

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Evriholder Products, LLC**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”
4 or “Plaintiff”) and Evriholder Products, LLC (“Evriholder” or “Defendant”), with Brimer and
5 Evriholder collectively referred to as the “parties.”

6 **1.2 Russell Brimer**

7 Brimer is an individual residing in the State of California who seeks to promote awareness
8 of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Evriholder Products, LLC**

11 Brimer alleges that Evriholder employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Evriholder has manufactured, imported, distributed, sold and/or offered
16 for sale casserole dishes with colored artwork or designs containing lead, without first providing
17 “clear and reasonable warning” under Proposition 65. Lead is listed pursuant to the Safe Drinking
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.*
19 (“Proposition 65”), as a chemical known to the State of California to cause birth defects and other
20 reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are casserole dishes with colored
23 artwork or designs containing lead including, but not limited to, *Campbell’s Green Bean Casserole*
24 *Dish, #80536 (#0 17145 60041 5)* manufactured, imported, distributed, sold and/or offered for sale
25 by Evriholder in California, referred to hereinafter as the “Products.”

1 **1.6 Notice of Violation**

2 On October 11, 2011, Brimer served Evriholder, and various public enforcement agencies,
3 with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients
4 with notice of alleged violations of California Health & Safety Code § 25249.6 based on
5 Evriholder’s alleged failure to warn consumers that the Products exposed users in California to lead.
6 To the best of the parties’ knowledge, no public enforcer has prosecuted the allegations set forth in
7 the Notice.

8 **1.7 Complaint**

9 On May 17, 2012, Brimer filed a complaint in the Santa Clara County Superior Court (the
10 “Complaint”), against Evriholder and Does 1 through 150, *Brimer v Evriholder Products, LLC, et*
11 *al.*, Case No. 1-12-CV-224755 (the “Action”), alleging violations of Proposition 65 based on the
12 alleged exposures to lead contained in certain casserole dishes with colored artwork or designs sold
13 by Defendant.

14 **1.8 No Admission**

15 Evriholder denies the factual and legal allegations contained in the Notice and Complaint,
16 and maintains that all products that it has sold in California, including the Products, have been and
17 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
18 admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall compliance
19 with this Consent Judgment constitute or be construed as an admission by Defendant of any fact,
20 finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant.
21 However, this section shall not diminish or otherwise affect Defendant’s obligations,
22 responsibilities, and duties under this Consent Judgment. The Parties disagree as to the proper
23 testing method to be used in testing the Products and Evriholder does not admit that the testing
24 procedure outlined in this Consent Judgment are the proper test methods for determining the
25 amount of lead content in the Products.

1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the parties stipulate that this Court has
3 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in
4 the County of Santa Clara, and that this Court has jurisdiction to enter and enforce the provisions of
5 this Consent Judgment, pursuant to California Code of Civil Procedure § 664.6, as a full and
6 binding resolution of all claims which were or could have been raised in the Complaint against
7 Defendant based on the facts alleged therein and in the Notice.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term “Effective Date” shall mean December 31,
10 2012.

11 **2. INJUNCTIVE RELIEF: REFORMULATION**

12 **2.1 Reformulation Commitment**

13 As of the Effective Date, Evriholder shall not manufacture, import, distribute, sell or offer to
14 be shipped for sale in California any Products unless they are “Reformulated Products.” For
15 purposes of this Consent Judgment, Reformulated Products are Products that comply with the
16 reformulation standards set forth in Section 2.2 (“Reformulation Standards”).

17 **2.2 Reformulation Standards**

18 Reformulated Products shall meet the standards outlined in Sections 2.2.1, 2.2.2, and 2.2.3.

19 **2.2.1 Wipe Test-Based Standard**

20 The Product shall yield a maximum result of 1.0 micrograms (“ug”) lead by weight
21 on the surface of all colored artwork or designs on the exterior of the dish (“Exterior Decorations”)
22 analyzed according to NIOSH test method 9100 or a comparable methodology recognized by state
23 or federal agencies.

24 **2.2.2 Content-Based Standard**

25 Exterior Decorations shall only utilize materials that contain a maximum of 50 parts
26 per million (“ppm”) (0.005%) of lead by weight as measured either before or after the material is
27
28

1 fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050B and 6010B using
2 inductively coupled plasma – mass spectrometry (ICP-MS).¹

3 **2.2.3 Total Acetic-Acid Immersion Test-Based Standard**

4 The Interior Decorations of the Products:

5 (a) shall achieve a result of 0.99 ppm (0.000099%) or less of lead after correcting
6 for internal volume when tested pursuant to American Society of Testing and Materials (“ASTM”)
7 Standard Test Method C738-94 (2011) modified for total immersion; or

8 (b) shall only utilize decorating materials that yield a result of no more than 0.99
9 ppm lead when analyzed according to EPA Test Method 3050B, 6010B with ICP-MS, and NIOSH
10 test method 9100 or a comparable methodology recognized by state or federal agencies.

11 **3. MONETARY PAYMENTS**

12 In settlement of all the claims referred to in this Consent Judgment, Evriholder shall pay a
13 total of \$15,000 in civil penalties in accordance with this Section. Each penalty payment will be
14 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
15 the funds remitted to the California Office of Environmental Health Hazard Assessment
16 (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer, as follows:

17 **3.1 Initial Civil Penalty**

18 Evriholder shall pay an initial civil penalty in the amount of \$5,000 on or before February
19 15, 2013. Evriholder shall issue two separate checks to: (a) “OEHHA” in the amount of \$3,750;
20 and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of \$1,250. All penalty
21 payments shall be delivered to the addresses listed in Section 3.3 below.

22 **3.2 Final Civil Penalty**

23 Evriholder shall pay a final civil penalty of \$10,000 on or before March 15, 2013. The final
24 civil penalty shall be waived in its entirety, however, if, no later than March 1, 2013, an officer of
25

26 ¹ If the Exterior Decoration is tested by Evriholder after it is affixed to a Product, the percentage of lead by weight must
27 relate only to the decorating material and must not include any quantity attributable to non-decorating material (e.g. the
28 ceramicware substrate).

1 Evriholder provides Brimer with written certification that, as of the date of such certification and
2 continuing into the future, Evriholder has met the reformulation standard specified in Section 2
3 above, such that Evriholder shall not import or cause to be imported or manufacture or cause to be
4 manufactured any Products for distribution and sale in California that do not meet the reformulation
5 commitment pursuant to Sections 2.2.1, 2.2.2, and 2.2.3(b). Brimer must receive any such
6 certification on or before March 1, 2013. The certification in lieu of a final civil penalty payment
7 provided by this Section is a material term, and time is of the essence. Evriholder shall issue two
8 separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$7,500; and
9 (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$2,500.

10 **3.3 Payment Procedures**

11 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

12 (a) All payments owed to Brimer, pursuant to Sections 3.1 through 3.2, shall
13 be held in trust pending the Court's approval of this Consent Judgment
14 and shall be 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 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections
21 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop
22 65 Penalties") at the following addresses:

23 For United States Postal Service Delivery:

24 Mike Gyrics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 P.O. Box 4010
28 Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:

2 Mike Gyrics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95814

7 With a copy of the checks payable to OEHHA mailed to The Chanler
8 Group at the address set forth above in 3.3.1(a), as proof of payment to
9 OEHHA.

10 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Evriholder shall
11 issue separate 1099 forms for each payment to Brimer, whose address and tax identification
12 number shall be furnished upon request after this Consent Judgment has been fully executed by the
13 Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

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

15 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
16 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
17 issue to be resolved after the material terms of the agreement had been settled. Brimer then
18 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
19 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
20 Brimer and his counsel under general contract principles and the private attorney general doctrine
21 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
22 execution of this agreement. Evriholder shall pay \$50,000 for fees and costs incurred as a result of
23 investigating, bringing this matter to Evriholder's attention, and negotiating a settlement in the
24 public interest. Evriholder shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall
25 make the check payable to "The Chanler Group" and shall deliver payment on or before February
26 15, 2013, to the address listed in Section 3.3.1(a) above.

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Brimer's Public Release Of Proposition 65 Claims**

3 Brimer acting on behalf of himself, his past and current agents, representatives, attorneys,
4 successors and/or assignees, and in the public interest releases Evriholder and each of its
5 downstream wholesalers, licensors, licensees, auctioneers, distributors, franchisees, dealers,
6 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their
7 respective officers, directors, attorneys, representatives, shareholders, agents and employees and
8 sister and parent entities (collectively "Releasees"), from all claims for violations of Proposition 65
9 up through the Effective Date based on exposure to lead from the Products as set forth in the Notice
10 and Complaint. Compliance with the terms of this Consent Judgment constitutes compliance with
11 Proposition 65 with respect to exposures to lead from the Products as set forth in the Notice and
12 Complaint.

13 **5.2 Brimer's Individual Release Of Claims**

14 Brimer also, in his individual capacity only and not in his representative capacity, on behalf
15 of himself, his past and current agents, representatives, attorneys, successors and/or assigns,
16 provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar
17 to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
18 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
19 suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead in the
20 Products manufactured, distributed or sold by Evriholder.

21 **5.3 Evriholder's Release of Plaintiff**

22 Evriholder on behalf of itself, its past and current agents, representatives, attorneys,
23 successors, and/or assignees, hereby waives any and all claims against Brimer, his attorneys and
24 other representatives, for any and all actions taken or statements made by Brimer and his attorneys
25 and other representatives, whether in the course of investigating claims or otherwise seeking to
26 enforce Proposition 65 against it in this matter with respect to exposures to lead from the Products.

1 **6. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
4 after it has been fully executed by all parties.

5 **7. SEVERABILITY**

6 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
7 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
8 remaining shall not be adversely affected.

9 **8. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of California
11 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
12 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
13 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
14 preemption or rendered inapplicable by reason of law generally as to the Products, then Evriholder
15 shall provide written notice to Brimer and shall have no further obligations pursuant to this Consent
16 Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this
17 Consent Judgment shall be interpreted to relieve Defendant from any obligation to comply with any
18 pertinent state or federal toxics control laws.

19 **9. NOTICES**

20 Unless specified herein, all correspondence and notices required to be provided pursuant to
21 this Consent Judgment shall be in writing and: (i) personally delivered; (ii) sent by first-class,
22 (registered or certified mail) return receipt requested; or (iii) sent by overnight courier to one party
23 from the other party at the following addresses:

24 To Evriholder:

25 Gary Seehoff, CEO
26 Evriholder Products, LLC
27 1500 South Lewis Street
28 Anaheim, CA 92805

 To Brimer:

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

1 To Evriholder:

2 Bruce Nye
3 Adams Nye Becht LLP
4 222 Kearny Street, Seventh Floor
5 San Francisco, CA 94108-4521

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

8 **10. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

9 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
10 each of which shall be deemed an original, and all of which, when taken together, shall constitute
11 one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

13 Brimer and his attorneys agree to comply with the reporting form requirements referenced in
14 California Health & Safety Code § 25249.7(f).

15 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

16 Brimer and Evriholder agree to mutually employ their and their counsel's, best efforts to
17 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
18 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
19 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
20 Consent Judgment, which Brimer shall draft and file. If any third party objection to the noticed
21 motion is filed, the parties shall work together to file a joint reply and appear at any hearing before
22 the Court, either in person or telephonically. This provision is a material component of the Consent
23 Judgment and shall be treated as such in the event of a breach.

24 **13. MODIFICATION**

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

1 **14. AUTHORIZATION**

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

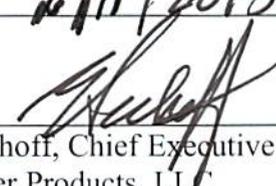
4
5 AGREED TO:

AGREED TO:

6
7 Date: February 11, 2013

Date: 2/11/2013

8
9 By:  _____
10 Plaintiff, Russell Brimer

By:  _____
Gary Seehoff, Chief Executive Officer,
Evriholder Products, LLC