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FILED

JAN -9 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: J. Dale, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

11 RUSSELL BRIMER,
12 Plaintiff,
13 v.

14 FRANKLIN FINANCIAL MANAGEMENT,
15 LLC and DOES 1-150,
16 Defendants.

Case No. CIV 1203486

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AGREEMENT**

Action Filed : July 31, 2012

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant FRANKLIN
2 FINANCIAL MANAGEMENT, LLC, having agreed through their respective counsel that a judgment
3 be entered pursuant to the terms of the Consent To Judgment entered into by the parties in resolution
4 of this Proposition 65 action, and following the issuance of an order approving the Parties' Consent to
5 Judgment on this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to
6 Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered
7 in accordance with the terms of the Consent To Judgment attached hereto as Exhibit A. By stipulation
8 of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil
9 Procedure § 664.6.

10 **IT IS SO ORDERED.**

11
12 Dated: JAN - 9 2013

13 ROY CHERNUS
14 Hon. Roy O. Chernus
15 Judge Of The Superior Court
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EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
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Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 RUSSELL BRIMER

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF MARIN

9 UNLIMITED CIVIL JURISDICTION
10

11 RUSSELL BRIMER,

12 Plaintiff,

13 v.

14 FRANKLIN FINANCIAL MANAGEMENT,
15 Inc. and DOES 1-150,

16 Defendants.

Case No. CIV 1203486

**CONSENT TO JUDGMENT AS TO
DEFENDANT FRANKLIN FINANCIAL
MANAGEMENT INC.**

Action Filed: July 31, 2012
Trial Date: Not Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent To Judgment is entered into by and between Plaintiff Russell Brimer,
4 ("Brimer" or "Plaintiff") and Defendants Franklin Financial Management Inc. ("Franklin") with
5 Brimer and Franklin collectively referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Franklin employs 10 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 &
13 Safety Code §§ 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Brimer alleges that Franklin manufactured, distributed and/or sold, in the State of
16 California, certain types of aprons containing DEHP and kitchen tools with grips containing
17 DEHP and Lead, including, but not limited to, Update International Vinyl Bib Apron, Item
18 #APV2641 HD, and Update International Oyster Opener, Item# EGU-9, that exposed users to
19 DEHP and Lead without first providing "clear and reasonable warning" under Proposition 65.
20 DEHP and Lead are listed as a reproductive and developmental toxicant pursuant to Proposition
21 65 and are collectively referred to hereinafter as the "Listed Chemical."

22 **1.5 Notice of Violation**

23 On January 31, 2012, Brimer served Defendant and various public enforcement agencies
24 with a document entitled "60-Day Notice of Violation" ("Notice") that provided public
25 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6
26 for failing to warn consumers of the presence of DEHP and Lead, toxic chemicals found in and
27 on their hand aprons or kitchen hand tool products sold in California. Defendant received such
28 60-Day Notices of Violation. Defendant represents that, as of the date it executes this Consent

1 Judgment, it believes that no public enforcer is diligently prosecuting a Proposition 65
2 enforcement action related to the Proposition 65 listed phthalate chemicals in its products, as
3 identified in their respective Notices.

4 **1.6 Complaint**

5 On July 31, 2012, Brimer, acting, in the interest of the general public in California, filed a
6 Complaint in the Superior Court of the State of California for the County of San Francisco,
7 alleging violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the
8 alleged exposures to DEHP and Lead contained in the referenced hand apron and hand kitchen
9 tool products (the "Action").

10 **1.7 No Admission**

11 This Consent To Judgment resolves claims that are denied and disputed by Franklin. The
12 Parties enter into this Consent To Judgment pursuant to a full and final settlement of any and all
13 claims between the Parties for the purpose of avoiding prolonged litigation. Defendant denies
14 the material factual and legal allegations contained in the Notice and Action, maintains that it
15 did not knowingly or intentionally expose California consumers to DEHP and Lead through the
16 reasonably foreseeable use of the Covered Products and otherwise contends that all Covered
17 Products it has manufactured, distributed and/or sold in California have been and are in
18 compliance with all applicable laws. Nothing in this Consent To Judgment shall be construed as
19 an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall
20 compliance with this Consent To Judgment constitute or be construed as an admission by the
21 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
22 specifically denied by Defendant. However, notwithstanding the foregoing, this section shall not
23 diminish or otherwise affect Franklin's obligations, responsibilities, and duties under this
24 Consent To Judgment.

25 **1.8 Consent to Jurisdiction**

26 For purposes of this Consent To Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Franklin as to the allegations contained in the Complaint, that venue is proper
28 in County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of

1 this Consent Judgment. As an express part of this Agreement, pursuant to C.C.P. §664.6 the
2 Court in which this action was filed shall retain jurisdiction over the parties to enforce the
3 settlement until performance in full of the terms of the settlement.

4 **2. DEFINITIONS**

5 2.1 The term "Complaint" shall mean the July 31, 2012, Complaint.

6 2.2 The term "Covered Products" means any vinyl or plastic aprons containing
7 DEHP, including, but not limited to, Update International Vinyl Bib Apron, Item #APV2641 HD,
8 and any kitchen hand tools with grips containing DEHP and Lead, including, but not limited to,
9 Update International Oyster Opener, Item# EGU-9.

10 2.3 The term "Effective Date" shall mean August 1, 2012.

11 2.4 "Accessible Component" means a metal or a poly vinyl chloride or other soft
12 plastic, vinyl, or synthetic leather component of a Covered Product that could be touched by a
13 person during reasonably foreseeable use.

14 2.5 The term "DEHP Free" Covered Products shall mean Covered Products
15 containing Accessible Components, materials or other components that may be handled,
16 touched or mouthed by a consumer, and which components contain less than or equal to 1,000
17 parts per million ("ppm") of DEHP as determined by a minimum of duplicate quality controlled
18 test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and
19 8270C.

20 2.6 The term "LEAD Free" Covered Products shall mean Covered Products and
21 Noticed Products containing Accessible Components, materials or other components that may be
22 handled, touched or mouthed by a consumer, and which components each yield less than 1.0
23 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100 and each yield
24 less than 100 parts per million ("ppm") lead when each such component material is analyzed
25 pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized
26 by federal or state agencies for the purpose of determining lead content in a solid substance. The
27 term "LEAD Free Standard" shall mean the above-referenced standard that will cause a Covered
28 Product to qualify as LEAD Free.

1 2.7 “Manufactured” and “Manufactures” have the meaning defined in Section
2 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended
3 from time to time.

4 **3. INJUNCTIVE RELIEF**

5 3.1 **Formulation Commitment**

6 **3.1.1** No more than thirty (30) days after the Effective Date, Defendant shall provide the
7 DEHP Free and LEAD Free Standards, to its then-current Vendors of Covered Products that will
8 be sold or offered for sale to California consumers and shall instruct each Vendor to use
9 reasonable efforts to provide Covered Products that comply with such DEHP Free and LEAD
10 Free Standards expeditiously. In addressing the obligation set forth in the preceding sentence,
11 Defendant shall not employ statements that will encourage a Vendor to delay compliance with
12 the DEHP Free and LEAD Free Standard. Upon request, Defendant shall provide Plaintiff with
13 copies of such Vendor notification and Plaintiff shall regard such copies as confidential business
14 information.

15 **3.1.2** No more than sixty (60) days after the Effective Date, Defendant shall not order,
16 cause to be ordered, manufacture or cause to be manufactured any Covered Product that is not
17 DEHP and Lead Free.

18 **3.1.3** For every Covered Product ordered, caused to be ordered, manufactured or
19 caused to be manufactured for distribution to or sale in California after the Effective Date,
20 Defendant shall maintain copies of Vendor or manufacturer testing of such products
21 demonstrating compliance with this section, shall maintain copies of all vendor correspondence
22 relating to the DEHP and Lead concentration standard and shall produce such copies to Brimer
23 within fifteen (15) days of receipt of written request from Brimer.

24 **3.2 Previously Obtained or Distributed Covered Products.**

25 **3.2.1 Past Product Warnings.** Franklin certifies that as of the Effective Date, it has
26 undertaken good faith efforts to label any Covered Product that was not Lead Free or DEHP Free
27 with a clear and reasonable warning.
28

1 **3.2.2 Future Product Warnings.** Commencing on the Effective Date, and until such
2 date six (6) months thereafter, Franklin shall not sell, ship, or offer to be sold or shipped for sale
3 in California any Covered Products unless such Covered Products are both DEHP and Lead Free
4 under Section 2.5 and Section 2.6 or are sold or shipped with one of the clear and reasonable
5 warnings set forth hereafter.

6 Each warning shall be prominently placed with such conspicuousness as compared with
7 other words, statements, designs, or devices as to render it likely to be read and understood by
8 an ordinary individual under customary conditions *before* purchase or use. Each warning shall
9 be provided in a manner such that the consumer or user understands to which *specific* Covered
10 Product the warning applies, so as to minimize the risk of consumer confusion.

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

12 (i) **Product Labeling.** Franklin may affix a warning to the packaging,
13 labeling, or directly on any Covered Products sold at a retail outlet of Defendant in California
14 that states:

15 **WARNING:** This product contains DEHP and Lead, a
16 chemical known to the State of California to
17 cause birth defects and other reproductive
18 harm.

19 (ii) **Point-of-Sale Warnings.** Alternatively, Franklin may provide
20 warning signs in the form below to retail outlets in California, which stores it is reasonably
21 aware of having sold the Covered Products or having inventory or orders of the Covered
22 Products, with instructions to post the signs *in immediate proximity* to the point of display of
23 any and all such Covered Products for the benefit of its customers.

24 **WARNING:** This product contains DEHP and Lead, a
25 chemical known to the State of California to
26 cause birth defects and other reproductive
27 harm.

28 (b) **Mail Order Catalog and Internet Sales.** In the event that Franklin sells
any Covered Products via mail order catalog or the Internet to customers located in California
any such catalog or Internet site offering any Covered Product for sale shall include a warning in

1 the catalog or within the website, identifying the specific Covered Product to which the warning
2 applies, as specified in Sections 3.2.2(b)(i) and (ii).

3 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
4 order catalog must be in the same type size or larger than the Covered Product description text
5 within the catalog. The following warning shall be provided on the same page and in the same
6 location as the display and/or description of the Covered Product:

7
8 **WARNING:** This product contains DEHP and Lead, a
9 chemical known to the State of California to
cause birth defects and other reproductive
harm.

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

15
16 **WARNING:** Certain products identified with this
17 symbol ▼ and offered for sale in this
18 catalog contain DEHP and Lead, a
chemical known to the State of California
to cause birth defects and other
reproductive harm.

19 The designated symbol must appear on the same page and in close proximity to the
20 display and/or description of the Covered Product. On each page where the designated symbol
21 appears, Franklin must provide a header or footer directing the consumer to the warning
22 language and definition of the designated symbol.

23 If Defendant elects to provide warnings in any mail order catalog, then the warnings
24 must be included in all catalogs offering to sell one or more Covered Products printed after the
25 Effective Date.

26 (ii) **Internet Website Warning.** A warning must be given in
27 conjunction with the sale of any Covered Products via the Internet, provided it appears either:
28 (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as

1 the order form for a Covered Product; (c) on the same page as the price for any Covered Product;
2 or (d) on one or more web pages displayed to a purchaser during the checkout process. The
3 following warning statement shall be used and shall appear in any of the above instances
4 adjacent to or immediately following the display, description, or price of the Covered Product
5 for which it is given in the same type size or larger than the Covered Product description text:

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

10 Alternatively, the designated symbol may appear adjacent to or immediately following
11 the display, description, or price of the Covered Product for which a warning is being given,
12 provided that the following warning statement also appears elsewhere on the same web page, as
13 follows:

14 **WARNING:** Products identified on this page with the
15 following symbol ▼ contain DEHP and
16 Lead, a chemical known to the State of
 California to cause birth defects and other
 reproductive harm.

17 **3.2.3** Commencing nine (9) months after the Effective Date, Franklin shall discontinue
18 all sales of any Covered Products that are not DEHP and Lead Free in California, regardless of
19 compliance with Section 3.2.1.

20 **3.2.4** No later than one year after the Effective Date, Franklin shall destroy, in a manner
21 compliant with any environmental or other waste disposal regulations, all Covered Products that
22 are not DEHP and Lead Free in the custody, control or possession of Defendant or otherwise
23 remaining in the possession of any retail store or internet distribution warehouse controlled,
24 owned or operated by Defendant in the United States.

25 **3.2.5** Franklin shall maintain records of compliance correspondence, inventory reports
26 or other communication confirming compliance with §§ 3.2.1 through 3.2.3 for three (3) years
27 from the Effective Date and shall produce copies of such records upon written request by Brimer.
28

1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

3 Franklin shall make a payment of \$14,000.00 to be apportioned in accordance with
4 Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds
5 earmarked for the State of California's Office of Environmental Health Hazard Assessment
6 ("OEHHA") and the remaining 25% of these penalty monies earmarked for Brimer. The civil
7 penalty Franklin is required to pay under this Section is substantially reduced in light of
8 Franklin's commitment to promptly commence labeling existing inventory and to require
9 reformulation of Covered Products from Vendors to essentially remove the presence of the
10 listed chemicals from those products. *The initial assessment contemplated civil penalties in the*
11 *amount of \$54,000. An amount of \$40,000 was automatically credited in light of settling Defendant's*
12 *commitment to reformulate its product lines to essentially remove the presence of the listed chemicals.*

13 **4.2 Reduction in Penalty Payments**

14 Franklin may reduce the total penalty payment due pursuant to section 4.1 above by
15 satisfying the following penalty offset options (in which event the division of remaining total
16 penalties due shall be proportioned between OEHHA and Brimer in the same ratio as set forth in
17 section 4.1 above). Defendant may realize a \$4,000.00 reduction in the total penalty amount due
18 under section 4.1 above if that party agrees, by express, written confirmation to counsel for
19 plaintiff, that, no later the Effective Date, the term "in California" in section 3.1 above shall be
20 deemed to have been replaced by the term "within the United States."

21 **4.3 Augmentation of Penalty Payments**

22 For purposes of the penalty assessment under this Consent To Judgment, plaintiff is
23 relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of
24 the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date,
25 plaintiff discovers and presents to Defendant evidence that the Covered Products have been
26 distributed by Franklin in sales volumes materially different than those identified by Defendant
27 prior to execution of this Agreement, then Defendant shall be liable for an additional penalty
28 amount of \$150 per quantity of Covered Product sold prior to execution of this Agreement but

1 not identified by Defendant to plaintiff. Defendant shall also be liable for any reasonable,
2 additional attorney fees expended by plaintiff in discovering such additional retailers or sales.
3 Plaintiff agrees to provide Defendant with a written demand for all such additional penalties
4 and attorney fees under this Section. After service of such demand, defendant shall have thirty
5 (30) days to agree to the amount of fees and penalties owing by Defendant and submit such
6 payment to plaintiff in accordance with the method of payment of penalties and fees identified
7 in Sections 4.5. Should this thirty (30) day period pass without any such resolution between the
8 parties and payment of such additional penalties and fees, plaintiff shall be entitled to file a
9 formal legal claim for damages for breach of this contract and shall be entitled to all reasonable
10 attorney fees and costs relating to such claim.

11 **4.4 Reimbursement of Plaintiff's Fees and Costs**

12 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
14 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
15 Franklin then expressed a desire to resolve the fee and cost issue shortly after the other
16 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
17 the compensation due to Brimer and his counsel under general contract principles and the
18 private attorney general doctrine codified at California Code of Civil Procedure section 1021.5,
19 for all work performed in this matter, except fees that may be incurred on appeal. Under these
20 legal principles, Franklin shall pay the amount of \$31,500.00 for fees and costs incurred
21 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
22 to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
23 Judgment in the public interest.

24 **4.5 Payment Procedures**

25 **4.5.1 Funds Brimer In Trust:** All payments required by Sections 4.1 and 4.4
26 shall delivered on or before September 15, 2012, to either The Chanler Group or the attorney of
27 record for Franklin , and shall be Brimer in trust pending the Court's approval of this Consent
28 Judgment.

1 Payments delivered to The Chanler Group shall be made payable, as follows:

- 2 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
3 the amount of \$11,000.00 (or 75% of any contractually reduced penalty);
4 (b) One check made payable to "The Chanler Group in Trust for Brimer" in
5 the amount of \$3,000.00 (or 25% of any contractually reduced penalty); and
6 (c) One check made payable to "The Chanler Group in Trust" in the amount
7 of \$31,500.00.

8 Payments delivered to Selman Breitman LLP shall be made payable, as follows:

- 9 (a) One check made payable to "Selman Breitman LLP in Trust for OEHHA"
10 in the amount of \$11,000.00 (or 75% of any contractually reduced penalty);
11 (b) One check made payable to "Selman Breitman LLP in Trust for Brimer"
12 in the amount of \$3,000.00 (or 25% of any contractually reduced penalty); and
13 (c) One check made payable to "Selman Breitman LLP in Trust for The
14 Chanler Group" in the amount of \$31,500.00.

15 If Franklin elects to deliver payments to its attorney of record, such attorney of
16 record shall: (a) confirm in writing within five days of receipt that the funds have been
17 deposited in a trust account; and (b) within two days of the date of the hearing on which
18 the Court approves the Consent Judgment, deliver the payment to The Chanler Group
19 in three separate checks, as follows:

- 20 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
21 the amount of \$11,000.00 (or 75% of any contractually reduced penalty);
22 (b) One check to "The Chanler Group in Trust for Brimer" in the amount of
23 \$3,000.00 (or 75% of any contractually reduced penalty); and
24 (c) One check to "The Chanler Group" in the amount of \$XXXX.00.

25 Any failure by defendant to deliver the above-referenced payments to The Chanler
26 Group within two days of the date of the hearing on which the Court approves the
27 Consent To Judgment shall result in imposition of a 10% simple interest assessment on
28 the undelivered payment(s) until delivery.

1 **4.5.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
2 and the settlement funds have been transmitted to plaintiff's counsel, Franklin shall issue three
3 separate 1099 forms, as follows:

4 (a) The first 1099 shall be issued to the Office of Environmental Health
5 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in
6 the amount of \$11,000.00 (or 75% of any contractually reduced penalty);

7 (b) The second 1099 shall be issued to Brimer in the amount of \$3,000.00 (or
8 25% of any contractually reduced penalty), whose address and tax identification
9 number shall be furnished upon request; and

10 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in
11 the amount of \$31,500.00.

12 **4.5.3 Payment Address:** All payments to the Chanler Group shall be delivered
13 to the following payment address:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

19 **5. CLAIMS COVERED AND RELEASE**

20 **5.1 Brimer's Releases of Franklin**

21 5.1.1 This Consent To Judgment is a full, final, and binding resolution between Brimer,
22 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
23 assignees, and in the interest of the general public, and Franklin and its attorneys, successors,
24 licensors and assigns ("Defendant Releasees"), and all entities to whom Franklin directly or
25 indirectly distribute or sell Covered Products, including but not limited to distributors,
26 wholesalers, customers, retailers, franchisees, cooperative members, and licensees
27 ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been or could
28 have been asserted against Defendant Releasees and Downstream Defendant Releasees
regarding the failure to warn about exposure to the Listed Chemical arising in connection with

1 Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to
2 the Effective Date. Franklin ' compliance with this Consent To Judgment shall constitute
3 compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products
4 after the Effective Date.

5 5.1.2 Brimer on behalf of himself, his past and current agents, representatives,
6 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
7 with respect to Covered Products all rights to institute or participate in, directly or indirectly,
8 any form of legal action and releases all claims, including, without limitation, all actions, and
9 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
10 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
11 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
12 (collectively "claims"), against Defendant Releasees and Downstream Defendant Releasees that
13 arise under Proposition 65 or any other statutory or common law claims that were or could have
14 been asserted in the public interest, as such claims relate to Defendant Releasees' and
15 Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed
16 Chemical contained in the Covered Products.

17 5.1.3 Brimer also, in his individual capacity only and *not* in his representative capacity,
18 provides a general release herein which shall be effective as a full and final accord and
19 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
20 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,
21 known or unknown, suspected or unsuspected, arising out of the subject matter of the
22 Complaint as to Covered Products manufactured, distributed or sold by Defendant Releasees.
23 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which
24 provides as follows:

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

1 Brimer, in his individual capacity only and *not* in his representative capacity, expressly
2 waives and relinquishes any and all rights and benefits which he may have under, or which may
3 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as
4 under any other state or federal statute or common law principle of similar effect, to the fullest
5 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
6 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
7 complete release notwithstanding the discovery or existence of any such additional or different
8 claims or facts arising out of the released matters.

9 This Section 5.1 release is expressly limited to those claims that arise under Proposition
10 65, as such claims relate to Defendant's alleged failure to warn about exposures to or
11 identification of the Listed Chemical contained in the Covered Products and as such claims are
12 identified in the Proposition 65 60-Day Notice to Defendant.

13 This Section 5.1 release is expressly limited to any alleged violations that occur prior to
14 thirty (30) days after the Effective Date and does not release any Downstream Defendant
15 Releasee or any other non-party from any liability for any violation of Proposition 65 regarding
16 the Covered Products that occur more than thirty (30) days after the Effective Date.

17 The Parties further understand and agree that this Section 5.1 release shall not extend
18 upstream to any entities, other than Defendant, that manufactured the Covered Products or any
19 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
20 component parts thereof to Defendant.

21 5.1.4 Upon court approval of the Consent To Judgment, the Parties waive their
22 respective rights to a hearing or trial on the allegations of the Complaint.

23 **5.2 Franklin's Release of Brimer**

24 5.2.1 Franklin waives any and all claims against Brimer, his attorneys, and other
25 representatives for any and all actions taken or statements made (or those that could have been
26 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
27 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
28 and/or with respect to the Covered Products.

1 5.2.2 Franklin also provides a general release herein which shall be effective as a full
2 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
3 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Franklin of any
4 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
5 subject matter of the Action. Franklin acknowledges that it is familiar with Section 1542 of the
6 California Civil Code, which provides as follows:

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

10 Franklin expressly waives and relinquishes any and all rights and benefits that it
11 may have under, or which may be conferred on it by the provisions of Section 1542 of the
12 California Civil Code as well as under any other state or federal statute or common law
13 principle of similar effect, to the fullest extent that it may lawfully waive such rights or
14 benefits pertaining to the released matters. In furtherance of such intention, the release
15 hereby given shall be and remain in effect as a full and complete release notwithstanding
16 the discovery or existence of any such additional or different claims or facts arising out of
17 the released matters.

18 **6. SEVERABILITY**

19 If, subsequent to court approval of this Consent To Judgment, any of the provisions of
20 this Consent To Judgment are Brimer by a court to be unenforceable, the validity of the
21 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any
22 unenforceable provision is not severable from the remainder of the Consent To Judgment.

23 **7. COURT APPROVAL**

24 This Consent To Judgment is effective upon execution but must also be approved by the
25 Court. If this Consent Judgment is not approved by the Court in its entirety, the Parties shall
26 meet and confer to determine whether to modify the terms of the Consent Judgment and to
27 resubmit it for approval. In meeting and conferring, the Parties agree to undertake any actions
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1 reasonably necessary to amend and/or modify this Consent Judgment in order to further the
2 mutual intention of the Parties in entering into this Consent Judgment.

3 The Consent to Judgment shall become null and void if, for any reason, it is not approved
4 and entered by the Court within one year after it has been fully executed by all Parties. If the
5 Consent to Judgment becomes null and void after any payment of monies under this agreement
6 to The Chanler Group in trust, such monies shall be returned to defendant by payment of such
7 monies to its counsel, in trust for Franklin.

8 If this Consent Judgment is not entered by the Court, and the Parties have exhausted
9 their meet and confer efforts pursuant to this Section, upon 15 days written notice, the law firm
10 holding Defendant's funds in trust shall refund any and all payments made into its trust
11 account by Defendant as requested.

12 **8. GOVERNING LAW**

13 The terms of this Consent To Judgment shall be governed by the laws of the State of
14 California.

15 **9. NOTICES**

16 When any Party is entitled to receive any notice under this Consent To Judgment, the
17 notice shall be sent by certified mail and electronic mail to the following:

18 For Franklin Financial Management Inc. to:

19 Alec Cheung
20 Franklin Financial Management Inc.
21 5801 South Boyle Avenue
22 Los Angeles, CA 90058

22 With copy to their counsel at

23 Mark Love, Esq.
24 Selman Breitman LLP
25 33 New Montgomery, Sixth Floor
26 San Francisco, CA 94105

25 For Brimer to:

26 Proposition 65 Coordinator
27 The Chanler Group
28 2560 Ninth Street
29 Parker Plaza, Suite 214

1 Berkeley, CA 94710-2565

2 Any Party may modify the person and address to whom the notice is to be sent by sending each
3 other Party notice by certified mail and/or other verifiable form of written communication.

4 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

5 Brimer agrees to comply with the reporting form requirements referenced, in California
6 Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.

7 **11. MODIFICATION**

8 This Consent To Judgment may be modified only: (1) by written agreement of the
9 Parties; or (2) upon a successful motion of any party and entry of a modified Consent To
10 Judgment by the Court.

11 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

12 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
13 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of
14 obtaining such approval, Brimer and Franklin and their respective counsel agree to mutually
15 employ their best efforts to support the entry of this agreement as a Consent To Judgment and
16 obtain approval of the Consent To Judgment - sufficient to render a formal judgment approving
17 this agreement - by the Court in a timely manner. Any effort by plaintiff or Franklin to impede
18 judicial approval of this Consent To Judgment shall subject such impeding party to liability for
19 attorney fees and costs incurred by plaintiff or his counsel in their efforts to meet or oppose
20 Franklin's impeding conduct.

21 **13. ENTIRE AGREEMENT**

22 This Consent To Judgment contains the sole and entire agreement and understanding of
23 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
24 negotiations, commitments, and understandings related hereto. No representations, oral or
25 otherwise, express or implied, other than those contained herein have been made by any Party
26 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
27 deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or
28 termination of this Consent Judgment shall be binding unless executed in writing by the Party to

1 be bound. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall
2 constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver
3 constitute a continuing waiver

4 **14. ATTORNEY'S FEES**

5 14.1 Should Brimer prevail on any motion, application for order to show cause or
6 other proceeding to enforce a violation of this Agreement, Brimer shall be entitled to his
7 reasonable attorney fees and costs incurred as a result of such motion, order or application,
8 consistent with C.C.P. §1021.5. Should Defendant prevail on any motion, application for order to
9 show cause or other proceeding to enforce a violation of this Consent Judgment, Defendant may
10 be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or
11 application upon a finding that Brimer's prosecution of the motion or application lacked
12 substantial justification. For purposes of this Agreement, the term substantial justification shall
13 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§
14 2016, et seq.

15 14.2 Except as specifically provided in the above paragraph and in Section 5.1, each
16 Party shall bear its own costs and attorney's fees in connection with this action.

17 14.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
18 sanctions pursuant to law.

19 **15. NEUTRAL CONSTRUCTION**

20 Both Parties and their counsel have participated in the preparation of this Consent
21 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
22 Consent Judgment was subject to revision and modification by the Parties and has been
23 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
24 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
25 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
26 Consent Judgment agrees that any statute or rule of construction providing that ambiguities
27 are to be resolved against the drafting Party should not be employed in the interpretation of
28

1 this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code
2 Section 1654.

3 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

7 **17. AUTHORIZATION**

8 The undersigned parties and their counsel are authorized to execute this Consent To
9 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the
10 terms and conditions of this Consent To Judgment.

11 **IT IS SO AGREED**

12 Dated: August <u>4</u> , 2012 13  14 _____ 15 Plaintiff Russell Brimer	Dated: August __, 2012 _____ Alec Cheung, President Franklin Financial Management Inc.
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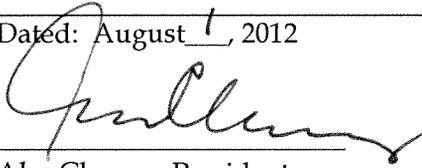
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11 **IT IS SO AGREED**

12 Dated: August __, 2012 13 14 _____ 15 Plaintiff Russell Brimer	12 Dated: August <u>1</u> , 2012 13  14 _____ 15 Alec Cheung, President 16 Franklin Financial Management Inc.
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