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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 KBL GROUP INTERNATIONAL LTD.; and
16 DOES 1-150, inclusive,
17 Defendants.

Case No. RG11576153
**[PROPOSED] CONSENT
JUDGMENT**
Health & Safety Code, § 25249.6

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1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and KBL Group International Ltd.**

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

6 **1.2 Plaintiff**

7 Brimer 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 Defendant employs ten or more people and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Defendant has manufactured, distributed, and/or offered for sale in
16 California belts that expose users to lead and the phthalate chemical di(2-ethylhexyl)phthalate
17 (“DEHP”) without first providing “clear and reasonable warning” as required by Proposition 65.
18 Lead and DEHP are each listed pursuant to Proposition 65 as chemicals known to the State of
19 California to cause birth defects and/or other reproductive harm.

20 **1.5 Product Description**

21 The following products, and no other products, are covered by this Consent Judgment:

- 22 a) A belt containing lead that is a component of the *Sweater Project Teal Thicket*
23 *Combo Sweater with Belt, Style No. JJQ04JR (#8 05081 34010 2)* (“First Product”),
24 and
25 b) A belt containing DEHP that is a component of the *Tuck Stitch Long Sleeve*
26 *Cardigan with Skinny Belt, Style No. JTB02MG (#8 05081 39463 1)* (“Second
27 Product”).
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1 Both of these products were manufactured, distributed, or sold by Defendant in California.
2 No other products are covered by this Consent Judgment.

3 **1.6 Notice of Violation**

4 On February 24, 2011 Brimer served Defendant and various public enforcement agencies
5 with a document entitled 60-Day Notice of Violation (“Notice”) that provided Defendant and such
6 public enforcers with notice that alleged that Defendant was in violation of Proposition 65 for
7 failing to warn consumers and customers that its belt products exposed users in California to lead.
8 No public enforcer (such as an attorney general) is known by either party to have made any effort to
9 prosecute the allegations set forth in the Notice.

10 On September 19, 2011, Brimer served Defendant and various public enforcement agencies
11 with a document entitled “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that
12 informed the recipients that Defendant was alleged to be in violation of Proposition 65 for failing to
13 warn consumers in California that its belt products sold in California exposed users to DEHP.

14 Brimer warrants and represents to Defendant that by November 28, 2011, at least sixty-six
15 (66) days will have passed from the date of such service of the Supplemental Notice on all public
16 enforcement agencies who must be notified pursuant to Health & Safety Code section
17 25249.7(d)(1). The Notice and Supplemental Notice are referred to collectively herein as the
18 “Notices.”

19 **1.7 Complaint**

20 On May 17, 2011, Brimer filed a complaint in the instant action (the “Complaint”) against
21 Defendant alleging violations of Proposition 65 based on the allegations in the Notice. Upon entry
22 of this Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc* to include the
23 violations of Proposition 65 alleged in the Supplemental Notice.

24 **1.8 No Admission**

25 Defendant denies the material factual and legal allegations contained in the Notices, the
26 original Complaint, and the Complaint as this settlement contemplates it will be amended, and
27 maintains that all products that it has sold in California have been and are in compliance with all
28 laws, including, without limitation, Proposition 65. Nothing in this Consent Judgment shall be

1 construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation
2 of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
3 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
4 specifically denied by Defendant. However, this Section shall not diminish or otherwise affect
5 Defendant's obligations, responsibilities, and duties under this Consent Judgment.

6 **1.9 Consent to Jurisdiction**

7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
8 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in
9 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
10 this Consent Judgment.

11 **1.10 Effective Date**

12 For purposes of this Consent Judgment, the term "Effective Date" shall mean November 28,
13 2011, provided that no authorized public prosecutor has filed prior to that date a Proposition 65
14 enforcement action based on the Supplemental Notice; in the latter event, the provisions of section 5
15 shall control the Parties' rights.

16 **2. INJUNCTIVE RELIEF**

17 As of the Effective Date, Defendant represents that it has ceased selling both the First
18 Product and the Second Product in California, and agrees that it will not offer either of these
19 products for sale in California in the future. The Parties nevertheless expect that some small residual
20 of the First and Second Product launched in "downstream" distribution by Defendant prior to the
21 Effective Date may be sold in California from time to time in the future by "Downstream Defendant
22 Releasees" (as defined in paragraph 4.1 below).

23 **3. MONETARY PAYMENTS**

24 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

25 KBL shall make a payment of \$15,000 to be apportioned in accordance with Health & Safety
26 Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the State
27 of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
28 25% of these penalty monies earmarked for Brimer.

1 **3.2 Reimbursement of Plaintiff's Fees and Costs**

2 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 issue to be resolved after the material terms of the agreement had been settled. KBL then expressed
5 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
6 The Parties then attempted to (and did) reach an accord on the compensation due to Brimer and his
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees
9 that may be incurred on appeal. Under these legal principles, KBL shall pay the amount of \$35,000
10 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees
11 and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's
12 approval of this Consent Judgment in the public interest.

13 **3.3 Payment Procedures**

14 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall
15 delivered on or before November 5, 2011 to either The Chanler Group or the attorney of record for
16 KBL, and shall be held in trust pending the Court's approval of this Consent Judgment.

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

- 18 (a) One check made payable to "The Chanler Group in Trust for
19 OEHHA" in the amount of \$11,250;
20 (b) One check made payable to "The Chanler Group in Trust for Russell
21 Brimer" in the amount of \$3,750; and
22 (c) One check made payable to "The Chanler Group in Trust" in the
23 amount of \$35,000.

24 Payments delivered to Andrew Lichtman, Esq. shall be made payable, as follows:

- 25 (a) One check made payable to "Andrew Lichtman, Esq. in Trust for
26 OEHHA" in the amount of \$11,250;
27 (b) One check made payable to "Andrew Lichtman, Esq. in Trust for
28 Brimer" in the amount of \$3,750; and

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(c) One check made payable to “Andrew Lichtman, Esq. in Trust for The Chanler Group” in the amount of \$35,000.

If KBL elects to deliver payments to its attorney of record, the attorney of record shall confirm, in writing within five days of deposit, that the funds have been deposited in a trust account.

Within two days of the date of the hearing on which the Court approves the Consent Judgment, the payments being held in trust by the attorney of record for KBL shall be delivered to The Chanler Group in three separate checks payable, as follows:

- (a) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$11,250;
- (b) One check to “The Chanler Group in Trust for Russell Brimer” in the amount of \$3,750; and
- (c) One check to “The Chanler Group” in the amount of \$35,000.

3.3.2 Issuance of 1099 Forms. After the Consent Judgment has been approved and the settlement funds have been transmitted to plaintiff’s counsel, KBL shall issue three separate 1099 forms, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$11,250;
- (b) The second 1099 shall be issued to Brimer in the amount of \$3,750, whose address and tax identification number shall be furnished upon request; and
- (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of \$35,000.

3.3.3 Payment Address: All payments delivered to the Chanler Group shall be sent to the following payment address:

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

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Full, Final, and Binding Resolution of Proposition 65 Allegations**

3 This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of
4 himself and the public, and Defendant, of any violation of Proposition 65 that was or could have been
5 asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated entities that are under
6 common ownership, directors, officers, employees, attorneys, successors, and assigns (“Defendant
7 Releasees”), and all entities to whom Defendant directly or indirectly has distributed or sold in
8 California prior to the Effective Date either the First Product or the Second Product or both, including
9 but not limited to specifically JC Penny and Macy’s and generally all downstream distributors,
10 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
11 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on their failure to
12 warn about alleged exposures to lead and/or DEHP contained in the First Product and/or the Second
13 Product (even for every such violation alleged to have been committed after the Effective Date by
14 Downstream Defendant Releasees, so long as the precise product in question had first been released
15 “downstream” by KBL prior to the Effective Date).

16 The Parties intend and understand that this Consent Judgment shall be given full *res judicata*
17 and *collateral estoppel* effect for purposes of precluding all Proposition 65 claims by anybody
18 regarding the First Product and the Second Product distributed or sold in California by Defendant
19 prior to the Effective Date, except that the Parties hereby contractually agree to block such effect
20 from extending upstream to any third parties that manufactured the First Product or the Second
21 Product or any component parts thereof, or any distributors or suppliers who sold the First Product or
22 the Second Product or any component parts thereof to Defendant.

23 **4.2 Plaintiff’s Public Release of Proposition 65 Claims**

24 In further consideration of the promises and agreements herein contained, Plaintiff on behalf
25 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
26 the interest of the general public hereby waives all rights to institute or participate in, directly or
27 indirectly, any form of legal action and provides a release herein which shall be effective as a full and
28 final accord and satisfaction, as a bar to all claims, including, without limitation, all past and future

1 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
2 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
3 fees, and attorneys' fees, but exclusive of fees and costs on appeal) limited to and arising under
4 Proposition 65 with respect to lead and/or DEHP in the First Product and/or the Second Product sold
5 by Defendant prior to the Effective Date, against Defendant Releasees and Downstream Defendant
6 Releasees. This release does not include a release of any fees on appeal.

7 **4.3 Plaintiff's Individual Release of Claims**

8 Plaintiff also, in his individual capacity, provides a release herein which shall be effective as a
9 full and final accord and satisfaction, as a bar to all past and future actions, causes of action,
10 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
11 Plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected,
12 limited to and arising out of alleged or actual lead and/or DEHP in the First Product and/or the
13 Second Product manufactured, distributed, or sold by Defendant in California prior to the Effective
14 Date, against Defendant Releasees and Downstream Defendant Releasees. This release does not
15 extend to any fees on appeal.

16 **4.4 Defendant's Release of Plaintiff**

17 Defendant on behalf of itself, its past and current agents, representatives, attorneys,
18 successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys and
19 other representatives, for any and all past actions taken or statements made by Plaintiff and his
20 attorneys and other representatives, whether in the course of investigating claims or otherwise
21 seeking to enforce Proposition 65 against them in this matter with respect to the First Product and the
22 Second Product. This release does not extend to any fees on appeal.

23 **5. COURT APPROVAL**

24 This Consent Judgment is merely a contract and not effective as a judgment until it is
25 approved and entered by the Court and, with the exception of this section's provisions, shall be null
26 and void upon the soonest of any of the following events: if after it has been fully executed by both
27 Parties, Brimer fails or refuses to refrain from litigating this case, including all discovery
28 proceedings; if, for any reason, it is not approved and entered by the Court within one year after

1 such execution; if any authorized public prosecutor has, prior to November 28, 2011, filed a
2 Proposition 65 enforcement action based on the Supplemental Notice; or if any court holds any
3 portion of section 4 to be unenforceable, as described in section 6 below. Any monies that have
4 been provided to Brimer or his counsel pursuant to Section 3 above shall be refunded within fifteen
5 (15) days after receipt of written notice from Defendant of any of these events.

6 **6. SEVERABILITY**

7 If subsequent to the execution of this Consent Judgment any of the provisions of this
8 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
9 remaining shall not be adversely affected unless the unenforceable part comprises or includes all or
10 any portion of section 4, as covered by section 5 above.

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California
13 and apply within the State of California.

14 **8. NOTICES**

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

19 For Defendant:

20 Andrew Lichtman
21 Attorney at Law
22 255 South Grand Ave., Suite 215
23 Los Angeles, CA 90012

24 For Brimer:

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

Any party, from time to time, may specify in writing to the other party a change of address

1 to which all notices and other communications shall be sent.

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

3 This Consent Judgment may be executed in counterparts and by facsimile or portable
4 document format (“pdf”) signature, each of which shall be deemed an original, and all of which,
5 when taken together, shall constitute one and the same document.

6 **10. POST EXECUTION ACTIVITIES**

7 Brimer agrees to comply with the reporting form requirements referenced in California
8 Health & Safety Code section 25249.7(f) and any applicable provisions of the Occupational Safety
9 Health Act (“OSH Act”) and to forthwith duly request the Court’s dismissal with prejudice all of
10 the defendants other than Defendant. In addition, the Parties acknowledge that, pursuant to Health
11 & Safety Code section 25249.7 and any applicable provisions of the OSH Act, a noticed motion is
12 required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
13 dismissals and such approval, Brimer shall prepare and file all documents necessary, and Brimer
14 and Defendant agree to mutually employ their best efforts to support the entry of this agreement as a
15 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
16 For purposes of this section, best efforts shall include, at a minimum, cooperating on the drafting
17 and filing of any papers in support of the required motion for judicial approval, so that Brimer shall
18 not file with the Court any paper without first giving Defendant a copy of it and waiting three days
19 so that Defendant may have a reasonable opportunity for input before the paper is filed.

20 **11. MODIFICATION**

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

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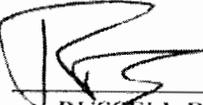
1 **12. AUTHORIZATION**

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.

5 **AGREED TO:**

AGREED TO:

KBL GROUP INTERNATIONAL LTD.

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8 _____
9 RUSSELL BRIMER

By: _____
STEVEN BEGLEITER, PRESIDENT

10 Date: 10-26-11 _____

Date: _____

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17 **IT IS SO ORDERED.**

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19 Date: _____

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21 JUDGE OF THE SUPERIOR COURT
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12. AUTHORIZATION

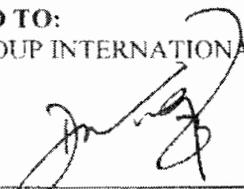
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

KBL GROUP INTERNATIONAL LTD.

RUSSELL BRIMER

By: 

~~STEVEN BEGLEITER, PRESIDENT~~

DANNY TSUNG, VICE-

Date: _____

Date: 12.27.11

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT