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

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 ROBERT BOSCH TOOL CORPORATION;
19 and DOES 1-150, inclusive,

20 Defendants.

Case No. HG 12644840

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Robert Bosch Tool Corporation**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer
4 (“Brimer” or “Plaintiff”) and defendant Robert Bosch Tool Corporation (“Robert Bosch” or
5 “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties” and each
6 individually referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Robert Bosch employs ten or more persons and is a person in the course of doing
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Brimer alleges that Robert Bosch manufactured, imported, distributed, sold and/or
17 offered for sale measuring wheels containing lead in the State of California without the health
18 hazard warnings required by Proposition 65, and that such measuring wheels expose users to
19 lead above the Proposition 65 limits. Lead is listed pursuant to Proposition 65 as known to the
20 State of California to cause birth defects and other reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as measuring
23 wheels containing lead including, but not limited to, the *Measure Master by Rolatape, MM-12*
24 *Series, 32-12RP (#0 95041 09880 2)*, which Robert Bosch manufactured, imported, distributed,
25 sold and/or offered for sale in the State of California, hereinafter referred to as the “Products.”
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1.6 Notice of Violation

On April 5, 2012, Brimer served Robert Bosch and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 for failing to warn consumers that the Products exposed users in California to lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On or about August 23, 2012, Brimer, who was and is acting in the interest of the general public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the County of Alameda against Robert Bosch and Does 1 through 150, alleging, *inter alia*, violations of Proposition 65 based on the alleged exposures to lead contained in the Products.

1.8 No Admission

Robert Bosch denies the material, factual and legal allegations contained in Brimer's Notice and Complaint and maintains that all Products sold and distributed in California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Robert Bosch of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Robert Bosch of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Robert Bosch. However, this section shall not diminish or otherwise affect Robert Bosch’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Robert Bosch as to the allegations contained in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1 Where more than one Product is sold in proximity to other like items or to those that do
2 not require a warning (e.g., Reformulated Products as defined in Section 2.3), the following
3 statement shall be used:¹

4 **WARNING:** The following products contain lead, a chemical
5 known to the State of California to cause birth
6 defects and other reproductive harm:

7 *[list products for which warning is required]*

8 **2.2 Exceptions to Warning Requirements**

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

11 **2.3 Reformulation Standards**

12 Reformulated Products shall mean Products containing components that may be handled
13 by a consumer, and which components yield less than 1.0 microgram of lead when using a wipe
14 test pursuant to NIOSH test method 9100, and yield less than 100 parts per million (“ppm”) lead
15 when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent
16 methodologies utilized by federal or state agencies for the purpose of determining lead content
17 in a solid substance.

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

19 In settlement of all the claims referred to in this Consent Judgment, Robert Bosch shall
20 pay a total of \$20,000 in civil penalties in accordance with this Section. Each penalty payment
21 will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d),
22 with 75% of the funds remitted to the California Office of Environmental Health Hazard
23 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Brimer, as follows:

24 **3.1 Initial Civil Penalty**

25 Robert Bosch shall pay an initial civil penalty in the amount of \$8,000 within 10 business
26 days of the Effective Date. Robert Bosch shall issue two separate checks to: (a) “OEHHA” in the

27 ¹ For purposes of the Consent Judgment, “sold in proximity” shall mean that the Product and another similar
28 product are offered for sale close enough to each other that the consumer, under customary conditions of purchase,
could not reasonably determine which of the two products is subject to the warning sign.

1 amount of \$6,000; and (b) “The Chanler Group in Trust for Russell Brimer” in the amount of
2 \$2,000. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3 **3.2 Final Civil Penalty**

4 Robert Bosch shall pay a final civil penalty of \$12,000 on or before April 30, 2014. The
5 final civil penalty shall be waived in its entirety, however, if, no later than April 15, 2014, an
6 officer of Robert Bosch provides Brimer with written certification that, as of the date of such
7 certification and continuing into the future, Robert Bosch has met the reformulation standard
8 specified in Section 2.3 above, such that all Products manufactured, imported, distributed, sold
9 and offered for sale in California by Robert Bosch are Reformulated Products. The certification
10 in lieu of a final civil penalty payment provided by this Section is a material term, and time is of
11 the essence. Robert Bosch shall issue two separate checks for its final civil penalty payments to:
12 (a) “OEHHA” in the amount of \$9,750; and (b) “The Chanler Group in Trust for Russell Brimer”
13 in the amount of \$3,250.

14 **3.3 Payment Procedures**

15 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

- 16 (a) All payments owed to Brimer pursuant to Sections 3.1 through 3.2,
17 shall be delivered to the following payment address:

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

- 21 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
22 Sections 3.1 through 3.2, shall be delivered directly to OEHHA
23 (Memo line “Prop 65 Penalties”) at the following addresses:

24 For United States Postal Service Delivery:

25 Mike Gyrics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 P.O. Box 4010
Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:

2 Mike Gyrics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95814

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

10 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Robert Bosch shall
11 issue separate 1099 forms for each payment to Russell Brimer whose address and tax
12 identification number shall be furnished upon request after this Consent Judgment has been fully
13 executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

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

15 Robert Bosch shall pay \$36,000 for fees and costs incurred as a result of investigating,
16 bringing this matter to Robert Bosch's attention, and negotiating a settlement in the public
17 interest. Robert Bosch shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall
18 make the check payable to "The Chanler Group" and shall deliver payment within 10 days of the
19 Effective Date to the address listed in Section 3.3.1(a) above.

20 **5. CLAIMS COVERED AND RELEASED**

21 **5.1 Brimer's Public Release of Proposition 65 Claims**

22 Brimer acting on his own behalf and in the public interest releases Robert Bosch, its
23 parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,
24 employees, attorneys, and each entity to whom Robert Bosch directly or indirectly distributes or
25 sells Products, including but not limited to downstream distributors, wholesalers, customers,
26 retailers, franchisees, cooperative members, licensors, and licensees ("Releasees") from all
27 claims for violations of Proposition 65 up through the Effective Date based on exposure to lead
28 from the Products as set forth in the Notice. Compliance with the terms of this Consent

1 Judgment constitutes compliance with Proposition 65 with respect to exposures to lead from the
2 Products as set forth in the Notice.

3 **5.2 Brimer's Individual Release of Claims**

4 Brimer also, in his individual capacity only and *not* in his representative capacity, provides
5 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
6 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
7 liabilities and demands of Plaintiff of any nature, character or kind, whether known or unknown,
8 suspected or unsuspected, limited to and arising out any violation of Proposition 65 regarding
9 the failure to warn about exposure to lead in the Products manufactured, imported, distributed,
10 sold and/or offered for sale by Releasees.

11 **5.3 Robert Bosch's Release of Brimer**

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

18 **6. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the court and
20 shall be null and void if, for any reason, it is not approved and entered by the court within one
21 year after it has been fully executed by all Parties, in which event any monies that have been
22 provided to Brimer or his counsel pursuant to Section 3 above, shall be refunded within fifteen
23 (15) days after receiving written notice from Robert Bosch that the one-year period has expired.

24 **7. SEVERABILITY**

25 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
26 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
27 provisions remaining shall not be adversely affected.

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1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed
4 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
5 Robert Bosch shall provide written notice to Brimer of any asserted change in the law, and shall
6 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
7 that, the Products are so affected.

8 **9. NOTICES**

9 Unless specified herein, all correspondence and notices required to be provided pursuant
10 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
11 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by
12 the other Party at the following addresses:

13 To Robert Bosch:

To Brimer:

14 Jack B. McCowan, Jr., Esq
15 Gordon & Rees LLP
16 275 Battery Street, Suite 2000
17 San Francisco, CA 94111

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

18 With a copy to:

19 Terry Horan, President
20 Robert Bosch Tool Corporation
21 1800 West Central Road
22 Mount Prospect, IL 60056

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

25 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

26 This Consent Judgment may be executed in counterparts and by facsimile or portable
27 document format (".pdf"), each of which shall be deemed an original, and all of which, when
28 taken together, shall constitute one and the same document. A facsimile or .pdf signature shall
be as valid as the original.

1 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

2 Brimer agrees to comply with the reporting form requirements referenced in California
3 Health & Safety Code § 25249.7(f).

4 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

5 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to
6 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
7 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to
8 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial
9 approval of this Consent Judgment, which Brimer shall file, and which Robert Bosch shall not
10 oppose. If any third party objection to the noticed motion is filed, Brimer and Robert Bosch
11 shall work together to file a joint reply and appear at any hearing before the Court. If the Court
12 does not approve the motion to approve this Consent Judgment, and the Parties choose not to
13 pursue a modified Consent Judgment within 30 days of said denial, or in the event that the
14 Court approve this Consent Judgment and any person successfully appeals that approval, all
15 payments made pursuant to this Consent Judgment will be returned to Robert Bosch.

16 **13. MODIFICATION**

17 This Consent Judgment may be modified only: (1) by written agreement of the parties
18 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
19 motion of any Party and entry of a modified Consent Judgment by the court.

20 **14. ENTIRE AGREEMENT**

21 This Consent Judgment contains the sole and entire agreement and understanding of the
22 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments, and understandings related hereto. No representations, oral or
24 otherwise, express or implied, other than those contained herein have been made by any party
25 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
26 deemed to exist or to bind any of the Parties.

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15. AUTHORIZATION

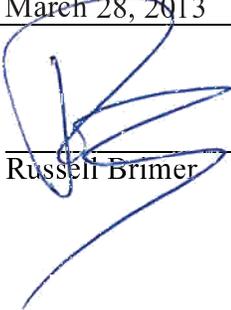
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: March 28, 2013

Date: _____



Robert Bosch Tool Corporation

By: Russell Brimer

By: _____

Its: _____

Date: _____

Robert Bosch Tool Corporation

By: _____

Its: _____

1 **15. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5 **AGREED TO:**

6 Date: _____

7
8 By: _____
9 Russell Brimer

AGREED TO:

6 Date: March 28, 2013

7 Robert Bosch Tool Corporation

8 By: [Signature]

9 Its: V.P. FINANCE - MEASURING TOOLS

10
11 Date: March 28, 2013

12 Robert Bosch Tool Corporation

13 By: [Signature]

14 Its: SENIOR VICE PRESIDENT - FINANCE AND
15 ADMINISTRATION AND CHIEF FINANCIAL
16 OFFICER

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