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6 RUSSELL BRIMER

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

12 RUSSELL BRIMER,  
13 Plaintiff,  
14 v.  
15 SPRINGS GLOBAL US, INC.; *et al.*,  
16 Defendants.

Case No. RG14730482  
**[PROPOSED] CONSENT JUDGMENT**  
(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Russell Brimer (“Brimer”) and Springs  
4 Global US, Inc. (“Springs”), with Brimer and Springs each individually referred to as a “Party” and  
5 collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Springs 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, Health and Safety Code  
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Springs manufactures, imports, sells, or distributes for sale in California,  
16 vinyl/PVC bags and vinyl/PVC zipper pulls containing di(2-ethylhexyl)phthalate (“DEHP”) without  
17 first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to  
18 Proposition 65 as a chemical known to the State of California to cause birth defects or other  
19 reproductive harm.

20 **1.5 Product Description**

21 The Springs products that are covered by this Consent Judgment are defined as vinyl/PVC  
22 bags and vinyl/PVC zipper pulls containing DEHP including, but not limited to, Pantone Universe  
23 Pillowcase x2, #, UPC #s 0034086696093, 0034086696178, 0034086696192, 0034086696239;  
24 Pantone Sheet Sets, UPC #s 0034086696307, 0034086696314, 0034086696321, 0034086696338,  
25 0034086696345, 0034086696505, 0034086696512, 0034086696529, 0034086696536,  
26 0034086696543, 0034086696550, 0034086696567, 0034086696574, 0034086696581,  
27 0034086696598, 0034086696659, 0034086696666, 0034086696673, 0034086696680,

1 0034086696697; Pantone Printed Shower Curtain, UPC#s 0034086695386, 0034086697526,  
2 0034086697533; Pantone Solid Shower Curtain, UPC #s 0034086695416, 0034086695423,  
3 0034086697540; Pantone Comforter Set, UPC#s 0034086695805, 0034086695812, 0034086695935,  
4 0034086695942, 0034086696024, 0034086696031, 0034086698363, 0034086698370; and the  
5 Spring Home Down Alternative Blanket, UPC #7 48279 27515 5, which are manufactured,  
6 imported, distributed, sold and/or offered for sale by Springs in the State of California, hereinafter the  
7 “Products.”

#### 8 **1.6 Notice of Violation**

9 On or about February 26, 2014, Brimer served Springs and certain requisite public  
10 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Springs was in  
11 violation of Proposition 65 for failing to warn its customers and consumers in California that the  
12 Products expose users to DEHP.

#### 13 **1.7 Complaint**

14 On June 25, 2014 Brimer filed the instant action (“Complaint”), naming Springs as a  
15 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of  
16 the Notice.

#### 17 **1.8 No Admission**

18 Springs denies the material, factual, and legal allegations contained in the Notice and  
19 Complaint, and maintains that all of the products that it has sold and distributed for sale in California,  
20 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
21 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
22 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
23 admission of any fact, finding, conclusion of law, issue of law, or violation of law. Springs reserves  
24 all of its rights and defenses with regard to any claim by any person under Proposition 65 or  
25 otherwise. This Section shall not, however, diminish or otherwise affect Springs’ obligations,  
26 responsibilities, and duties under this Consent Judgment.

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1           **1.9     Jurisdiction**

2           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
3 jurisdiction over Springs as to the allegations in the Complaint, that venue is proper in the County of  
4 Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent  
5 Judgment.

6           **1.10    Effective Date**

7           For purposes of this Consent Judgment, the term “Effective Date” means September 30, 2014.

8   **2.     INJUNCTIVE RELIEF: WARNINGS**

9           **2.1     Warnings**

10          On or before September 30, 2014, for any Products that remain within Springs’ possession,  
11 Springs shall provide clear and reasonable warnings for all Products intended for sale in California  
12 that do not currently have warnings. On or before September 30, 2014, Springs shall also request that  
13 its distributors and any retailers known to possess any remaining Products shall provide clear and  
14 reasonable warnings for all Products intended for sale in California, and shall provide an exemplar  
15 warning for use by same. Each warning shall be prominently placed with such conspicuousness as  
16 compared with other words, statements, designs, or devices as to render it likely to be read and  
17 understood by an ordinary individual under customary conditions before purchase or use. The  
18 Parties understand that Springs has instituted a warning program. Springs may continue to use the  
19 warning on all Products already labeled and in production and inventory as of the Effective Date. For  
20 any Products not already containing a warning prior to the Effective Date Springs shall affix a  
21 warning to the packaging, labeling, or directly on each Product thereafter provided for sale in retail  
22 outlets in California that states:

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24  
25                   WARNING: This product contains a chemical  
26                                   known to the State of California to cause cancer and  
27                                   birth defects (or other reproductive harm).  
28

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred  
4 to in this Consent Judgment, Springs shall pay \$5,000 in civil penalties. The civil penalty payment  
5 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-  
6 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard  
7 Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Brimer.

8 **3.1.1 Civil Penalty**

9 On or before the Effective Date, Springs shall issue two separate payments for its initial civil  
10 penalty payment in the amounts of \$3,750 designated for OEHHA, and \$1,250 designated for Brimer,  
11 care of Sheppard Mullin Richter and Hampton, LLP’s (“Sheppard Mullin’s”) client trust account.  
12 Sheppard Mullin shall provide The Chanler Group with written confirmation within five days of  
13 receipt that the funds have been received. Within one week of the date that this Consent Judgment is  
14 approved by the Court, Sheppard Mullin shall issue two separate checks for the civil penalty payment  
15 to “OEHHA” and “Russell Brimer, Client Trust Account” as described in section 3.3.1 below.

16 **3.2 Reimbursement of Fees and Costs**

17 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue  
19 to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
20 other settlement terms had been finalized, Springs expressed a desire to resolve Brimer’s fees and  
21 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Brimer  
22 and his counsel under general contract principles and the private attorney general doctrine codified  
23 at California Code of Civil Procedure section 1021.5 for all work performed through the mutual  
24 execution of this Consent Judgment. Springs shall, on or before the Effective Date, issue a check  
25 payable to Sheppard Mullin in the amount of fees and costs of \$17,500 to be held in trust by  
26 Sheppard Mullin for The Chanler Group. Sheppard Mullin shall provide The Chanler Group with  
27 written confirmation within five days of receipt that the funds have been deposited in a trust account.

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1 Within one week of the date this Consent Judgment is approved by the Court, Sheppard Mullin shall  
2 issue a check payable to “The Chanler Group” to the address found in Section 3.3.1 below.

3 **3.3 Payment Procedures**

4 All payments due under this Consent Judgment are to be delivered within five days of the  
5 Effective Date to Sheppard Mullin, and within one week of the date this Consent Judgment is  
6 approved, released to The Chanler Group and Brimer according to the following subsections.

7 **3.3.1 Payment Addresses**

8 (a) All payments and tax documentation for Brimer and his counsel shall be  
9 delivered to:

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

15 (b) All payments and tax documentation for OEHHA shall be delivered to  
16 OEHHA (Checks with memo line “Prop 65 Penalties”) at one of the following addresses, as  
17 appropriate:

18 For United States Postal Service Delivery:

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

24 For Non-United States Postal Service Delivery or Courier:

25 Mike Gyurics  
26 Fiscal Operations Branch Chief  
27 Office of Environmental Health Hazard Assessment  
28 1001 I Street  
Sacramento, CA 95812-4010

**3.3.2 Proof of Payment to OEHHA**

Springs’ counsel shall provide Brimer’s counsel with a copy of the checks sent to  
OEHHA enclosed with the payments to Brimer and his counsel sent to the address in Section  
3.3.1(a).

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Brimer’s Public Release of Proposition 65 Claims**

3 Brimer, acting on his own behalf and in the public interest, releases Springs and its parents,  
4 subsidiaries, affiliated entities under common ownership, shareholders, divisions, subdivisions,  
5 sister companies, directors, officers, employees, and attorneys (“Releasees”) and each entity to  
6 whom it directly or indirectly distributes or sells the Products, including but not limited to its  
7 downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,  
8 licensors, and licensees (“Downstream Releasees”) for alleged violations arising under Proposition  
9 65 for unwarned exposures to DEHP from the Products sold or distributed for sale by Springs prior  
10 to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent  
11 Judgment by the Releasees and Downstream Releasees constitutes compliance with Proposition 65  
12 with respect to DEHP from the Products sold before the Effective Date.

13 **4.2 Brimer’s Individual Release of Claims**

14 Brimer, in his individual capacity only and *not* in his representative capacity, also provides a  
15 release to Springs, Releasees, and Downstream Releasees which shall be effective as a full and final  
16 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
17 attorneys’ fees, damages, losses, claims, liabilities and demands of Brimer of any nature, character or  
18 kind, whether known or unknown, suspected or unsuspected, fixed or contingent, arising out of  
19 alleged or actual exposures to DEHP from the Products sold or distributed for sale by Springs before  
20 the Effective Date (collectively, the “Claims”). In furtherance of the foregoing, as to alleged  
21 exposures to Products, Brimer and his counsel hereby waive any and all rights and benefits which he  
22 now has, or in the future may have, with respect to the Claims by virtue of the provisions of section  
23 1542 of the California Civil Code, which provides as follows:

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

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2 Brimer and his counsel understand and acknowledge the significance and consequence of  
3 this waiver of California Civil Code section 1542 is that even if Brimer or his counsel suffer future  
4 damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, the  
5 Covered Products, they will not be able to make any claim for those damages against Springs, the  
6 Releasees, or the Downstream Releasees.

7 **4.3 Springs' Release of Brimer**

8 Springs, on its own behalf, and on behalf of its past and current agents, representatives,  
9 attorneys, successors, and assignees, hereby waives any and all claims against Brimer and his  
10 attorneys and other representatives, for any and all actions taken or statements made by Brimer and  
11 his attorneys and other representatives, whether in the course of investigating claims, otherwise  
12 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

13 Springs, its past and current agents, representatives and attorneys acknowledge that they are  
14 familiar with Section 1542 of California Civil Code, which provides as follows:

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

21 Springs, on behalf of itself and its past and current agents, representatives, attorneys,  
22 successors, and/or assignees expressly waive and relinquish any and all rights and benefits which  
23 they may have under, or which may be conferred on them it by the provisions of Civil Code § 1542.

24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
26 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
27 has been fully executed by the Parties.  
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1     **6. SEVERABILITY**

2             If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any  
3 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be  
4 adversely affected.

5     **7. GOVERNING LAW**

6             The terms of this Consent Judgment shall be governed by the laws of the state of California  
7 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is  
8 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Springs may  
9 provide written notice to Brimer of any asserted change in the law, and shall have no further  
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
11 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Springs from any  
12 obligation to comply with any pertinent state or federal toxics control laws.

13     **8. NOTICE**

14             Unless specified herein, all correspondence and notice required by this Consent Judgment  
15 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
16 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

17

18     For Springs:

19             Meredith Jones-McKeown, Esq.  
20             Sheppard Mullin Richter & Hampton, LLP  
21             Four Embarcadero Center  
22             Seventeenth Floor  
23             San Francisco, CA 94111

24     For Brimer:

25             The Chanler Group  
26             Attn: Proposition 65 Coordinator  
27             2560 Ninth Street  
28             Parker Plaza, Suite 214  
              Berkeley, CA 94710

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable  
3 document format (PDF) signature, each of which shall be deemed an original, and all of which, when  
4 taken together, shall constitute one and the same document.

5 **10. POST EXECUTION ACTIVITIES**

6 Brimer agrees to comply with the reporting form requirements referenced in Health and  
7 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety  
8 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In  
9 furtherance of obtaining such approval, Brimer and Springs agree to mutually employ their best  
10 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain  
11 judicial approval of their settlement in a timely manner. For purposes of this Section, “best efforts”  
12 shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers,  
13 and supporting the motion for judicial approval.

14 **11. MODIFICATION**

15 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
16 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any  
17 Party, and the entry of a modified consent judgment by the Court.

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1 **12. AUTHORIZATION**

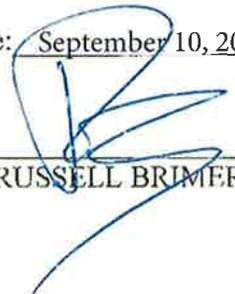
2 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
3 and agree to all of the terms and conditions contained herein.

4  
5 **AGREED TO:**

**AGREED TO:**

6 Date: September 10, 2014

Date: \_\_\_\_\_

7  
8 By:  \_\_\_\_\_  
9 RUSSELL BRIMER

 \_\_\_\_\_  
10 Thomas P. O'Connor  
11 Title: President  
12 For: Springs Global US, Inc  
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