

1 Stephen S. Sayad, State Bar No. 104866
Clifford A. Chanler, State Bar No. 135534
2 THE CHANLER GROUP
81 Throckmorton Ave, Suite 203
3 Mill Valley, CA 94941
Telephone: (415) 388-1132
4 Facsimile: (415) 388-1135

5 Attorneys for Plaintiff
RUSSELL BRIMER

6 Bruce Nye, State Bar No. 77608
7 Adams | Nye | Becht LLP
222 Kearny Street, Seventh Floor
8 San Francisco, CA 94108-4521
Telephone: (415) 982-8955
9 Facsimile: (415) 982-2042

10 Attorneys for Defendant
LOGO CHAIR, INC.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 RUSSELL BRIMER,
17 Plaintiff,
18 v.
19 LOGO CHAIR, INC., *et al.*,
20 Defendants.
21

Case No. RG-10-544353

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Logo Chair, Inc.**

3 This Consent Judgment is entered into by and between Plaintiff Russell Brimer (hereinafter
4 “Brimer” or “Plaintiff”) and Defendant Logo Chair, Inc. (hereinafter “Logo Chair” or “Defendant”),
5 with Brimer and Logo Chair collectively referred to as the “Parties”.

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Logo Chair employs ten 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 & Safety
13 Code Section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Logo Chair has manufactured, distributed, and/or sold in the State of
16 California folding chairs with sport team logos (including but not limited to *Folding Chair, Anaheim*
17 *Angels*) containing lead on the exterior surface. Lead is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause birth defects and other reproductive harm. Lead is
19 hereinafter referred to as the “Listed Chemical”.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: folding chairs
22 with sport team logos containing the Listed Chemical on the exterior surface including, but not
23 limited to, *Folding Chair, Anaheim Angels*. All such items shall hereinafter be referred to as the
24 “Products”.

25 **1.6 Notice of Violation**

26 On June 17, 2010, Brimer served Logo Chair and various public enforcement agencies with a
27 document entitled “60-Day Notice of Violation” that provided Logo Chair and such public enforcers
28 with notice alleging that Logo Chair was in violation of California Health & Safety Code

1 Section 25249.6 for failing to warn consumers and customers that the Products exposed users in
2 California to the Listed Chemical. To the best of the Parties' knowledge, no public enforcer has
3 diligently prosecuted any action involving the allegations set forth in the 60-Day Notice of Violation
4 ("Notice").

5 **1.7 Complaint**

6 On or about October 29, 2010, Brimer, who is acting in the interest of the general public in
7 California, filed a complaint in the Superior Court for the County of Alameda, naming Logo Chair as
8 a defendant and alleging violations of Proposition 65 by Logo Chair, based on the alleged exposures
9 to the Listed Chemical contained in the Products manufactured, distributed, and/or offered for sale in
10 California by Logo Chair ("Complaint"). Logo Chair has answered the Complaint, generally denying
11 its allegations and asserting various affirmative defenses.

12 **1.8 No Admission**

13 Logo Chair denies the material, factual, and legal allegations contained in Brimer's Notice and
14 Complaint, and expressly denies any wrongdoing. Logo Chair further maintains that all products
15 manufactured, distributed, and/or sold by it in California, including the Products, have been, and are,
16 in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by
17 Logo Chair of any fact, finding, issue of law, or violation of law; nor shall compliance with this
18 Consent Judgment constitute or be construed as an admission by Logo Chair of any fact, finding,
19 conclusion, issue of law, or violation of law, such being specifically denied by Logo Chair. However,
20 this Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Logo
21 Chair under this Consent Judgment.

22 **1.9 Consent to Jurisdiction/Enforcement**

23 For purposes of this Consent Judgment, the parties stipulate that this Court has jurisdiction
24 over Logo Chair as to the allegations contained in the Complaint, that venue is proper in the
25 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this
26 Consent Judgment pursuant to Code of Civil Procedure Section 664.6.

27 Brimer or Logo Chair may, after meeting and conferring, by motion or application for an order
28 to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean April 30, 2011.

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

4 **2.1 Reformulation Commitment:** Commencing on April 30, 2011, Logo Chair shall not
5 ship, sell or offer for sale in California any Products that do not provide a clear and reasonable
6 warning pursuant to Section 2.2 below, unless such Products are “Lead Free”. For purposes of this
7 Consent Judgment, “Lead Free” Products shall mean Products containing components that may be
8 handled, touched, or mouthed by a consumer, and which components yield less than 1.0 microgram of
9 lead when using a wipe test pursuant to NIOSH Test Method 9100 or contain less than 90 parts per
10 million of the Listed Chemical when analyzed pursuant to EPA testing methodologies 3050B and
11 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of
12 determining the amount of the Listed Chemical in a solid substance. Products that are Lead Free are
13 hereinafter referred to as “Reformulated Products”. Notwithstanding the foregoing, after December
14 31, 2011, all Products manufactured by Logo Chair, and all products bearing California team logos
15 sold in California shall be Lead Free.

16 **2.2 Warning Commitment:**

17 As of April 30, 2011, Logo Chair shall provide clear and reasonable warnings for all Products
18 shipped, sold, or offered for sale in California pursuant to the requirements of Proposition 65 unless
19 the Products are Lead Free. The method and message shall be as follows:

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

21 (i) **Product Labeling.** Logo Chair (or its agents) shall affix a clear and
22 conspicuous warning to the packaging, labeling, or directly on each Product sold in retail outlets in
23 California. The warning shall be clearly and conspicuously placed on the Product or on the packaging
24 for the Product. The clear and conspicuous warning shall contain the following language:

25 **WARNING:** This product contains lead, a chemical
26 known to the State of California to cause
27 cancer, birth defects and other reproductive
28 harm. Wash hands after handling.

1 (ii) **Point-of-Sale Warnings.** Alternatively, Logo Chair may provide clear
2 and conspicuous warning signs in the form below to its customers in California with instructions to
3 post the warnings in close proximity to the point of display of the Products.

4 **WARNING:** This product contains lead, a chemical known to
5 the State of California to cause cancer, birth
6 defects and other reproductive harm. Wash hands
7 after handling.

8 Where more than one Product is sold in proximity to other like items or to those that do not
9 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1 or Products distributed prior
10 to the Effective Date), the following statement must be used:¹

11 **WARNING:** This product contains lead, a chemical known to
12 the State of California to cause cancer, birth
13 defects and other reproductive harm. Wash hands
14 after handling.

15 *[list products for which warning is required]*

16 (b) **Logo Chair-Controlled Mail Order Catalog and Internet Sales.** In the
17 event that Logo Chair makes direct sales of Products via a Logo Chair-published mail order catalog or
18 a Logo Chair-sponsored internet site to customers located in California after the Effective Date that
19 are not Reformulated Products, Logo Chair shall provide a clear and conspicuous warning for
20 Products: (1) in any Logo-Chair-published mail order catalog; or (2) on any Logo Chair-sponsored
21 internet website. Warnings given in the mail order catalog or on the website shall identify the specific
22 Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

23 (i) **Mail Order Catalog Warning.** Any warning provided in any Logo-
24 Chair-published mail order catalog must be in the same type size or larger than the Product
25 description text within the catalog. The following warning shall be provided on the same page and in
26 the same location as the display and/or description of the Product:

27 ¹ For purposes of the consent judgment, "sold in proximity" shall mean that the Product and another product are offered
28 for retail sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably
determine which of the two products are subject to the warning sign.

1 **WARNING:** This product contains lead, a chemical known to
2 the State of California to cause cancer, birth
3 defects and other reproductive harm. Wash hands
4 after handling.

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

10 **WARNING:** Certain products identified with this symbol ▼
11 and offered for sale in this catalog contain lead,
12 a chemical known to the State of California to
13 cause cancer, birth defects and other
14 reproductive harm. Wash hands after handling.

15 The designated symbol must appear on the same page and in close proximity to the display
16 and/or description of the Product. On each page where the designated symbol appears, Logo Chair
17 must provide a header or footer directing the consumer to the warning language and definition of the
18 designated symbol.

19 If Logo Chair elects to provide warnings in the Logo Chair-published mail order catalog, then
20 the warnings must be included in all Logo Chair-published mail order catalogs offering to sell one or
21 more Products printed after the Effective Date.

22 (ii) **Internet Website Warning.** A clear and conspicuous warning may be
23 given in conjunction with the sale of the Product via any Logo Chair-sponsored Internet website,
24 provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the
25 same web page as the order form for the Product; (c) on the same page as the price for any Product; or
26 (d) on one or more web pages displayed to a purchaser during the checkout process. The following
27 warning statement shall be used and shall appear in any of the above instances adjacent to or
28 immediately following the display, description, or price of the Product for which it is given in the
29 same type size or larger than the Product description text:

1 **WARNING:** This product contains lead, a chemical known to
2 the State of California to cause cancer, birth
3 defects and other reproductive harm. Wash hands
4 after handling.

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

8 **WARNING:** Products identified on this page with this
9 symbol ▼ contain lead, a chemical known to
10 the State of California to cause cancer, birth
11 defects and other reproductive harm. Wash
12 hands after handling.

13 (c) **Non-Logo Chair-Controlled Mail Order Catalog and Internet Sales.**

14 For non-Logo Chair-controlled mail order catalog or Internet sales, Logo Chair shall either
15 affix a clear and conspicuous warning to the packaging, labeling, or directly on each product as
16 provided for by Section 2.2(a)(i) above or will use its best efforts to notify its direct customers that
17 sell such products to customers in California via mail order catalog or internet sales of the notice
18 requirements described in Section 2.2(b), and of the requirement under Proposition 65 that mail order
19 catalogs and internet sites selling to customers in California post Proposition 65 warnings for any
20 Product that is not a Reformulated Product. Logo Chair shall not be required to provide affixed
21 warnings or to notify direct customers as to product shipped by Logo Chair prior to the Effective
22 Date.

23 3. **MONETARY PAYMENTS**

24 3.1 **Payments Pursuant to Health & Safety Code Section 25249.7(b)**

25 3.1.1. In settlement of all claims related to the Products and Listed Chemical referred
26 to in the 60-Day Notice of Violation, the Complaint, and this Consent Judgment, pursuant to Health &
27 Safety Code Section 25249.7(b), Logo Chair shall pay civil penalties as follows:

28 3.1.1.1 **Initial Civil Penalty:** Logo Chair shall pay an initial civil penalty of
\$15,000 no later than April 30, 2011.. Logo Chair shall issue two separate checks for the Initial
Civil Penalty payment pursuant to Health & Safety Code Section 25249.12(c) and (d): (a) one check
made payable to The Chanler Group in Trust for the State of California's Office of Environmental

1 Health Hazard Assessment (“OEHHA”) in the amount of \$11,250, representing 75% of the total;
2 and (b) one check to The Chanler Group in Trust for Russell Brimer in the amount of \$3,750,
3 representing 25% of the total. Two separate Form 1099s shall be issued for the above payments:
4 (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer,
5 whose information shall be provided within five days after execution of this Consent Judgment. The
6 payments shall be delivered to the following address:

7 The Chanler Group
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710-2565

12 **3.1.1.2 Final Civil Penalty:** Logo Chair shall pay a Final Civil Penalty of
13 \$100,000. The payment shall be delivered to the address above on or before January 31, 2012.
14 However, as an incentive for achieving reformulation of the Products, the Final Civil Penalty shall be
15 waived in its entirety if an Officer of Logo Chair certifies in writing that, as of January 1, 2012, Logo
16 Chair manufactures and will continue to manufacture only Reformulated Products, that all Products
17 bearing California logos that it sells, ships, and offers for sale nationwide will be Reformulated
18 Products and that upon depletion of its current inventory of Products, Logo Chair will sell, ship and
19 offer for sale nationwide only Reformulated Products. Such certification may be reasonably based on
20 Logo Chair’s design and ordering specifications and laboratory testing of production samples, and
21 must be received by The Chanler Group on or before January 15, 2012.

22 This Final Civil Penalty is to be apportioned in accordance with California Health & Safety
23 Code Section 25249.12(c)1 and (d), with 75% of these funds remitted to OEHHA and the remaining
24 25% of the penalty remitted to Russell Brimer. The Final Civil Penalty of \$100,000 shall be
25 apportioned accordingly: (a) one check made payable to “The Chanler Group in Trust for the State
26 of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)” in the amount of
27 \$75,000, representing 75% of the total; and (b) one check to “The Chanler Group in Trust for
28 Russell Brimer” in the amount of \$25,000, representing 25% of the penalty. Two separate Form
1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814

1 (EIN: 68-0284486); and (b) Russell Brimer, whose information shall be provided within five days
2 after execution of this Consent Judgment.

3 **4. REIMBURSEMENT OF FEES AND COSTS**

4 **4.1 Attorney Fees and Costs**

5 The parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without
6 reaching terms on the amount of attorneys' fees and costs to be reimbursed to them, thereby leaving
7 the fee issue to be resolved after the material terms of the agreement had been settled. Logo Chair
8 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
9 been finalized. The parties then attempted to (and did) reach an accord on the compensation due to
10 Plaintiff and his counsel under general contract principles and the private attorney general doctrine
11 codified at California Code of Civil Procedure Section 1021.5, for all work performed through the
12 mutual execution of this agreement. Logo Chair shall reimburse Brimer and his counsel the total of
13 \$60,000 for fees and costs incurred as a result of investigating, bringing this matter to Logo Chair's
14 attention, and litigating and negotiating a settlement in the public interest. Logo Chair shall issue a
15 separate Form 1099 for fees and costs (EIN: 94-3171522) and shall make the check payable to "The
16 Chanler Group". The check shall be delivered on or before April 30, 2011, to the following address:

17 The Chanler Group
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710-2565

22 **5. RELEASE OF ALL CLAIMS**

23 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

24 This Consent Judgment is a full, final and binding resolution between Plaintiff on behalf of
25 himself and the public interest and Defendant of any violation of Proposition 65 that was asserted by
26 Plaintiff against Defendant, its parents, subsidiaries, affiliated entities that are under common
27 ownership, directors, officers, employees, attorneys, and each entity to whom Defendant and directly
28 or indirectly distribute or sell Products, including but not limited to downstream distributors,
wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees

1 (“Releasees”), based on their failure to warn about alleged exposures to the Listed Chemical
2 contained in the Products that were sold by Defendant.

3 **5.2 Plaintiff’s Public Release of Proposition 65 Claims.**

4 In further consideration of the promises and agreements herein contained, Plaintiff on behalf
5 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
6 the interest of the general public, hereby waives all rights to institute or participate in, directly or
7 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
8 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
9 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
10 attorneys’ fees, excluding fees on appeal) of any nature whatsoever, fixed or contingent, limited to
11 and arising under Proposition 65 with respect to the Listed Chemical in the Products sold by
12 Defendant (collectively “claims”), against Defendant, Defendant Releasees, and Downstream
13 Defendant Releasees.

14 **5.3** In further consideration of the promises and agreements herein contained, Plaintiff on
15 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees,
16 and in the interest of the general public, hereby waives all rights to institute or participate in, directly
17 or indirectly, any form of legal action and releases all claims, including, without limitation, all
18 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
19 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees,
20 and attorneys’ fees, excluding fees on appeal) of any nature whatsoever, fixed or contingent, limited
21 to and arising under Proposition 65 with respect to the Listed Chemical in the Products sold by
22 Defendant (collectively “claims”), against Defendant, Defendant Releasees, and Downstream
23 Defendant Releasees.

24 **5.4 Defendant’s Release of Plaintiff.** Defendant on behalf of itself, its past and current
25 agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims
26 against Plaintiff, his attorneys and other representatives, for any and all actions taken or statements
27 made (or those that could have been taken or made) by Plaintiff and his attorneys and other
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1 representatives, whether in the course of investigating claims or otherwise seeking to enforce
2 Proposition 65 against it in this matter with respect to the Products.

3 **5.5 Compliance with Proposition 65.** For the purposes of this Consent Judgment and
4 only as to the Listed Chemical in the Products, compliance with this Consent Judgment by Logo Chair
5 shall be deemed by the Parties to constitute compliance with Proposition 65.

6 **6. COURT APPROVAL**

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

10 **7. SEVERABILITY**

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

14 **8. GOVERNING LAW**

15 The terms of this Consent Judgment shall be governed by the laws of the State of California
16 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
17 rendered inapplicable by reason of law generally, or as to the Listed Chemical in the Products, then
18 Logo Chair shall provide written notice to Brimer of any asserted change in the law, and shall have no
19 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
20 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 other
25 party at the following addresses:
26
27
28

1 For Logo Chair:

2 William McCauley, President
3 Logo Chair, Inc.
4 117 Southeast Parkway
5 Franklin | TN | 37064

6 For Brimer:

7 Proposition 65 Coordinator
8 The Chanler Group
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

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

14 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

15 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall
16 be deemed an original, and all of which, when taken together, shall constitute one and the same
17 document.

18 **11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

19 Brimer agrees to comply with the reporting form requirements referenced in California Health
20 & Safety Code Section 25249.7(f).

21 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

22 The parties acknowledge that, pursuant to Health & Safety Code Section 25249.7, a noticed
23 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining
24 such approval, Brimer and Logo Chair and their respective counsel agree to mutually employ their
25 best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the
26 Consent Judgment by the Court in a timely manner.

27 **13. MODIFICATION**

28 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 Any party seeking to modify this Consent Judgment shall attempt in good faith to meet and
2 confer with the other party prior to filing a motion to modify the Consent Judgment.

3 **14. AUTHORIZATION**

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

6 **AGREED TO:**

AGREED TO:

7 Date: 5-4-11

Date: _____

8
9 By: 
10 RUSSELL BRIMER

By: _____
11 William McCauley, President
12 LOGO CHAIR, INC.

1 Any party seeking to modify this Consent Judgment shall attempt in good faith to meet and
2 confer with the other party prior to filing a motion to modify the Consent Judgment.

3 **14. AUTHORIZATION**

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

6 **AGREED TO:**

AGREED TO:

7 Date: _____

Date: 5/6/2011

9 By: _____
10 RUSSELL BRIMER

By: William McCauley
William McCauley, President
LOGO CHAIR, INC.

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