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6 Attorneys for Plaintiff  
RUSSELL BRIMER

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

11 RUSSELL BRIMER,  
12 Plaintiff,  
13  
14 v.  
15 SERVICE TOOL COMPANY, L.L.C.; and  
DOES 1 through 150, inclusive,  
16 Defendants.

Case No. CIV1105661

**[PROPOSED] CONSENT JUDGMENT**

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1 **5. INTRODUCTION**

2 **5.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”  
4 or “Plaintiff”) and Service Tool Company, L.L.C. (“Service Tool” or “Defendant”), with Brimer  
5 and Service Tool 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 awareness  
8 of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous  
9 substances contained in consumer products.

10 **1.3 Defendant**

11 Service Tool 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 **5.4 General Allegations**

15 Brimer alleges that Service Tool has manufactured, distributed, sold, and/or offered for  
16 sale in the State of California tape measures with hand straps containing lead without the  
17 requisite Proposition 65 health hazard warnings. Brimer further alleges that Service Tool has  
18 manufactured, distributed, sold, and/or offered for sale in the State of California tape measures  
19 with hand straps containing di(2-ethylhexyl)phthalate (“DEHP”) and hand tool grips containing  
20 lead without the requisite Proposition 65 health hazard warnings. Lead and DEHP are listed  
21 pursuant to Proposition 65 as chemicals known to cause birth defects and other reproductive  
22 harm.

23 **5.5 Product Description**

24 The products that are covered by this Consent Judgment include: (a) tape measures with  
25 hand straps containing lead including, but not limited to, *Tool Cache 16' x 3/4" Tape with*  
26 *Scriber, #51111 (#0 42374 30506 0)*, manufactured, distributed, sold and/or offered for sale in  
27 California by Service Tool, hereinafter the “Initial Noticed Products;” and (b) (1) tape measures  
28 with hand straps containing DEHP including, but not limited to, *Tool Cache 16' x 3/4" Tape with*

1 *Scriber, #51111 (#0 42374 30506 0)*, manufactured, distributed, sold and/or offered for sale in  
2 California by Service Tool, and (2) the *Tool Cache Hammer, #51627 (#0 42374 70946 2)*  
3 containing lead manufactured, distributed, sold and/or offered for sale in California by Service  
4 Tool, both hereinafter referred to collectively as the “Supplemental Noticed Products.” Initial  
5 Noticed Products and Supplemental Noticed Products are collectively referred to as “Products.”

#### 6 **5.6 Notices of Violation**

7 On or about September 1, 2011, Brimer served Service Tool and various public  
8 enforcement agencies with a document entitled “60-Day Notice of Violation” (“Initial Notice”)  
9 that provided the recipients with notice of alleged violations of Proposition 65 by Service Tool  
10 for failing to warn its customers and consumers in California that the Initial Noticed Products it  
11 sold exposed users to lead. To the best of the Parties’ knowledge, no public enforcer has  
12 commenced and is diligently prosecuting the allegations set forth in the Initial Notice.

13 On or about August 16, 2012, Brimer served Service Tool and various public enforcement  
14 agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“Supplemental  
15 Notice”) that provided the recipients with notice of alleged violations of Proposition 65 by  
16 Service Tool for failing to warn its customers and consumers in California that tape measures  
17 with hand straps it sold exposed users to DEHP and hand tools with grips exposed users to lead.  
18 The Initial Notice and Supplemental Notice are collectively referred to as the “Notices.”

#### 19 **5.7 Complaint**

20 On November 16, 2011, Brimer, who was and is acting in the interest of the general public  
21 in California, filed a complaint (“Complaint” or “Action”) in the Superior Court for the County  
22 of Marin against Service Tool and Does 1 through 150, alleging violations of Proposition 65  
23 based on the alleged exposures to lead contained in the Initial Noticed Products. In the event that  
24 no public enforcer undertakes diligent prosecution of the allegations set forth in the  
25 Supplemental Notice, and upon entry of this Consent Judgment by the Court, the Complaint shall  
26 be deemed amended to including violations of Proposition 65 based on the alleged exposures to  
27 DEHP contained in the tape measures with hand straps and to lead contained in the *Tool Cache*  
28 *Hammer, #51627 (#0 42374 70946 2)*.

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**5.8 No Admission**

Service Tool denies the material factual and legal allegations contained in Brimer’s Notices and Complaint, and maintains that all Products sold and distributed in California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Service Tool of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Service Tool of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Service Tool. However, this section shall not diminish or otherwise affect Service Tool’s obligations, responsibilities, and duties under this Consent Judgment.

**5.9 Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Service Tool as to the allegations contained in the Complaint, that venue is proper in the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

**1.10 Effective Date**

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this Consent Judgment is approved by the Court.

**6. INJUNCTIVE RELIEF: REFORMULATION**

Commencing on the Effective Date, Service Tool shall manufacture, distribute, sell and/or offer for sale in California only Products that are “Reformulated Products.” For purposes of this Consent Judgment, “Reformulated Products” shall mean Products containing components that may be handled, touched or mouthed by a consumer, and which components yield: (1) less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100; (2) less than 100 parts per million (“ppm”) lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B; and (3) contain less than or equal to 1,000 ppm (0.1%) DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C.

1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty Payment**

3 Pursuant to Health & Safety Code § 25249.7(b), Service Tool shall pay \$19,000 in civil  
4 penalties. Service Tool shall pay an initial civil penalty of \$4,000 and a final civil penalty of  
5 \$15,000 on the dates provided in Section 3.3. However, the final civil penalty shall be waived in  
6 its entirety if an officer of Service Tool provides Brimer with a written certification that, as of  
7 September 30, 2012, and continuing on into the future, Service Tool has sold and will continue  
8 to sell only Reformulated Products as defined in Section 2 of this Consent Judgment. Brimer  
9 must receive any such certification no later than March 15, 2013, and time is of the essence.

10 The penalty payments will be allocated according to Health & Safety Code §§ 25249.12  
11 (c)(1) & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California  
12 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five  
13 (25%) of the penalty amount earmarked for Brimer.

14 **3.2 Reimbursement of Brimer’s Fees and Costs**

15 The Parties acknowledge that Brimer and his counsel offered to resolve the non-monetary  
16 terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to  
17 them, thereby leaving this fee issue to be resolved after the non-monetary terms of the  
18 agreement had been settled. The Parties then agreed to resolve the fee and cost issue shortly  
19 after the non-monetary terms had been finalized, subject to agreement on fees. The Parties then  
20 attempted to (and did) reach an accord on the compensation due to Brimer and his counsel  
21 under general contract principles and the private attorney general doctrine codified at California  
22 Code of Civil Procedure § 1021.5, for all work performed in this matter, except fees that may be  
23 incurred on appeal. Under these legal principles, Service Tool shall pay the amount of \$23,000  
24 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees  
25 and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s  
26 approval of this Consent Judgment in the public interest.

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1           **3.3    Payment Procedures**

2                   **3.3.1 Funds Held In Trust:** The initial civil penalty payments required by  
3 Section 3.1 and the payment required by Section 3.2 shall be delivered on or before September  
4 21, 2012 to either The Chanler Group or the attorney of record for Service Tool and shall be  
5 held in trust pending the Court’s approval of this Consent Judgment.

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

- 7                   **(i)**     One check made payable to “The Chanler Group in Trust for  
8                                    OEHHA” in the amount of \$3,000;
- 9                   **(ii)**    One check made payable to “The Chanler Group in Trust for  
10                                   Russell Brimer” in the amount of \$1,000; and
- 11                  **(iii)**   One check made payable to “The Chanler Group in Trust” in the  
12                                   amount of \$23,000.

13           Payments delivered to Barg, Coffin, Lewis & Trapp, LLP shall be made payable, as  
14 follows:

- 15                  **(i)**     One check made payable to “Barg, Coffin, Lewis & Trapp, LLP in  
16                                   Trust for OEHHA” in the amount of \$3,000;
- 17                  **(ii)**    One check made payable to “Barg, Coffin, Lewis & Trapp, LLP in  
18                                   Trust for Russell Brimer in the amount of \$1,000; and
- 19                  **(iii)**   One check made payable to “Barg, Coffin, Lewis & Trapp, LLP in  
20                                   Trust for The Chanler Group” in the amount of \$23,000.

21           If Service Tool elects to deliver payments to its attorney of record, such attorney of  
22 record shall: (a) confirm in writing within five days of receipt that the funds have been  
23 deposited in a trust account; and (b) within five days of the date of the hearing on which the  
24 Court approves the Consent Judgment, deliver the payment to The Chanler Group in three  
25 separate checks, as follows:

- 26                  **(i)**     One check made payable to “The Chanler Group in Trust for  
27                                   OEHHA” in the amount of \$3,000;

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- (ii) One check made payable to “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,000; and
- (iii) One check made payable to “The Chanler Group” in the amount of \$23,000.

If the final civil penalty of \$15,000 referenced in Section 3.1 above is not waived, payments shall be delivered on or before March 29, 2013, to The Chanler Group and made payable, as follows:

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

**3.3.2 Issuance of 1099 Forms:** After the Consent Judgment has been approved and the settlement funds have been transmitted to Brimer’s counsel, Service Tool shall issue separate 1099 forms, when reasonably available, as follows:

- (i) 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 \$3,000;
- (ii) The second 1099 shall be issued to Russell Brimer in the amount of \$1,000, whose address and tax identification number shall be furnished upon request;
- (iii) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of \$23,000.
- (iv) If the penalty of \$15,000 referenced in Section 3.1 above is paid, the fourth 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; and

1 (v) If the penalty of \$15,000 referenced in Section 3.1 above is paid,  
2 the fifth 1099 shall be issued to Brimer in the amount of \$3,750,  
3 whose address and tax identification number shall be furnished  
4 upon request.

5 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered  
6 to the following payment address:

7 The Chanler Group  
8 Attn: Proposition 65 Controller  
9 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

12 This Consent Judgment is a full, final and binding resolution between Brimer, on behalf of  
13 himself and the public, and Defendant, of any violation of Proposition 65 that was or could have  
14 been asserted by Brimer against Defendant, or its parent, subsidiaries, affiliated entities that are  
15 under common ownership, directors, officers, employees, attorneys, and each entity to whom  
16 each Defendant directly or indirectly distributes or sells Products, including but not limited to  
17 downstream distributors, wholesalers, customers, retailers (“Downstream Releasees”) and their  
18 respective parents, subsidiaries, affiliated entities that are under common ownership, directors,  
19 officers, employees, attorneys, franchisees, cooperative members, licensors, and licensees of  
20 each Downstream Releasees (Defendant and the Downstream Releasees and the other entities  
21 identified in this Section 4.1 are collectively referred to herein as “Releasees”) based on their  
22 failure to warn about alleged exposures to lead contained in the Initial Noticed Products that  
23 were manufactured, distributed, sold and/or offered for sale by Releasees prior to the Effective  
24 Date.

25 In the event that the Complaint is deemed amended pursuant to Section 1.7 above to  
26 include the allegations found in the Supplemental Notice, this Consent Judgment constitutes a  
27 full, final and binding resolution between Brimer, on behalf of himself and in the public interest,  
28 and Releasees of any violation of Proposition 65 regarding the failure to warn about exposure to



1 DEHP in the tape measures with hand straps and lead in the *Tool Cache Hammer, #51627 (#0*  
2 *42374 70946 2)* manufactured, distributed, sold and/or offered for sale by Releasees prior to the  
3 Effective Date. Any other hand tool grips containing lead manufactured, distributed, sold and/or  
4 offered for sale by Releasees besides the *Tool Cache Hammer, #51627 (#0 42374 70946 2)* are  
5 expressly excluded from this release.

6 **4.2 Brimer's Public Release of Proposition 65 Claims**

7 Brimer acting on his own behalf and in the public interest, releases Releasees from all  
8 claims for violations of Proposition 65 up through the Effective Date based on exposure to lead  
9 from the Initial Noticed Products as set forth in the Initial Notice and the Complaint.  
10 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
11 with respect to exposures to lead from the Initial Noticed Products as set forth in the Initial  
12 Notice.

13 In the event that the Complaint is deemed amended pursuant to Section 1.7 above to  
14 include the allegations found in the Supplemental Notice, Brimer, acting on his own behalf and  
15 in the public interest, further releases Releasees from all claims for violations of Proposition 65  
16 up through the Effective Date based on exposure to DEHP in the tape measures with hand straps  
17 and lead in the *Tool Cache Hammer, #51627 (#0 42374 70946 2)*. Compliance with the terms of  
18 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to  
19 DEHP in the tape measures with hand straps and lead in the *Tool Cache Hammer, #51627 (#0*  
20 *42374 70946 2)*. Any other hand tool grips containing lead manufactured, distributed, sold  
21 and/or offered for sale by Releasees besides the *Tool Cache Hammer, #51627 (#0 42374 70946*  
22 *2)* are expressly excluded from this release.

23 **4.3 Brimer's Individual Release of Claims**

24 Brimer also, in his individual capacity only and *not* in his representative capacity, provides  
25 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
26 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
27 liabilities and demands of Plaintiff of any nature, character or kind, whether known or unknown,  
28 suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead and

1 DEHP in the tape measures with hand straps and to lead in the *Tool Cache Hammer, #51627 (#0*  
2 *42374 70946 2)* manufactured, distributed or sold by Releasees. Any other hand tool grips  
3 containing lead manufactured, distributed, sold and/or offered for sale by Releasees besides the  
4 *Tool Cache Hammer, #51627 (#0 42374 70946 2)* are expressly excluded from this release.

5 **4.4 Service Tool's Release of Plaintiff**

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

12 **5. SEVERABILITY**

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

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and  
19 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
20 year after it has been fully executed by all Parties, in which event any monies that have been  
21 provided to Brimer or his counsel pursuant to Section 3 above, shall be refunded within  
22 fifteen (15) days after receiving written demand from Service Tool for return of such funds.

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of  
25 California and apply within the State of California. In the event that Proposition 65 is repealed,  
26 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to lead, DEHP  
27 and/or the Products, then Service Tool shall provide written notice to Brimer of any asserted  
28 change in the law, and shall have no further obligations pursuant to this Consent Judgment with

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

2 **8. NOTICES**

3 When any Party is entitled to receive any notice under this Consent Judgment, the notice  
4 shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail)  
5 return receipt requested; or (ii) overnight courier on any Party by the other Party at the following  
6 addresses:

7 To Service Tool:

8 Thomas Le Blanc, President  
9 Service Tool Company, L.L.C.  
10 2501 South Lewis Street  
11 New Iberia, LA 70560

To Brimer:

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

12 With copy to:

13 Joshua A. Bloom  
14 Barg, Coffin, Lewis & Trapp, LLP  
15 350 California Street, 22<sup>nd</sup> Floor  
16 San Francisco, CA 94104-1435

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

20 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

21 Brimer agrees to comply with the reporting form requirements referenced in California  
22 Health & Safety Code § 25249.7(f) and to file a motion for approval of this Consent Judgment.

23 **10. MODIFICATION**

24 This Consent Judgment may be modified only: (1) by written agreement of the parties and  
25 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful  
26 motion of any party and entry of a modified Consent Judgment by the court.

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1 **11. ADDITIONAL POST-EXECUTION ACTIVITIES**

2 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to  
3 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent  
4 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California  
5 Health and Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of  
6 this Consent Judgment, which Brimer shall prepare and file, and which Service Tool shall not  
7 oppose. If any third party objection to the noticed motion is filed, Brimer and Service Tool shall  
8 work together to file a joint reply and appear at any hearing before the Court. If the Superior  
9 Court does not approve the motion to approve this Consent Judgment, and the Parties choose not  
10 to pursue a modified Consent Judgment within 30 days of said denial, or in the event that the  
11 Superior Court approves this Consent Judgment and any person successfully appeals that  
12 approval, all payments made pursuant to this Consent Judgment will be returned to Service Tool.

13 **12. ENTIRE AGREEMENT**

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

20 **13. COUNTERPARTS, FACSIMILE SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile or portable  
22 document format (".pdf"), each of which shall be deemed an original, and all of which, when  
23 taken together, shall constitute one and the same document. A facsimile or .pdf signature shall  
24 be as valid as the original.


25 **14. AUTHORIZATION**

26 The undersigned are authorized to execute this Consent Judgment and have read,  
27 understood, and agree to all of the terms and conditions of this Consent Judgment.  
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**AGREED TO:**

Date: Sept 19. 2012

By:  \_\_\_\_\_  
Russell Brimer

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Service Tool Company, L.L.C.

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**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Russell Brimer

**AGREED TO:**

Date: 9-17-12

By:   
Service Tool Company, L.L.C.