

1 Christopher M. Martin, State Bar No. 186021
Josh Voorhees, State Bar No. 241436
2 THE CHANLER GROUP
2560 Ninth Street, Suite 214
3 Berkeley, CA 94710
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 FOR THE COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 PARAMOUNT APPAREL
INTERNATIONAL, INC.; and DOES 1-150,
16 inclusive,

17 Defendants.

Case No. RG12641740

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Paramount Apparel International, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer,
4 (“Brimer” or “Plaintiff”) and defendant Paramount Apparel International, Inc. (“Defendant” or
5 “Paramount”), with Plaintiff and Defendant collectively referred to as the “Parties” and each
6 individually referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Brimer alleges that Paramount manufactured, imported, distributed, sold and/or offered
17 for sale certain hats causing an exposure to lead in the state of California without the requisite
18 Proposition 65 health hazard warnings. Lead is listed pursuant to Proposition 65 as known to
19 the state of California to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as hats containing
22 lead, including, but not limited to, *Bass Pro Shops Khaki Safari Hat, #040077139326-1245797*,
23 which Paramount manufactured, imported, distributed, sold and/or offered for sale in the State
24 of California, hereinafter referred to as the “Products.”

25 **1.6 Notice of Violation**

26 On January 19, 2012, Brimer served Paramount. and various public enforcement
27 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the
28

1 recipients with notice of alleged violations of Proposition 65 for failing to warn consumers that
2 the Products exposed users in California to lead. To the best of the Parties' knowledge, no
3 public enforcer has commenced and is diligently prosecuting the allegations set forth in the
4 Notice.

5 **1.7 Complaint**

6 On or about August 1, 2012, Brimer, who was and is acting in the interest of the general
7 public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and
8 for the County of Alameda against Paramount and Does 1 through 150, alleging, *inter alia*,
9 violations of Proposition 65 based on the alleged exposures to lead contained in the Products.

10 **1.8 No Admission**

11 This Consent Judgment resolves claims that are denied and disputed by Defendant. The
12 Parties enter into this Consent Judgment pursuant to a full and final settlement of claims
13 between the Parties for the purpose of avoiding prolonged litigation. Paramount denies the
14 material factual and legal allegations contained in Brimer's Notice and Complaint and maintains
15 that all products it has sold and distributed in California, including the Products, have been and
16 are in compliance with Proposition 65 and all other applicable laws. Nothing in this Consent
17 Judgment shall be construed as an admission by Paramount of any fact, finding, issue of law, or
18 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
19 an admission by Paramount of any fact, finding, conclusion, issue of law, or violation of law,
20 the same being specifically denied by Paramount. However, this section shall not diminish or
21 otherwise affect Paramount's obligations, responsibilities, and duties under this Consent
22 Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Paramount as to the allegations contained in the Complaint, that venue is
26 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
27 provisions of this Consent Judgment.

28

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean December
3 15, 2012.

4 **2. INJUNCTIVE RELIEF: REFORMULATION**

5 **2.1 Reformulation Standards and Commitment**

6 As of the Effective Date, Paramount shall only manufacture and/or import for sale in
7 California Products that are “Lead Free.” For purposes of this Consent Judgment, “Lead Free”
8 Products shall mean Products containing components that may be handled, touched or mouthed
9 by a consumer, and which components yield less than 1.0 microgram of lead when using a wipe
10 test pursuant to NIOSH Test Method 9100, and yield less than 100 parts per million (“ppm”)
11 lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent
12 methodologies utilized by federal or state agencies for the purpose of determining lead content
13 in a solid substance.

14 **3. MONETARY PAYMENTS**

15 **3.1 Civil Penalty Payments Pursuant to Health & Safety Code § 25249.7(b)**

16 In settlement of the claims covered by this Consent Judgment, Paramount has been
17 assessed \$3,000 in civil penalties. For its cooperation in the settlement process and its
18 commitment to reformulate the Products to be Lead Free pursuant to Section 2.1 above,
19 Paramount is receiving from Plaintiff a penalty credit of \$6,000. Therefore, Paramount shall pay
20 a total of payment of \$3,000 as a civil penalty in settlement of Plaintiff’s claims that will be
21 apportioned in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and
22 (d), with 75% of these funds earmarked for the state of California’s Office of Environmental
23 Health Hazard Assessment (“OEHHA”) and the remaining 25% of these penalty monies
24 earmarked for Brimer.

25 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

26 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
28

1 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
2 Paramount then expressed a desire to resolve the fee and cost issue shortly after the other
3 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
4 the compensation due to Brimer and his counsel under general contract principles and the private
5 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
6 Plaintiff's work performed in this matter. Under these legal principles, Paramount shall pay
7 Brimer the amount of \$31,500 for his attorney's fees and costs incurred prior to the execution of
8 this Consent Judgment, inclusive of any fees and costs incurred investigating, noticing, and
9 litigating this matter, and including all future fees and costs, including attorney's fees, to be
10 incurred in seeking judicial approval of this Consent Judgment including, but not limited to,
11 preparing and filing the approval papers, complying with Proposition 65 reporting requirements,
12 and preparing for and attending any and all hearings related to the approval of this Consent
13 Judgment in the public interest.

14 **3.3 Payment Procedures**

15 **3.3.1 Funds Held In Trust.** All payments required by Sections 3.1 and 3.2
16 shall delivered on or before the Effective Date to either The Chanler Group or the attorney of
17 record for Paramount and shall be held in trust pending the Court's approval of this Consent
18 Judgment.

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

- 20 (a) One check made payable to "The Chanler Group in Trust for
21 OEHHA" in the amount of \$2,250;
- 22 (b) One check made payable to "The Chanler Group in Trust for
23 Russell Brimer" in the amount of \$750; and
- 24 (c) One check made payable to "The Chanler Group in Trust" in the
25 amount of \$31,500.

26 Payments delivered to Rogers Joseph O'Donnell shall be made payable, as follows:
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

- (a) One check made payable to “Rogers Joseph O’Donnell in Trust for OEHHA” in the amount of \$2,250;
- (b) One check made payable to “Rogers Joseph O’Donnell in Trust for Russell Brimer” in the amount of \$750; and
- (c) One check made payable to “Rogers Joseph O’Donnell in Trust for The Chanler Group” in the amount of \$31,500.

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

- (a) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$2,250;
- (b) One check made payable to “The Chanler Group in Trust for Russell Brimer” in the amount of \$750; and
- (c) One check made payable to “The Chanler Group” in the amount of \$31,500.

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, Paramount 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 \$2,250;
- (b) The second 1099 shall be issued to Russell Brimer in the amount of \$750, whose address and tax identification number shall be furnished upon request; and

1 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
2 3171522) in the amount of \$31,500.

3 **3.3.3 Payment Address.** All payments to the Chanler Group shall be delivered
4 to the following payment address:

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

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Brimer’s Public Release of Proposition 65 Claims**

10 Brimer acting on his own behalf and in the public interest releases Defendant, its parents,
11 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
12 attorneys, and each entity to whom Defendant directly or indirectly distributes or sells Products,
13 including but not limited to downstream distributors, wholesalers, customers, retailers,
14 franchisees, cooperative members, licensors, and licensees (“Defendant Releasees”) from all
15 claims for violations of Proposition 65 for Products manufactured and/or imported by Defendant
16 up through the Effective Date for sale in California based on alleged exposure to lead from the
17 Products as set forth in the Notice and Complaint. Defendant’s Compliance with the terms of this
18 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead
19 from the Products as set forth in the Notice and the Action.

20 **4.2 Brimer’s Individual Release of Claims**

21 Brimer, also on behalf of himself, his past and current agents, representatives, attorneys,
22 successors, and/or assignees and *not* in his representative capacity, provides a general release to
23 Defendant Releasees herein which shall be effective as a full and final accord and satisfaction, as
24 a bar to all Claims, liabilities and demands of any nature, character or kind, known or unknown,
25 suspected or unsuspected, as such claims relate to Defendant’s or Defendant Releasees’ sales of
26 Products containing lead manufactured and/or imported by Defendant prior to the Effective Date
27
28

1 for sale by Defendant or Defendant Releasees in California. Brimer further acknowledges that he
2 is familiar with Civil Code § 1542, which provides as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
4 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
5 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
6 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
7 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
8 DEBTOR.

7 Brimer, in his individual capacity only and *not* in his representative capacity, and on
8 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
9 assignees expressly waives and relinquishes any and all rights and benefits which he may have
10 under, or which may be conferred on him by the provisions of California Civil Code § 1542 as
11 well as under any other state or federal statute or common law principle of similar effect, to the
12 fullest extent that he may lawfully waive such rights or benefits pertaining to Defendant's or
13 Defendant Releasees' sales of Products containing lead manufactured and/or imported by
14 Defendant prior to the Effective Date for sale by Defendant or Defendant Releasees in California.

15 **4.3 Defendant's Release of Brimer**

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

22 Defendant also provides a general release herein which shall be effective as a full and final
23 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
24 attorneys' fees, damages, losses, claims, liabilities and demands of Defendants of any nature,
25 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter
26 of the Action alleging the presence of lead in the Products. Defendant acknowledges that it is
27 familiar with Civil Code § 1542, which provides as follows:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
4 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
5 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
6 DEBTOR.

7 Defendant expressly waives and relinquishes any and all rights and benefits which it may
8 have under, or which may be conferred on it by, the provisions of California Civil Code § 1542 as
9 well as under any other state or federal statute or common law principle of similar effect, to the
10 fullest extent that it may lawfully waive such rights or benefits pertaining to alleged exposures to
11 lead from the Products sold by Defendant prior to the Effective Date.

12 **5. COURT APPROVAL**

13 This Consent Judgment is not effective until it is approved and entered by the court and
14 shall be null and void if, for any reason, it is not approved and entered by the court within nine
15 months after it has been fully executed by all Parties. If this Consent Judgment is not entered by
16 the Court within nine months, upon 15 days written notice, the Plaintiff and/or the law firm
17 holding Defendant's settlement funds in trust shall refund any and all payments made into its trust
18 account by Defendant as requested.

19 **6. SEVERABILITY**

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

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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
27 Paramount shall provide written notice to Brimer of any asserted change in the law, and shall
28 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
that, the Products are so affected.

1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant
3 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
4 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by
5 the other Party at the following addresses:

6 To Paramount:

7 Steve Lefler, President
8 Paramount Apparel International, Inc.
9 1 Paramount Drive
Bourbon, MO 65441

10 With a copy to:

11 J. Robert Maxwell
12 Rogers Joseph O'Donnell
13 311 California Street, 10th Floor
San Francisco, CA 94104-2695

14 To Brimer:

15 Proposition 65 Coordinator
16 The Chanler Group
17 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

20 **9. 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 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

26 Brimer agrees to comply with the reporting form requirements referenced in California
27 Health & Safety Code §25249.7(f).
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

11. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties agree to mutually employ their, and their counsel’s, reasonable best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Brimer shall file, and which Paramount shall not oppose. If any third party objection to the noticed motion is filed, Brimer and Paramount shall work together to file a joint reply and appear at any hearing before the Court. If the Superior Court does not approve the motion to approve this Consent Judgment, and the Parties choose not to pursue a modified Consent Judgment within 30 days of said denial, or in the event that the Superior Court approves this Consent Judgment and any person successfully appeals that approval, all payments made pursuant to this Consent Judgment will be returned to Paramount within 15 days of Paramount’s written request.

12. MODIFICATION

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

13. ENTIRE AGREEMENT

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

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

14. AUTHORIZATION

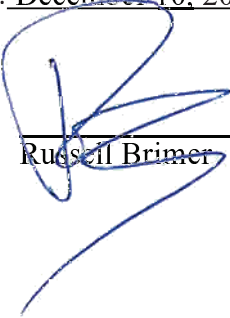
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: December 10, 2012

Date: _____

By:  _____
Russell Brimer

By: _____
Steve Lefler, President
Paramount Apparel International, Inc.

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.

5 **AGREED TO:**

AGREED TO:

6 Date: _____

Date: 12/14/02

7
8 By: _____
9 Russell Brimer

By: Steve Lefler
Steve Lefler, President
Paramount Apparel International, Inc.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28