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Attorneys for Defendant  
RITE AID CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,  
  
Plaintiff,  
  
v.  
  
RITE AID CORPORATION; *et al.*,  
  
Defendants.

Case No. RG14733162

**[PROPOSED]  
CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Russell Brimer (“Brimer”),  
4 and defendant, Rite Aid Corporation (“Rite Aid”), with Brimer and Rite Aid each referred to  
5 individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Rite Aid 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 &  
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Rite Aid has manufactured, imported, distributed, sold and/or offered for  
16 sale in the State of California, water sprayers with metal nozzles containing lead. Lead is listed  
17 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and  
18 other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as water sprayers with  
21 metal nozzles including, but not limited to, *Rite Aid Home & Garden Water Sprayer, Item 9018648-*  
22 *MMXIII, (UPC #6 55759 32465 7)*, manufactured, imported, distributed, sold and/or offered for sale  
23 by Rite Aid in the State of California, hereinafter “Products.”

24 **1.6 Notice of Violation**

25 On December 30, 2013, Brimer served Rite Aid and various public enforcement agencies with  
26 a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice  
27 that Rite Aid was in violation of California Health & Safety Code § 25249.6 for failing to warn  
28

1 consumers that its Products exposed users in the State of California to lead. No public enforcer has  
2 diligently prosecuted the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On July 16, 2014, Brimer filed the instant action (“Complaint”) against Rite Aid for the  
5 alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

6 **1.8 No Admission**

7 Rite Aid denies the material, factual, and legal allegations contained in the Notice and  
8 Complaint, and maintains that all of the products that it has sold in California, including the Products,  
9 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be  
10 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law;  
11 nor shall compliance with this Consent Judgment constitute or be construed as an admission of any  
12 fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied  
13 by Rite Aid. This section shall not, however, diminish or otherwise affect Rite Aid’s obligations,  
14 responsibilities, and duties under this Consent Judgment.

15 **1.9 Consent to Jurisdiction**

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

20 **1.10 Execution Date**

21 For purposes of this Consent Judgment, the term “Execution Date” shall mean the date the  
22 Consent Judgment is signed by all Parties.

23 **1.11 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the  
25 Consent Judgment is approved by the Court.

26 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNING**

27 Commencing on the Execution Date, Rite Aid shall only sell, ship or offer for sale in  
28 California Products that are: (1) sold or shipped with one of the clear and reasonable warnings set

1 forth in subsections 2.1(a) and (b); or (2) exempt pursuant to Section 2.2 as Reformulated Products  
2 as defined in Section 2.3.

3 **2.1 Product Warnings: Retail Store Sales.**

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

9 (a) **Product Labeling.** Rite Aid may affix a warning to the packaging, labeling  
10 or directly on any Products that are not Reformulated Products sold in retail outlets in California  
11 that states:

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

14 For Products that contain, in addition to lead, any Proposition 65-listed carcinogen, Rite Aid  
15 may employ the following warning statement:

16 **WARNING:** This product contains chemicals  
17 known to the State of California to  
cause cancer, and birth defects or  
18 other reproductive harm.

19 (b) **Point-of-Sale Warnings.** Alternatively, Rite Aid may provide warning  
20 signs in the form below to its retailers in California with instructions to post the signs in close  
21 proximity to the point of display of any such Products for the benefit of its retailers' customers.

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

24 Where any such Products are sold in proximity to other like items or to those that do not  
25 require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement  
26 must be used:

27 **WARNING:** The following product(s) contain lead, a  
28 chemical known to the State of California  
to cause birth defects or other reproductive  
harm.

[list product(s) for which warning is required]

1           **2.2    Exceptions to Warning Requirements**

2           The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products  
3 (as defined in Section 2.3 below).

4           **2.3    Reformulation Standards**

5           Reformulated Products are defined as those Products that contain no more than 90 parts per  
6 million lead content by weight in any accessible component (i.e., any component that can be touched  
7 during reasonably a foreseeable use) when analyzed pursuant to Environmental Protection Agency  
8 (“EPA”) testing methodologies 3050B and 6010B, and that yield a result of no more than 1.0  
9 micrograms of lead when sampled pursuant to the NIOSH 9100 testing protocol and analyzed  
10 pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by  
11 federal or state agencies to determine lead content in a solid substance.

12           **2.4    Vendor Notification Requirement**

13           To the extent is has not already done so, no more than ten (10) days after the Execution Date,  
14 Rite Aid shall provide the reformulation standards specified in section 2.3 for Reformulated Products  
15 to any and all of its vendors of Products and of accessible component parts used in the Products that  
16 will be sold or offered for sale to California consumers, and shall instruct each vendor to use its best  
17 efforts to provide only Reformulated Products, as defined in Section 2.3.

18           **3.    MONETARY PAYMENTS**

19           **3.1    Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

20           In settlement of all the claims referred to in this Consent Judgment, Rite Aid shall pay a total  
21 of \$25,500 in civil penalties in accordance with this Section. Each penalty payment will be allocated  
22 in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds  
23 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the  
24 remaining 25% of the penalty remitted to Brimer, as follows:

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**3.1.1 Initial Civil Penalty.** Within five (5) days of the Effective Date, Rite Aid shall pay an initial civil penalty in the amount of \$7,500, in two separate checks made payable as follows: (a) "OEHHA" in the amount of \$5,625; and (b) "Russell Brimer, Client Trust Account" in the amount of \$1,875. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

**3.1.2 Final Civil Penalty.** On or before November 1, 2014, Rite Aid shall pay a final civil penalty of \$18,000, in two separate checks for made payable as follows: (a) "OEHHA" in the amount of \$13,500; and (b) "Russell Brimer, Client Trust Account" in the amount of \$4,500. The final civil penalty shall be waived in its entirety, however, if, no later than September 15, 2014, an officer of Rite Aid provides Brimer with written certification that, as of the Execution Date and continuing into the future, Rite Aid has met the reformulation standard specified in Section 2.3 above, such that all Products manufactured, imported, sold and/or distributed for sale in California by Rite Aid are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence.

**3.2 Reimbursement of Brimer's 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, Rite Aid expressed a desire to resolve the fee and costs issue. 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 California Code of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees and costs incurred on appeal, if any. Under these legal principles, Rite Aid shall pay \$31,200 for fees and costs incurred investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be incurred) drafting, negotiating, and obtaining the Court's approval of this Consent Judgment in the public interest.

1           **3.3   Payment Procedures**

2                   **3.3.1   Issuance of Payments.**

3                   (a)     All payments owed to Plaintiff and his counsel, pursuant to Sections  
4 3.1 and 3.2 shall be delivered to the following payment address:

5                                 The Chanler Group  
6                                 Attn: Proposition 65 Controller  
7                                 2560 Ninth Street  
8                                 Parker Plaza, Suite 214  
9                                 Berkeley, CA 94710

10                   (b)     All payments owed to OEHHA (EIN: 68-0284486), pursuant to  
11 Sections 3.1 and 3.2 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of  
12 the following addresses, as appropriate:

13                                 For United States Postal Service Delivery:

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

19                                 For Non-United States Postal Service Delivery:

20                                         Mike Gyurics  
21                                         Fiscal Operations Branch Chief  
22                                         Office of Environmental Health Hazard Assessment  
23                                         1001 I Street  
24                                         Sacramento, CA 95814

25                   **3.3.2   Proof of Payment to OEHHA.** A copy of each check payable to OEHHA shall  
26 be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section  
27 3.3.1(a) above, as proof of payment to OEHHA.

28           **4.   CLAIMS COVERED AND RELEASED**

**4.1   Brimer's Release of Proposition 65 Claims**

                  Brimer, acting on his own behalf and in the public interest, releases Rite Aid from all claims  
for violations of Proposition 65 up through the Effective Date based on exposures to lead from the  
Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes  
compliance with Proposition 65 with respect to exposures to lead from the Products sold by Rite  
Aid before the Effective Date as set forth in the Notice.

1 Brimer, in his individual capacity only and *not* in his representative capacity, also provides a  
2 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
3 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
4 liabilities and demands of Brimer of any nature, character or kind, whether known or unknown,  
5 suspected or unsuspected, arising out of alleged or actual exposures to lead in the Products  
6 imported, manufactured, sold or distributed for sale by Rite Aid before the Effective Date.

7 **4.2 Rite Aid's Release of Brimer**

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

14 **5. COURT APPROVAL**

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

18 **6. SEVERABILITY**

19 If, subsequent to the execution of this Consent Judgment, any provision is Brimer by a court  
20 to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California  
23 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
24 rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement  
25 Agreement are rendered inapplicable or no longer required as a result of any such repeal or  
26 preemption or rendered inapplicable by reason of law generally as to the Products, then Rite Aid shall  
27 provide written notice to Brimer of any asserted change in the law, and shall have no further  
28 obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products



1 are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Rite Aid from  
2 any obligation to comply with any pertinent state or federal toxics control law.

3 **8. NOTICES**

4 Unless specified herein, all correspondence and notices required to be provided pursuant to  
5 this Settlement Agreement shall be in writing and (i) personally delivered, (ii) sent by first-class  
6 (registered or certified mail) return receipt requested, or (iii) sent by overnight courier, to one party  
7 by the other party at the following addresses:

8 For Rite Aid:

For Brimer:

9 Ron Chima  
10 Senior Counsel  
11 Rite Aid Corporation  
30 Hunter Lane  
Camp Hill, PA 17011

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

12 With a copy on behalf of Rite Aid to:

13 Elizabeth V. McNulty  
14 Archer Norris, PLC  
4695 MacArthur Court, Suite 350  
15 Newport Beach, CA 92660

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 **9. COUNTERPARTS; FACSIMILE 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 one  
21 and the same document.

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

23 Brimer agrees to comply with the reporting form requirements referenced in California Health  
24 & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to California Health &  
25 Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the  
26 settlement. In furtherance of obtaining such approval, Brimer and Rite Aid agree to mutually employ  
27 their best efforts, and those of their counsel, to support the entry of this agreement as a Consent  
28 Judgment and to obtain judicial approval of the settlement in a timely manner. For purposes of this

1 section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the  
2 necessary moving papers and supporting the motion for judicial approval.

3 **11. MODIFICATION**

4 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
5 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or  
6 application of any Party and the entry of a modified consent judgment by the Court.

7 **12. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
9 and agree to all of the terms and conditions contained herein.

10 **AGREED TO:**


**AGREED TO:**

11

12 Date: Nov. 3, 2014

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

13

14 By:   
Russell Brimer

By: \_\_\_\_\_  
Ron Chima  
Senior Counsel  
Rite Aid Corporation

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

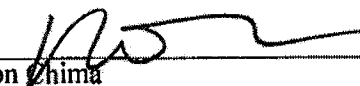
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Date: 11/12/14

By: \_\_\_\_\_  
Russell Brimer

By:   
Ron Zhima  
Senior Counsel  
Rite Aid Corporation