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9 RUSSELL BRIMER

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

13 RUSSELL BRIMER,
14 Plaintiff,

15 v.

16 AAMP OF FLORIDA, INC.; AAMP OF
17 AMERICA, INC., and DOES 1-150, inclusive,
18 Defendants.

Assigned for all purposes to the Honorable John
M. True, III, Judge of the Superior Court

Case No. RG 13676116

**[PROPOSED] CONSENT TO JUDGMENT
AS TO DEFENDANTS AAMP OF FLORIDA,
INC. AND AAMP OF AMERICA, INC.**

Date:
Time:
Dept: 23
Judge: Hon. John M. True, III

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INTRODUCTION

1.1 The Parties

This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”) and AAMP of Florida, Inc. (dba AAMP of America) (“AAMP” or “Defendant”), with Brimer and AAMP collectively referred to as the “parties,” and individually as a “party.” AAMP represents, and Brimer acknowledges, that defendant “AAMP of America, Inc.,” is a dba and not a separate business entity, and the parties intend that this Consent Judgment resolve and dismiss all claims against all of the named defendants. Brimer is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. AAMP employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

1.2 General Allegations

Brimer alleges that AAMP has manufactured, imported, distributed and/or sold vinyl/PVC USB cables containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause birth defects and other reproductive harm.

1.3 Product Description

As used in this Consent Judgment, “Products” shall mean vinyl/PVC USB cables containing DEHP, and is specifically limited to the products identified in Exhibit A hereto, which are manufactured, imported, distributed and/or sold by AAMP for sale in the State of California.

1.4 Notice of Violation

On December 21, 2012, Brimer served AAMP and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with notice alleging that AAMP was in violation of Proposition 65 for failing to warn consumers and customers that its vinyl/PVC USB cables exposed users in State of California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 Complaint

1 On or about April 10, 2013, Brimer filed a complaint in the Superior Court in the County of
2 Alameda against AAMP and Does 1 through 150, *Brimer v. AAMP of Florida, Inc., et al.*, Case No.
3 RG13676116, alleging violations of Proposition 65, based on the alleged exposures to DEHP
4 contained in certain vinyl/PVC USB cables containing DEHP sold by AAMP (“Complaint”).

5 **1.6 No Admission**

6 AAMP denies the material, factual and legal allegations contained in Brimer’s Notice and
7 Complaint and maintains that all products that it has sold, manufactured, imported and/or distributed in
8 the State of California, including the Products, have been and are in compliance with all laws. Nothing
9 in this Consent Judgment shall be construed as an admission by AAMP of any fact, finding, issue of law,
10 or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
11 admission by AAMP of any fact, finding, conclusion, issue of law, or violation of law. However, this
12 Section shall not diminish or otherwise affect AAMP’s obligations, responsibilities and duties under this
13 Consent Judgment pursuant to California Code of Civil Procedure §664.6.

14 **1.7 Consent to Jurisdiction**

15 For purposes of this Consent Judgment only, the parties stipulate that this Court has
16 jurisdiction over AAMP as to the allegations contained in the Complaint, that venue is proper in the
17 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this
18 Consent Judgment.

19 **1.8 Execution Date**

20 For purposes of this Consent Judgment, the term “Execution Date” shall mean the date this
21 Consent Judgment is signed by both parties.

22 **1.9 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the
24 Court enters Judgment pursuant to the terms of this Consent Judgment.

25 **1.10 Accessible Component**

26 For purposes of this Consent Judgment, the term “Accessible Component” means a
27 component of the Products that could be touched by a person during reasonable and regular use.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Standard**

3 Reformulated Products are Products containing DEHP in concentrations of less than 0.1
4 percent (1,000 parts per million) in each Accessible Component when analyzed pursuant to U.S.
5 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
6 methodology utilized by federal or state agencies for the purpose of determining DEHP content in a
7 solid substance.

8 **2.2 Reformulation Commitment**

9 Commencing on June 1, 2014, all Products manufactured, produced, assembled, imported,
10 distributed, shipped, sold and/or offered by AAMP for sale in the State of California shall qualify as
11 Reformulated Products as defined in Section 2.1 above. By June 1, 2014, an officer of AAMP shall
12 provide Brimer with written certification that, as of the date of the certification and continuing into the
13 future, AAMP has met the Reformulation Standard specified in Section 2.1 above.

14 **3. MONETARY PAYMENTS**

15 **3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

16 In settlement of all the claims referred to in this Consent Judgment, AAMP shall pay a total
17 of \$6,000 in accordance with this Section. Each penalty payment will be allocated in accordance
18 with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the
19 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25%
20 of the penalty remitted to Brimer, as follows:

21 **3.1.1 Initial Civil Penalty.** AAMP shall pay an initial civil penalty in the amount of
22 \$1,000. AAMP shall issue two separate checks made payable as follows: (a) the first to “OEHHA”
23 in the amount of \$750 due within five (5) days of the Execution Date; and (b) the second to “The
24 Chanler Group in Trust for Russell Brimer” in the amount of \$250 due within five (5) days of the
25 Execution Date and to be held in trust by Glaser Weil, Fink, Jacobs, Howard, Avchen and Shapiro,
26 LLP until Court approval of this Consent Judgment. All penalty payments shall be delivered to the
27 addresses listed in Section 3.4 below.

28 **3.1.2 Final Civil Penalty.** AAMP shall pay a final civil penalty of \$5,000 on or before

1 June 1, 2014. The final civil penalty shall be waived in its entirety if an officer of AAMP provides
2 Brimer with written certification that, as of the date of the certification and continuing into the future,
3 AAMP has met the Reformulation Standard specified in Section 2.1 above such that pursuant to Section
4 2.2 above all Products manufactured, produced, assembled, imported, distributed, shipped, sold or
5 offered for sale in State of California as of June 1, 2014 and continuing into the future are Reformulated
6 Products. Brimer must receive any such certification on or before June 1, 2014, and time is of the
7 essence. Unless waived in its entirety, AAMP shall issue two separate checks for any remaining portion
8 of the final civil penalty, with 75% of the funds remitted to OEHHA and 25% of the funds remitted to
9 "The Chanler Group in Trust for Russell Brimer."

10 3.2 Representation

11 AAMP represents that the sales data regarding the Products that it provided to Brimer by email
12 on September 5, 2013, in negotiating this Consent Judgment was truthful to its knowledge at the time of
13 execution of this Consent Judgment and a material factor upon which Brimer relied to determine the
14 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. Brimer represents that,
15 as of the time of execution of this Consent Judgment, Brimer and his counsel have no knowledge that
16 such sales data is inaccurate. If, within nine months of the Effective Date, Brimer discovers and presents
17 to Settling Defendant, evidence demonstrating that the preceding representation was materially
18 inaccurate, then AAMP shall have 30 days to meet and confer regarding Brimer's contention. Should
19 this 30 day period pass without any such resolution between Brimer and AAMP, Brimer shall be entitled
20 to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

21 3.3 Reimbursement of Fees and Costs

22 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
23 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue
24 to be resolved after the material terms of the agreement had been settled. AAMP then expressed a desire
25 to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties
26 then attempted to (and did) reach an accord on the compensation due to Brimer and his counsel under
27 general contract principles and the private attorney general doctrine codified at California Code of Civil
28 Procedure § 1021.5, for all work performed through the mutual execution of this agreement, except fees

1 that may be incurred on appeal. AAMP shall pay \$ \$29,000 for fees and costs incurred as a result of
2 investigating, bringing this matter to AAMP's attention, and negotiating a settlement in the public
3 interest, as well as the fees and costs incurred (and to be incurred) obtaining the Court's approval of this
4 Consent Judgment in the public interest. AAMP shall issue a separate 1099 for fees and costs (EIN: 94-
5 3171522), shall make the check payable to "The Chanler Group" to be held in Glaser Weil, Fink,
6 Jacobs, Howard, Avchen and Shapiro, LLP's trust account until Court approval of this Consent
7 Judgment and shall deliver payment to The Chanler Group within five (5) business days of court
8 approval of this Consent Judgment.

9 **3.4 Payment Procedures**

10 **3.4.1. Issuance of Payments.** Payments shall be delivered as follows:

11 (a) All payments owed to Brimer and his counsel, pursuant to Sections 3.1
12 through 3.3, shall be delivered to the following payment address:

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

18 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section
19 3.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

20 For United States Postal Service Delivery:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 P.O. Box 4010
25 Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 1001 I Street
 Sacramento, CA 95814

1 3.4.2 **Proof of Payment to OEHHA.** AAMP shall mail a copy of each check payable
2 to OEHHA, simultaneous with payment, to The Chanler Group at the address set forth in Section
3 3.4.1(a) above, as proof of payment to OEHHA.

4 3.4.3 **Tax Documentation.** AAMP shall issue a separate 1099 form for each payment
5 required by this Section to: (a) Russell Brimer, whose address and tax identification number shall be
6 furnished upon request after this Consent Judgment has been fully executed by the Parties; (b) OEHHA,
7 who shall be identified as “California Office of Environmental Health Hazard Assessment” (EIN: 68-
8 0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814;
9 and (c) “The Chanler Group” (EIN: 94-3171522) to the address set forth in Section 3.4.1(a) above.

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Brimer’s Release of AAMP**

12 Brimer, acting on his own behalf and in the public interest, waives all rights to institute or
13 participate in, directly or indirectly, any form of legal action and releases AAMP, its parents,
14 subsidiaries, affiliated entities, successors, and/or assignees; its and their directors, governors,
15 officers, managers, employees, shareholders, members, partners, attorneys; and each entity to whom
16 AAMP directly or indirectly distributes or sells Products, including, but not limited to, downstream
17 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and
18 licensees (“Releasees”), from all claims including, without limitation, all actions and causes of
19 action in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
20 losses or expenses, investigation fees, expert fees, and attorneys’ fees of any nature whatsoever
21 arising from any violation of Proposition 65 up through the Effective Date based on exposure to
22 DEHP from the Products. Compliance with the terms of this Consent Judgment constitutes
23 compliance with Proposition 65 with respect to exposures to DEHP from the Products as set forth in
24 the Notice.

25 Brimer, also, in his individual capacity only and *not* in his representative capacity, provides a
26 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
27 actions, causes of action, suits, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
28 liabilities and demands of Brimer of any nature, character or kind, whether known or unknown,

1 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the DEHP in
2 the Products manufactured, imported, distributed and/or sold by Releasees for sale in the State of
3 California prior to the Effective Date.

4 **4.2 AAMP's Release of Brimer**

5 AAMP on behalf of itself, its past and current agents, representatives, attorneys, successors,
6 and/or assignees, hereby waives any and all claims against Brimer, his attorneys and other
7 representatives, for any and all actions taken or statements made (or those that could have been taken or
8 made) by Brimer and his attorneys and other representatives, whether in the course of investigating
9 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the
10 Products.

11 **4.3 Civil Code Section 1542 Waiver**

12 Each of the parties expressly waives all rights relating to the subject matter herein under
13 California Civil Code section 1542 and any similar right under any federal, state or local statute, rule or
14 regulation. Civil Code Section 1542 provides as follows:

15 "A general release does not extend to claims which the creditor does not know or suspect
16 to exist in his or her favor at the time of executing the release, which if known by him or her must have
17 materially affected his or her settlement with the debtor."

18 Each of the parties understands and acknowledges the significance and consequences of the
19 specific waivers of Civil Code Section 1542. In waiving the provisions of Civil Code Section 1542,
20 each of the parties acknowledges that it may hereafter discover facts in addition to or different from
21 those which they now believe to be true with respect to the matters released herein but agree that each of
22 the parties has taken that possibility into account in reaching this Agreement and that the releases given
23 herein shall be and remain in effect as full and complete releases notwithstanding the discovery or
24 existence of any such additional or different facts as to which each of the parties expressly assumes the
25 risk.

26 This waiver is limited in scope and applies only to the sales of the Products which are the subject
27 of this Consent Judgment.

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1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall be
3 null and void if, for any reason, it is not approved and entered by the Court within one year after it has
4 been fully executed by all parties. In the event the Court does not approve this Consent Judgment within
5 one year, the funds paid pursuant to Section 3 of this Consent Judgment shall be returned to AAMP.

6 Brimer and AAMP agree to support the entry of this agreement as a Consent Judgment and
7 obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge
8 that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain
9 judicial approval of this Consent Judgment, which Brimer shall draft and file. If any third-party
10 objection to the noticed motion is filed, Brimer and AAMP shall work together to file a reply and appear
11 at any hearing before the Court. This provision is a material component of the Consent Judgment and
12 shall be treated as such in the event of a breach.

13 **6. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of California and
15 the obligations of AAMP hereunder as to the Products apply only within the State of California. In the
16 event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law
17 generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or no longer
18 required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally
19 as to the Products, then AAMP shall notify Brimer and his counsel and may have no further obligations
20 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.
21 Nothing in this Consent Judgment shall be interpreted to relieve AAMP from any obligation to comply
22 with any pertinent state or federal toxics control law.

23 **7. NOTICES**

24 Unless specified herein, all correspondence and notices required to be provided pursuant to this
25 Consent Judgment shall be in writing and (i) personally delivered, (ii) sent by first-class, (registered or
26 certified mail) return receipt requested, or (iii) sent by overnight courier to one party from the other party
27 at the following addresses:

28 To Brimer:

1 Proposition 65 Coordinator
2 The Chanler Group
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565

6 To AAMP:

7 Ron Freeman, President
8 AAMP of Florida, Inc.
9 13190 56th Court, Suite 401
10 Clearwater FL 33760

11 with a copy to:

12 Aaron P. Allan
13 Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP
14 10250 Constellation Blvd., 19th Floor
15 Los Angeles, CA 90067

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

18 **8. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

19 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
20 each of which shall be deemed an original, and all of which, when taken together, shall constitute
21 one and the same document. A facsimile or pdf signature shall be as valid as the original.

22 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

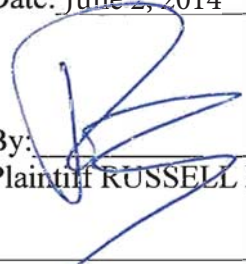
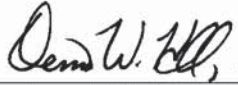
25 **10. MODIFICATION**

26 This Consent Judgment may be modified only: (1) by written agreement of the parties and upon
27 entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any
28 party and entry of a modified Consent Judgment by the Court.

1 **11. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment and have read, understood,
3 and agree to all of the terms and conditions of this Consent Judgment.

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AGREED TO: Date: June 2, 2014 By:  Plaintiff RUSSELL BRIMER	AGREED TO: Date: 3-18-14 By:  , ITS CFO Defendant AAMP OF FLORIDA, INC.
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Brimer v. AAMP of Florida, Inc. (Case No. RG 13676116)

Exhibit A to Proposed Consent to Judgment

<u>List of Products</u>	<u>Description</u>
IS4502	isimple Micro USB to standard USB cable with Car Charger
IC-PIOUSBAV	PAC IPOD video direct control cable