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8 Attorneys for Plaintiff
9 RUSSELL BRIMER

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14 Attorneys for Defendants
WESTRIM, INC.; WESTRIM CRAFTS;
15 WESTERN TRIMMING CORPORATION

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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF ALAMEDA – HAYWARD BRANCH
19 UNLIMITED CIVIL JURISDICTION

20 RUSSELL BRIMER,
21 Plaintiff,

22 vs.

23 WESTRIM, INC., WESTRIM CRAFTS,
24 WESTERN TRIMMING CORPORATION,
MICHAELS STORES, INC; and DOES 1
25 through 150,
26 Defendants.

Case No. HG-05-232366

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

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STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Settling Defendants** This Consent Judgment is entered into by and
3 between plaintiff RUSSELL BRIMER (hereafter “Brimer” or “Plaintiff”) and WESTRIM, INC.;
4 WESTRIM CRAFTS; and WESTERN TRIMMING CORPORATION (hereafter collectively
5 referred to as “Westrim”), with Plaintiff and Westrim collectively referred to as the “Parties” and
6 Brimer and Westrim each being a “Party.”

7 **1.2 Plaintiff** Brimer is an individual residing in Northern California who seeks to
8 promote awareness of exposures to toxic chemicals and improve human health by reducing or
9 eliminating hazardous substances contained in consumer products.

10 **1.3 General Allegations** Plaintiff alleges that Westrim has manufactured, distributed
11 and/or sold in the State of California metal scrapbooking charms that contain lead (and/or lead
12 compounds) that are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code §§25249.5, *et seq.*, also known as Proposition 65, to cause cancer,
14 birth defects and other reproductive harm. Lead (and/or lead compounds) shall be referred to herein
15 as the “Listed Chemicals.”

16 **1.4 Product Descriptions** The products that are covered by this Consent Judgment are
17 defined as follows: all metal (containing lead) scrapbooking charms manufactured, distributed and/or
18 sold by Westrim, Inc., Westrim Crafts, or Western Trimming Corporation listed in Exhibit A
19 attached hereto. Such products collectively are referred to herein as the “Products.”

20 **1.5 Notices of Violation** On July 8, 2005, Brimer served Westrim, Inc., Westrim Crafts,
21 Western Trimming Corporation and Michaels Stores Inc. (“Michaels”), and various public
22 enforcement agencies (including the Attorney General of the State of California), with documents
23 entitled “60-Day Notice of Violation” (“Notice”) that provided Westrim and such public enforcers
24 with notice that alleged that Westrim was in violation of Health & Safety Code §25249.6 for failing
25 to warn purchasers that certain products that it sold expose users in California to the Listed
26 Chemicals.

1 **1.6 Complaints** On September 14, 2005, Brimer, who is acting in the interest of the
2 general public in California, filed a complaint (hereafter referred to as the "Complaint" or the
3 "Action") in the Superior Court for the County of Alameda against Westrim, Inc., Westrim Crafts,
4 Western Trimming Corporation, Michaels and Does 1 through 150, alleging violations of Health &
5 Safety Code §25249.6 based on the alleged exposures to one or more of the Listed Chemicals
6 contained in certain products sold by Westrim and Michaels.

7 **1.7 No Admission** Westrim denies the material factual and legal allegations contained in
8 Plaintiff's Notice and Complaint and maintains that all products that it has sold and distributed in
9 California, including the Products, have been and are in compliance with all laws. Nothing in this
10 Consent Judgment shall be construed as an admission by Westrim, Inc., Westrim Crafts, or Western
11 Trimming Corporation, or any other defendant, of any fact, finding, issue of law, or violation of law,
12 nor shall compliance with this Agreement constitute or be construed as an admission by Westrim,
13 Inc., Westrim Crafts, or Western Trimming Corporation, or any other defendant, of any fact, finding,
14 conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise
15 affect the obligations, responsibilities and duties of Westrim under this Consent Judgment.

16 **1.8 Consent to Jurisdiction** For purposes of this Consent Judgment only, the Parties
17 stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint
18 and personal jurisdiction over Westrim as to the acts alleged in the Complaint, that venue is proper
19 in the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment and to
20 enforce the provisions thereof.

21 **1.9 Effective Date** For purposes of this Consent Judgment, the "Effective Date" shall be
22 October 1, 2005.

23 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS AND REFORMULATION**

24 **2.1 Warning Obligations**

25 **2.1.A Required Warnings** Within thirty (30) days of the Effective Date, Westrim
26 agrees that it will not ship or offer to ship for sale in California any Products containing the Listed
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1 Chemicals, unless warnings are given in accordance with one or more provisions in subsection 2.2
2 below.

3 **2.1.B. Exception** The warning requirements set forth in subsections 2.1.A. and 2.2
4 below shall not apply to:

- 5 (i) any Products manufactured before September 30, 2005, or
- 6 (ii) Reformulated Products as defined in Section 2.3 of this Consent Judgment.

7 **2.2 Clear And Reasonable Warnings**

8 **2.2.A. Product Labeling** A warning may be given by Westrim or its designee
9 pursuant to this Consent Judgment if it is affixed to the packaging, labeling or directly to or on the
10 Product that states:

11 **WARNING: This product contains lead, a chemical known to the State of
12 California to cause birth defects or other reproductive harm.**

13 Warnings issued for any Products pursuant to this subsection shall be prominently placed
14 with such conspicuousness as compared with other words, statements, designs, or devices as to
15 render it likely to be read and understood by an ordinary individual under customary conditions of
16 purchase. Any changes to the language or format of the warning required by this subsection shall
17 only be made following: (1) approval from the California Attorney General's Office, provided that
18 written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or (2)
19 Court approval.

20 **2.2.B. Point-of-Sale Warnings** Westrim may alternatively execute its warning
21 obligations, where applicable, through arranging for the posting of signs at retail outlets in the State
22 of California at which the Products are sold, in accordance with the terms specified in subsections
23 2.2.B.1., and 2.2.B.2., so long as Westrim receives a written commitment from each retailer that the
24 retailer will post the warning signs in conjunction with its sales of the Products to California
25 residents.

26 **2.2.B.1.** Point of sale warnings shall be provided through one or more
27 signs posted at the point of display of the Products that state:

1 **WARNING: This product contains lead, a chemical known to the State**
2 **of California to cause birth defects or other reproductive**
3 **harm.**

4 2.2.B.2. A point of sale warning provided pursuant to subsection
5 2.2.B.1 shall be prominently placed with such conspicuousness as compared with other words,
6 statements, designs, or devices as to render it likely to be read and understood by an ordinary
7 individual under customary conditions of purchase and shall be placed or written in a manner such
8 that the consumer understands to which *specific* Products the warnings apply. Any changes to the
9 language or format of the warning required for the Products by this subsection shall only be made
10 following: (1) approval from the California Attorney General's Office, provided that written notice
11 of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or (2) Court
12 approval.

13 **2.3 Reformulation Standards** Products satisfying the conditions of Section 2.3 are
14 referred to as "Reformulated Products" and are defined as follows:

- 15 (i) Any Product containing one tenth of one percent (0.1%) lead or
16 less by weight in each material used in the Products (such as
17 solder and came); or
18 (ii) Any Product which produces a test result no higher than 5.0
19 micrograms (ug) of lead applied on all of the lead containing
20 surfaces of the Product to which consumers may reasonably be
21 exposed as the result of foreseeable use or handling performed
22 as outlined in NIOSH method no. 9100.

23 **3. MONETARY PAYMENTS**

24 **3.1 Penalties Pursuant To Health & Safety Code §25249.7(b)** Pursuant to Health &
25 Safety Code §25249.7(b) and in settlement of all of the claims referred to in this Consent Judgment,
26 Westrim shall pay \$16,000 in civil penalties in two installments with the first payment of \$8,000 to
27 be made not later than October 21, 2005, and made payable to "Chanler Law Group in Trust For
28 Russell Brimer." The second penalty payment of \$8,000 shall be paid on October 15, 2007. The
second payment shall be waived in the event that Westrim certifies on or before October 15, 2007,
that it has taken all commercially reasonable efforts to reformulate the Products. Payment shall be
delivered to Plaintiff's counsel at the following address:

STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT

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CHANLER LAW GROUP
Attn: Clifford A. Chanler
71 Elm Street, Suite 8
New Canaan, CT 06840

3.1.A. In the event that Westrim pays any penalty and the Consent Judgment is not thereafter approved and entered by the Court, Brimer shall return any penalty funds paid under this agreement within fifteen (15) days of receipt of a written request from Westrim.

3.2 Apportionment of Penalties Received After Court approval of this Consent Judgment pursuant to Section 6, all penalty monies received shall be apportioned by Plaintiff in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code §25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of California the appropriate civil penalties paid in accordance with this paragraph.

4. REIMBURSEMENT OF FEES AND COSTS

4.1 The Parties acknowledge that Plaintiff 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. Westrim then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Plaintiff and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 for all work performed through the Effective Date of the Agreement. Under the private attorney general doctrine, Westrim shall reimburse Plaintiff and his counsel for fees and costs incurred as a result of investigating, bringing this matter to Westrim's attention, litigating and negotiating a settlement in the public interest. Westrim shall pay Plaintiff and his counsel \$26,250 for all attorneys' fees, expert and investigation fees, and litigation costs. The

1 payment shall be made payable to the "Chanler Law Group" and shall be delivered to Plaintiff's
2 counsel on or before twenty one (21) days following the Effective Date at the following address:

3 CHANLER LAW GROUP
4 Attn: Clifford A. Chanler
5 71 Elm Street, Suite 8
6 New Canaan, CT 06840

7 Except as specifically provided in this Consent Judgment, Westrim shall have no
8 further obligation with regard to reimbursement of Plaintiff's attorneys' fees and costs with regard to
9 the Products covered in this Action. In the event Westrim pays any amount for attorneys' fees and
10 costs and the Consent Judgment is not thereafter approved and entered by the Court, the Chanler
11 Law Group shall return any funds paid under this Agreement within fifteen (15) days of receipt of a
12 written request from Westrim.

13 **5. RELEASE OF ALL CLAIMS**

14 **5.1 Plaintiff's Release of Westrim** In further consideration of the promises and
15 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4, Plaintiff,
16 on behalf of himself, his past and current agents, representatives, attorneys, successors and/or
17 assignees, and in the interest of the general public, hereby waives all rights to institute or participate
18 in, directly or indirectly, any form of legal action and releases all claims, including, without
19 limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands, obligations,
20 damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees,
21 expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
22 contingent (collectively "Claims"), against Westrim, Inc., Westrim Crafts, and Western Trimming
23 Corporation, and each of its retailers (and specifically including Michaels Stores, Inc.), licensors,
24 licensees, auctioneers, dealers, customers, owners, purchasers, users, parent companies, corporate
25 affiliates, subsidiaries and their respective officers, directors, attorneys, representatives,
26 shareholders, agents, and employees (collectively, "Westrim Releasees") arising under Proposition
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1 65, related to Westrim's or the Westrim Releasees' alleged failure to warn about exposures to or
2 identification of Listed Chemicals contained in the Products.

3 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
4 binding resolution of any violation of Proposition 65 that has been or could have been asserted in the
5 Complaint against Westrim or Westrim Releasees' for their alleged failure to provide clear and
6 reasonable warnings of exposure to or identification of Listed Chemicals in the Products.

7 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waives all rights to
8 institute or participate in, directly or indirectly, any form of legal action and releases all Claims
9 against the Westrim Releasees arising under Proposition 65 related to each of the Westrim
10 Releasees' alleged failures to warn about exposures to or identification of Listed Chemicals
11 contained in the Products and for all actions or statements made by Westrim or its attorneys or
12 representatives, in the course of responding to alleged violations of Proposition 65 by Westrim.
13 Provided however, Plaintiff shall remain free to institute any form of legal action to enforce the
14 provisions of this Consent Judgment.

15 It is specifically understood and agreed that the Parties intend that Westrim's compliance
16 with the terms of this Consent Judgment resolves all issues and liability, now and in the future (so
17 long as Westrim complies with the terms of the Consent Judgment) concerning Westrim's and the
18 Westrim Releasees' compliance with the requirements of Proposition 65, as to the Listed Chemicals
19 in the Products.

20 **5.2 Westrim's Release of Plaintiff** Westrim and the Westrim Releasees (and
21 specifically including Michaels Stores, Inc.) waive all rights to institute any form of legal action
22 against Plaintiff, or his attorneys or representatives, for all actions taken or statements made by
23 Plaintiff and his attorneys or representatives, in the course of seeking enforcement of Proposition 65
24 in this Action.

25 **6. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court and shall
27 be null and void if, for any reason, it is not approved and entered by the Court within one year after

1 it has been fully executed by all Parties, in which event any monies that have been provided to
2 Plaintiff or his counsel pursuant to section 3 and/or section 4 above, shall be refunded within fifteen
3 (15) days.

4 **7. SEVERABILITY**

5 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
6 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
7 remaining shall not be adversely affected.

8 **8. ATTORNEYS' FEES**

9 In the event that a dispute arises with respect to any provision(s) of this Consent Judgment,
10 the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable and
11 necessary costs and reasonable attorneys' fees incurred from the resolution of such dispute.

12 **9. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California
14 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
15 rendered inapplicable by reason of law generally, or as to the Products specifically, then Westrim
16 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
17 that, those Products are so affected.

18 **10. NOTICES**

19 All correspondence and notices required to be provided pursuant to this Consent Judgment
20 shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail, return
21 receipt requested or (ii) overnight courier on either Party by the others at the following addresses.

22 To Westrim:

23 Fred Gysi
24 Chief Financial Officer
25 Westrim, Inc.
26 7855 Hayvenhurst Avenue
27 Van Nuys, CA 91406

28 With a copy to:

1 Robert L. Falk, Esq.
2 Morrison & Foerster, LLP
3 425 Market Street
4 San Francisco, CA 94105

5 To Plaintiff:

6 Clifford A. Chanler, Esq.
7 Chanler Law Group
8 71 Elm Street, Suite 8
9 New Canaan, CT 06840

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

12 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

16 **12. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(F)**

17 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
18 Safety Code §25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
19 present this Consent Judgment to the California Attorney General's Office within five (5) days after
20 receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment will then
21 be served on the Attorney General's Office at least forty-five (45) days prior to the date a hearing is
22 scheduled on such motion in the Superior Court for the County of Alameda unless the Court allows a
23 shorter period of time.

24 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

25 The Parties shall mutually employ their best efforts to support the entry of this Agreement as
26 a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
27 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is
28 required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties agree to file
a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which Westrim's
counsel shall prepare, within a reasonable period of time after the Execution Date (*i.e.*, not to exceed

1 fifteen (15) days unless otherwise agreed to by the Parties' counsel based on unanticipated
2 circumstances). Plaintiff's counsel shall prepare a declaration in support of the Joint Motion that
3 shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to Section 4,
4 within a reasonable period of time after receipt of the first draft of the Joint Motion from Westrim's
5 counsel (*i.e.*, not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based
6 on unanticipated circumstances). Westrim shall have no additional responsibility to Plaintiff's
7 counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of
8 any fees and costs incurred with respect to the preparation and filing of the Joint Motion and its
9 supporting declaration or with regard to Plaintiff's counsel appearing for a hearing or related
10 proceedings thereon.

11 **14. DISMISSAL**

12 Within fifteen (15) days of Entry of Order by the Court approving the Joint Motion to
13 Approve the Agreement, Plaintiff shall file a Request for Dismissal dismissing defendant Michaels
14 Stores, Inc. without prejudice from this case.

15 **15. MODIFICATION**

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

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

AGREED TO:

AGREED TO:

Date: 10-10-05

Date: _____

By: 
Plaintiff Russell Brimer

By: _____
Defendant Westrim, Inc.

APPROVED AS TO FORM:


APPROVED AS TO FORM:

Date: 10/18/05

Date: _____

PARAS LAW GROUP

MORRISON & FOERSTER LLP

By: 
Daniel Bornstein
Attorneys for Plaintiff
RUSSELL BRIMER

By: _____
Robert L. Falk
Attorneys for Defendant
WESTRIM, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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17. AUTHORIZATION

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

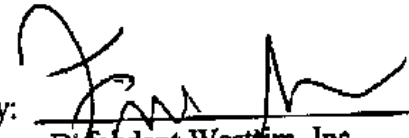
AGREED TO:

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Date: _____

Date: 10/11/05

By: _____

By: 
Defendant Westrim, Inc.

Plaintiff Russell Brimer

APPROVED AS TO FORM:

APPROVED AS TO FORM:


Date: _____

Date: 10/11/05

PARAS LAW GROUP

MORRISON & FOERSTER LLP

By: _____

By: 
Robert L. Falk

Daniel Bornstein
Attorneys for Plaintiff
RUSSELL BRIMER

Attorneys for Defendant
WESTRIM, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT