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17 Attorneys for Defendant
18 JOHN D. BRUSH & CO., INC.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF ALAMEDA
21 UNLIMITED CIVIL JURISDICTION

22 RUSSELL BRIMER,

23 Plaintiff,

24 v.

25 JOHN D. BRUSH & CO., INC.; and DOES
26 1-150, inclusive,

27 Defendants.

Case No. RG13670145

[PROPOSED]
CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and John D. Brush & Co., Inc.**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”) and defendant John D. Brush & Co., Inc., dba the Sentry Group (“Sentry”), with Brimer and Sentry collectively referred to as the “parties,” and individually as a “party.” Brimer is an individual residing in the State of California who has asserted that he seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Brimer alleges that Sentry employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

12 **1.2 General Allegations**

13 Brimer has alleged that Sentry has portable safes with vinyl/PVC cables which contain the phthalate, di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65 warnings. DEHP is listed under Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

17 **1.3 Covered Products**

18 The products that are covered by this Consent Judgment are defined as portable safes with vinyl/PVC cables containing DEHP including, but not limited to, *SentrySafe Compact Safe, P008E, #401485, #P008EAF0480061604 (#0 49074 02003 3)*, manufactured, imported, distributed, sold and/or offered for sale by Sentry in the State of California, hereinafter the “Covered Products.”

23 **1.4 Notice of Violation**

24 On December 21, 2012, Brimer served Sentry and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with notice alleging that Sentry was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in the State of California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1 **1.5 Complaint**

2 On or about March 7, 2013, Brimer filed a complaint in the Superior Court in and for the
3 County of Alameda against John D. Brush & Co., Inc., and Does 1 through 150, *Brimer v. John D.*
4 *Brush & Co., Inc.*, Case No. RG13670145, alleging violations of Proposition 65, based on the
5 alleged exposures to DEHP contained in certain portable safes with vinyl/PVC cables sold by
6 Sentry (“Complaint”).

7 **1.6 No Admission**

8 Sentry denies the material, factual, and legal allegations contained in Brimer’s Notice and
9 Complaint and maintains that all Covered Products it has sold and distributed in the State of
10 California have been and are in compliance with all laws. Nothing in this Consent Judgment shall
11 be construed as an admission by Sentry of any fact, finding, issue of law, or violation of law, nor
12 shall compliance with this Consent Judgment constitute or be construed as an admission by Sentry
13 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
14 Sentry. However, this section shall not diminish or otherwise affect Sentry’s obligations,
15 responsibilities, and duties under this Consent Judgment.

16 **1.7 Execution Date**

17 For purposes of this Consent Judgment, the term “Execution Date” shall mean the date of
18 the complete execution of Consent Judgment by the Parties.

19 **1.8 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
21 this Consent Judgment is approved by the Court, including any non-contested Tentative Ruling.

22 **2. INJUNCTIVE RELIEF: REFORMULATION**

23 **2.1 Reformulation Standards**

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

1 **2.2 Reformulation Commitment**

2 As of April 1, 2013, all Covered Products manufactured, imported, distributed, sold or
3 offered for sale in the State of California by Sentry shall be Covered Products that qualify as
4 Reformulated Products as defined in Section 2.1 above, except to the extent that Covered Products
5 that do not qualify as Reformulated Products sold by Sentry prior to April 1, 2013 remain in the
6 inventory of Sentry’s downstream third-party retail or distribution customers.

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

8 In settlement of all the claims referred to in this Settlement Agreement, Sentry shall pay a
9 total of \$45,000 in civil penalties in accordance with this Section. Each penalty payment will be
10 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
11 the funds remitted to the California Office of Environmental Health Hazard Assessment
12 (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer, as follows:

13 **3.1 Initial Civil Penalty**

14 Sentry shall pay an initial civil penalty in the amount of \$15,000 within five (5) days of the
15 Execution Date. Sentry shall issue two separate checks made payable as follows: (a) the first to
16 “OEHHA” in the amount of \$11,250 due within five (5) days of the Effective Date; and (b) “The
17 Chanler Group in Trust for Russell Brimer” in the amount of \$3,750 due within five (5) days of the
18 Execution Date. All penalty payments shall be delivered to the addresses listed in Section 3.3
19 below.

20 **3.2 Final Civil Penalty**

21 Sentry shall pay a final civil penalty of \$30,000 on or before the Effective Date. The final
22 civil penalty shall be waived in its entirety, however, if, no later than May 1, 2013, an officer of
23 Sentry provides Brimer with written certification that, as of the April 1, 2013 and continuing into
24 the future, Sentry has met the reformulation commitment specified in Section 2.2 above. The
25 certification in lieu of a final civil penalty payment provided by this Section is a material term, and
26 time is of the essence. Sentry shall issue two separate checks for its final civil penalty payments
27 made payable as follows: (a) “OEHHA” in the amount of \$22,500; and (b) “The Chanler Group in
28 Trust for Russell Brimer” in the amount of \$7,500.

1 **3.3 Payment Procedures**

2 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

3 (a) All payments owed to Brimer, pursuant to Sections 3.1 through 3.2,
4 shall be delivered 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

10 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
11 Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”)
12 at the following addresses:

13 For United States Postal Service Delivery:

14 Mike Gyrics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010
18 Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery:

20 Mike Gyrics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

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

27 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Sentry shall issue
28 separate 1099 forms for each payment to Brimer, whose address and tax identification number
shall be furnished upon request after this Settlement Agreement has been fully executed by the
Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

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

30 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
31 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee

1 issue to be resolved after the material terms of the agreement had been settled. Brimer then
2 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
3 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
4 Brimer and his counsel under general contract principles and the private attorney general doctrine
5 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
6 execution of this agreement. Sentry shall pay \$38,000 for fees and costs incurred as a result of
7 investigating, bringing this matter to Sentry’s attention, and negotiating a settlement in the public
8 interest. Sentry shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the
9 check payable to “The Chanler Group” and shall deliver payment within five (5) days of the
10 Execution Date, to the address listed in Section 3.3.1(a) above.

11 **5. RELEASE OF ALL CLAIMS**

12 **5.1 Brimer’s Release of Sentry**

13 (a) This Consent Judgment is a full, final, and binding resolution between
14 Brimer and Sentry, and its owners, subsidiaries, affiliates, sister and related companies, employees,
15 shareholders, directors, insurers, attorneys, successors, and assigns (“Releasees”), and all entities to
16 whom they directly or indirectly distribute or sell Covered Products, including but not limited to
17 any distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees
18 (“Downstream Releasees”) of any violation of Proposition 65 that has been or could have been
19 asserted against Releasees and Downstream Releasees regarding the failure to warn about exposure
20 to the Listed Chemical arising in connection with Covered Products manufactured, sourced,
21 distributed or sold by Releasees or/and Downstream Releasees prior to execution of this
22 agreement. Releasees’ compliance with this Consent Judgment shall constitute compliance with
23 Proposition 65 with respect to the Listed Chemical in Covered Products after execution of this
24 agreement.

25 (b) Brimer, acting on his own behalf, and on behalf of his agents, successors
26 and assigns, and in the public interest, releases all Releasees and Downstream Releasees, from all
27 claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,
28 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,

1 but not limited to, investigation fees, expert fees, and attorneys' fees) for violations of Proposition
2 65 up through the Effective Date, based on exposure to DEHP from the Covered Products.
3 Releasees' Compliance with the terms of this Consent Judgment constitutes compliance with
4 Proposition 65 with respect to exposures to DEHP from the Covered Products.

5 (c) Brimer, also, in his individual capacity, and on behalf of his agents,
6 successors and assigns, only, and *not* in his representative capacity, provides a release herein which
7 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
8 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
9 Brimer related to the Covered Products manufactured, distributed or sold by Releasees or
10 Downstream Releasees. Brimer acknowledges that he is familiar with Section 1542 of the
11 California Civil Code, which provides as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
13 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
14 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
15 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
16 DEBTOR.

17 Brimer, in his individual capacity only and not in his representative capacity, and on behalf
18 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees
19 expressly waives and relinquishes any and all rights and benefits which he may have under, or
20 which may be conferred on him by the provisions of Section 1542 of the California Civil Code as
21 well as under any other state or federal statute or common law principle of similar effect, to the
22 fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.
23 In furtherance of such intention, the release hereby given shall be and remain in effect as a full and
24 complete release notwithstanding the discovery or existence of any such additional or different
25 claims or facts arising out of the released matters.

26 **5.2 Sentry's Release of Brimer**

27 Sentry on behalf of itself, its past and current agents, representatives, attorneys, successors,
28 and/or assignees, hereby waives any and all claims against Brimer, his attorneys and other
representatives, for any and all actions taken or statements made (or those that could have been
taken or made) by Brimer and his attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
2 respect to the Covered Products. Sentry acknowledges that it is familiar with Section 1542 of the
3 California Civil Code, which provides as follows:

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

9 Sentry expressly waives and relinquishes any and all rights and benefits which it may have
10 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil
11 Code as well as under any other state or federal statute or common law principle of similar effect,
12 to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released
13 matters. In furtherance of such intention, the release hereby given shall be and remain in effect as
14 a full and complete release notwithstanding the discovery or existence of any such additional or
15 different claims or facts arising out of the released matters

16 **6. SEVERABILITY**

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

20 **7. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and
22 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
23 after it has been fully executed by all parties. In the event the Court does not approve this Consent
24 Judgment within one year, the funds paid pursuant to Section 3 of this Consent Judgment shall be
25 returned to Sentry.

26 **8. SEVERABILITY**

27 If, subsequent to the approval of this Consent Judgment, any of the provisions of it are held
28 by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be
adversely affected. If not approved by the Court, this Consent Judgment shall be of no force and
effect.

1 **9. GOVERNING LAW**

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

4 **10. NOTICES**

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

9 To Sentry:

10 Mike Norris, General Counsel
11 and VP Human Resources
12 John D. Brush & Co., Inc.,
13 dba The Sentry Group
14 900 Linden Avenue
15 Rochester, NY 14625

14 with a copy to:

15 Christopher D. Jensen, Esq.
16 Barg Coffin Lewis & Trapp, LLP
17 350 California Street, 22nd Floor
18 San Francisco, California 94104-1435

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

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

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

23 **11. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

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

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

13. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Brimer’s counsel shall prepare a motion for this Consent Judgment’s approval by the Court, and Brimer and Sentry, and their respective counsel, agree to mutually employ their 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.

14. 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.

15. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 3.27.13

Date: _____

By:  _____
Plaintiff, Russell Brimer

By: _____
James Brush, CEO
Defendant, John D. Brush & Co., Inc.
dba The Sentry Group

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15. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: _____

Date: March 27, 2013

By: _____
Plaintiff, Russell Brimer

By: [Signature]
James B. Brush, CEO
Defendant, John D. Brush & Co., Inc.
dba The Sentry Group