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10 RUSSELL BRIMER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 CAMPING WORLD, INC.; CWI, INC., *et al.*,

18 Defendants.

Case No. RG11571252

[PROPOSED] CONSENT JUDGMENT

Dept:

Judge:

Date:

Complaint Filed: April 15, 2011

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2 **1. Introduction**

3 **1.1 Russell Brimer, Camping World, Inc. and CWI, Inc.**

4 This Consent Judgment is entered into by and between plaintiff RUSSELL BRIMER
5 ("Brimer" or "Plaintiff"), CAMPING WORLD, INC. and CWI, INC. (collectively "Camping
6 World" or "Defendants"), with Brimer and Camping World collectively referred to as the "parties."

7 **1.2 Russell Brimer**

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

11 **1.3 Camping World and CWI, Inc.**

12 Defendants each employ ten or more persons and each is a person in the course of doing
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
14 Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

15 **1.4 General Allegations**

16 Camping World has manufactured, imported, distributed, sold and/or offered for sale certain
17 tire pressure gauges that contain lead ("Lead"), without the requisite Proposition 65 warnings. Lead
18 is on the Proposition 65 list as a chemical known to the State of California to cause birth defects and
19 other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: tire pressure
22 gauges containing Lead in Accessible Components, including, but not limited to, *Tire Pressure*
23 *Gauge, Item # 25770 (#8 38361 00336 7)* and *Wheel Masters Dual Tire Equalization Tool #85-*
24 *2819-00/01-06/Part # 8216-9 (#0 15407 82169 1)* manufactured, imported, distributed, sold and/or
25 offered for sale in California by Camping World. Said tire pressure gauges containing Lead in
26 Accessible Components are referred to hereinafter as the "Products". For the purposes of this
27 Consent Judgment, the term "Accessible Component" shall mean any component of the Products
28 that could be touched by a person during reasonably foreseeable use.

1 **1.6 Notices of Violation**

2 On October 29, 2010, Brimer served Camping World, CWI, Inc. and various public
3 enforcement agencies with documents entitled “60-Day Notice of Violation” that provided the
4 recipients with notice of alleged violations of California Health & Safety Code § 25249.6 based on
5 Defendants’ alleged failure to warn consumers that the tire pressure guage exposed users in
6 California to Lead.

7 On February 1, 2011, Brimer served Camping World, CWI, Inc., WMI, Inc. dba Wheel
8 Masters, Inc. and various public enforcement agencies with documents entitled “60-Day Notice of
9 Violation” that provided the recipients with notice of alleged violations of California Health &
10 Safety Code § 25249.6 based on Defendants’ alleged failure to warn consumers that the tire
11 pressure guage exposed users in California to Lead. The Notices issued on October 29, 2010, and
12 February 1, 2011, shall collectively be referred to hereinafter as “Notices”. To the best of the
13 parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notices.

14 **1.7 Complaint**

15 On April 15, 2011, Brimer filed a complaint in the Superior Court in and for the County of
16 Alameda against Camping World, Inc., CWI, Inc., and Does 1 through 150, *Brimer v. Camping*
17 *World, et al.*, Case No. RG11571252 (the “Complaint”), alleging violations of California Health &
18 Safety Code § 25249.6, based on the alleged exposures to Lead contained in certain tire pressure
19 gauges sold by Camping World.

20 **1.8 No Admission**

21 Camping World denies the material, factual and legal allegations contained in Brimer’s
22 Notices and Complaint and maintains that all products that they have manufactured, imported,
23 distributed, sold and/or offered for sale in California, including the Products, have been and are in
24 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by
25 Camping World of any fact, finding, issue of law, or violation of law, nor shall compliance with this
26 Consent Judgment constitute or be construed as an admission by Camping World of any fact,
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1 finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or
2 otherwise affect Camping World's obligations, responsibilities, and duties under this Consent
3 Judgment.

4 **1.9 Consent to Jurisdiction**

5 For purposes of this Consent Judgment only, the parties stipulate that this Court has
6 jurisdiction over Camping World as to the allegations contained in the Complaint, that venue is
7 proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the
8 provisions of this Consent Judgment.

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 7,
11 2011.

12 **2. Injunctive Relief: Reformulation And Warnings**

13 **2.1 Reformulation Standards**

14 Reformulated Products are defined as those Products: (a) containing less than or equal to
15 100 parts per million ("ppm") of lead in any Accessible Component when using a method of
16 detection and analysis authorized under 27 C.C.R. § 25900; and (b) which yield not more than 1.0
17 micrograms of lead when using a wipe test pursuant to NIOSH Test Method 9100 in any Accesible
18 Component.

19 **2.2 Reformulation Commitment**

20 As of the Effective Date, all Products manufactured, imported, distributed, sold and/or
21 offered for sale in retail stores in the State of California by Camping World shall be Products that
22 qualify as Reformulated Products as defined in section 2.1 above or are non-Reformulated Products
23 containing the warnings set forth below.

24 The parties acknowledge and agree that Defendant has already implemented a warning
25 program pursuant to which all non-Reformulated Products manufactured, distributed, and/or sold by
26 Defendant, contain the following warning:
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28

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2 **CALIFORNIA PROPOSITION 65**

3 **WARNING:**

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

7 or:

8 **WARNING:**

9 This product contains chemicals known to the
10 State of California to cause cancer, birth defects
11 or other reproductive harm.

12 Defendant shall continue to use said warnings on all non-Reformulated Products through and until
13 February 28, 2012, at which time all Products must qualify as Reformulated Products pursuant to
14 the standards set forth in Section 2.1 above.

15 **3. Payments Pursuant To California Health & Safety Code § 25249.7(b):**

16 **3.1 Civil Penalty**

17 Camping World shall pay a civil penalty of \$10,000, of which \$7,000 shall be automatically
18 waived in exchange for Camping World's agreement to sell only Products that comply with Section
19 2 above. The remaining \$3,000 is to be apportioned in accordance with California Health & Safety
20 Code § 25249.12(c) and (d), with 75% of these funds remitted to the State of California's Office of
21 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
22 remitted to Russell Brimer. Camping World shall issue two separate checks for the penalty
23 payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in an amount
24 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Russell
25 Brimer" in an amount representing 25% of the total penalty. Two separate 1099s shall be issued for
26 the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and
27 (b) Russell Brimer, whose information shall be provided five calendar days before the payment is
28 due.

Payment shall be delivered to Brimer's counsel on or before October 7, 2011, at the
following address:

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

Berkeley, CA 94710

4. **Reimbursement Of Attorney's 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 this fee issue to be resolved after the material terms of the agreement had been settled. Camping World then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties reached an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5. Camping World shall reimburse Brimer and his counsel \$32,000 for fees and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a settlement in the public interest. This figure also includes Brimer's future fees and costs including attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as well as any other legal work performed after the execution of this Consent Judgment incurred in an effort to obtain finality of the case. However, in the event a third party were to appeal entry of this Consent Judgment, either party and their respective counsel shall be entitled to seek their reasonable attorney's fees and costs associated with all appellate work defending the entry of judgment pursuant to CCP §1021.5.

The check for reimbursement of fees and costs shall be made payable to "The Chanler Group" and shall be delivered on or before October 7, 2011 to the following address:

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

A separate 1099 shall be issued to "The Chanler Group" (EIN: 94-3171522) for the amount of the reimbursement of Plaintiff's fees and costs.

5. **Release Of All Claims**

5.1 **Full, Final and Binding Resolution of Proposition 65 Allegations**

This Consent Judgment is a full, final and binding resolution between Plaintiff, on behalf of himself and the public, and Defendants, of any violation of Proposition 65 that was or could have

1 been asserted by Plaintiff against Defendants, their parents, subsidiaries, affiliated entities that are
2 under common ownership, directors, officers, employees, attorneys, and each entity to whom
3 Defendants directly or indirectly distribute or sell Products, including but not limited to downstream
4 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and
5 licensees ("Releasees"), based on their failure to warn about alleged exposures to Lead contained in
6 the Products that were sold by Defendants.

7 **5.2 Brimer's Public Release of Proposition 65 Claims**

8 In further consideration of the promises and agreements herein contained, Plaintiff on behalf
9 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and
10 in the interest of the general public, hereby waives all rights to institute or participate in, directly or
11 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
12 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,
13 fines, penalties, losses, or expenses, including, but not limited to, investigation fees, expert fees, and
14 attorneys' fees, but exclusive of fees and costs on appeal, limited to and arising under Proposition
15 65 with respect to Lead in the Products sold by Defendants (collectively "claims"), against
16 Defendants, and Releasees.

17 **5.3 Brimer's Individual Release of Claims**

18 Brimer also, in his individual capacity only and *not* in his representative capacity, provides a
19 release to Camping World, Inc., CWI, Inc. and Wheelmaster, Inc., herein which shall be effective as
20 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
21 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of plaintiff of any nature,
22 character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out
23 of alleged or actual exposures to Lead in the Products manufactured, imported, distributed or sold
24 and/or offered for sale by Defendants.

25 **5.4 Camping World's Release of Brimer**

26 Camping World on behalf of themselves, their past and current agents, representatives,
27 attorneys, successors, and/or assignees, hereby waive any and all claims against Plaintiff, his
28

1 attorneys and other representatives, for any and all actions taken or statements made (or those that
2 could have been taken or made) by Plaintiff and his attorneys and other representatives, whether in
3 the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
4 matter with respect to the Products.

5 **6. Court Approval**

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

9 **7. Severability**

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

13 **8. Governing Law**

14 The terms of this Consent Judgment shall be governed by the laws of the State of California
15 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
16 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
17 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
18 preemption or rendered inapplicable by reason of law generally as to the Products, then Camping
19 World shall have no further obligations pursuant to this Consent Judgment with respect to, and to
20 the extent that, the Products are so affected.

21 **9. Notices**

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

Bruce Nye, Esq.
Adams | Nye | Becht LLP
222 Kearny Street, Seventh Floor
San Francisco, CA 94108-4521

To 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.

10. Counterparts; Facsimile Signatures

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.

11. Compliance With Health & Safety Code § 25249.7(f)

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

12. Additional Post Execution Activities

Brimer and Camping World 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 Defendants shall join. If any third party objection to the noticed motion is filed, Brimer and Camping World 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.

13. Modification

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.

1 **14. Authorization**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5
6 AGREED TO:

AGREED TO:

7
8 Date: 9.30.11

Date: _____

9
10 By: 
 Russell Brimer

By: _____
 Marcus Lemonis, President
 Camping World, Inc.

11
12 AGREED TO:

13
14 Date: _____

15
16 By: _____
 Marcus Lemonis, President
 CWI, Inc.

1
2 **14. Authorization**

3 The undersigned are authorized to execute this Consent Judgment on behalf of their
4 respective parties and have read, understood, and agree to all of the terms and conditions of this
5 Consent Judgment.

6
7 AGREED TO:

AGREED TO:

8 Date: _____

9 Date: September 30, 2011

10 By: _____
11 Russell Brimer

12 By: Brent Moody
13 Brent Moody, Exec. Vice President
14 Camping World, Inc.

15
16 AGREED TO:

17 Date: September 30, 2011

18 By: Brent Moody
19 Brent Moody, Exec. Vice President
20 CWI, Inc.