

1 Christopher M. Martin, State Bar No. 186021  
2 Stephen E. Cohen, State Bar No. 284416  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 RUSSELL BRIMER

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION  
15

16 RUSSELL BRIMER,  
17 Plaintiff,  
18 v.  
19 RASHMAN CORPORATION; and DOES 1-  
20 150, inclusive,  
21 Defendants.

22 Case No.: RG 13686058  
23 **AMENDED [PROPOSED] CONSENT**  
24 **JUDGMENT**  
25 (Health & Safety Code § 25249.6 *et seq.*)  
26  
27  
28

1  
2 **1. INTRODUCTION**

3 **1.1 Russell Brimer and Rashman Corporation**

4 This Amended Consent Judgment is entered into by and between plaintiff Russell Brimer  
5 (“Brimer” or “Plaintiff”) and Rashman Corporation (“Rashman” or “Defendant”), with Brimer and  
6 Rashman collectively referred to as the “Parties.”

7 **1.2 Russell Brimer**

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 hazardous  
10 substances contained in consumer and commercial products. Brimer brings this Proposition 65  
11 action acting in the interest of the general public as a private attorney general after service of a 60-  
12 Day Notice of Violation (“Notice”) had been sent to the Attorney General of the State of California  
13 and the District Attorney for Each of the 58 counties in California and the City Attorney for Los  
14 Angeles, San Diego, San Jose, San Francisco and Sacramento (hereafter “Governmental Entities”).  
15 This Proposition 65 action was brought by Brimer more than 60 days after service of the Notice on  
16 the Governmental Entities.

17 **1.3 Rashman Corporation**

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

21 **1.4 General Allegations**

22 Brimer alleges that Rashman has manufactured, imported, distributed and/or sold ballpoint  
23 pen grips containing di(2-ethylhexyl)phthalate (“DEHP”) in California without the requisite  
24 Proposition 65 health hazard warnings. DEHP is listed pursuant to Proposition 65 as known to the  
25 State of California to cause birth defects and other reproductive harm.

26 **1.5 Product Description**

27 The products that are covered by this Amended Consent Judgment are defined as ballpoint  
28 pens having grips containing DEHP including, but not limited to, the *Prestige Medical Chart Pen*,

1 S400 (#7 86511 56131 4), manufactured, imported, distributed and/or sold by Rashman in  
2 California, hereinafter referred to as the “Noticed Products.”

3 In addition to the above, this Amended Consent Judgment covers the *Prestige Medical*  
4 *Royal Fiberglass Tape Measure, 45-ROY* (#7 86511 78241 2), *Prestige Medical I.D. Pouch-Black*  
5 *19-BLK* (#7 86511 19001 9), *Prestige Medical anatomy Dissecting Kit of 12 Pieces AK-1* (#7 86511  
6 *00901 4*), *Prestige Medical Bag 753* (#7 86511 75346 7), *Prestige Medical Aneroid*  
7 *Sphygmomanometer Sprague Kit A1-105* (#7 86511 78651 9) , which Rashman manufactured,  
8 imported, distributed, and/or sold in the State of California, hereinafter referred to as the  
9 “Additional Products.” The Noticed Products and the Additional Products are hereinafter referred  
10 to collectively as the “Products.”  
11

#### 12 **1.6 Notice of Violation**

13  
14 On July 11, 2012, Brimer served Rashman and various public enforcement agencies, with a  
15 document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice  
16 of alleged violations of California Health & Safety Code § 25249.6 based on Rashman’s alleged  
17 failure to warn consumers that the Noticed Products exposed users in California to DEHP. To the  
18 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the  
19 allegations set forth in the Notice.

#### 20 **1.7 Complaint**

21 On July 1, 2013, Brimer filed a complaint in the Superior Court in and for the County of  
22 Alameda against Rashman and Does 1 through 150, *Brimer v. Rashman Corporation, et al.*, Case  
23 No. RG13686058 (the “Complaint”), alleging violations of California Health & Safety Code  
24 § 25249.6, based on the alleged exposures to DEHP contained in the Noticed Products sold by  
25 Rashman.

#### 26 **1.8 No Admission**

27 Rashman denies the material, factual and legal allegations contained in Brimer’s Notice and  
28 Complaint and maintains that all Products that it has manufactured, imported, distributed, and/or

1 sold in California, including the Products, have been and are in compliance with all laws. Nothing  
2 in this Amended Consent Judgment shall be construed as an admission by Rashman of any fact,  
3 finding, issue of law, or violation of law, nor shall compliance with this Amended Consent  
4 Judgment constitute or be construed as an admission by Rashman of any fact, finding, conclusion,  
5 issue of law, or violation of law. However, this Section shall not diminish or otherwise affect  
6 Rashman's obligations, responsibilities, and duties under this Amended Consent Judgment.

7 **1.9 Consent to Jurisdiction**

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

12 **1.10 Effective Date**

13 For purposes of this Amended Consent Judgment, the term "Effective Date" shall mean the  
14 date the Amended Consent Judgment is approved by the Court.

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

16 **2.1 Injunctive Relief**

17 As of December 16, 2013, Rashman shall only acquire for distribution to or sale in  
18 California, Noticed Products that: (1) qualify as Reformulated Products as defined in Section 2.2  
19 below; or (2) include one of the clear and reasonable warnings set forth in Section 2.3 below. As of  
20 July 15, 2014, Rashman shall only acquire for distribution to or sale in California, Additional  
21 Products that: (1) qualify as Reformulated Products as defined in Section 2.2 below; or (2) include  
22 one of the clear and reasonable warnings set forth in Section 2.3 below.

23 **2.2 Reformulation Standards**

24 Reformulated Products are defined as those Products containing DEHP in concentrations  
25 less than 0.1 percent (1,000 parts per million) in each Accessible Component when analyzed  
26 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any  
27 other methodology utilized by federal or state agencies for the purpose of determining the DEHP  
28 content in a solid substance. "Accessible Component," as used in this Amended Consent Judgment,

1 means a component of any Product that can be touched by a person during normal, intended and  
2 foreseeable use of the Product.

3 **2.3 Product Warnings**

4 Commencing on December 16, 2013 for all Noticed Products, and July 15, 2014 for all  
5 Additional Products, Rashman shall, for all Products, other than Reformulated Products, sold in  
6 California, and all Products, other than Reformulated Products, sold to customers located outside of  
7 California that have a California warehouse, distribution center, maintain a retail outlet in California  
8 or has made internet sales into California on or after July 15, 2014, provide clear and reasonable  
9 warnings as set forth in subsections 2.3(a) and (b). Each warning shall be prominently placed with  
10 such conspicuousness as compared with other words, statements, designs, or devices as to render it  
11 likely to be read and understood by an ordinary individual under customary conditions before  
12 purchase or use. Each warning shall be provided in a manner such that the consumer or user  
13 understands to which *specific* Products the warning applies, so as to minimize the risk of consumer  
14 confusion.

15 (a) **Product Labeling.** Rashman shall affix a warning to the packaging,  
16 labeling, or directly on each of the Products, other than Reformulated Products, sold to California  
17 residents and to all Products, other than Reformulated Products, sold to customers located outside of  
18 California that have a California warehouse, distribution center, maintain a retail outlet in California  
19 or has made internet sales into California on or after July 15, 2014, that states:

20 **WARNING:** This product contains DEHP, a chemical known to  
21 the State of California to cause birth defects and  
22 other reproductive harm.

23 (b) **Internet Website Warning.** If after July 15, 2014, Rashman sells the  
24 Products, other than Reformulated Products, via the internet, a warning shall be given in  
25 conjunction with the sale of the Products on the Rashman website, which warning shall appear  
26 either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the  
27 order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more  
28 web pages displayed to a purchaser during the checkout process. The following warning statement

1 shall be used and shall appear in any of the above instances adjacent to or immediately following  
2 the display, description, or price of the Product for which it is given in the same type size or larger  
3 than the Product description text:

4           **WARNING:** This product contains DEHP, a chemical known to  
5                           the State of California to cause birth defects and  
6                           other reproductive harm.

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

10           **WARNING:** Products identified on this page with the following  
11                           symbol ▼ contain DEHP, a chemical known to the  
12                           State of California to cause birth defects and other  
13                           reproductive harm.

14           **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

15           In settlement of all the claims related to the Noticed Products referred to in this Amended  
16           Consent Judgment, and subject to the qualification set forth in paragraphs 3.1 and 3.2, Rashman  
17           shall pay a total of \$6,000 in civil penalties in accordance with this Section. Each penalty payment  
18           will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with  
19           75% of the funds remitted to the California Office of Environmental Health Hazard Assessment  
20           (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer as follows:

21           **3.1 Initial Civil Penalty**

22           Rashman has paid an initial civil penalty in the amount of \$2,000 on or before December 1,  
23           2013, Rashman by issuing two separate checks to: (a) “OEHHA” in the amount of \$1,500; and (b)  
24           “The Chanler Group in Trust for Russell Brimer” in the amount of \$500. All initial civil penalty  
25           payments have been delivered to the addresses listed in Section 3.3 below.

26           **3.2 Final Civil Penalty**

27           Rashman shall not have to pay a final civil penalty of \$4,000 on or before December 31,  
28           2013 as prior to that date an officer of Rashman provided Brimer with written certification that, as  
29           of December 16, 2013 and continuing into the future, Rashman has met the reformulation standard

1 specified in Section 2.2 above, such that all Noticed Products manufactured, imported, distributed,  
2 sold and offered for sale in California by Rashman are Reformulated Products. Brimer  
3 acknowledges having received such certification on or before December 30, 2013. Therefore, the  
4 final civil penalty provided in this Section has been waived.

5 **3.3 Payment Procedures**

6 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

7 (a) All payments owed to Brimer, pursuant to Sections 3.1 through 3.2,  
8 shall be delivered to the following payment address:

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

14 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to  
15 Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at  
16 the following addresses:

17 For United States Postal Service Delivery:

18 Mike Gyurics  
19 Fiscal Operations Branch Chief  
20 Office of Environmental Health Hazard Assessment  
21 P.O. Box 4010  
22 Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery:

24 Mike Gyurics  
25 Fiscal Operations Branch Chief  
26 Office of Environmental Health Hazard Assessment  
27 1001 I Street  
28 Sacramento, CA 95814

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

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





1           **5.2 Brimer's Individual Release of Claims**

2           Brimer also, in his individual capacity only and *not* in his representative capacity, provides a  
3 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
4 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
5 liabilities and demands of Brimer of any nature, character or kind, whether known or unknown,  
6 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the  
7 Products manufactured, imported, distributed, or sold by Rashman.

8           **5.3 Rashman's Release of Brimer**

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

15       **6. COURT APPROVAL**

16           This Amended Consent Judgment as to the Noticed Products is not effective until it is  
17 approved and entered by the Court and shall be null and void as to the the Noticed Products if, for any  
18 reason, it is not approved and entered by the Court within one year after it has been fully executed  
19 by all Parties. If the Court does not approve and enter the Amended Consent Judgment as to the  
20 Noticed Products within one year of the date this Amended consent Judgment is fully executed by  
21 the Parties, any monies that have been provided to OEHHA or held in trust for Brimer or his  
22 counsel pursuant to Section 3, above, shall be refunded to Rashman within 15 days. Upon  
23 execution, Brimer shall promptly file an appropriate motion to approve this Amended Consent  
24 Judgment with the Court.

25       **7. SEVERABILITY**

26           If, subsequent to the execution of this Amended Consent Judgment, any of the provisions of  
27 this Amended Consent Judgment are held by a court to be unenforceable, the validity of the  
28 enforceable provisions remaining shall not be adversely affected.

1       **8. GOVERNING LAW**

2           The terms of this Amended Consent Judgment shall be governed by the laws of the State of  
3 California and apply within the State of California. In the event that Proposition 65 is repealed,  
4 preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the  
5 provisions of this Amended Consent Judgment are rendered inapplicable or are no longer required  
6 as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as  
7 to the Products, then Rashman shall provide written notice to Brimer of any asserted change in the  
8 law, and shall have no further obligations pursuant to this Amended Consent Judgment with respect  
9 to, and to the extent that, the Products are so affected. Nothing in this Amended Consent Judgment  
10 shall be interpreted to relieve Rashman from any obligation to comply with any pertinent state or  
11 federal toxics control law.

12       **9. NOTICES**

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

17           To Rashman:

18           Steven L. Feldman, Esq.  
19           Goldfarb, Sturman & Averbach  
20           15760 Ventura Blvd.  
21           Nineteenth Floor  
22           Encino, CA 91436-3012

17           To Brimer:

18           Proposition 65 Coordinator  
19           The Chanler Group  
20           2560 Ninth Street  
21           Parker Plaza, Suite 214  
22           Berkeley, CA 94710-2565

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

25       **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

4       **12.    ADDITIONAL POST EXECUTION ACTIVITIES**

5           Brimer and Rashman agree to mutually employ their best efforts to support the entry of this  
6 agreement as a Amended Consent Judgment and obtain approval of the Amended Consent  
7 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California  
8 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this  
9 Amended Consent Judgment with respect to the Noticed Products, which Brimer shall draft and file,  
10 and Rashman shall join. If any third party objection to the noticed motion is filed, Brimer and  
11 Rashman shall work together to file a joint reply and appear at any hearing before the Court. This  
12 provision is a material component of the Amended Consent Judgment and shall be treated as such in  
13 the event of a breach.

14       **13.    MODIFICATION**

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

18       **14.    AUTHORIZATION**

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

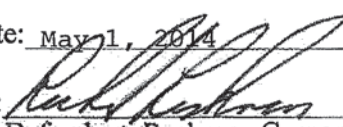
22       AGREED TO:

22       AGREED TO:

23  
24       Date: May 9, 2014

23  
24       Date: May 1, 2014

25       By:   
26       Plaintiff, Russell Brimer

25       By:   
26       Defendant, Rashman Corporation  
27       Richard Rashman, its CEO