

1 THE CHANLER GROUP
DANIEL BORNSTEIN, State Bar No. 181711
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710-2565
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 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

11 RUSSELL BRIMER,
12 Plaintiff,
13

14 v.

15 INVENTORY LIQUIDATORS CORP.;
REGENT PRODUCTS CORP.; and DOES 1-
16 150, inclusive,
17 Defendants.

Assigned for all purposes to the Honorable
Michael Ballachey, Judge of the Superior Court

Case No. RG13675862

**CONSENT TO JUDGMENT AS
TO DEFENDANTS REGENT PRODUCTS
CORP. and INVENTORY LIQUIDATORS,
CORP.**

Date:
Time:
Dept: 18
Judge: Hon. Michael Ballachey

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent To Judgment is entered into by and between plaintiff Russell Brimer
4 (“Brimer” or “Plaintiff”) and defendants Inventory Liquidators Corp. and Regent Products Corp.,
5 (“Regent” or “Defendant”), with Brimer and Regent 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 improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Regent**

11 Regent employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code §25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Brimer alleges that Regent has manufactured, imported, distributed and/or sold planners
16 with vinyl/PVC covers containing Di(2-ethylhexyl)phthalate (“DEHP”) for use in the State of
17 California without the requisite health hazard warnings. DEHP (the “Listed Chemical”) is listed
18 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects
19 and other reproductive harm.

20 **1.5 Notice of Violation.**

21 On December 21, 2012, Brimer served Regent and various public enforcement agencies
22 with a document entitled “60-Day Notice of Violation,” that alleged that Regent violated
23 Proposition 65 by failing to warn consumers that planners with vinyl/PVC covers exposed users
24 in California to DEHP.

25 **1.6 Complaint.**

26 On April 17, 2013 Brimer, acting in the interest of the general public in California, filed a
27 Complaint in the instant action (“Complaint”) naming Regent as a defendant and alleging
28 violations of Health & Safety Code §§ 25249.6, *et seq.* based on, *inter alia*, alleged occupational

1 and consumer exposures to the Listed Chemical contained in the Covered Products sold in
2 California without the clear and reasonable warning required by Proposition 65.

3 1.7 **No Admission.** The Parties enter into this Consent To Judgment as a full and final
4 settlement of all claims that were raised in the Complaint or that could have been raised in the
5 Complaint, arising out of the facts or conduct alleged therein. By execution of this Consent To
6 Judgment and agreeing to comply with its terms, Regent does not admit any facts or conclusions
7 of law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating
8 any violations of Proposition 65 or any other statutory, common law or equitable requirements
9 relating to DEHP in Covered Products. Nothing in this Consent To Judgment shall be construed
10 as an admission by Regent of any fact, conclusion of law, issue of law or violation of law, nor
11 shall compliance with the Consent To Judgment constitute or be construed as an admission by
12 Regent of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent
13 To Judgment shall prejudice, waive or impair any right, remedy, argument or defense Regent may
14 have in this or any other or future legal proceedings. This Consent To Judgment is the product of
15 negotiation and compromise and is accepted by Regent for purposes of settling, compromising,
16 and resolving issues disputed in this action. However, this section shall not diminish or otherwise
17 affect the obligations, responsibilities and duties of Regent under this Consent To Judgment.

18 1.8 **Consent to Jurisdiction.** For purposes of this Consent To Judgment only, Regent
19 stipulates that this Court has jurisdiction over Regent as to the allegations contained in the
20 Complaint, that venue is proper in the County of Alameda and that this Court has jurisdiction to
21 enter and enforce the provisions of this Consent To Judgment.

22 **2. DEFINITIONS.**

23 2.1 “Covered Product[s]” means planners with vinyl/PVC covers.

24 2.2 “Effective Date” means the date this Consent To Judgment is approved by the
25 court.

26 2.3 “DEHP Limits” means the maximum concentration of DEHP and DEHP
27 composites by weight specified in Section 3.1.

28

1 2.4 “Manufactured” and “Manufactures” have the meaning defined in Section 3(a)(10)
2 of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)],¹ as amended from time
3 to time.

4 **3. INJUNCTIVE RELIEF REFORMULATION**

5 3.1 **Reformulated Products**

6 As of the Effective date, Regent shall not manufacture, distribute, sell or offer for sale to
7 consumers in California Covered Products unless such Product contains no more than 1,000 parts
8 per million of DEHP by weight when analyzed pursuant to EPA testing methodologies 3580A
9 and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of
10 determining DEHP content in a solid substance.

11 **4. MONETARY PAYMENTS**

12 4.1 **Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

13 Regent shall make a payment of \$7,100 to be apportioned in accordance with Health &
14 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked
15 for the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)
16 and the remaining 25% of these penalty monies earmarked for Brimer. This payment shall be
17 delivered to The Chanler Group no later than five (5) days after entry of judgment, and shall be
18 made payable, as follows:

19 4.1.1 One check made payable to “The Chanler Group in Trust for OEHHA” in
20 the amount of \$5,325;

21 4.1.2 One check made payable to “The Chanler Group in Trust for Russell
22 Brimer” in the amount of \$1,775.

23 4.2 **Final Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

24 December 31, 2013, Regent shall pay an additional sum of \$5,000 (the “Final Payment”).
25 The Final Payment shall be waived in its entirety, if, on or before December 15, 2013, an officer
26 of Regent certifies to Brimer’s counsel, in writing, that all Products described in section 2.1 of
27 this Agreement sold or offered for sale by Regent in California after November 1, 2013, are
28 _____

1 Reformulated Products as described in Section 3.1, and that Regent will continue to distribute,
2 import, ships, sell in, or offer for sale in California only Reformulated Products after the date of
3 certification.

4 Unless waived, the Final Payment shall be allocated according to Health & Safety
5 Code § 25249.7(c)(1) and (d), with 75% of the payment earmarked for OEHHA, and the
6 remaining 25% of the penalty earmarked for Brimer. Regent shall issue two separate
7 checks for the final penalty payment: (a) one check made payable to “OEHHA” in the
8 amount of \$3,750 representing 75% of the total penalty; and (b) one check to “The
9 Chanler Group in Trust for Russell Brimer” in the amount of \$1,250 representing 25% of
10 the total penalty. Two separate 1099s shall be issued for the above payments. The checks
11 and 1099s shall be delivered to the addresses listed in Section 3.3 below.

12 **4.2 Reimbursement of Plaintiff’s Fees and Costs**

13 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
14 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
15 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
16 Regent then expressed a desire to resolve the fee and cost issue shortly after the other settlement
17 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
18 compensation due to Brimer and his counsel under general contract principles and the private
19 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
20 work performed in this matter, except fees that may be incurred on appeal. Under these legal
21 principles, Regent shall pay the amount of \$32,000 for fees and costs incurred investigating,
22 litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred)
23 negotiating, drafting, and obtaining the Court’s approval of this Consent Judgment in the public
24 interest.

25 This payment shall be delivered and made payable to The Chanler Group no later than
26 five (5) days after entry of judgment.

27
28

1 4.3 **Issuance of 1099 Forms.** After the Consent Judgment has been approved and the
2 settlement funds have been transmitted to plaintiff's counsel, Regent shall issue three separate
3 1099 forms, as follows:

4 4.3.1 The first 1099 shall be issued to the Office of Environmental Health Hazard
5 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of
6 \$5,325;

7 4.3.2 The second 1099 shall be issued to Brimer in the amount of \$1,775, whose
8 address and tax identification number shall be furnished upon request; and

9 4.3.3 The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in
10 the amount of \$32,000.

11 4.4 **Payment Address:** All payments to the Chanler Group shall be delivered to the
12 following payment address:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

16 **5. CLAIMS COVERED AND RELEASE**

17 5.1 This Consent To Judgment is a full, final, and binding resolution between Brimer
18 and Regent and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates,
19 and sister companies and their successors and assigns ("Defendant Releasees"), and their
20 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
21 licensors, and licensees, and any other person or entity to whom they directly or indirectly
22 distribute or sell Covered Products, ("Downstream Defendant Releasees"), of any violation of
23 Proposition 65 that has been asserted by Brimer in the public interest, through a Proposition 65
24 60-Day Notice of Violation against Regent, Defendant Releasees, and Downstream Defendant
25 Releasees regarding the failure to warn about exposure to DEHP in Covered Products. Defendant
26 Releasees' compliance with this Consent To Judgment shall constitute compliance with
27 Proposition 65 with respect to DEHP in Covered Products after the Effective Date.
28

1 5.2 Brimer on behalf of himself, his past and current agents, representatives, attorneys,
2 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to
3 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
4 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
5 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
6 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
7 known or unknown, fixed or contingent (collectively "Claims"), against Regent, Defendant
8 Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65
9 regarding the failure to warn about exposure to DEHP in Covered Products.

10 5.3 Brimer also, in his individual capacity only and *not* in his representative capacity,
11 provides a general release herein which shall be effective as a full and final accord and
12 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
13 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,
14 known or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint.
15 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which
16 provides as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
18 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
19 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
 HER SETTLEMENT WITH THE DEBTOR.

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

28

1 This release is expressly limited to those claims that arise under Proposition 65, as such
2 claims relate to Defendant's alleged failure to warn about exposures to or identification of the
3 DEHP contained in the Covered Products, as such claims are identified in the Proposition 65 60-
4 Day Notice to Defendant and to the extent that any alleged violations occur prior to thirty (30)
5 days after the Effective Date. This Release does not release any person, party or entity from any
6 liability for any violation of Proposition 65 regarding the Covered Products that occur more than
7 thirty (30) days after the Effective Date.

8 The Parties further understand and agree that this release shall not extend upstream to any
9 entities, other than Defendant, that Manufactured the Covered Products or any component parts
10 thereof, or any distributors or suppliers who sold the Covered Products or any component parts
11 thereof to Defendant.

12 5.4 Regent waives any and all Claims against Brimer, his attorneys, and other
13 representatives for any and all actions taken or statements made (or those that could have been
14 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
15 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
16 matter, and/or with respect to the Covered Products.

17 5.5 Regent also provides a general release herein which shall be effective as a full and
18 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
19 attorneys' fees, damages, losses, claims, liabilities and demands of Regent of any nature,
20 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter
21 of the Action. Regent acknowledges that it is familiar with Section 1542 of the California Civil
22 Code, which provides as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
25 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
26 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
27 HER SETTLEMENT WITH THE DEBTOR.

26 Regent expressly waives and relinquishes any and all rights and benefits which it may have
27 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil
28 Code as well as under any other state or federal statute or common law principle of similar effect,

1 to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released
2 matters. In furtherance of such intention, the release hereby given shall be and remain in effect as
3 a full and complete release notwithstanding the discovery or existence of any such additional or
4 different claims or facts arising out of the released matters.

5 **6. COURT APPROVAL**

6 6.1 By this Consent To Judgment and upon its approval, the Parties waive their right
7 to trial on the merits, and waive rights to seek appellate review of any and all interim rulings,
8 including all pleading, procedural, and discovery orders.

9 6.2 The parties acknowledge that, pursuant to California Health & Safety Code §
10 25249.7, a noticed motion is required to obtain judicial approval of this Consent To Judgment,
11 which Brimer shall file,.

12 6.3 If this Consent To Judgment is not approved by the Court, (a) this Consent To
13 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
14 become null and void, and the action shall revert to the status that existed prior to the execution
15 date of this Consent To Judgment; (b) no term of this Consent To Judgment or any draft thereof,
16 or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions,
17 shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this
18 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
19 whether to modify the terms of the Consent To Judgment and to resubmit it for approval.

20 **7. ATTORNEYS' FEES**

21 7.1 Should Plaintiff prevail on any motion, application for an order to show cause or
22 other proceeding to enforce a violation of this Consent To Judgment, Plaintiff shall be entitled to
23 his reasonable attorneys' fees and costs (including investigative costs) incurred as a result of such
24 motion or application. Should Regent prevail on any motion application for an order to show
25 cause or other proceeding, Regent may be awarded its reasonable attorneys' fees and costs as a
26 result of such motion or application upon a finding by the court that Plaintiff's prosecution of the
27 motion or application lacked substantial justification. For purposes of this Consent To Judgment,
28

1 the term substantial justification shall carry the same meaning as used in the Civil Discovery Act
2 of 1986, Code of Civil Procedure Section 2016, *et seq.*

3 7.2 Except as otherwise provided in this Consent To Judgment, each Party shall bear
4 its own attorneys' fees and costs.

5 7.3 Nothing in this Section 8 shall preclude a Party from seeking an award of
6 sanctions pursuant to law.

7 **8. GOVERNING LAW**

8 8.1 The terms of this Consent To Judgment shall be governed by the laws of the State
9 of California, and shall apply only to Covered Products offered for sale in the State of California.
10 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
11 generally, or as to the Products, then Regent may provide written notice to Brimer of any asserted
12 change in the law, and shall have no further obligations pursuant to this Consent To Judgment
13 with respect to, and to the extent that, the Covered Products are so affected.

14 8.2 The Parties, including their counsel, have participated in the preparation of this
15 Consent To Judgment and this Consent To Judgment is the result of the joint efforts of the
16 Parties. This Consent To Judgment was subject to revision and modification by the Parties and
17 has been accepted and approved as to its final form by all Parties and their counsel. Accordingly,
18 any uncertainty or ambiguity existing in this Consent To Judgment shall not be interpreted against
19 any Party as a result of the manner of the preparation of this Consent To Judgment. Each Party to
20 this Consent To Judgment agrees that any statute or rule of construction providing that
21 ambiguities are to be resolved against the drafting Party should not be employed in the
22 interpretation of this Consent To Judgment and, in this regard, the Parties hereby waive California
23 Civil Code § 1654.

24 **9. NOTICES**

25 9.1 Unless specified herein, all correspondence and notices required to be provided
26 pursuant to this Consent To Judgment shall be in writing and personally delivered or sent by: (i)
27 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
28 Party by the other Party at the following addresses:

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

To Regent:

Michael De Paul, President
Regent Products Corp.
8999 Palmer St.
River Grove, IL 60171

To Brimer:

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

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

10. MODIFICATION

10.1 **Modification.** This Consent To Judgment may be modified by written agreement of the Parties and upon entry of a modified Consent To Judgment by the court, or by motion of any Party and entry of a modified Consent To Judgment by the court.

10.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the DEHP content of Covered Products sold in California, any Party shall be entitled to request that the Court modify the reformulation standard of Section 3.1 of this Consent To Judgment for good cause shown.

10.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent To Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent To Judgment.

11. ENTIRE AGREEMENT

11.1 This Consent To 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, or understandings related thereto, if any, are hereby merged herein and therein. No supplementation, modification, waiver, or termination of this Consent To Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent To Judgment shall be deemed or

1 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
2 such waiver constitute a continuing waiver.

3 **12. RETENTION OF JURISDICTION**


4 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent To Judgment and shall retain jurisdiction to enforce this Consent To Judgment, or any
6 provision thereof, under C.C.P §664.6.

7 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

8 13.1 This Consent To Judgment may be executed in counterparts and by facsimile or
9 portable document format (pdf), each of which shall be deemed an original, and all of which,
10 when taken together, shall constitute one and the same document.

11 **14. AUTHORIZATION**

12 14.1 The undersigned are authorized to execute this Consent To Judgment on behalf of
13 their respective Parties and have read, understood, and agree to all of the terms and conditions of
14 this Consent To Judgment.

<p>16 AGREED TO:</p> <p>17 Date: <u>August 16, 2013</u></p> <p>18 </p> <p>19 By: _____</p> <p>20 Plaintiff RUSSELL BRIMER</p> <p>21</p> <p>22</p>	<p>16 AGREED TO:</p> <p>17 Date: _____</p> <p>18</p> <p>19 By: _____</p> <p>20 Michael DePaul, President</p> <p>21 REGENT PRODUCTS CORP. and</p> <p>22 INVENTORY LIQUIDATORS. CORP.</p>
---	--

1 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
2 such waiver constitute a continuing waiver.

3 **12. RETENTION OF JURISDICTION**

4 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent To Judgment and shall retain jurisdiction to enforce this Consent To Judgment, or any
6 provision thereof, under C.C.P §664.6.

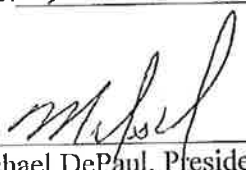
7 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

8 13.1 This Consent To Judgment may be executed in counterparts and by facsimile or
9 portable document format (pdf), each of which shall be deemed an original, and all of which,
10 when taken together, shall constitute one and the same document.

11 **14. AUTHORIZATION**

12 14.1 The undersigned are authorized to execute this Consent To Judgment on behalf of
13 their respective Parties and have read, understood, and agree to all of the terms and conditions of
14 this Consent To Judgment.

15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO: Date: _____ By: _____ Plaintiff RUSSELL BRIMER	AGREED TO: Date: <u>7.30.2013</u> By:  Michael DePaul, President REGENT PRODUCTS CORP. and INVENTORY LIQUIDATORS. CORP.
---	---