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10 RUSSELL BRIMER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,

v.

MAFCOTE, INC.; ROYAL CONSUMER
PRODUCTS LLC; and DOES 1 – 150,
inclusive,
Defendants.

Case No. 16CV294141

[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 plaintiff Russell Brimer (“Brimer” or
4 “Plaintiff”), on the one hand, and defendants Mafcote, Inc. and Royal Consumer Products, LLC,
5 (“Defendants”), on the other, with Plaintiff and Defendants each individually referred to as a “Party”
6 and collectively as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

12 Defendants employ ten or more individuals and are each a “person in the course of doing
13 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
14 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Plaintiff alleges that Defendants manufacture, import, sell, or distribute for sale in California,
17 vinyl/PVC poster carriers that contain di(2-ethylhexyl) phthalate (“DEHP”) without first providing
18 the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
19 chemical known to the State of California to cause birth defects or other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are vinyl/PVC poster carriers containing
22 DEHP, that are manufactured, imported, sold, or distributed for sale in California by Defendants
23 including, but not limited to, *RoyalBrites Poster Carrier, Item #26808, UPC #0 71064 26808 8*,
24 (hereinafter “Products”), as well as vinyl lettering containing di-isononyl phthalate (DINP),
25 including, but not limited to, the *RoyalBrites Vinyl Letters, Item #26800, UPC #0 71064 26800 2*
26 (hereinafter “Additional Products”).¹

27 ¹ Based on Plaintiff’s continued investigation, the Parties are aware that certain Additional Products contain
28 DINP, and Defendants have agreed to include these Additional Products in this Settlement and to apply the injunctive
 terms to Additional Products as well as the Products. Defendants will receive a properly tailored release.

1 **1.6 Notice of Violation**

2 On or about January 29, 2016, Plaintiff served Defendants, and certain requisite public
3 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Defendants
4 violated Proposition 65 by failing to warn their customers and consumers in California that the
5 Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has
6 commenced and is diligently prosecuting the allegations set forth in the Notice.

7 **1.7 Complaint**

8 On April 20, 2016, Plaintiff filed the instant action (“Complaint”) for the alleged violations of
9 Health and Safety Code section 25249.6 that are the subject of the Notice.

10 **1.8 No Admission**

11 Defendants deny the material, factual, and legal allegations contained in the Notices and
12 Complaint, and maintain that all of the products they have sold and distributed for sale in California,
13 including the Products and the Additional Products, have been, and are, in compliance with all laws.
14 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion
15 of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute
16 or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of
17 law. This Section shall not, however, diminish or otherwise affect Defendants’ obligations,
18 responsibilities, and duties under this Consent Judgment.

19 **1.9 Jurisdiction**

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

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
26 the Motion to Approve the Consent Judgment is granted by the Court.

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

2 **2.1 Reformulated Products**

3 Commencing on the Effective Date, and continuing thereafter, Defendants shall only (1)
4 purchase for sale, manufacture for sale, or import for sale in California “Reformulated Products,” or
5 (2) sell Products with a clear and reasonable warning pursuant to Section 2.2 below. For purposes of
6 this Consent Judgment, “Reformulated Products” are Products that contain DEHP in concentrations
7 of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
8 Protection Agency testing methodologies 3580A and 8270C, or any other methodology utilized by
9 federal or state agencies for the purpose of determining the DEHP content in a solid substance.

10 Commencing on the Effective Date, and continuing thereafter, Defendants shall also only (1)
11 purchase for sale, manufacture for sale, or import for sale in California, Additional Products
12 containing DINP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed
13 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any
14 other methodology utilized by federal or state agencies for the purpose of determining the DINP
15 content in a solid substance, or (2) sell Additional Products with a clear and reasonable warning
16 pursuant to Section 2.2 below.


17 **2.2 Product Warnings**

18 Commencing on the Effective Date, Defendants shall provide clear and reasonable warnings
19 for all Products and Additional Products as set forth in subsections 2.2(a) and (b) that do not
20 currently have warnings nor qualify as Reformulated Products. Each warning shall be prominently
21 placed with such conspicuousness as compared with other words, statements, designs, or devices as
22 to render it likely to be read and understood by an ordinary individual under customary conditions
23 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
24 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
25 confusion.

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

27 **(i) Product Labeling.** Defendants shall affix a warning to the packaging,
28 labeling, or directly on each Product packaging provided for sale in retail outlets in California that


states:

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


For Additional Products,

 **WARNING:** This product contains a chemical known to the State of California to cause cancer.


(ii) **Point-of-Sale Warnings.** Alternatively, Defendants may provide warning signs in the form below to their customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Defendants customers shall be sent by certified mail, return receipt requested.

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

For Additional Products,

 **WARNING:** This product contains a chemical known to the State of California to cause cancer.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used: ²

 **WARNING:** The following products contain a chemical known to the State of California to cause cancer, birth defects and other reproductive harms:

[list products for which warning is required]

For Additional Products,

 **WARNING:** The following products contain a chemical known to the State of California to cause cancer:

[list products for which warning is required]

² For purposes of the Consent Judgment, “sold in proximity” shall mean that the Product (or Additional Product) and another similar 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 **(b) Mail Order Catalog and Internet Sales.** In the event that Defendants sell Products
2 or Additional Products via mail order catalog and/or the internet, to customers located in California,
3 after the Effective Date, that are not Reformulated Products, Defendants shall provide warnings for
4 such Products and Additional Products sold via mail order catalog or the internet to California
5 residents. Warnings given in the mail order catalog or on the internet shall identify the *specific*
6 Product or Additional Product to which the warning applies as further specified in Sections 2.2(b)(i)
7 and (ii).

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



WARNING: This product contains a chemical known
to the State of California to cause cancer, birth defects
and other reproductive harms.

For Additional Products,



WARNING: This product contains a chemical known
to the State of California to cause cancer.

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



WARNING: Certain products identified with this symbol ▼
and offered for sale in this catalog contain
a chemical known to the State of California to
cause cancer, birth defects and other reproductive harms.

For Additional Products,



WARNING: Certain products identified with this symbol ▼
and offered for sale in this catalog contain
a chemical known to the State of California to
cause cancer.

1 The designated symbol must appear on the same page and in close proximity to the display
2 and/or description of the Product or Additional Product. On each page where the designated symbol
3 appears, Defendants must provide a header or footer directing the consumer to the warning language
4 and definition of the designated symbol.

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



14 **WARNING:** This product contains a chemical known
15 to the State of California to cause cancer, birth defects
and other reproductive harms.

16 For Additional Products,



18 **WARNING:** This product contains a chemical known
19 to the State of California to cause cancer.

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



25 **WARNING:** This product contains a chemical known
26 to the State of California to cause cancer, birth defects
and other reproductive harms.

27 For Additional Products,
28



WARNING: This product contains a chemical known to the State of California to cause cancer.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Consent Judgment, Defendants shall pay \$6,000 in civil penalties to “Russell Brimer, Client Trust Account.” The Total Civil Penalty is \$6,000, of which \$2,000 will pay the Initial Civil Penalty in full, and the remaining \$4,000 will go towards the Final Civil Penalty, which may be waived. (See paragraphs 3.1.1 and 3.1.2.) The civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Brimer, and twenty-five percent (25%) of the funds remitted to Brimer. Brimer shall be responsible for ensuring the 75% payment is remitted to OEHHA.

3.1.1 Initial Civil Penalty.

On or before the fifteenth (15th) day following the mutual execution of this Consent Judgment, Defendants shall deliver a check for their Initial Civil Penalty payment in the amount of \$2,000, issued in two checks for the following amounts to (a) “OEHHA” in the amount of \$1,500, and (b) “Russell Brimer, Client Trust Account” in the amount of \$500 to Lewis, Brisbois, Bisgaard & Smith, LLP, c/o Michael K. Johnson, Esq, who shall provide The Chanler Group with written confirmation within five days of receipt of the check.

Within five (5) business days of the Effective Date, Lewis, Brisbois, Bisgaard & Smith, LLP shall deliver the checks for the Initial Civil Penalty payment to the Chanler Group, at the address named in Section 3.3.1. Brimer subsequently will direct 75% of the initial civil penalty to OEHHA.

3.1.2 Final Civil Penalty. On or before September 30, 2017, Defendants shall pay a Final Civil Penalty of \$4,000. The Final Civil Penalty shall be waived in its entirety if, no later than September 16, 2017, officers of Defendants provide Brimer’s counsel with written certification that, as of the date of their certification, all of the Products and Additional Products they manufacture, import, and purchase for sale in California are Reformulated Products as defined by Section 2, and

1 that they will continue to only offer Reformulated Products in the future. The option to provide a
2 written certification of reformulation in lieu of making the Final Civil Penalty payment otherwise
3 required by this Consent Judgment is a material term, and time is of the essence. In the event that
4 Defendants do not provide certification pursuant to this Section, Defendants shall issue two checks
5 for their Final Civil Penalty payments in the following amounts, and made payable to (a) "OEHHA"
6 in the amount of \$3,000, and (b) "Russell Brimer, Client Trust Account" in the amount of \$1,000.

7 **3.2 Reimbursement of Attorneys' Fees and Costs**

8 The parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
10 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
11 other settlement terms had been finalized, Defendants expressed a desire to resolve Plaintiff's fees
12 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
13 Plaintiff and his counsel under general contract principles and the private attorney general doctrine
14 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
15 mutual execution of this Consent Judgment. Defendants shall pay \$20,500 for the fees and costs
16 incurred by Plaintiff investigating, bringing this matter to Defendants' attention, litigating and
17 negotiating a settlement in the public interest. Payment shall be made to "The Chanler Group"
18 pursuant to Sections 3.3 and 3.4 below.

19 **3.3 Payment Procedures**

20 All payments due under this Consent Judgment shall be held in trust until such time as the
21 Court approves the Parties' settlement. All payments, except the Final Civil Penalty under Section
22 3.1.2, due under this agreement shall be delivered within fifteen (15) days of the mutual execution of
23 this Consent Judgment, and held by Defendants' counsel until the Court grants the motion for
24 approval of this Consent Judgment contemplated by Section 5. Within five business days of the
25 Effective Date, Defendants' counsel shall tender the Initial Civil Penalty payments and attorneys'
26 fee and costs reimbursements required by Sections 3.1.1 and 3.2.

27 **3.4 Payment Address**

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

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

4. CLAIMS COVERED AND RELEASED

4.1 Plaintiff's Public Release of Proposition 65 Claims

Plaintiff, acting on his own behalf and in the public interest, releases the Defendants and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, insurers and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP from Products sold by Defendants prior to the Effective Date, as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to failures to warn about DEHP from the Products sold by Defendants before the Effective Date, as set forth in the Notices.

4.2 Plaintiff's Individual Release of Claims

Plaintiff, in his individual capacity only and *not* in his representative capacity, also releases Defendants, Releasees, and Downstream Releasees, and said release which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to Proposition 65-listed chemicals, specifically limited to phthalate chemicals, in Products and Additional Products sold or distributed for sale by Defendants before the Effective Date.

4.3 Defendants' Release of Plaintiff

Defendants, on their own behalf, and on behalf of their past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his attorneys and other representatives, for any and all actions taken or statements made by Plaintiff and his attorneys and other representatives, whether in the course of investigating

claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. COURT APPROVAL

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

6. SEVERABILITY

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

7. GOVERNING LAW

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

8. NOTICE

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

Defendants:

Steven Schulman, President
Mafcote, Inc.
108 Main Street, Floor 3
Norwalk, CT 06851

Michael K. Johnson, Esq.
Lewis Brisbois Bisgaard & Smith LLP
333 Bush St., 11th floor
San Francisco, CA 94104

///

1 **Plaintiff:**

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Plaintiff agrees to comply with the reporting form requirements referenced in Health and
15 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
16 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement.
17 Brimer shall prepare and file such motion. In furtherance of obtaining such approval, the Parties
18 agree to mutually employ their best efforts, and those of their counsel, to support the entry of this
19 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
20 purposes of this Section, “best efforts” shall include, at a minimum, cooperating on the drafting and
21 filing of the necessary moving papers, supporting the motion, and appearing at the hearing before the
22 Court.

23 **11. MODIFICATION**

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

27 **12. AUTHORIZATION**

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

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2 **AGREED TO:**

3 Date: 4/11/2017

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5 By: 
6 RUSSELL BRIMER

AGREED TO:

Date: _____

By: _____
Steven Schulman, President
MAFCOTE, INC.

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8 **AGREED TO:**

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10 Date: _____

11 By: _____
12 Steven Schulman, President
13 ROYAL CONSUMER PRODUCTS, LLC
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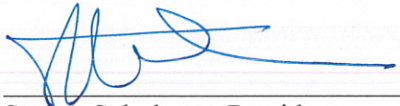
AGREED TO:

Date: _____

By: _____
RUSSELL BRIMER

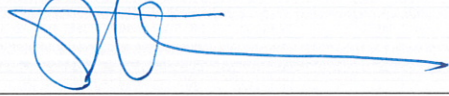
AGREED TO:

Date: 4/12/17

By: 
Steven Schulman, President
MAFCOTE, INC.

AGREED TO:

Date: 4/12/17

By: 
Steven Schulman, President
ROYAL CONSUMER PRODUCTS, LLC