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6 RUSSELL BRIMER

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
11

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 SILVER CREEK LEATHER CO., LLC; JO-
16 ANN STORES, LLC; *et al.*,

17 Defendants.
18

Case No. 16CV294144

[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 (“Plaintiff”),
4 and Silver Creek Leather Co., LLC, (“Defendant”), with Plaintiff and Defendant each individually
5 referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Defendant employs ten or more individuals and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Plaintiff alleges that Defendant manufactures, imports, sells, or distributes for sale in
16 California, vinyl/PVC tool grips that contain di(2-ethylhexyl)phthalate (“DEHP”) without first
17 providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition
18 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC tool grips containing DEHP
21 that are manufactured, imported, sold, or distributed for sale in California by Defendant including,
22 but not limited to, *Realeather Crafts Leather Punch, T3220, 2014-12, UPC #8 70192 00243 0*,
23 hereinafter the “Products”.

24 **1.6 Notice of Violation**

25 On or about January 29, 2016, Plaintiff served Defendant, and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Defendant
27 violated Proposition 65 by failing to warn its customers and consumers in California that the Products
28

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

3 **1.7 Complaint**

4 On April 20, 2016, Plaintiff filed the instant action ("Complaint") naming Defendant as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Defendant denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
14 not, however, diminish or otherwise affect Defendant's obligations, responsibilities, and duties under
15 this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in
19 the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of
20 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the Motion to Approve the Consent Judgment is granted by the Court.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date, and continuing thereafter, Defendant agrees to only
27 manufacture for sale or purchase for sale in California, "Reformulated Products". For purposes of
28 this Consent Judgment, "Reformulated Products" are Products containing DEHP in concentrations of

1 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
2 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal
3 or state government agencies for the purpose of determining DEHP content in a solid substance.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
7 this Consent Judgment, Defendant shall pay \$2,500 in civil penalties to “Russell Brimer, Client Trust
8 Account.” The civil penalty payment shall be allocated according to Health and Safety Code section
9 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of
10 Environmental Health Hazard Assessment (“OEHHA”) by Brimer, and twenty-five percent (25%) of
11 the funds remitted to Brimer.

12 **3.2 Reimbursement of Attorney’s Fees and Costs**

13 The parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
15 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
16 other settlement terms had been finalized, Defendant expressed a desire to resolve Plaintiff’s fees and
17 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Plaintiff
18 and his counsel under general contract principles and the private attorney general doctrine codified at
19 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
20 execution of this Consent Judgment. Defendant shall pay \$24,500 for the fees and costs incurred by
21 Plaintiff investigating, bringing this matter to Defendant’s attention, litigating and negotiating a
22 settlement in the public interest.

23 **3.3 Payments Held in Trust**

24 All payments due under this Consent Judgment shall be held in trust until such time as the
25 Court approves the Parties’ settlement. Within fourteen (14) days of the Effective Date, Defendant’s
26 counsel shall send the checks for the initial civil penalty payments and attorneys’ fee and costs
27 reimbursements required by Sections 3.1 and 3.2.

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3.4 Payment Address

All payments required by this Consent Judgment shall be delivered to the following address:

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

4. CLAIMS COVERED AND RELEASED

4.1 Plaintiff’s Public Release of Proposition 65 Claims

Plaintiff, acting on his own behalf and in the public interest, releases the Defendant and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures to DEHP from Products sold by Defendant prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to alleged, unwarned exposures to DEHP from the Products sold by Defendant before the Effective Date, as set forth in the Notice.

4.2 Plaintiff’s Individual Release of Claims

Plaintiff, in his individual capacity only and *not* in his representative capacity, also provides a release to Defendant, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to phthalates, including DEHP, in the Products sold or distributed for sale by Defendant before the Effective Date.

4.3 Defendant’s Release of Plaintiff

Defendant, on their own behalf, and on behalf of their past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against

1 Plaintiff and his attorneys and other representatives, for any and all actions taken or statements
2 made by Plaintiff and his attorneys and other representatives, whether in the course of investigating
3 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the
4 Products.

5 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the state of California
15 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
16 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendant
17 may provide written notice to Plaintiff of any asserted change in the law, and shall have no further
18 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
19 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant
20 from any obligation to comply with any pertinent state or federal toxics control laws.

21 **8. NOTICE**

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

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27 **Silver Creek Leather Co., LLC**
Greg Sartor, President
Silver Creek Leather Co., LLC
1402 Bell Lane, Unit 2
New Albany, IN 47150

Robert H. Eichenberger
Middleton Reutlinger
401 South Fourth St, Suite 2600
Louisville, KY 40202

1 Stacy Don
2 Law Office of Stacy E. Don
3 3007 Douglas Blvd., Suite 100
4 Roseville, CA 95661

4 **Russell Brimer**
5 Proposition 65 Coordinator
6 The Chanler Group
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710-2565

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Plaintiff agrees to comply with the reporting form requirements referenced in Health and
15 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
16 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
17 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
18 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
19 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
20 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
21 supporting the motion, and appearing at the hearing before the Court.

22 **11. MODIFICATION**

23 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry of a
24 modified consent judgment by the Court; or (ii) a successful motion or application of any Party, and
25 the entry of a modified consent judgment by the Court.


26 **12. AUTHORIZATION**

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

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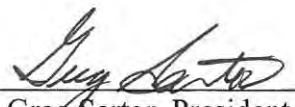
AGREED TO:

Date: 8/23/16

By: 
Russell Brimer

AGREED TO:

Date: 9-20-16

By: 
Greg Sartor, President
Silver Creek Leather Co., LLC