if, by
14 December 15, 2011, Manual Woodworkers certifies to Brimer that the Products contain no more
15 than 100 ppm of lead when analyzed pursuant to Environmental Protection Agency testing
16 methodologies 3050B or equivalent methods and do not exceed 1.0 ug of lead as applied to all
17 coated portions of all surfaces of the Products performed as outlined in NIOSH Test Method No.
18 9100.

19 **3.1.3** All payments, unless waived, shall be delivered to the following address:

20 The Chanler Group
21 Attn: Proposition 65 Controller
22 2560 Ninth Street, Suite 214
Berkeley, CA 94710

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

24 **4.1 Attorney Fees and Costs**

25 The parties acknowledge that Brimer and his counsel offered to reach agreement on the
26 material terms of this Consent Judgment, other than attorney fees and costs, before reaching terms
27 on the amount of attorney fees and costs to be reimbursed to them, thereby leaving the fee issue to
28 be resolved after the other non-fee related material terms of the agreement had been settled. The

1 Parties agreed to resolve the fee and cost issue shortly after the other settlement terms had been
2 tentatively agreed to, subject to agreement on fees and costs. The parties then attempted to (and
3 did) reach an accord on the compensation due to Brimer and his counsel under general contract
4 principles and the private attorney general doctrine codified at California Code of Civil Procedure
5 § 1021.5, for all work performed through the mutual execution of this agreement and entry of this
6 Consent Judgment and any other fees and costs that have been or may be incurred by Brimer
7 and/or his counsel, except for fees on appeal. Manual Woodworkers shall pay the total amount of
8 \$32,500 for fees and costs to “The Chanler Group” within ten (10) days of the Effective Date, to
9 the following address:

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

15 Manual Woodworkers shall issue a 1099 form, when reasonably available, to The
16 Chanler Group (EIN: 94-3171522) for the payment of \$32,500.

17 **5. CLAIMS COVERED AND RELEASED**

18 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.** This
19 Consent Judgment is a full, final and binding resolution between Brimer, on behalf of himself
20 and the public, and Manual Woodworkers, of any violation of Proposition 65 that was or could
21 have been asserted by Brimer against Manual Woodworkers, its parents, subsidiaries, affiliated
22 entities that are under common ownership, directors, officers, employees, attorneys, and each
23 entity to whom Manual Woodworkers directly or indirectly distributes or sells Products,
24 including but not limited to downstream distributors, wholesalers, customers, retailers,
25 franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure
26 to warn about alleged exposures to the Listed Chemical contained in the Products that were sold
27 by Manual Woodworkers.

28 **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

1 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
2 legal action and releases all claims, including, without limitation, all actions, and causes of
3 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
4 penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and
5 attorneys' fees, but exclusive of fees and costs on appeal -- limited to and arising under
6 Proposition 65 with respect to the Listed Chemical in the Products sold by Manual
7 Woodworkers (collectively "claims"), against Manual Woodworkers and Releasees.

8 **5.3 Brimer's Individual Release of Claims.** Brimer also, in his individual capacity
9 only and *not* in his representative capacity, provides a release herein which shall be effective as
10 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
11 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any
12 nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and
13 arising out of alleged or actual exposures to the Listed Chemical in the Products manufactured,
14 distributed or sold by Manual Woodworkers.

15 **5.4 Manual Woodworkers's Release of Brimer.** Manual Woodworkers on behalf
16 of itself, its past and current agents, representatives, attorneys, successors, and/or assignees,
17 hereby waives any and all claims against Brimer, his attorneys and other representatives, for any
18 and all actions taken or statements made (or those that could have been taken or made) by
19 Brimer and his attorneys and other representatives, whether in the course of investigating claims
20 or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the
21 Products.

22 **6. SEVERABILITY**

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

26 **7. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and
28 shall be null and void if, for any reason, it is not approved and entered by the Court within twelve

1 months after it has been fully executed by all Parties. If the Superior Court does not approve the
2 motion to approve this Consent Judgment within one-year of execution, all payments made by
3 Manual Woodworkers shall be returned to counsel for Manual Woodworkers. Brimer shall
4 provide to Manual Woodworkers for review no later than sixty (60) days after this Agreement is
5 executed by both parties a draft motion to approve the Consent Judgment and all supporting
6 papers, and shall file such motion and supporting papers no later than ten (10) business days after
7 Manual Woodworkers provides written consent, which consent shall not be unreasonably
8 withheld or delayed.

9 **8. GOVERNING LAW**

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

15 **9. NOTICES**

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

18 To Manual Woodworkers:

19 Joshua Bloom, Esq.
20 Barg Coffin Lewis & Trapp, LLP
21 350 California Street, 22nd Floor
22 San Francisco, CA 94104-1435

23 To Brimer:

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

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

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) and to file a motion for approval of this Consent Judgment.
4 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is
5 required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
6 approval, Brimer, Manual Woodworkers and their respective counsel agree to mutually employ
7 their best efforts to support the entry of this agreement as a Consent Judgment and obtain
8 approval of the Consent Judgment by the Court in a timely manner. Brimer shall prepare and file
9 all documents necessary to obtain court approval of this Consent Judgment. For purposes of this
10 paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any
11 papers in support of the required motion for judicial approval.

12 **11. MODIFICATION**

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

16 **12. ENTIRE AGREEMENT**

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

23 **13. COUNTERPARTS, FACSIMILE SIGNATURES**

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

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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.

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AGREED TO:

AGREED TO:

Dated: 6-13-11

Dated: 6/9/11

By: 
Russell Brimer

By: James G. Clarke
The Manual Woodworkers & Weavers,
Inc.
(JAMES G. CLARKE,
VP/CFO)