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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION
10

11 RUSSELL BRIMER,
12 Plaintiff,

13 v.

14 DUNDAS JAFINE INC.; and DOES 1-150,
15 inclusive,

16 Defendants.
17

Case No. RG16831822

[PROPOSED] CONSENT JUDGMENT

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

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[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”)
4 and Dundas Jafine Inc. (“Dundas”) with Brimer and Dundas each individually referred to as a “Party”
5 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 Dundas 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, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Dundas manufactures, imports, sells, or distributes for sale in California,
16 vinyl/PVC coated cables containing di(2-ethylhexyl)phthalate (“DEHP”) which are or were a
17 component of certain products, without first providing the exposure warning required by Proposition
18 65. DEHP was listed on October 24, 2003 pursuant to Proposition 65 as a chemical known to the
19 State of California to cause birth defects or other reproductive harm. The warning obligations
20 became effective one year later, on October 24, 2004.

21 **1.5 Product Description**

22 Dundas’ products that are covered by this Consent Judgment are defined as vinyl/PVC coated
23 cables containing DEHP which are or were a component of the *ProClean Dryer Lint Removal Kit*
24 *BPCK, UPC #0 60672 15001 4* (the “Products”). Dundas has manufactured, or distributed, or sold
25 and/or offered for sale in the State of California, or could manufacture, or distribute or sell and/or
26 offer for sale in California in the future, the Products.

1 **1.6 Notice of Violation**

2 On June 30, 2016, Brimer served Dundas, and certain requisite public enforcement agencies
3 with a “60-Day Notice of Violation” (“Notice”) alleging that Dundas violated Proposition 65 when
4 Dundas failed to warn its customers and consumers in California that use of the Products exposed
5 users to DEHP.

6 **1.7 Complaint**

7 On September 20, 2016, Brimer filed the instant action (“Complaint”), naming Dundas as a
8 defendant for its alleged violations of Health and Safety Code section 25249.6 that are the subject of
9 the Notice.

10 **1.8 No Admission**

11 Dundas denies the material, factual, and legal allegations contained in the Notice and
12 Complaint, and maintains that all of the products that it has sold and distributed for sale in California,
13 including the Products, have been, and are in compliance with all laws. Nothing in this Consent
14 Judgment shall be construed as an admission against interest of any fact, finding, conclusion of law,
15 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
16 construed as an admission against interest of any fact, finding, conclusion of law, issue of law, or
17 violation of law, such being specifically denied by Dundas. Nothing in this agreement shall preclude
18 Dundas from asserting any and all applicable defenses available to it in any future proceeding by any
19 person under Proposition 65 or otherwise. This Section shall not, however, diminish or otherwise
20 affect Dundas’ obligations, responsibilities, and duties under this Consent Judgment.

21 **1.9 Jurisdiction**

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

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” means the date which
28 Brimer serves notice on Dundas that the Court has issued an order approving this Consent Judgment.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulated Products**

3 Commencing on the Effective Date, and continuing thereafter, Dundas agrees to manufacture
4 for sale in California, or purchase for sale in California, “Reformulated Products.” For purposes of
5 this Consent Judgment, “Reformulated Products” are products that contain DEHP in concentrations
6 of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
7 Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by
8 federal or state agencies for the purpose of determining the DEHP content in a solid substance.

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Civil Penalty Payments**

11 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
12 to in this Consent Judgment, Dundas shall pay \$3,000.00 in civil penalties. Dundas shall make the
13 check payable to “Russell Brimer, Client Trust Account.” Brimer shall allocate the payment
14 according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five percent (75%)
15 of the funds paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”)
16 and twenty-five percent (25%) of the funds allocated to Brimer. Brimer and his counsel will deliver
17 the appropriate 75% portion of all civil penalties paid to OEHHA within five (5) days of receipt.

18 **3.2 Reimbursement of Fees and Costs**

19 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
21 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
22 other settlement terms had been finalized, Dundas expressed a desire to resolve Brimer’s fees and
23 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Brimer
24 and his counsel under general contract principles and the private attorney general doctrine codified at
25 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
26 execution of this Consent Judgment. Under this accord Dundas has agreed to pay, and shall issue a
27 check in the amount of, \$25,500.00, payable to “The Chanler Group.”

1 **3.3 Payment Procedures**

2 All payments due under this Consent Judgment are to be sent to The Chanler Group, at the
3 address listed below in section 3.3.1, within five (5) days of the Effective Date according to the
4 following subsections:

5 **3.3.1 Payment Address**

6 All payments to Brimer and his counsel shall be delivered to:

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

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Brimer’s Public Release of Proposition 65 Claims**

12 Brimer, acting on his own behalf and in the public interest, releases all claims against
13 Dundas and its parents, subsidiaries, predecessors, successors or assigns, affiliated entities under
14 common ownership, directors, officers, employees, and attorneys (“Releasees”) and each entity to
15 whom it, or they, directly or indirectly distributed or sold the Products, including but not limited to
16 its, or their, downstream distributors, wholesalers, customers, retailers (including Orchard Supply
17 Hardware), franchisers, cooperative members, licensors, and licensees (“Downstream Releasees”) for
18 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
19 manufactured, or distributed, or sold by or on behalf of Dundas in California, or to California
20 consumers prior to the Effective Date.

21 **4.2 Brimer’s Individual Release of Claims**

22 Brimer, in his individual capacity only and *not* in his representative capacity, also provides a
23 release of all claims to Dundas, Releasees, and Downstream Releasees which shall be effective as a
24 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
25 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Brimer of any nature,
26 character or kind, arising out of alleged or actual exposures to DEHP from the Products
27 manufactured, or distributed, or sold by or on behalf of Dundas, before the Effective Date.

1 **4.3 Dundas' Release of Brimer**

2 Dundas, on its own behalf, and on behalf of the Releasees, hereby waives any and all claims
3 against Brimer and his attorneys and other representatives, for any and all actions taken or
4 statements made by Brimer and his attorneys and other representatives, whether in the course of
5 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
6 respect to the Products, up through the Effective Date.

7 **5. COURT APPROVAL**

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

11 **6. SEVERABILITY**

12 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
13 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
14 adversely affected.

15 **7. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the state of California
17 and apply within the state of California. This Consent Judgment does not govern Products which do
18 not result in exposures to California consumers. In the event that Proposition 65 is repealed,
19 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
20 then Dundas may provide written notice to Brimer of any asserted change in the law, and shall have
21 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
22 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Dundas
23 from any obligation to comply with any pertinent state or federal toxics control laws. Compliance
24 with this Consent Judgment by Dundas constitutes compliance with Proposition 65 by Dundas, the
25 Releasees and Downstream Releasees.

1 **8. NOTICE**

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

5 For Dundas:

6 David Jafine, President
7 Dundas Jafine Inc.
8 11099 Broadway
Alden, NY 14004

Copy to:

Judith M. Praitis, Esq.
Sidley Austin LLP
555 West Fifth Street
Los Angeles, CA 90013

9 For Brimer:

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

13 Courtesy copies may be sent via email. Any Party may, from time to time, specify in writing to the
14 other, a change of address to which all notices and other communications shall be sent.

15 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

19 **10. POST EXECUTION ACTIVITIES**

20 Brimer agrees to comply with the reporting form requirements referenced in Health and
21 Safety Code section 25249.7(f). Pursuant to Health and Safety Code section 25249.7(f), a noticed
22 motion is required to obtain judicial approval of the settlement, which motion Brimer shall draft and
23 file. Dundas agrees to support approval of this Consent Judgment.

24 **11. DISPUTE RESOLUTION**

25 If either Party determines at a future date that a violation of this Consent Judgment has
26 occurred, such Party shall provide notice to the other Party. Prior to bringing any action to enforce
27 any requirement of this Consent Judgment, the Party alleging a violation shall provide the other Party
28 with written notice of the grounds for such allegation together with all supporting information as well
as a complete demand for the relief sought. The Parties shall then meet and confer regarding the

1 allegation in an attempt to resolve the matter informally. Should such attempts at informal resolution
2 fail, the Party alleging a violation may file its lawsuit, or any other available remedy at law, seeking
3 the proposed relief no less than 30 days after the Party alleging a violation of this Consent Judgment
4 provided the other Party with written notice of the grounds for such allegation.

5 **12. MODIFICATION**

6 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
7 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
8 Party, and the entry of a modified consent judgment by the Court. Except as set forth in the next
9 sentence, nothing precludes either Party from filing, or contesting, any motion to modify this Consent
10 Judgment. If Brimer agrees in a subsequent court approved consent judgment governing products
11 like the Products to a different Reformulation Standard, or if a court determines that a standard other
12 than the Reformulation Standard herein is the applicable standard for whether a warning under
13 Proposition 65 is required for products like the Products, or if DEHP is de-listed from the Proposition
14 65 list of chemicals, then Dundas may move to modify this Consent Judgment to include such new
15 standard or, in the case of de-listing, to terminate the injunctive terms of this Consent Judgment, and
16 Brimer shall not oppose such motion.

17 **13. AUTHORIZATION**

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

21 **AGREED TO:**

22
23 Date: 9/22/2016

24
25 By: 
26 Russell Brimer

21 **AGREED TO:**

22
23 Date: Sept 21/16

24
25 By: 
26 David Jaffine, President
27 Dundas Jaffine Inc.