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5 Attorneys for Plaintiff  
RUSSELL BRIMER  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SANTA CLARA  
10 UNLIMITED CIVIL JURISDICTION  
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12 RUSSELL BRIMER,  
13 Plaintiff,  
14 v.  
15 GRAND STAR INDUSTRIAL LIMITED;  
TARGET CORPORATION; and DOES 1-  
16 150, inclusive,  
17 Defendants.

Case No. 114CV269021

**[PROPOSED] CONSENT JUDGMENT  
AS TO DEFENDANT GRAND STAR  
INDUSTRIAL LIMITED**

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**1. INTRODUCTION**

**1.1 Parties**

The parties to this Consent Judgment (“Consent Judgment”) are Plaintiff Russell Brimer (“Brimer”) on the one hand, and Defendant Grand Star Industrial Limited (“Grand Star”) on the other hand (each a “Party” and collectively “Parties”).

**1.2 Plaintiff**

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

**1.3 Defendant**

Grand Star 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, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

**1.4 General Allegations**

Brimer alleges that Grand Star sells travel manicure sets with Vinyl/PVC cases containing Di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

**1.5 Product Description**

The products that are covered by this Consent Judgment are travel manicure sets with Vinyl/PVC cases containing DEHP that are imported for sale or manufactured for sale by Grand Star, and sold or distributed for sale in California by Target Corporation, including, but not limited to, the case on *Travel Manicure Set, #044 15 0704, UPC #4 90441 50704 4*.

**1.6 Notices of Violation**

On or about February 26, 2014, Brimer served Target Corporation and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Target violated Proposition 65 by failing to warn its customers and consumers in California that the

1 Covered Products expose users to DEHP. To the best of the Parties' knowledge, no public  
2 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

3 On or about May 21, 2014, Brimer served Grand Star, Target Corporation and certain  
4 requisite public enforcement agencies with a "Supplemental 60-Day Notice of Violation"  
5 ("Supplemental Notice") alleging that Grand Star violated Proposition 65 by failing to warn its  
6 customers and consumers in California that the Covered Products expose users to DEHP. The  
7 Notice and Supplemental Notice are referred to collectively as the "Notices." To the best of the  
8 Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the  
9 allegations set forth in the Notices.

10 **1.7 Complaint**

11 On August 6, 2014, Brimer filed the instant action against Grand Star and Target  
12 ("Complaint") for the alleged violations of Health and Safety Code section 25249.6 that are the  
13 subject of the Notices.

14 **1.8 No Admission**

15 Grand Star denies the material, factual and legal allegations contained in the Notices and  
16 Complaint, and it maintains that all of the products that it has sold and distributed in California,  
17 including the Covered Products, have been, and are, in compliance with all laws. Nothing in this  
18 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,  
19 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or  
20 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of  
21 law. This Section shall not, however, diminish or otherwise affect Grand Star's obligations,  
22 responsibilities, and duties under this Consent Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25 jurisdiction over Grand Star as to the allegations in the Complaint, that venue is proper in Santa  
26 Clara County, and that this Court has jurisdiction to enter and enforce the provisions of this  
27 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

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**2. DEFINITIONS**

2.1 “Covered Products” means travel manicure sets with Vinyl/PVC cases.

2.2 “Effective Date” means date this Consent Judgment is approved by the court.

2.3 “Vendor” means a person or entity that manufactures, imports, distributes, or otherwise supplies a Covered Product to Grand Star.

**3. INJUNCTIVE RELIEF: REFORMULATION**

**3.1 Vendor Notification**

No more than 30 days after the Effective Date, Grand Star shall provide the Reformulation Standard to its then-current Vendors of Covered Products that will be sold or offered for sale to California consumers, and shall instruct each Vendor to use reasonable efforts to provide Covered Products that comply with the Reformulation Standard of Section 3.2 expeditiously. In addressing the obligation set forth in the preceding sentence, Grand Star shall not employ statements that will encourage a Vendor to delay compliance with the Reformulation Standard.

**3.2 Reformulation Standard**

Commencing on the Effective Date, Grand Star shall not offer for sale, purchase for sale, import for sale, or manufacture for sale, any Covered Product that will be sold or offered for sale to California consumers with a Vinyl/PVC case that contains DEHP in concentrations exceeding 0.1 percent (1,000 parts per million) when analyzed pursuant to, U.S. EPA testing methodologies any methodology utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

**4. PAYMENTS**

**4.1 Payments Pursuant to Health and Safety Code § 25249.7(b)**

Pursuant to Health and Safety Code section 25249.7(b)(2), Grand Star shall pay \$18,000 in civil penalties. Each Penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHHA”) and the remaining twenty-five percent remitted to Brimer.

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**4.1.1 Initial Civil Penalty**

Within 10 days of the Effective Date, Grand Star shall make an initial civil penalty payment of \$6,000. It shall provide its payment in the form of two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$4,500; and (b) "Russell Brimer, Client Trust Account" in the amount of \$1,500.

**4.1.2 Final Civil Penalty**

On or before March 15, 2015, Grand Star shall pay a final civil penalty of \$12,000. The final civil penalty shall be waived in its entirety if, no later than March 1, 2015, an officer of Grand Star provides Brimer's counsel with written certification that, as of the date of its certification, all Covered Products shipped for sale or distributed for sale in California meet the Reformulation Standard established by Section 3.2, and that it will continue to only offer Covered Products meeting the Reformulation Standard in California in the future. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment otherwise required by this Consent Judgment is a material term, and time is of the essence. Unless waived, the Final Civil Penalty Payment shall be allocated as set forth in Section 4.1 and delivered to Brimer and OEHHA at the addresses set forth in subsections 4.3.2(a) and 4.3.2(b), respectively.

**4.2 Reimbursement of Attorneys' Fees and Costs**

The Parties acknowledge that Brimer 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after all other settlement terms had been finalized, Grand Star expressed a desire to resolve the fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due Brimer and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter exclusive of fees and costs incurred on appeal, if any. Under these legal principles, on or before the Effective Date, Grand Star shall pay \$30,000 for the fees and costs incurred investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be incurred)

1 drafting, negotiating, and obtaining the Court's approval of this Consent Judgment in the public  
2 interest.

3           **4.3 Payment Procedures**

4                   **4.3.1 Payments**

5           The payments required by Sections 4.1 and 4.2 shall be delivered within 10 days of the  
6 Effective Date according to the following subsections

7                   **4.3.2 Payment Addresses**

8                   (a) All payments and to Brimer and The Chanler Group shall be  
9 delivered to the following address:

10                               The Chanler Group  
11                               Attn: Proposition 65 Controller  
12                               2560 Ninth Street  
13                               Parker Plaza, Suite 214  
14                               Berkeley, CA 94710

15                   (b) All payments to OEHHA (EIN: 68-0284486) shall be delivered  
16 directly to OEHHA (Memo line "Prop 65 Penalties") at the following address:

17                               Mike Gyurics  
18                               Fiscal Operations Branch Chief  
19                               Office of Environmental Health Hazard Assessment  
20                               P.O. Box 4010  
21                               Sacramento, CA 95812-4010

22           With a copy of the check(s) payable to OEHHA mailed to The Chanler Group at the address  
23 payment address provided in section 4.3.2(a), as proof of payment to OEHHA.

24           **5. CLAIMS COVERED AND RELEASED**

25                   **5.1 Public Release of Proposition 65 Claims**

26           In consideration of the promises and commitments herein contained, Brimer, on his own  
27 behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or  
28 assignees, and in the public interest, hereby waives and releases Grand Star, its parents,  
subsidaries, sales representatives, agents, affiliated entities under common ownership or control,  
directors, officers, employees, and attorneys ("Releasees"); and each entity to whom it directly or

1 indirectly distributes or sells Covered Products, including but not limited to distributors,  
2 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees  
3 (“Downstream Defendant Releasees”), from all claims for violations of Proposition 65 based on  
4 exposures to DEHP from the Covered Products through the Effective Date. This waiver and  
5 release is limited to those claims arising under Proposition 65 for unwarned exposures to DEHP  
6 from Covered Products manufactured, imported, purchased, or sold by Grand Star before the  
7 Effective Date. Grand Star’s and Releasees’ compliance with this Consent Judgment constitute  
8 compliance with Proposition 65.

9 **5.2 Private Release in Plaintiff’s Individual, Non-representative Capacity**

10 Brimer, in his individual capacity only and not in his representative capacity, also  
11 provides a release to Grand Star, Releasees, and Downstream Defendant Releasees which shall be  
12 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
13 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of  
14 Brimer of any nature, character or kind, whether known or unknown, suspected or unsuspected,  
15 arising out of alleged or actual unwarned exposures to DEHP from the Products.

16 **5.3 Grand Star Company’s Release of Brimer**

17 Grand Star waives any and all claims against Brimer and his attorneys and other  
18 representatives, for any and all actions taken or statements made (or those that could have been  
19 taken or made) by Brimer and his attorneys and other representatives, whether in the course of  
20 investigating claims, otherwise seeking enforcement of Proposition 65 against it in this matter, or  
21 with respect to the Covered Products.

22 **6. ENFORCEMENT; ARBITRATION**

23 6.1 Either Party may, by motion or application for an order to show cause before this  
24 Court, or by any other procedure available, enforce the terms and conditions contained in this  
25 Consent Judgment.

26 6.2 In addition, any dispute, controversy or claim arising out of or relating to this  
27 Consent Judgment, including the formation, interpretation, breach or termination thereof, may, at  
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1 the election of the Party seeking to enforce the terms contained herein, be referred to and finally  
2 determined by arbitration in accordance with the JAMS International Arbitration Rules. In such a  
3 case, the tribunal will consist of a sole arbitrator. The place of arbitration will be in either San  
4 Francisco, California, U.S.A. or Hong Kong, China at the discretion of the Party alleging a breach  
5 or otherwise seeking to enforce the terms of the agreement. The language to be used in the  
6 arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator may be  
7 entered by any court having jurisdiction thereof, including those in Hong Kong, China or the  
8 United States. Any award rendered may be executed by attachment to Grand Star assets. If  
9 Brimer successfully enforces the provisions of this Consent Judgment against Grand Star after  
10 arbitration, Brimer shall be entitled to the reimbursement of his reasonable attorneys' fees and  
11 costs incurred obtaining such relief pursuant to Code of Civil Procedure section 1021.5.

12 **7. NOTICE**

13 When any Party is entitled to receive any notice under this Consent Judgment, the notice  
14 shall be sent by: (a) first class, registered or certified mail; (b) personal delivery; or (c) a  
15 recognized overnight courier on any one Party by the other at the following addresses:

16 For Brimer:

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

21 For Grand Star:

22 Noah L. Feldman  
23 Globo Tec, Inc.  
24 15725 51st Place  
Plymouth, Minnesota 55446

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1 With a copy to:

2 Jeffrey B. Margulies, Esq.  
3 Fulbright & Jaworski, LLP  
4 555 South Flower Street, Forty-First Floor  
5 Los Angeles, CA 90071

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

8 **8. DISMISSAL OF TARGET CORPORATION**

9 8.1 Within 15 days of Brimer's receipt of Grand Star's payment of the initial civil  
10 penalty and attorneys' fee reimbursement required by Sections 4.1.1 and 4.2, Brimer agrees to file  
11 a request for a dismissal without prejudice as to defendant Target Corporation.

12 **9. POST SETTLEMENT ACTIVITIES AND COURT APPROVAL**

13 9.1 Brimer agrees to comply with the reporting form requirements referenced in  
14 Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to  
15 Health and Safety Code section 25249.7(f), a noticed motion ("Motion") is required to obtain  
16 judicial approval of this Consent Judgment, which Motion Brimer shall draft and file with the  
17 Court. Grand Star shall support the entry of this Consent Judgment, including appearing at the  
18 hearing on the Motion if requested.

19 9.2 If this Consent Judgment is not approved by the Court in its entirety, (a) this  
20 Consent Judgment and any and all prior agreements between the parties as to the Notices or  
21 Complaint referenced herein shall terminate and become null and void, and the action shall revert  
22 to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this  
23 Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or  
24 aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be  
25 admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the  
26 parties agree to meet and confer to determine whether to modify the terms of the Consent  
27 Judgment and to resubmit it for approval.  
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1 **10. ATTORNEYS' FEES**

2 Except as otherwise provided in this Consent Judgment including a successful  
3 enforcement of this Consent Judgment under section 6, which may entitle Brimer to attorney's  
4 fees under Code of Civil Procedure section 1021.5 or any other applicable law, each Party and  
5 their privies, shall bear its own attorneys' fees and costs.

6 **11. OTHER TERMS**

7 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
8 California and apply within the state of California. In the event that Proposition 65 is repealed,  
9 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered  
10 Products, then Grand Star may provide written notice to Brimer of any asserted change in the law,  
11 and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
12 extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall be  
13 interpreted to relieve Grand Star from any obligation to comply with any pertinent state or federal  
14 toxics control laws.

15 11.2 This Consent Judgment contains the sole and entire agreement and understanding  
16 of the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any  
17 and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are  
18 deemed merged. There are no warranties, representations, or other agreements between the  
19 Parties except as expressly set forth in this Consent Judgment. No representations, oral or  
20 otherwise, express or implied, other than those specifically referred to in this Consent Judgment  
21 have been made by any Party. No other agreements not specifically contained or referenced in  
22 this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties.  
23 No supplementation, modification, waiver, or termination of this Consent Judgment shall be  
24 binding unless executed in writing by the Party to be bound. No waiver of any of the provisions  
25 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
26 provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

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1           11.3 This Consent Judgment may be modified only by: (a) an agreement or stipulation  
2 of the Parties and the entry of a modified consent judgment by the Court, or (b) by the successful  
3 motion, application, or such other procedure as is available at law to any party, and the entry of a  
4 modified consent judgment by the Court thereon.

5           11.4 Nothing in this Consent Judgment shall release, or in any way affect any rights that  
6 Grand Star might have against any other party.

7           11.5 This Consent Judgment may be executed in counterparts and by facsimile or  
8 portable document format (PDF) signature, each of which shall be deemed an original, and all of  
9 which, when taken together, shall constitute one and the same document.

10           11.6 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
11 by the party he or she represents to agree to the terms and conditions of this Consent Judgment,  
12 and to enter into and execute the Consent Judgment on behalf of the party represented and to  
13 legally bind that party.

14           11.7 The Parties, including their counsel, have participated in the preparation of this  
15 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
16 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
17 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
18 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
19 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
20 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
21 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
22 this regard, the Parties hereby waive California Civil Code section 1654.

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**AGREED TO:**

Plaintiff, RUSSELL BRIMER



\_\_\_\_\_  
Signature

Date: Nov. 3. 2014

**AGREED TO:**

Defendant, GRAND STAR INDUSTRIAL LIMITED

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Print Name

Its: \_\_\_\_\_  
Title

Date: \_\_\_\_\_

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**AGREED TO:**

Plaintiff, RUSSELL BRIMER

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

**AGREED TO:**

Defendant, GRAND STAR INDUSTRIAL LIMITED

*Andy Chiang*  
\_\_\_\_\_  
Signature

By: *Andy Chiang*  
\_\_\_\_\_  
Print Name

Its: *Manager*  
\_\_\_\_\_  
Title

Date: *Oct / 30 / 14'*  
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