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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
11

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 STANDARD MOTOR PRODUCTS,
16 INC., *et al.*,

17 Defendants.
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Case No. 115CV281919

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”)
4 and defendant Standard Motor Products, Inc. (“SMP”), with Brimer and SMP each referred to
5 individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 SMP 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 and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that SMP manufactures, imports, sells and/or distributes for sale in
16 California, booster cable clamps with vinyl/PVC grips that contain di(2-ethylhexyl)phthalate
17 (“DEHP”), and that it does so without providing the health hazard warning required by Proposition
18 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to cause birth defects or
19 other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are booster cable clamps with vinyl/PVC
22 grips alleged to contain DEHP (collectively, “Products”).

23 **1.6 Notice of Violation**

24 On March 31, 2015, Brimer served SMP and the requisite public enforcement agencies with
25 a 60-Day Notice of Violation (“Notice”), alleging that SMP violated Proposition 65 when it failed
26 to warn its customers and consumers in California that the Products expose users to DEHP. To the
27 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an
28 action to enforce the allegations set forth in the Notice.

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1.7 Complaint

On June 15, 2015, Brimer commenced the instant action, naming SMP as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 No Admission

SMP denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by SMP of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by SMP of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect SMP’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over SMP as to the allegations contained in the Complaint, that venue is proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

2. INJUNCTIVE SETTLEMENT TERMS

2.1 Reformulated Products

Commencing on the Effective Date and continuing thereafter, SMP shall only sell or distribute for sale in California: (a) Reformulated Products; or (b) Products that are sold with a clear and reasonable warning in accordance with subsection 2.2, below. For purposes of this Consent Judgment, “Reformulated Products” are defined as Products with a maximum DEHP concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection

1 Agency testing methodologies 3580A and 8270C, or other methodologies utilized by state or
2 federal agencies for the purpose of determining DEHP content in a solid substance.

3 **2.2 Clear and Reasonable Warnings**

4 For purposes of this Consent Judgment, a clear and reasonable warning shall be prominently
5 placed with such conspicuousness when compared to other words, statements, designs, or devices
6 as to render it likely to be read and understood by an ordinary individual under customary
7 conditions of purchase or use, and contain the following statement:

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

10 **2.3 Vendor Notification**

11 No later than 30 days after the Effective Date, SMP shall provide written notice to all of its
12 vendors of Products that are sold or offered for sale in California, instructing each vendor to use its
13 best efforts to provide only Reformulated Products (i.e., Products with no more than 1,000 ppm
14 DEHP content). In addressing the obligation set forth in the preceding sentence, SMP shall not
15 employ statements to encourage a vendor to delay compliance with SMP's request.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Payment Pursuant to Health and Safety Code § 25249.7(b)(2)**

18 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
19 claims referred to in this Consent Judgment, SMP shall pay \$9,000 in civil penalties. The penalty
20 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) &
21 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
22 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Brimer. SMP shall
23 provide its payment in a single check made payable to "Russell Brimer, Client Trust Account" to be
24 delivered to the address provided in Section 3.4, below. Brimer's counsel shall be responsible for
25 remitting SMP's penalty payment(s) under this Consent Judgment to OEHHA.

26 **3.1.1 Initial Civil Penalty.** SMP shall make an initial civil penalty payment of
27 \$3,000.

28 **3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation.** On January

1 15, 2016, SMP shall make a final civil penalty payment of \$6,000. Pursuant to title 11 California
2 Code of Regulations, section 3203(c), Brimer agrees that the final civil penalty payment shall be
3 waived in its entirety if, no later than January 1, 2016, an officer of SMP provides Brimer with a
4 signed declaration certifying that all of the Products it ships for sale or distributes for sale in
5 California as of the date of its declaration comply with the injunctive obligations imposed by
6 subsections 2.1 through 2.3, and that SMP will continue to comply with these obligations in the
7 future. The option to provide a certified declaration in lieu of making the final civil penalty
8 payment otherwise required by this Section is a material term, and time is of the essence.

9 **3.2 Reimbursement of Attorneys' Fees and Costs**

10 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
11 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
12 to be resolved after the material terms of the agreement had been settled. Shortly after finalizing
13 the other settlement terms, as a separate and final component of their settlement, the Parties
14 negotiated a reimbursement of Brimer's fees and costs pursuant to general contract principles and
15 the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5
16 For all work performed through the mutual execution of this agreement and the Court's approval
17 of the same, but exclusive of fees and costs on appeal, if any, SMP agrees to reimburse Brimer and
18 his counsel \$28,500. SMP's payment shall be delivered to the address in Section 3.4 in the form of
19 a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs
20 incurred by Brimer investigating, bringing this matter to SMP's attention, litigating, and
21 negotiating a settlement of the matter in the public interest.

22 **3.3 Payment Timing; Payments Held In Trust**

23 With the exception of the final civil penalty payment required by Section 3.1.2, SMP shall
24 confirm in writing to Brimer's counsel within one week of the date that this Consent Judgment is
25 fully executed by the parties that the funds to cover the initial civil penalty and fee reimbursement
26 payments required by this Consent Judgment are being held in trust by SMP's General Counsel
27 and, if requested, shall provide the number of the account in which such funds are being held.
28 Within five days of the Effective Date, SMP shall deliver the initial civil penalty and fee

1 reimbursement payments to Brimer's counsel at the address provided in Section 3.4.

2 **3.4 Payment Address**

3 All payments required by this Consent Judgment shall be delivered to:

4 The Chanler Group
5 Attn: Proposition 65 Controller
6 2560 Ninth Street
7 Parker Plaza, Suite 214
8 Berkeley, CA 94710

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Brimer's Release of Proposition 65 Claims**

9 Brimer, acting on his own behalf and on behalf of his heirs, executors, successors and
10 assigns (collectively, the "Releasers"), and in the public interest, releases Defendants, SMP and its
11 parents, subsidiaries, and affiliated entities, and their respective stockholders, directors, officers,
12 employees, agents, successors, assigns and attorneys ("Releasees") and each entity to whom it
13 directly or indirectly distributes or sells the Products including, but not limited to, its downstream
14 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
15 licensees ("Downstream Releasees") for any and all actions, causes of action, obligations, costs,
16 expenses, attorneys' fees, damages, losses, claims, liabilities, demands, penalties and violations of
17 any nature, arising under Proposition 65 for unwarned exposures to DEHP from Products
18 manufactured, imported, distributed or sold by SMP prior to the Effective Date. Compliance with
19 the terms of this Consent Judgment constitutes compliance with Proposition 65 by SMP with
20 respect to the alleged or actual failure to warn about exposures to DEHP from Products
21 manufactured, sold, or distributed for sale by SMP after the Effective Date.

22 **4.2 Brimer's Individual Release of Claims**

23 The Releasers, in their individual capacity only and *not* in any representative capacity, also
24 provide a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a
25 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
26 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of the Releasers of any
27 nature, character or kind, whether known or unknown, suspected or unsuspected, arising under
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1 Proposition 65 and pertaining to Products manufactured, imported, distributed or sold by SMP
2 before the Effective Date.

3 **4.3 SMP's Release of Brimer**

4 SMP, on its own behalf and on behalf of its past and current agents, representatives,
5 attorneys, successors and/or assignees, hereby waives any and all claims against Brimer and his
6 attorneys and other representatives, for any and all actions taken or statements made by Brimer and
7 his attorneys and other representatives in the course of investigating claims, seeking to enforce
8 Proposition 65 against it in this matter, or with respect to the Products.

9 **4.4 Mutual Waiver of California Civil Code Section 1542**

10 The Parties each acknowledge he/it is familiar with Section 1542 of the Civil
11 Code, which provides as follows:

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

18 The Parties, each on his/its own behalf, and on behalf of his/its past and current agents,
19 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and
20 all rights and benefits which they may have under, or which may be conferred upon them by
21 the provisions of Civil Code section 1542 as well as under any other state or federal statute or
22 common law principle of similar effect, to the fullest extent he/it may lawfully waive such
23 rights or benefits pertaining to the released matters, as defined by Sections 4.1 through 4.3,
24 above.

25 **5. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court and
27 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
28 after it has been fully executed by the Parties. Brimer and SMP agree to support the entry of this
agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a

1 noticed motion is required for judicial approval of this Consent Judgment, which motion Brimer
2 shall draft and file and SMP shall support. If any third-party objection to the motion is filed,
3 Brimer and SMP agree to work together to jointly reply, including by appearing at the approval
4 hearing if requested. This provision is a material component of the Consent Judgment and shall be
5 treated as such in the event of a breach.

6 **6. SEVERABILITY**

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

10 **7. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the State of California
12 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
13 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then SMP may
14 provide Brimer with written notice of any asserted change in the law, and shall have no further
15 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
16 are so affected. If there is a future revision of Title 27, California Code of Regulations, Article 6,
17 section 25601, *et seq.* relating to the content of any warning required for exposures to DEHP from
18 the Products, then SMP may use the statutory warning language required by the regulations, as
19 revised, to warn of the risks of birth defects and reproductive harm caused by exposures to DEHP
20 from the Products. Nothing in this Consent Judgment shall be interpreted to relieve SMP from its
21 obligation to comply with any pertinent state or federal law or regulation.

22 **8. NOTICE**

23 Unless specified herein, all correspondence and notice required by this Consent Judgment
24 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
25 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
26 following addresses:
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1 To SMP:	To Brimer:
2 Carmine J. Broccole 3 Vice President General Counsel 4 Standard Motor Products, Inc. 37-18 Northern Boulevard Long Island City, NY 11101	Attn: Proposition 65 Coordinator The Chanler Group 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565

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

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8 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

12 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

13 Brimer and his counsel agree to comply with the reporting form requirements referenced in
14 California Health and Safety Code section 25249.7(f).

15 **11. MODIFICATION**

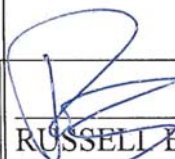
16 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
17 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
18 any party and the entry of a modified Consent Judgment by the Court thereon.

19 **12. AUTHORIZATION**

20 The undersigned are authorized to execute this Consent Judgment on behalf of their
21 respective Parties and have read, understood, and agree to all of the terms and conditions of this
22 Consent Judgment.

23 **AGREED TO:**

AGREED TO:

24 
25 _____
RUSSELL BRIMER.

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25 _____
STANDARD MOTOR PRODUCTS, INC.

26 Dated: 9/29/2015

26 By: Carmine J. Broccole, Vice President
27 General Counsel

28 Dated: 9/25/2015

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