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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO  
10 UNLIMITED CIVIL JURISDICTION  
11

12 RUSSELL BRIMER

13 Plaintiffs,

14 v.

15 TAYLOR PRECISION PRODUCTS, INC.,  
et al.

16 Defendants.  
17

Case No. CGC-14-542200

**[PROPOSED] CONSENT JUDGMENT AS  
TO DEFENDANT TAYLOR PRECISION  
PRODUCTS, INC.**

(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

7 Brimer is a resident of the State of California who seeks to promote awareness of exposures  
8 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances  
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 Taylor 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 and  
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Taylor manufactures, imports, sells and/or distributes, for sale in  
16 California, glass shakers with exterior designs that contain lead without providing the health hazard  
17 warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical that is  
18 known to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are glass shakers with exterior designs  
21 containing lead including, but not limited to, the *Metrokane Rabbit Flip-Top Boston Shaker, Item*  
22 *# 9902, UPC #0 22578 10394 5* (collectively, “Products”).

23 **1.6 Notices of Violation**

24 On June 20, 2014, Brimer served Taylor and the requisite public enforcement agencies with  
25 a 60-Day Notice of Violation (“Notice”), alleging that Taylor violated Proposition 65 when it failed  
26 to warn its customers and consumers in California of the health hazards associated with exposures  
27 to lead in the Products.

28

1           Thereafter, on February 27, 2015, Brimer served Taylor, its retail customer in California,  
2 Ross Stores, Inc., and the same requisite public enforcement agencies with a Supplemental 60-Day  
3 Notice of Violation (“Supplemental Notice”), alleging that Taylor violated Proposition 65 when it  
4 failed to warn its customers and consumers in California of the health hazards associated with  
5 exposures to lead in the Products. The Notice and Supplemental Notice are referred to collectively  
6 hereinafter as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has  
7 commenced and is diligently prosecuting an action to enforce the allegations set forth in the  
8 Notices.

9           **1.7 Complaint**

10           On October 15, 2014, Brimer commenced the instant action (“Complaint”), naming Taylor  
11 as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

12           **1.8 No Admission**

13           Taylor denies the material, factual, and legal allegations contained in the Notice and  
14 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,  
15 including the Products, have been and are in compliance with all laws. Nothing in this Consent  
16 Judgment shall be construed as an admission by Taylor of any fact, finding, conclusion of law,  
17 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be  
18 construed as an admission by Taylor of any fact, finding, conclusion of law, issue of law, or  
19 violation of law. This Section shall not, however, diminish or otherwise affect Taylor’s obligations,  
20 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 Taylor as to the allegations in the Complaint, that venue is proper in San Francisco  
24 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent  
25 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

26           **1.10 Effective Date**

27           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
28 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

1 **2. INJUNCTIVE SETTLEMENT TERMS**

2 Commencing on the Effective Date and continuing thereafter, Taylor shall only manufacture  
3 for sale, or purchase for sale in California, "Reformulated Products". For purposes of this Consent  
4 Judgment, "Reformulated Products" are Products that contain (a) a maximum of 90 parts per  
5 million lead content by weight when analyzed pursuant to EPA testing methodologies 3050B and  
6 6010B; and (b) no more than 1.0 micrograms of lead when sampled and analyzed pursuant to the  
7 NIOSH 9100 testing protocol. In addition to the above methodologies, the Parties may use  
8 equivalent methodologies utilized by federal or state agencies for the purpose of determining lead  
9 content in a solid substance.

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

12 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the  
13 claims referred to in this Consent Judgment, Taylor shall pay \$22,000 in civil penalties in  
14 accordance with this Section. Each penalty payment will be allocated in accordance with California  
15 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California  
16 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the  
17 penalty remitted to Brimer. Brimer's counsel shall be responsible for remitting Taylor's penalty  
18 payment(s) under this Consent Judgment to OEHHA.

19 **3.1.1 Initial Civil Penalty.** Taylor shall make an initial civil penalty payment of  
20 \$6,000. Taylor shall provide its payment in a single check made payable to "Russell Brimer Client  
21 Trust Account" to be delivered to the address provided in Section 3.4, below.

22 **3.1.2 Final Civil Penalty; Waiver for Early Reformulation.** On March 1, 2016,  
23 Taylor shall make a final civil penalty payment of \$16,000. Pursuant to title 11 California Code of  
24 Regulations, section 3203(c), Brimer agrees that the final civil penalty payment shall be waived in  
25 its entirety if, no later than February 15, 2016, an officer of Taylor provides Brimer with a signed  
26 declaration certifying that all of the Products it ships for sale or distributes for sale in California as  
27 of the date of its certification are Reformulated Products, and that Taylor will continue to offer only  
28 Reformulated Products in California in the future. The option to provide a declaration certifying its

1 complete early reformulation of the Products in lieu of making the final civil penalty payment  
2 otherwise required by this Section is a material term, and time is of the essence.

### 3 **3.2 Reimbursement of Attorneys' Fees and Costs**

4 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue  
6 to be resolved after the material terms of the agreement had been settled. After finalizing the other  
7 settlement terms the Parties then negotiated a resolution of the compensation due to Brimer and  
8 his counsel under general contract principles and the private attorney general doctrine codified at  
9 California Code of Civil Procedure § 1021.5. For all work performed through the mutual  
10 execution of this agreement and the Court's approval of the same, but exclusive of fees and costs  
11 on appeal, if any, Taylor shall reimburse Brimer and his counsel \$31,000. Taylor's payment shall  
12 be in the form of a check payable to "The Chanler Group." The reimbursement covers all fees and  
13 costs incurred by Brimer investigating, bringing this matter to Taylor's attention, litigating, and  
14 negotiating a settlement of the matter in the public interest and obtaining court approval of the  
15 same.

### 16 **3.3 Payments Held In Trust**

17 With the exception of the final civil penalty payment required by Section 3.1.2, Taylor  
18 shall deliver all payments required by this Consent Judgment to its counsel within one week of the  
19 date that this agreement is fully executed by the Parties. Taylor's counsel shall confirm receipt of  
20 settlement funds in writing to Brimer's counsel and, thereafter, hold the amounts paid in trust until  
21 such time as the Court grants the motion for approval of the Parties' settlement. Within two days  
22 of the Effective Date, Taylor's counsel shall deliver all settlement payments it has held in trust to  
23 Brimer's counsel at the address provided in Section 3.4. In the event the final civil penalty  
24 payment required by Section 3.1.2 becomes due prior to the Effective Date, then Taylor shall  
25 deliver the final civil penalty payment to its attorney to be held in trust until, and disbursed within  
26 two days after, the Effective Date.

1           **3.4     Payment Address**

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

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

9           **4.     CLAIMS COVERED AND RELEASED**

10           **4.1     Brimer's Release of Proposition 65 Claims**

11           Brimer, acting on his own behalf and in the public interest, releases Taylor and its parents,  
12 subsidiaries, affiliated entities under common ownership directors, officers, employees, and  
13 attorneys ("Releasees") and each entity to whom Taylor directly or indirectly distributes or sells the  
14 Products including, but not limited to, its downstream distributors, wholesalers, customers  
15 (including, without limitation, Ross Stores, Inc.), retailers, franchisers, cooperative members,  
16 licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65  
17 for unwarned exposures to lead from the Products manufactured, imported, distributed or sold by  
18 Taylor prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this  
19 Consent Judgment constitutes compliance with Proposition 65 by Taylor with respect to exposures  
20 to lead from Products manufactured, sold or distributed for sale by Taylor after 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 to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and  
24 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
25 attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any nature, character  
26 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
27 exposures to lead in Products manufactured, imported, distributed or sold by Taylor before the  
28 Effective Date.

1           **4.3 Taylor's Release of Brimer**

2           Taylor, on its own behalf and on behalf of its past and current agents, representatives,  
3 attorneys, successors and/or assignees, hereby waives any and all claims against Brimer and his  
4 attorneys and other representatives for any and all actions taken or statements made by Brimer and  
5 his attorneys and other representatives in the course of investigating claims, seeking to enforce  
6 Proposition 65 against it in this matter, or with respect to the Products.

7           **5. COURT APPROVAL**

8           This Consent Judgment is not effective until it is approved and entered by the Court and  
9 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
10 after it has been fully executed by all Parties. Brimer and Taylor agree to support the entry of this  
11 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.  
12 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a  
13 noticed motion is required for judicial approval of this Consent Judgment, which motion Brimer  
14 shall draft and file and Taylor shall support, appearing at the hearing if so requested. If any third-  
15 party objection to the motion is filed, Brimer and Taylor agree to work together to file a reply and  
16 appear at any hearing. This provision is a material component of the Consent Judgment and shall  
17 be treated as such in the event of a breach.

18           **6. SEVERABILITY**

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

22           **7. GOVERNING LAW**

23           The terms of this Consent Judgment shall be governed by the laws of the State of California  
24 and apply within the State of California. In the event that Proposition 65 is repealed, pre-empted, or  
25 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Taylor  
26 may provide Brimer with written notice of any asserted change in the law, and shall have no further  
27 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products  
28

1 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Taylor from its  
2 obligation to comply with any pertinent state or federal law or regulation.

3 **8. NOTICE**

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

8 To Taylor:

To Brimer:

9 Donald Robinson, Chief Executive Officer  
10 Taylor Precision Products, Inc.  
11 2311 West 22<sup>nd</sup> Street  
Oak Brook, IL 60523

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

12 with a copy to:

13 Walter J. Lipsman, Esq.  
14 Morris Polich & Purdy LLP  
15 1055 West Seventh Street, 24<sup>th</sup> Floor  
Los Angeles, CA 90017

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

18 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

22 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

23 Brimer and his counsel agree to comply with the reporting form requirements referenced in  
24 California Health and Safety Code section 25249.7(f).  
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26  
27  
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1 **11. MODIFICATION**


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

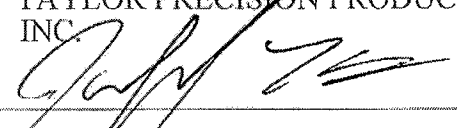
5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their  
7 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
8 Consent Judgment.

9 **AGREED TO:**

**AGREED TO:**

10  
11 Date: 8.27.15  
12 By:   
13 RUSSELL BRIMER

Date: 8/24/2015  
TAYLOR PRECISION PRODUCTS,  
INC.  
By:   
Its: DIRECTOR OF ENGINEERING

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