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9 Attorneys for Plaintiff
RUSSELL BRIMER

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION
14

15 RUSSELL BRIMER

16 Plaintiff,

17 v.

18 E&B GIFTWARE, LLC; ROSS STORES, INC.;
19 and DOES 1 through 150,

20 Defendants.
21 _____

No. CGC-04-435206

CONSENT JUDGMENT

1 This Consent Judgment ("Agreement" or "Consent Judgment") is entered into by and
 2 between plaintiff Russell Brimer ("Brimer" or "Plaintiff"), a California citizen, and defendant
 3 E&B Giftware, LLC ("E&B" or "Defendant"), as of November 30, 2004, (the "Effective Date"),
 4 with reference to the following:

5 **WHEREAS,**

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

9 B. Defendant represents that it distributes and/or offers for sale (or in the past
 10 distributed and/or offered for sale) fishing sets, including tackle (such as sinkers).

11 C. On or about July 30, 2004, Brimer first served Defendant, as an alleged violator,
 12 and certain public enforcement agencies (the "Public Enforcers") with a document entitled
 13 "60-Day Notice of Violation" (the "Notice" or the "60-Day Notice") which provided Defendant
 14 and the public enforcers with notice that Brimer considered Defendant to be in violation of
 15 Proposition 65 for allegedly failing to warn purchasers that Defendant distributes and/or
 16 offers for retail sale in California fishing sets containing sinkers that contain one or more
 17 chemicals (the "Listed Chemicals") listed pursuant to California Health & Safety Code
 18 §25249.5 *et seq.* ("Proposition 65") The Notice further alleged that the Products have been
 19 distributed and/or sold by Defendant for use in California since at least July 30, 2001. A list
 20 of the specific products that are covered by this Agreement are set forth in Exhibit A (the
 21 "Products").

22 D. On or about October 5, 2004, Brimer filed a Complaint entitled *Russell Brimer v.*
 23 *E&B Giftware, LLC, et al.*, in the San Francisco County Superior Court against Defendant
 24 alleging violations of Proposition 65 on behalf of individuals in California who allegedly have
 25 been exposed to lead contained in the Products (the "Action"). The Action was given a civil
 26 case number (CGC-04-435206).

1 E. In order to avoid the costs and expense of litigation, and without admitting
2 liability or wrongdoing by any Party, the Parties hereto have elected to resolve this matter by
3 settlement on the terms set forth in this Agreement.

4 **BASED ON THE FOREGOING AND THE MUTUAL PROMISES AND COVENANTS**
5 **SET FORTH BELOW, THE PARTIES AGREE AS FOLLOWS:**

6 1. **Injunctive Relief: Warnings.** Beginning on January 1, 2005, or the date thirty
7 (30) days from the entry of this Consent Judgment if later, Defendant agrees that any Product
8 sold or offered for sale in California shall be labeled or otherwise be accompanied by the
9 following warning:

10 **WARNING** This product will expose you to lead, a chemical known to
11 the State of California to cause birth defects or other
12 reproductive harm. *Do not put this product in your
13 mouth. Wash hands after handling this product.*

14 This warning need not accompany any Products that contain only "lead-free" fishing tackle.
15 The term "lead-free" in this paragraph shall mean fishing tackle that does not contain lead in
16 excess of 0.02% by weight.

17 2. **Monetary Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant
18 to the relevant factors set forth in Health & Safety Code §25249.7(b), the total amount of all
19 civil fines to be paid by Defendant shall be \$1,000. This amount shall be paid within fifteen
20 (15) days of the Effective Date and made payable to the "Charler Law Group in Trust for
21 Russell Brimer." If Defendant does not commit, by means of sending Plaintiff written notice
22 in the manner specified in paragraph 10 on or before June 30, 2005, that it will not sell or
23 distribute any Product in California during 2006 that contains fishing tackle that contains
24 leaded weights, Defendant shall on or before July 31, 2005, tender to Plaintiff an additional
25 sum of \$2,000 in civil fines. Any such payment shall be made payable to the "Charler Law
26 Group in Trust for Russell Brimer." Defendant may sell any Product in California during 2006
without incurring this additional fine if the only Product contains "lead free" fishing tackle.
The term "lead-free" in this paragraph shall mean fishing tackle that does not contain lead in

1 excess of 0.02% by weight. Plaintiff shall bear all responsibility for apportioning and paying
2 to the State of California the appropriate share of the civil penalties paid in accordance with
3 this paragraph.

4 **3. Reimbursement Of Fees And Costs.** The Parties have reached an accord on
5 the compensation due to Brimer and his counsel under the private attorney general doctrine
6 codified at Code of Civil Procedure §1021.5 for all work performed through the Effective
7 Date of the Agreement and anticipated to be performed through the approval process.
8 Under the private attorney general doctrine codified at CCP §1021.5, Defendant shall
9 reimburse Brimer and his counsel for fees and costs, incurred as a result of investigating,
10 bringing this matter to the parties' attention, litigating and negotiating a settlement in the
11 public interest in the amount of \$10,000 for all attorneys' fees, expert and investigation fees,
12 and litigation costs incurred through the Effective Date (and including those efforts through
13 the Court's approval of this agreement) within fifteen (15) days of the Effective Date.
14 Payment should be made payable to "Chanler Law Group." Except as specifically provided
15 in this Consent Judgment, Defendant shall have no further obligation with regard to
16 reimbursement of Plaintiff's attorney's fees and costs with regard to the Products.

17 **4. Releases Of Defendant.** Russell Brimer, by this Agreement, on behalf of
18 himself, his past and current agents, representatives, attorneys, assigns and the citizens of the
19 State of California, and in the interest of the general public (the "Brimer Releasers"), waives
20 and releases all rights to institute or participate in, directly or indirectly, any form of legal
21 action against the Releasees (as defined below), and releases all claims, liabilities, obligations,
22 losses, costs, expenses, fines and damages, against Defendant and its respective customers,
23 distributors, wholesalers, licensors, licensees, retailers, dealers, purchasers, users, directors,
24 officers, employees, lawyers, affiliates, successors and assigns (collectively the "Releasees"),
25 whether under Proposition 65 or the Business & Profession Code §§17200 *et seq.* and 17500 *et*
26 *seq.*, or any other statutory or common law claim, arising out of or relating to the allegations

1 asserted in the 60-Day Notice, the Complaint and the Action, including without limitation the
2 allegation that Defendant failed to warn about exposure to lead contained in any of the
3 Products. As to alleged exposures to the Products, compliance with the terms of this
4 Agreement resolves any issue, now and in the future, and is deemed sufficient to satisfy all
5 obligations concerning, compliance by Defendant with the requirements of Proposition 65 and
6 the Business & Profession Code §§17200 *et seq.* and 17500 *et seq.* The parties agree and
7 acknowledge that this Consent Judgment is a full, final and binding resolution of any
8 violation of Proposition 65, the Business & Profession Code §§17200 *et seq.* and 17500 *et seq.*,
9 or any other statutory or common law claim, related to the Releasees' alleged failures to warn
10 about exposures to or identification of Listed Chemicals contained in the Products and for all
11 actions or statements made by Defendant or their attorneys or representatives in the course of
12 responding to alleged violations of Proposition 65 or the Business & Profession Code §§17200
13 *et seq.* and 17500 *et seq.* Provided, however, that Plaintiff shall remain free to institute any
14 form of legal action to enforce the provisions of this Consent Judgment. The releases
15 provided by Plaintiff in this paragraph shall not extend upstream to the Product
16 manufacturers or to any Product distributor or supplier from whom Defendant purchased any
17 Product.

18 5. **Release Of Brimer.** Defendant waives all rights to institute any form of legal
19 action against Brimer and his attorneys or representatives, for all actions or statements made
20 by Brimer, and his attorneys or representatives, in the course of seeking enforcement of
21 Proposition 65 against Defendant for the Products identified in Exhibit A.

22 6. **No Admissions.** Nothing in this Agreement shall be construed as an
23 admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall
24 compliance with this Agreement constitute or be construed as an admission by Defendant of
25 any fact, finding, conclusion, issue of law, or violation of law. However, this Paragraph shall

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1 not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant
2 under this Agreement.

3 7. **Severability.** In the event that any of the provisions of this Agreement are held
4 by a court to be unenforceable, the validity of the enforceable provisions shall not be
5 adversely affected.

6 8. **Attorney's Fees.** In the event that a dispute arises with respect to the
7 interpretation or enforcement of any provision(s) of this Consent Judgment, the prevailing
8 party in any action to interpret or enforce the judgment shall be entitled to recover its costs
9 and reasonable attorneys' fees.

10 9. **Governing Law.** The terms of this Consent Judgment shall be governed by the
11 laws of the State of California, without reference to any conflicts of law provisions of
12 California law.

13 10. **Notices.** If a notice is required under this Consent Judgment, it shall be sent to
14 the address or location set forth below and shall be delivered by mail or overnight delivery.
15 In addition to, but not in lieu of, such mail or overnight delivery, any notice may also be
16 delivered by electronic mail. All correspondence to Brimer shall be sent to:

17 Clifford A. Chanler, Esq.
18 CHANLER LAW GROUP
19 71 Elm Street, Suite 8
New Canaan, CT 06840
Tel: (203) 966-9911

20 Stephen S. Sayad
21 Laralei C. Paras
22 PARAS LAW GROUP
655 Redwood Highway, Suite 216
Mill Valley, CA 94941
Tel: (415) 380-9222

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All correspondence to E&B shall be sent to:

Edward S. Sacks
General Counsel
E&B Giftware, LLC
4 Executive Plaza
Yonkers, NY 10701
Tel: (914) 964-5200

With a copy to:

Robert C. Longstreth, Esq.
GRAY CARY WARE & FREIDENRICH LLP
401 B Street, 20th Floor
San Diego, CA 92101
Tel: (619) 699-4718

Any party may, from time to time, specify a change of address and/or addressee to which all notices and other communications shall be sent.

11. **Judicial Approval.** The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the parties agree to file a Motion to Approve the Consent Judgment within a reasonable period of time after execution of this Consent Judgment. Defendant agrees to transmit a draft of the moving papers for the approval to Plaintiff's counsel within ten (10) working days of the Effective Date of this Consent Judgment. The Parties shall 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. If this Consent Judgment is disapproved by the Court, it shall be null and void, and any monies that have been provided to Plaintiff or his counsel pursuant to paragraphs 2 and 3 above shall be refunded within fifteen (15) days.

12. **Duties Limited to California.** This Consent Judgment shall have no effect on Products sold by Defendant outside the State of California.

13. **Compliance With Reporting Requirements.** In accordance with the reporting form requirements referenced in Health & Safety Code Section 25249.7(f), counsel for Brimer

1 shall submit, at the appropriate times to the Attorney General's Office, a completed copy of
 2 form JUS 1501 as well as a completed copy of form JUS 1502. In accordance with the
 3 regulations promulgated with respect to Proposition 65, counsel for Brimer represents that he
 4 will send a copy of this Agreement to the California Attorney General's Office within five (5)
 5 days of its execution and no later than forty-five (45) days prior to the hearing on the Motion
 6 for Approval with respect to the Consent Judgment.

7 14. **Counterparts and Facsimile.** This Stipulation and Consent Judgment may be
 8 executed in counterparts and facsimile, each of which shall be deemed an original, and all of
 9 which, when taken together, shall constitute one and the same document.

10 15. **Authorization.** The undersigned represent and warrant that he or she is
 11 authorized to execute this Agreement on behalf of the respective parties for which they are
 12 signing and have read, understood and agree to all of the terms and conditions of this
 13 Agreement.

14 16. **Modification.** This Consent Judgment may be modified only by (1) written
 15 agreement of the Parties and upon entry of a modified Consent Judgment by the Court
 16 thereon, or (2) motion of any Party as provided by law and upon entry of a modified Consent
 17 Judgment by the Court. The Attorney General shall be served with notice of any proposed
 18 modification to this Consent Judgment at least fifteen (15) days in advance of its consideration
 19 by the Court.


20 17. **Retention of Jurisdiction.** This Court shall retain jurisdiction of this matter to
 21 implement the Consent Judgment.

22
 23 DATED: November ____, 2004

E&B GIFTWARE, LLC
 By: David Maue

1
2 DATED: November 29, 2004

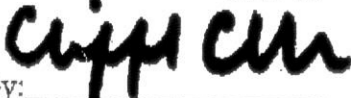
RUSSELL BRIMER

3 By: 
4 Russell Brimer

5 APPROVED AS TO FORM

6 DATED: November 29, 2004

7 CHANLER LAW GROUP

8 By: 
9 Clifford Chanler
10 Attorneys for Plaintiff
11 RUSSELL BRIMER

12 DATED: November _____, 2004

13 GRAY CARY WARE & FREIDENRICH LLP

14 By: _____
15 Robert C. Longstreth
16 Attorneys for Defendant
17 E&B GIFTWARE, LLC
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DATED: November ____, 2004

RUSSELL BRIMER

By: _____
Russell Brimer

APPROVED AS TO FORM

CHANLER LAW GROUP

DATED: November ____, 2004

By: _____
Clifford Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

DATED: November 23, 2004

GRAY CARY WARE & FREIDENRICH LLP

By: *Robert C Longstreth*
Robert C. Longstreth
Attorneys for Defendant
E&B GIFTWARE, LLC

EXHIBIT A

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Specific products which contain one or more of the Listed Chemicals including lead and which are covered by this Agreement:

- (1) Fishing Kits with Sinkers (containing lead)