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10 RUSSELL BRIMER

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

14 RUSSELL BRIMER,
15 Plaintiff,

16 v.

17 WOLTERS KLUWER UNITED STATES
18 INC., *et al.*,
19 Defendants.

Case No.

[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 defendants, Wolters Kluwer United States Inc. (“Wolters Kluwer U.S.”), and Wolters Kluwer
5 Health, Inc., formerly known as Lippincott Williams & Wilkins Inc. (“Wolters Kluwer Health”)
6 (hereinafter “Defendants”), with Brimer and Defendants each individually referred to as a “Party”
7 and collectively as the “Parties.”

8 **1.2 Plaintiff**

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

12 **1.3 Defendants**

13 Defendants employ ten or more persons and are persons in the course of doing business for
14 purposes of The Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code
15 § 25249.6 *et seq.* (“Proposition 65”).

16 **1.4 General Allegations**

17 Brimer alleges that Defendants sold vinyl/PVC notebooks containing di(2-ethylhexyl)phthalate
18 (“DEHP”) without first providing the clear and reasonable warning required by Proposition 65.
19 DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause
20 birth defects or other reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are vinyl or PVC notebooks
23 containing DEHP that are imported, manufactured, sold, or distributed for sale in California by
24 Wolters Kluwer Health (collectively “Products”) including, but not limited to, the *Pocket Notebook*
25 *Pocket Medicine*, ISBN 978-1-60831-905-3.

26 **1.6 Notice of Violation**

27 On or about August 16, 2012, Brimer served Defendants and certain requisite public
28 enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the

1 recipients of Brimer’s allegation that Defendants were in violation of Proposition 65 for failing to
2 warn their customers and consumers in California that the Products expose users to DEHP.

3 **1.7 Complaint**

4 On or about March 12, 2013, Brimer filed the instant action against Defendants (“Complaint”)
5 for the alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

6 **1.8 No Admission**

7 Defendants deny the material, factual and legal allegations contained in the Notice and
8 Complaint, and maintain that all of the products that Wolters Kluwer Health has sold and distributed
9 in California, including the Products, have been, and are, in compliance with all laws. Defendants
10 deny that any Proposition 65 warning was or is required on any of their products, and deny that they
11 have violated any law or regulation. Wolters Kluwer U.S. also represents and warrants that it does
12 not manufacture, sell or distribute any products, but instead assists various Wolters Kluwer business
13 units by providing certain managerial functions and entering into global contracts for such units.
14 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion
15 of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute
16 or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of
17 law. This Section shall not, however, diminish or otherwise affect Defendants’ obligations,
18 responsibilities, and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Defendants as to the allegations in the Complaint, that venue is proper in Alameda
22 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
23 Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean March 15, 2013.

26 **2. INJUNCTIVE RELIEF**

27 2.1. Wolters Kluwer Health asserts that it ceased shipping the Products to California
28 customers, retailers and distributors on September 5, 2012, after receipt of the Notice. Commencing

1 no later than August 1, 2013, Wolters Kluwer Health shall only sell or distribute for sale in
2 California, Products that are “Reformulated Products.” For purposes of this Consent Judgment,
3 “Reformulated Products” are Products that contain a maximum of 1,000 parts per million (0.1%)
4 DEHP content in any accessible component (i.e., any component that may be touched or handled
5 during a reasonably foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A
6 and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of
7 determining DEHP content in a solid substance.

8 2.2. As an interim measure until Wolters Kluwer Health meets the Reformulation Standard
9 in Section 2.1, on and after the Effective Date, Wolters Kluwer Health shall, for all Products other
10 than Reformulated Products sold in California, provide clear and reasonable warnings as set forth
11 below. The warning shall be placed on each such Product as shown on the exemplar attached hereto
12 as Exhibit A, which Wolters Kluwer Health contends complies with the applicable regulatory
13 requirements (27 Calif. Code Regs. §§ 25601 and 25603). For Products containing DEHP, Wolters
14 Kluwer Health shall provide one of the following warnings:

15
16 **WARNING: This product contains a chemical known to the State of
17 California to cause cancer and birth defects or other
reproductive harm.**

18 Or

19 **WARNING: This product contains DEHP, a phthalate chemical
20 known to the state of California to cause birth defects
and other reproductive harm.**

21 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

22 In settlement of all the claims referred to in this Consent Judgment, and in accordance with
23 the payment procedure set forth in Section 3.3 below, Wolters Kluwer Health shall pay a total of
24 \$22,500 in civil penalties in accordance with this Section. Each penalty payment will be allocated in
25 accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
26 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
27 remaining 25% of the penalty remitted to Brimer, as follows:

28 ///

1 **3.1 Initial Civil Penalty**

2 Wolters Kluwer Health shall pay an initial civil penalty in the amount of \$7,500 on or before
3 the Effective Date. Wolters Kluwer Health shall issue two separate checks to: (a) “Office of
4 Environmental Health Hazard Assessment” in the amount of \$5,625; and (b) “The Chanler Group in
5 Trust for Russell Brimer” in the amount of \$1,875. All penalty payments shall be delivered to the
6 addresses listed in Section 3.3 below.

7 **3.2 Final Civil Penalty**

8 Wolters Kluwer Health shall pay a final civil penalty of \$15,000 on or before August 15,
9 2013. The final civil penalty shall be waived in its entirety, however, if, no later than August 1, 2013,
10 Wolters Kluwer Health provides Brimer (through his counsel) with written certification signed by an
11 officer that Wolters Kluwer Health has met the Reformulation Standard specified in Section 2.1
12 above, such that (no later than August 1, 2013) all Products imported, manufactured, sold, or
13 distributed for sale in California by Wolters Kluwer Health are Reformulated Products. Brimer’s
14 counsel must receive any such certification on or before August 1, 2013. The certification in lieu of a
15 final civil penalty payment provided by this Section is a material term, and time is of the essence.
16 Unless this penalty is waived as provided in this Section 3.2, Wolters Kluwer Health shall issue two
17 separate checks for its final civil penalty payment to: (a) “Office of Environmental Health Hazard
18 Assessment” in the amount of \$11,250; and (b) “The Chanler Group in Trust for Russell Brimer” in
19 the amount of \$3,750.

20 **3.3 Payment Procedures**

21 **3.3.1. Issuance of Payments.** All payments made under this Consent Judgment
22 (except for the payment required by Section 3.2, which shall be paid if not waived in accordance
23 with the terms of Section 3.2) shall be held in trust by counsel for Defendants until the Court
24 approves and enters this Consent Judgment. Counsel for Defendants shall confirm in writing within
25 five days of receipt of each payment that the funds have been deposited in a trust account. Within
26 five (5) business days of the Court’s approval and entry of this Consent Judgment, counsel for
27 Defendants shall deliver the payments as follows:

- 28 (a) All payments owed to Brimer, pursuant to Section 3.1 and (if applicable)

1 Section 3.2, shall be delivered to the following payment address:

2 The Chanler Group
3 Attn: Proposition 65 Controller
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

7 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section
8 3.1 and (if applicable) Section 3.2, shall be delivered directly to OEHHA
9 (Memo line "Prop 65 Penalties") at the following addresses:

10 For United States Postal Service Delivery:

11 Mike Gyrics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 P.O. Box 4010
15 Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

17 Mike Gyrics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 1001 I Street
21 Sacramento, CA 95814

22 With a copy of the checks payable to OEHHA mailed to The Chanler
23 Group at the address set forth above in 3.3.1(a), as proof of payment to
24 OEHHA.

25 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Wolters Kluwer
26 Health shall issue separate 1099 forms for each payment to Brimer, whose address and tax
27 identification number shall be furnished upon request after this Consent Judgment has been fully
28 executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

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

30 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
31 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
32 issue to be resolved after the material terms of the agreement had been settled. Brimer then
33 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
34 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Brimer

1 and his counsel under general contract principles and the private attorney general doctrine codified at
2 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of
3 this Consent Judgment. Wolters Kluwer Health shall pay \$34,500 for fees and costs incurred as a
4 result of investigating, bringing this matter to Wolters Kluwer Health’s attention, and negotiating a
5 settlement in the public interest. Wolters Kluwer Health shall make the check for this payment
6 payable to “The Chanler Group,” and deposit this payment in its outside counsel’s client trust account
7 on or before the Effective Date. Within five (5) business days of the Court’s approval and entry of
8 this Consent Judgment, counsel for Defendants shall deliver this payment to the address listed in
9 Section 3.3.1(a) above. Wolters Kluwer Health also shall issue a separate 1099 form for payment of
10 these fees and costs (EIN: 94-3171522),.

11 **5. CLAIMS COVERED AND RELEASED**

12 **5.1 Brimer’s Public Release of Proposition 65 Claims**

13 Brimer, acting on behalf of himself and in the public interest pursuant to Cal. Health &
14 Safety Code § 25249.7(d), releases and forever discharges Defendants and all of their respective
15 officers, directors, shareholders, parent companies, divisions, subdivisions, subsidiaries, sister
16 companies, employees, agents, franchisees, licensees, customers, distributors, wholesalers, retailers,
17 and all other entities in the distribution chain down to the consumer of any Product, and the
18 predecessors, successors and assigns of any of them (collectively, “Released Parties”), from all
19 claims for alleged violation of Proposition 65 that have been or could have been asserted regarding
20 alleged exposures to DEHP from Products imported, manufactured, distributed or sold by Wolters
21 Kluwer Health (as set forth in the Notice) prior to the Effective Date (hereinafter, the “Released
22 Claims”). This Consent Judgment is a full, final, and binding resolution of all Released Claims.
23 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
24 with respect to alleged exposures to DEHP from Products imported, manufactured, distributed or
25 sold by Wolters Kluwer Health (as set forth in the Notice) on or after the Effective Date.

26 **5.2 Brimer’s Individual Release of Claims**

27 Brimer, in his individual capacity only and *not* in his representative capacity, also releases,
28 waives, and forever discharges Defendants and the Released Parties from and against any and all

1 claims, actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
2 liabilities and demands of Brimer of any nature, character or kind, whether known or unknown,
3 suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products
4 imported, manufactured, distributed or sold by Wolters Kluwer Health before the Effective Date.

5 **5.3 Defendants' Release of Brimer**

6 Defendants and the Released Parties hereby waive any and all claims against Brimer and his
7 attorneys and other representatives, for any and all actions taken or statements (or those that could
8 have been taken or made) made by Brimer and his attorneys and other representatives, whether in
9 the course of investigating claims, otherwise seeking to enforce Proposition 65 against Defendants
10 in this matter, or with respect to the Products.

11 **6. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and shall
13 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
14 has been fully executed by all Parties. In such event, counsel for Defendants shall return the
15 payments held in trust to Defendants.

16 **7. SEVERABILITY**

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

20 **8. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the state of California
22 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
23 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendants
24 may provide written notice to Brimer of any asserted change in the law, and shall have no further
25 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
26 so affected. Except as provided in this Consent Judgment, nothing in this Consent Judgment shall be
27 interpreted to relieve Defendants from any obligation to comply with any pertinent state or federal
28 toxics control laws.

1 **9. NOTICES**

2 Unless specified herein, all correspondence and notices required by this Consent Judgment
3 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
4 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

5 For Defendants:

6 Office of General Counsel
7 Wolters Kluwer United States Inc.
8 2700 Lake Cook Road
9 Riverwoods, IL 60015

9 Office of General Counsel
10 Wolters Kluwer Health, Inc.
11 2001 Market Street
12 Philadelphia, PA 19103

12 with a copy to:

13 Thomas M. Donnelly, Esq.
14 Jones Day
15 555 California Street, 26th Floor
16 San Francisco, CA 94104

15 For Brimer:

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

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

21 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

25 **11. POST EXECUTION ACTIVITIES**

26 Brimer agrees to comply with the reporting form requirements referenced in Health & Safety
27 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
28 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance

1 of obtaining such approval, Brimer and Defendants agree to mutually employ their reasonable best
2 efforts, and that of their counsel, to support the entry of this agreement as a Consent Judgment, and to
3 obtain judicial approval of the settlement in a timely manner. For purposes of this Section,
4 “reasonable best efforts” shall include, at a minimum, cooperating on the drafting and filing of the
5 necessary moving papers, and supporting the motion for judicial approval.

6 **12. MODIFICATION**

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

10 **13. AUTHORIZATION**

11 The undersigned are authorized to execute this Consent Judgment on behalf of the Party they
12 represent, to bind that Party to all terms and conditions of this Consent Judgment, and have read,
13 understood, and agree to all of the terms and conditions contained herein.

14
15 **AGREED TO:**

16
17 Date: March 7, 2013

18
19 By:  _____
RUSSELL BRIMER

AGREED TO:

20 Date: _____

21 WOLTERS KLUWER UNITED STATES INC.

22 By: _____

23 Name: _____

24 Title: _____

25
26 **AGREED TO:**

27 Date: _____

28 WOLTERS KLUWER HEALTH, INC.

By: _____

Name: _____

Title: _____

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2 efforts, and that of their counsel, to support the entry of this agreement as a Consent Judgment, and to
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13 understood, and agree to all of the terms and conditions contained herein.

14
15 **AGREED TO:**

16
17 Date: _____

18
19 By: _____
RUSSELL BRIMER

AGREED TO:

20
21 Date: March 5, 2013

22 WOLTERS KLUWER UNITED STATES INC.

23 By: Deidra D. Gold
24 Name: Deidra D. Gold
25 Title: Executive Vice President

26
27 **AGREED TO:**

28 Date: _____

WOLTERS KLUWER HEALTH, INC.

By: _____
Name: _____
Title: _____

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2 efforts, and that of their counsel, to support the entry of this agreement as a Consent Judgment, and to
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13 understood, and agree to all of the terms and conditions contained herein.

14
15 **AGREED TO:**

AGREED TO:

16
17 Date: _____

Date: _____

18
19 By: _____
RUSSELL BRIMER

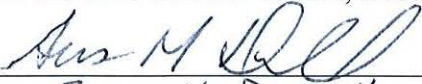
WOLTERS KLUWER UNITED STATES INC.

20 By: _____
21 Name: _____
Title: _____

22 **AGREED TO:**

23
24 Date: March 5, 2013

25 WOLTERS KLUWER HEALTH, INC.

26 By: 
27 Name: Susan M. Driscoll
28 Title: CEO, Professional Education