



1       **1. INTRODUCTION**

2               **1.1 Russell Brimer and Anest Iwata-Medea, Inc.**

3               This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer” or  
4               “Plaintiff”) and defendant Anest Iwata-Medea, Inc. (“Iwata-Medea” or “Defendant”) with Plaintiff  
5               and Defendant 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 to improve human health by reducing or eliminating hazardous  
9               substances contained in consumer and commercial products.

10              **1.3 Anest Iwata-Medea, Inc.**

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

14              **1.4 General Allegations**

15              Brimer alleges that Defendant has manufactured, imported, distributed and/or sold in the  
16              State of California metal hose nozzle fittings containing lead. Lead is listed pursuant to Proposition  
17              65 as a chemical known to the State of California to cause birth defects and other reproductive  
18              harm.

19              **1.5 Product Description**

20              The products that are covered by this Consent Judgment are defined as metal hose nozzle  
21              fittings containing lead including, but not limited to, *Iwata Professional Airbrush Straight Shot*  
22              *Airhose, DT 1 10, UPC #7 34748 20020 9*, and related valves, nozzles, needles and other airbrush  
23              and spray gun components containing lead, which are manufactured, imported, distributed, sold  
24              and/or offered for sale by Defendant in the State of California, hereinafter referred to as the  
25              “Products.”

26              **1.6 Notice of Violation**

27              On April 16, 2014, Brimer served Iwata-Medea, certain distributors and retailers of the  
28              Products, and various public enforcement agencies with a document entitled “60-Day Notice of

1 Violation” (“Notice”) that provided the recipients with notice that Iwata-Medea was alleged by  
2 Brimer to be in violation of California Health & Safety Code § 25249.6 for failing to warn  
3 consumers that certain Products exposed users in California to lead.

4 **1.7 Complaint**

5 On July 9, 2014, Brimer filed a complaint in the Superior Court in and for the County of  
6 Alameda against Iwata-Medea and Does 1 through 150, *Brimer v. Anest Iwata-Medea, Inc., et al.*,  
7 Case No. RG14732193 (the “Action”), alleging violations of California Health & Safety Code  
8 § 25249.6, based on the alleged failure to warn of exposure to lead in certain Products sold by  
9 Defendant in the State of California.

10 **1.8 No Admission**

11 Defendant denies the material, factual and legal allegations contained in Brimer’s Notice  
12 and Complaint and maintains that all products that it has sold, manufactured, imported and/or  
13 distributed in California, including the Products, have been and are in compliance with all laws.  
14 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,  
15 finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute  
16 or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or  
17 violation of law. However, this section shall not diminish or otherwise affect Defendant’s  
18 obligations, responsibilities and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
21 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in  
22 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of  
23 this Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on  
26 which the Court approves and enters this Consent Judgment, including the date on which any  
27 tentative ruling approving this Consent Judgment is unopposed by the parties and becomes the final  
28 ruling of the Court.



1       **2.       INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

2               **2.1       Reformulation Standards**

3               “Reformulated Products” are defined as those Products containing lead in concentrations  
4       less than 100 parts per million (“ppm”) when analyzed pursuant to Environmental Protection  
5       Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or  
6       state agencies for the purpose of determining lead content in a solid substance or which yield no  
7       more than 1.0 micrograms of lead when analyzed pursuant to NIOSH Test Method 9100 performed  
8       on any accessible component (i.e. any component part that may be handled, touched or mouthed  
9       during the reasonably foreseeable use or misuse by a consumer).

10              **2.2       Reformulation Commitment**

11              As of the Effective Date all Products manufactured for sale or caused to be manufactured for  
12       sale in the State of California by Iwata-Medea shall be Products that qualify as Reformulated  
13       Products as defined in Section 2.1, or shall carry the appropriate Proposition 65 warning specified in  
14       Section 2.3 below.

15              **2.3       Product Warnings**

16              As of the Effective Date, Iwata-Medea shall provide clear and reasonable warnings for all  
17       Products as set forth in subsections 2.3(a) and (b) for all products that do not qualify as  
18       Reformulated Products. Each warning shall be prominently placed with such conspicuousness as  
19       compared with other words, statements, designs, or devices as to render it likely to be read and  
20       understood by an ordinary individual under customary conditions before purchase or use. Each  
21       warning shall be provided in a manner such that the consumer or user understands to which *specific*  
22       Product the warning applies, so as to minimize the risk of consumer confusion. The warnings  
23       provided herein may be discontinued for any specific Product if Iwata-Medea reformulates that  
24       Product to meet the standards for Reformulated Products as defined herein, but as of the Effective  
25       Date, warnings shall be provided on all Products manufactured, imported, distributed, sold and  
26       offered for sale in California by Iwata-Medea that do not meet the Reformulated Products standards.

1 (a) **Retail Store Sales.**

2 (i) **Product Labeling.** Iwata-Medea shall affix a warning to the packaging,  
3 labeling, or directly on each Product provided for sale in retail outlets in California that states:

4 **CALIFORNIA PROP 65 WARNING:** This product contains lead,  
5 a chemical known to the State of California to cause cancer,  
6 birth defects and other reproductive harm.

7 (ii) **Point-of-Sale Warnings.** Alternatively, Iwata-Medea may provide warning  
8 signs in the form below to its customers in California with instructions to post the warnings in close  
9 proximity to the point of display of the Products. Such instruction sent to Iwata-Medea's  
10 customers shall be sent by certified mail, return receipt requested.

11 **CALIFORNIA PROP 65 WARNING:** This product contains lead,  
12 a chemical known to the State of California to cause cancer,  
13 birth defects and other reproductive harm.

14 Where more than one Product is sold in proximity to other like items or to those that do not require  
15 a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be  
16 used:<sup>1</sup>

17 **CALIFORNIA PROP 65 WARNING:** The following products contain lead,  
18 a chemical known to the State of California to cause cancer,  
19 birth defects and other reproductive harm:

20 *[list products for which warning is required]*

21 (b) **Mail Order Catalog and Internet Sales.** In the event that Iwata-Medea or its  
22 distributors and retailers sell Products via mail order catalog and/or the internet, to customers  
23 located in California, after the Effective Date, that are not Reformulated Products, Iwata-Medea  
24 shall provide warnings for such Products sold via mail order catalog or the internet to California  
25 residents, and shall advise distributors and retailers to provide warnings for such Products sold via  
26 their mail order catalog or the internet to California residents. Warnings given in the mail order

27 <sup>1</sup>For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar  
28 product are offered for sale close enough to each other that the consumer, under customary conditions of purchase,  
could not reasonably determine which of the two products is subject to the warning sign.



1 catalog or for sale of such Products on the internet shall identify the *specific* Product to which the  
2 warning applies as further specified in Sections 2.3(b)(i) and (ii).

3 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order  
4 catalog shall be in the same type size or larger than the Product description text within the catalog.  
5 The following warning shall be provided on the same page and in the same location as the display  
6 and/or description of the Product:

7 **CALIFORNIA PROP 65 WARNING:** This product contains lead,  
8 a chemical known to the State of California to cause cancer,  
9 birth defects and other reproductive harm.

10 Where it is impracticable to provide the warning on the same page and in the same location  
11 as the display and/or description of the Product, a designated symbol may be utilized to cross  
12 reference the applicable warning and shall define the term “designated symbol” with the following  
13 language on the inside of the front cover of the catalog or on the same page as any order form for  
14 the Product(s):

15 **CALIFORNIA PROP 65 WARNING:** Certain products identified  
16 with this symbol ▼ and offered for sale in this catalog contain  
17 lead, a chemical known to the State of California to cause cancer, birth  
18 defects and other reproductive harm.

19 The designated symbol must appear on the same page and in close proximity to the display  
20 and/or description of the Product. On each page where the designated symbol appears, a header or  
21 footer must be included to direct the consumer to the warning language and definition of the  
22 designated symbol.

23 (ii) **Internet Website Warning.** A warning shall be given in conjunction with  
24 the sale of the Products via the internet, which warning shall appear either: (a) on the same web  
25 page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)  
26 on the same page as the price for any Product; or (d) on one or more web pages displayed to a  
27 purchaser during the checkout process. The following warning statement shall be used and shall  
28 appear in any of the above instances adjacent to or immediately following the display, description,  
or price of the Product for which it is given in the same type size or larger than the Product  
description text:

1 **CALIFORNIA PROP 65 WARNING:** This product contains lead,  
2 a chemical known to the State of California to cause cancer,  
3 birth defects and other reproductive harm.

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

7 **CALIFORNIA PROP 65 WARNING:** This product contains lead,  
8 a chemical known to the State of California to cause cancer,  
9 birth defects and other reproductive harm.

### 10 **3. MONETARY PAYMENTS**

#### 11 **3.1 Civil Penalty Payments**

12 In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay a  
13 total of \$16,500.00 in civil penalties in accordance with this Section. Each penalty payment will be  
14 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of  
15 the funds remitted to the California Office of Environmental Health Hazard Assessment  
16 (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer. Each penalty payment shall  
17 be made within five (5) business days of the date it is due and be delivered to the addresses listed in  
18 Section 3.3 below. In the event that a payment is not made within five (5) business days of the due  
19 date, Iwata-Medea shall be liable for payment of interest, at an annual simple rate of ten percent  
20 (10%) on the amount due, accrued from the due date to the payment date and Brimer and his  
21 counsel shall be entitled to their reasonable attorneys’ fees and costs incurred in collecting any late  
22 payment. The accrued interest shall be included and payable with the late penalty payment.

##### 23 **3.1.1 Initial Civil Penalty**

24 Within five (5) business days of the Effective Date, Iwata-Medea shall issue two  
25 separate checks for the initial civil penalty payment to “OEHHA” in the amount of \$4,875.00; and  
26 to “Russell Brimer, Client Trust Account” in the amount of \$1,625.00, for delivery as provided in  
27 Section 3.3.1.

##### 28 **3.1.2 Final Civil Penalty**

Iwata-Medea shall pay a final civil penalty of \$10,000.00 on or before March 31,  
2015. The final civil penalty shall be waived in its entirety, however, if, no later than March 15,



1 2015, an officer of Iwata-Medea provides Brimer with written certification that, as of the date of  
2 such certification and continuing into the future, all Products manufactured, imported, distributed,  
3 sold and offered for sale in California by, or on behalf of, Defendant are Reformulated Products.  
4 Brimer must receive any such certification on or before March 15, 2015. The certification in lieu of  
5 a final civil penalty payment provided by this Section is a material term, and time is of the essence.  
6 If Defendant fails to provide such certification, Defendant shall issue two separate checks for its  
7 final civil penalty payments payable to: (a) "OEHHA" in the amount of \$7,500.00; and to (b)  
8 "Russell Brimer, Client Trust Account" in the amount of \$2,500.00, for delivery as provided in  
9 Section 3.3 below.

### 10 **3.2 Reimbursement of Fees and Costs**

11 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
12 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
13 issue to be resolved after the material terms of the agreement had been settled. Brimer then  
14 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
15 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
16 Brimer and his counsel under general contract principles and the private attorney general doctrine  
17 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual  
18 execution of this agreement. Within five (5) business days of the Effective Date, Iwata-Medea shall  
19 issue a check payable to "The Chanler Group" in the amount of \$32,000.00, for delivery to The  
20 Chanler Group at the address found in Section 3.3.1(a) below.

### 21 **3.3 Payment Procedures**

22 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 23 (a) All payments owed to Brimer and his counsel, pursuant to Sections 3.1  
24 through 3.2, shall be delivered to the following payment address:

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



1 (b) All payments owed to OEHHA, pursuant to Sections 3.1, shall be  
2 delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of  
3 the following addresses:

4 For United States Postal Service Delivery:

5 Mike Gyurics  
6 Fiscal Operations Branch Chief  
7 Office of Environmental Health Hazard Assessment  
8 P.O. Box 4010  
9 Sacramento, CA 95812-4010

10 For Non-United States Postal Service Delivery:

11 Mike Gyurics  
12 Fiscal Operations Branch Chief  
13 Office of Environmental Health Hazard Assessment  
14 1001 I Street  
15 Sacramento, CA 95814

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

19 **4. CLAIMS COVERED AND RELEASED**

20 **4.1 Brimer's Public Release of Proposition 65 Claims**

21 Brimer, acting on his own behalf and in the public interest, releases Iwata-Medea and its  
22 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
23 owners, shareholders, and attorneys ("Releasees"), and each entity to whom they directly or  
24 indirectly distribute or sell the Products including, but not limited to, their downstream distributors,  
25 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees  
26 ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures  
27 to lead relating to the Products manufactured and distributed by Defendant prior to the Effective  
28 Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition  
65 for Releasees and Downstream Releasees with respect to exposures to lead from the Products as  
set forth in the Notice.

1           **4.2 Brimer's Individual Release of Claims**

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

9           **4.3 Iwata-Medea's Release of Brimer**

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

16          **4.4 Civil Code §1542 Waiver**

17          Brimer, and his past and current agents, representatives and attorneys acknowledge that they  
18 are familiar with Section 1542 of California Civil Code, which provides as follows:

19  
20           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
21           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
22           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.

23          Brimer, on behalf of himself and his past and current agents, representatives, attorneys, successors,  
24 and/or assignees expressly waives and relinquishes any and all rights and benefits which he may  
25 have under, or which may be conferred on him by the provisions of Civil Code Section 1542.  
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1       **5. COURT APPROVAL**

2           This Consent Judgment is not effective until it is approved and entered by the Court and  
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
4 after it has been fully executed by all Parties.

5       **6. SEVERABILITY**

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

9       **7. GOVERNING LAW**

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

19       **8. NOTICES**

20          Unless specified herein, all correspondence and notices required to be provided pursuant to  
21 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
22 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
23 other party at the following addresses:  
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1           To Anest Iwata-Medea, Inc.:

2           Gary Glass, President  
3           Anest Iwata-Medea, Inc.  
4           1336 North Mason Street  
5           Portland, OR 97217

6           Chris Locke  
7           Farella Braun + Martel LLP  
8           235 Montgomery Street, 17<sup>th</sup> Floor  
9           San Francisco, CA 94104

To Russell Brimer:

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

              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.

9           **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

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

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

16           **11. ADDITIONAL POST EXECUTION ACTIVITIES**

17           The Parties 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. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Brimer shall draft and file, and Defendant shall join. If any third party objection to the noticed motion is filed, Brimer and Defendant shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

25           **12. MODIFICATION**

26           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.



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**13. AUTHORIZATION**

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

**14. FULL SETTLEMENT**

The Parties intend for this Consent Judgment to constitute a full and final settlement of this matter, and that it should be entered as a final judgment.

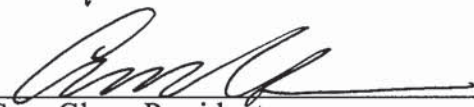
AGREED TO:

AGREED TO:

Date: 10/6/2014

Date: 9/26/14

By:   
Russell Brimer

By:   
Gary Glass, President  
Anest Iwata-Medea, Inc.