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10 RUSSELL BRIMER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,

v.

NORTHERN BREWER, LLC, *et al.*,
Defendant.

Case No. CGC-16-555806

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Cal. Code Civ. Proc. § 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 Northern Brewer, LLC (“Northern Brewer”), with Brimer and Northern Brewer each
5 individually referred to as a “Party” and 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 to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

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

20 **1.5 Product Description**

21 For purposes of this Consent Judgment “Products” are defined as (a) tools with grips
22 containing DEHP; and (b) vinyl/PVC hoses containing DEHP that are manufactured, imported, sold,
23 distributed, and/or offered for sale to or in California by Northern Brewer including, but not limited
24 to, the grip component of the clamp crimper tool offered in connection with *the Draft Brewer*
25 *Taproom Maintenance Tool Kit, SKU# 40074*; and the hose component offered in connection with
26 *the Blichmann Engineering BeerGun Accessory Kit, BE-000212-00, SKU# K217*.

1 **1.6 Notice of Violation**

2 On June 30, 2016, Brimer served Northern Brewer and certain requisite public enforcement
3 agencies with a “60-Day Notice of Violation” (“Notice”). The Notice alleges that Northern Brewer
4 violated Proposition 65 when it failed to provide “clear and reasonable” warnings to consumers in
5 California that the Products contain DEHP, a chemical known to the State of California to cause birth
6 defects or other reproductive harm. To the best of the Parties’ knowledge, no public enforcer has
7 commenced and is diligently prosecuting the allegations set forth in the Notice.

8 **1.7 Complaint**

9 On December 12, 2016, Brimer filed the instant action (“Complaint”), for the violations of
10 Proposition 65 that are the subject of the Notice.

11 **1.8 No Admission**

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

20 **1.9 Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Northern Brewer as to the allegations contained in the Complaint, that venue is
23 proper in the County of San Francisco, and that the Court has jurisdiction to enter and enforce the
24 provisions of this Consent Judgment pursuant to Proposition 65, and Code of Civil Procedure section
25 664.6.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
3 the Motion for Approval of the Consent Judgment is granted by the Court.

4 **2. INJUNCTIVE RELIEF: REFORMULATION**

5 **2.1 Reformulated Products**

6 Commencing on the Effective Date, and continuing thereafter, any Products sold,
7 manufactured for sale, and/or distributed for sale in California by Northern Brewer shall be
8 “Reformulated Products.” For purposes of this Consent Judgment, Reformulated Products are
9 Products containing DEHP in concentrations of not more than 0.1 percent (1,000 parts per million)
10 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
11 8270C or other methodology utilized by federal or state government agencies for the purpose of
12 determining DEHP content in a solid substance, including, without limitation, Consumer Product
13 Safety Commission test method: CPSC-CH-C1001-09.3, Determination of Phthalates (April, 1st,
14 2010), as amended from time to time.

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty Payment**

17 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
18 this Consent Judgment, Northern Brewer shall pay \$3,500 in civil penalties. The civil penalty
19 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with
20 seventy-five percent (75%) of the funds paid to the California Office of Environmental Health
21 Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Brimer.
22 Northern Brewer shall provide its payment in two checks for the following amount made payable to
23 (a) “OEHHA” in the amount of \$2,625; and (b) “Russell Brimer, Client Trust Account” in the
24 amount of \$875. Brimer’s counsel shall be responsible for delivering the penalty payment made
25 under this Consent Judgment to OEHHA.

26 **3.2 Reimbursement of Attorney’s Fees and Costs**

27 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
28 reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the issue to be

1 resolved after the material terms of this Consent Judgment had been settled. Shortly after the other
2 settlement terms had been finalized, the Parties negotiated the compensation due to Brimer and his
3 counsel under general contract principles and the private attorney general doctrine codified at
4 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
5 execution of this Consent Judgment. As provided for in Section 3.3. below, Northern Brewer shall
6 pay \$28,500 to “The Chanler Group” for all of the fees and costs incurred by Brimer through the
7 Effective Date in investigating, bringing this matter to Northern Brewer’s attention, litigating, and
8 obtaining court approval of the Parties settlement in the public interest.

9 **3.3 Payments Held in Trust**

10 All payments due under this Consent Judgment shall be held in trust until such time as the
11 Court approves this Consent Judgment. All payments due under this agreement shall be delivered
12 within ten (10) business days of the date that this Consent Judgment is fully executed by the Parties,
13 and held in trust by Northern Brewer’s counsel until the Court grants the motion for approval of this
14 Consent Judgment contemplated by Section 5. Within three (3) business days following receipt by
15 Northern Brewer’s counsel of written notice of the Court’s approval of this Consent Judgment,
16 Northern Brewer’s counsel shall tender the civil penalty payments and attorneys’ fee and costs
17 reimbursements required by Sections 3.1 and 3.2. If the Court does not approve the Consent
18 Judgment, Northern Brewer’s counsel will return to Northern Brewer all payments made pursuant to
19 Sections 3.1 and 3.2.

20 **3.4 Payment Address**

21 All payments owed by Northern Brewer under this Consent Judgment shall be delivered to:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

27 **4. CLAIMS COVERED AND RELEASED**

28 **4.1 Brimer’s Public Release of Proposition 65 Claims**

Brimer, acting on his own behalf and in the public interest, releases Northern Brewer and its
parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,

1 shareholders and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes
2 or sells the Products including, but not limited to, its downstream distributors, wholesalers,
3 customers, retailers, franchisers, cooperative members, licensors and licensees (collectively
4 “Downstream Releasees”) for any violations arising under Proposition 65 based on any alleged
5 exposure to DEHP from Products manufactured, imported, sold, distributed, and/or offered for sale
6 or use by Northern Brewer prior to the Effective Date. Compliance with the terms of this Consent
7 Judgment constitutes compliance with Proposition 65 with respect to the alleged or actual failure to
8 warn about exposures to DEHP from Products manufactured, imported, sold, or distributed and/or
9 offered for sale or use by Northern Brewer after the Effective Date.

10 **4.2 Brimer’s Individual Release of Claims**

11 Brimer, in his individual capacity only and *not* in his representative capacity, also provides a
12 release to Northern Brewer, Releasees, and Downstream Releasees that shall be effective as a full and
13 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
14 attorneys’ fees, damages, losses, claims, liabilities, and demands of Brimer of any nature, character or
15 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
16 exposures to DEHP in the Products manufactured, imported, sold, distributed and/or offered for sale
17 or use by Northern Brewer before the Effective Date.

18 **4.3 Northern Brewer’s Release of Brimer**

19 Northern Brewer, on its own behalf, and on behalf of its past and current agents,
20 representatives, attorneys, successors, and assignees, hereby waives any and all claims against
21 Brimer and his attorneys and other representatives, for any and all actions taken or statements made
22 by Brimer and his attorneys and other representatives, whether in the course of investigating claims
23 or otherwise seeking to enforce Proposition 65 against Northern Brewer in this matter with respect
24 to the Products, through the Effective Date.

25 **4.4 Mutual Waiver of California Civil Code Section 1542**

26 The Parties each acknowledge that he/it is familiar with Section 1542 of the Civil Code,
27 which provides as follows:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
4 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
5 OR HER SETTLEMENT WITH THE DEBTOR.

6 The Parties, each on his/its own behalf (and Brimer in his individual capacity only and *not* in any
7 representative capacity), and on behalf of his/its past and current agents, representatives, counsel,
8 successors, and/or assignees, expressly waive and relinquish any and all rights and benefits that they
9 may have under, or that may be conferred upon them by the provisions of Civil Code section 1542 as
10 well as under any other state or federal statute or common law principle of similar effect, to the
11 fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters, as
12 defined by Sections 4.2 and 4.3, above.

13 **5. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and shall
15 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
16 has been fully executed by the Parties, or within such additional time as the Parties may agree to in
17 writing.

18 **6. SEVERABILITY**

19 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
20 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
21 adversely affected, so long as the deletion of provisions deemed unenforceable does not materially
22 affect, or otherwise result in the effect of the Consent Judgment being contrary to the intent of the
23 Parties.

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of California
26 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
27 otherwise rendered inapplicable by reason of law generally, or if any provision of this Consent
28 Judgment is rendered inapplicable or no longer required as a result of any such repeal or preemption,
or rendered inapplicable by reason of law generally as to the Products, then Northern Brewer may
provide written notice to Brimer of any asserted change in the law, and shall have no further

1 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
2 Products are so affected.

3 **8. NOTICE**

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

7 For Northern Brewer:

8 Dolores Dinyon, President
9 Northern Brewer, LLC
10 2221 Highway 36 West
11 Saint Paul, MN 55113

12 With a courtesy copy to:

13 Stuart Block, Esq.
14 Stice & Block LLP
15 2335 Broadway, Suite 201
16 Oakland, CA 94612

17 For Brimer:

18 Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
21 Parker Plaza, Suite 214
22 Berkeley, CA 94710-2565

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

10. POST EXECUTION ACTIVITIES

Brimer agrees to comply with the reporting form requirements referenced in Health and
Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
Code section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent

1 Judgment, which Brimer shall take the lead to draft and file and Northern Brewer shall support,
2 including appearing at the hearing if so required.

3 **11. MODIFICATION; DUTY TO MEET AND CONFER**

4 **11.1 Modification**

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

8 **11.2 Duty to Provide Notice; Meet and Confer**

9 Any Party seeking to modify this Consent Judgment or allege a violation thereof shall first
10 attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the
11 Consent Judgment.

12 **12. AUTHORIZATION**

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

15 **AGREED TO:**

AGREED TO:

16
17 Date: 2/1/2017

NORTHERN BREWER, LLC

Date: February 1, 2017

18 By:  _____
19 RUSSELL BRIMER

By:  _____
DOLORES DINYON, PRESIDENT