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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
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12 RUSSELL BRIMER,
13 Plaintiff,
14 v.
15 MADE FOR RETAIL, INCORPORATED;
16 TARGET CORPORATION; and DOES 1-
17 150, inclusive,
18 Defendants.

Case No. CIV 1501549

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT MADE FOR
RETAIL, INCORPORATED**

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 The parties to this Consent Judgment (“Consent Judgment”) are Plaintiff Russell Brimer
4 (“Brimer”) on the one hand, and Defendant Made for Retail, Incorporated (“Made for Retail”) on
5 the other hand (each a “Party” and collectively “Parties”).

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Made for Retail employs ten or more persons, and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
13 and Safety Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Made for Retail sells ID Pouches containing Di(2-ethylhexyl)phthalate
16 (“DEHP”) without first providing the clear and reasonable warning required by Proposition 65.
17 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
18 birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are ID Pouches containing DEHP
21 including, but not limited to, the *ID Pouch #234 24 0922, UPC# 8 47302 03308 0* that is
22 manufactured for sale by Made for Retail, and sold or distributed for sale in California by Made
23 for Retail’s customers in California, including Target Corporation.

24 **1.6 Notices of Violation**

25 1.6.1 On or about February 26, 2014, Brimer served Target Corporation and
26 certain requisite public enforcement agencies with a “60-Day Notice of Violation”
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1 (“Notice”) alleging that Target violated Proposition 65 by failing to warn its customers
2 and consumers in California that the Covered Products expose users to DEHP.

3 1.6.2 On or about May 21, 2014, Brimer served Target Corporation and certain
4 requisite public enforcement agencies with a “Supplemental 60-Day Notice of Violation”
5 (“Supplemental Notice”) alleging that Target violated Proposition 65 by failing to warn its
6 customers and consumers in California that the Covered Products expose users to DEHP.

7 1.6.3 On or about February 27, 2015, Brimer served Made for Retail, Target
8 Corporation, and certain requisite public enforcement agencies with a “Supplemental 60-
9 Day Notice of Violation” (“Second Supplemental Notice”) alleging that Made for Retail
10 violated Proposition 65 by failing to warn its customers and consumers in California that
11 the Covered Products expose users to DEHP.

12 1.6.4 The Notice, Supplemental Notice, and Second Supplemental Notice are
13 referred to collectively as the “Notices.” To the best of the Parties’ knowledge, no public
14 enforcer has commenced and is diligently prosecuting the allegations set forth in the
15 Notices.

16 **1.7 Complaint**

17 On April 28, 2015, Brimer filed the instant action against Made for Retail and Target
18 Corporation (“Complaint”) for the alleged violations of Health and Safety Code section 25249.6
19 that are the subject of the Notices.

20 **1.8 No Admission**

21 Made for Retail denies the material, factual and legal allegations contained in the Notices
22 and Complaint, and it maintains that all of the products that it has sold and distributed in
23 California, including the Covered Products, have been, and are, in compliance with all laws.
24 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
25 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
26 Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue
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1 of law, or violation of law. This Section shall not, however, diminish or otherwise affect Made for
2 Retail's obligations, responsibilities, and duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Made for Retail as to the allegations in the Complaint, that venue is proper in
6 MarinCounty, and that this Court has jurisdiction to enter and enforce the provisions of this
7 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

8 **2. DEFINITIONS**

9 2.1 "Covered Products" means ID Pouches containing DEHP, including, but not
10 limited to, *ID Pouch #234 24 0922, UPC# 8 47302 03308 0*.

11 2.2 "Effective Date" means date this Consent Judgment is approved by the court.

12 2.3 "Vendor" means a person or entity that manufactures, imports, distributes, or
13 otherwise supplies theCovered Product to Made for Retail.

14 **3. INJUNCTIVE RELIEF: REFORMULATION**

15 **3.1 Vendor Notification**

16 No more than 30 days after the Effective Date, Made for Retail shall provide the
17 Reformulation Standard to its then-current Vendors of Covered Products that will be sold or
18 offered for sale to California consumers, and shall instruct each Vendor to use reasonable efforts
19 to provide Covered Products that comply with theReformulation Standard of Section 3.2
20 expeditiously. In addressing the obligation set forth in the preceding sentence, Made for Retail
21 shall not employ statements that will encourage a Vendor to delay compliance with the
22 Reformulation Standard.

23 **3.2 Reformulation Standard**

24 Commencing on the Effective Date, Made for Retail shall not offer for sale, purchase for
25 sale, import for sale, or manufacture for sale, any Covered Product that will be sold or offered for
26 sale to California consumers that contains DEHP in concentrations exceeding 0.1 percent (1,000
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1 parts per million) when analyzed pursuant to any methodology utilized by federal or state
2 agencies for the purpose of determining DEHP content in a solid substance.

3 **4. PAYMENTS**

4 **4.1 Payments Pursuant to Health and Safety Code § 25249.7(b)**

5 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
6 claims referred to in this Consent Judgment, Made for Retail shall pay \$18,500 in civil penalties.
7 Each Penalty payment shall be allocated according to Health and Safety Code section
8 25249.12(c)(1) and (d), with seventy-five percent of the penalty amount remitted to the California
9 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five
10 percent remitted to Brimer. Brimer’s counsel shall be responsible for remitting Made for Retail’s
11 penalty payment(s) under this Consent Judgment to OEHHA.

12 **4.1.1 Initial Civil Penalty**

13 Within 10 days of the Effective Date, Made for Retail shall make an initial civil
14 penalty payment of \$6,000. It shall provide its payment in a single check made payable to
15 “Russell Brimer, Client Trust Account,” to be delivered to the address provided in subsection
16 4.3.2.

17 **4.1.2 Final Civil Penalty**

18 On or before January 4, 2016, Made for Retail shall pay a final civil penalty of \$12,500.
19 The final civil penalty shall be waived in its entirety if, no later than December 15, 2015, an
20 officer of Made for Retail provides Brimer’s counsel with written certification that, as of the date
21 of its certification, all Covered Products shipped for sale or distributed for sale in California meet
22 the Reformulation Standard established by Section 3.2, and that it will continue to only offer
23 Covered Products meeting the Reformulation Standard in California in the future. The option to
24 provide a written certification of reformulation in lieu of making the final civil penalty payment
25 otherwise required by this Consent Judgment is a material term, and time is of the essence.
26 Unless waived, the Final Civil Penalty Payment shall be allocated as set forth in Section 4.1 and
27 delivered to Brimer at the address set forth in subsection 4.3.2.

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4.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after all other settlement terms had been finalized, Made for Retail expressed a desire to resolve the fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due Brimer and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter exclusive of fees and costs incurred on appeal, if any. Under these legal principles, on or before the Effective Date, Made for Retail shall pay \$26,500 for the fees and costs incurred investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be incurred) drafting, negotiating, and obtaining the Court's approval of this Consent Judgment in the public interest.

4.3 Payment Procedures

4.3.1 Payments

The payments required by Sections 4.1 and 4.2 shall be delivered within 10 days of the Effective Date.

4.3.2 Payment Address

All payments shall be delivered to the following address:

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

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Public Release of Proposition 65 Claims**

3 In consideration of the promises and commitments herein contained, Brimer, on his own
4 behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or
5 assignees, and in the public interest, hereby waives and releases Made for Retail, its parents,
6 subsidiaries, sales representatives, agents, affiliated entities under common ownership or control,
7 directors, officers, employees, and attorneys (“Releasees”); and each entity to whom it directly or
8 indirectly distributes or sells the Covered Products, including but not limited to distributors,
9 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
10 (“Downstream Defendant Releasees”), from all claims for violations of Proposition 65 based on
11 exposures to DEHP from the Covered Product through the Effective Date. This waiver and
12 release is limited to those claims arising under Proposition 65 for unwarned exposures to DEHP
13 from Covered Products manufactured, imported, purchased, or sold by Made for Retail before the
14 Effective Date. Made for Retail’s and Releasees’ compliance with this Consent Judgment
15 constitute compliance with Proposition 65.

16 **5.2 Private Release in Plaintiff’s Individual, Non-representative Capacity**

17 Brimer, in his individual capacity only and not in his representative capacity, also
18 provides a release to Made for Retail, Releasees, and Downstream Defendant Releasees which
19 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
20 action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and
21 demands of Brimer of any nature, character or kind, whether known or unknown, suspected or
22 unsuspected, arising out of alleged or actual unwarned exposures to DEHP from the Covered
23 Products.

24 **5.3 Made for Retail Company’s Release of Brimer**

25 Made for Retail waives any and all claims against Brimer and his attorneys and other
26 representatives, for any and all actions taken or statements made by Brimer and his attorneys and
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1 other representatives, whether in the course of investigating claims, otherwise seeking
2 enforcement of Proposition 65 against it in this matter, or with respect to the Covered Products.

3 **6. ENFORCEMENT**

4 Either Party may, by motion or application for an order to show cause before this Court,
5 or by any other procedure available, enforce the terms and conditions contained in this Consent
6 Judgment.

7 **7. NOTICE**

8 When any Party is entitled to receive any notice under this Consent Judgment, the notice
9 shall be sent by: (a) first class, registered or certified mail; (b) personal delivery; or (c) a
10 recognized overnight courier on any one Party by the other at the following addresses:

11 For Brimer:

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

16 For Made for Retail:

17 Thomas Anderson
18 President
19 Made for Retail, Inc.
3900 Stinson Blvd.
Columbia Heights, MN 55421

20 With a copy to:

21 Jeffrey B. Margulies, Esq.
22 Norton Rose Fulbright US LLP
23 555 South Flower Street, Forty-First Floor
Los Angeles, CA 90071

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

1 **8. POST SETTLEMENT ACTIVITIES AND COURT APPROVAL**

2 8.1 Brimer agrees to comply with the reporting form requirements referenced in
3 Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to
4 Health and Safety Code section 25249.7(f), a noticed motion (“Motion”) is required to obtain
5 judicial approval of this Consent Judgment, which Motion Brimer shall draft and file with the
6 Court. Made for Retail shall support the entry of this Consent Judgment, including appearing at
7 the hearing on the Motion if requested.

8 8.2 If this Consent Judgment is not approved by the Court in its entirety, (a) this
9 Consent Judgment and any and all prior agreements between the parties as to the Notices or
10 Complaint referenced herein shall terminate and become null and void, and the action shall revert
11 to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this
12 Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or
13 aspect of the Parties’ settlement discussions, shall have any effect, nor shall any such matter be
14 admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the
15 parties agree to meet and confer to determine whether to modify the terms of the Consent
16 Judgment and to resubmit it for approval.

17 8.1 Within 15 days of Brimer’s receipt of Made for Retail’s payment of the initial civil
18 penalty and attorneys’ fee reimbursement required by Sections 4.1.1 and 4.2, Brimer agrees to file
19 a request for a dismissal without prejudice as to defendant Target Corporation.

20 **9. ATTORNEYS’ FEES**

21 Except as otherwise provided in this Consent Judgment including a successful
22 enforcement of this Consent Judgment under section 0, which may entitle Brimer to attorney’s
23 fees under Code of Civil Procedure section 1021.5 or any other applicable law, each Party and
24 their privies, shall bear its own attorneys’ fees and costs.

25 **10. OTHER TERMS**

26 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California and apply within the state of California. In the event that Proposition 65 is repealed,
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1 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
2 Products, then Made for Retail may provide written notice to Brimer of any asserted change in the
3 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and
4 to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall
5 be interpreted to relieve Made for Retail from any obligation to comply with any pertinent state or
6 federal toxics control laws.

7 10.2 This Consent Judgment contains the sole and entire agreement and understanding
8 of the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any
9 and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
10 deemed merged. There are no warranties, representations, or other agreements between the
11 Parties except as expressly set forth in this Consent Judgment. No representations, oral or
12 otherwise, express or implied, other than those specifically referred to in this Consent Judgment
13 have been made by any Party. No other agreements not specifically contained or referenced in
14 this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties.
15 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
16 binding unless executed in writing by the Party to be bound. No waiver of any of the provisions
17 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
18 provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

19 10.3 This Consent Judgment may be modified only by: (a) an agreement or stipulation
20 of the Parties and the entry of a modified consent judgment by the Court, or (b) by the successful
21 motion, application, or such other procedure as is available at law to any party, and the entry of a
22 modified consent judgment by the Court thereon.

23 10.4 Nothing in this Consent Judgment shall release, or in any way affect any rights that
24 Made for Retail might have against any other party.

25 10.5 This Consent Judgment may be executed in counterparts and by facsimile or
26 portable document format (PDF) signature, each of which shall be deemed an original, and all of
27 which, when taken together, shall constitute one and the same document.
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10.6 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to agree to the terms and conditions of this Consent Judgment, and to enter into and execute the Consent Judgment on behalf of the party represented and to legally bind that party.

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

AGREED TO:

Plaintiff, RUSSELLBRIMER

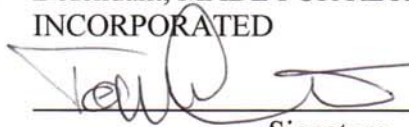


Signature

Date: 9/29/2015

AGREED TO:

Defendant, MADE FOR RETAIL, INCORPORATED



Signature

By: Tom Anderson

Print Name

Its: President

Title

Date: 09/26/15