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RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

ARAMCO IMPORTS, INC., and DOES 1 through 150, inclusive,

Defendants.

Case No. RG09464344

~~[PROPOSED]~~ JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT

Date: November 20, 2009
Time: 2:30 p.m.
Dept.: 516
Judge: Hon. Brenda Harbin-Forte

Reservation No: R-990217

In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant ARAMCO IMPORTS, INC., having agreed through their respective counsel that judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a [Proposed] Consent Judgment entered into by the parties, and following issuance of an order approving this Proposition 65 settlement agreement and entering the Consent Judgment on November 20, 2009,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil Procedure §664.6, judgment is entered in accordance with the terms of the [Proposed] Consent Judgment attached hereto as Exhibit 1.

IT IS SO ORDERED.

Dated: NOV 20 2009

JUDGE OF THE SUPERIOR COURT
BRENDA HARBIN-FORTE

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Attorneys for Defendant
ARAMCO IMPORTS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER, Plaintiff, v. ARAMCO IMPORTS, INC.; and DOES 1 through 150 inclusive, Defendant.	CASE NO.: RG 09464344 [PROPOSED] CONSENT JUDGMENT Health & Safety Code §25249.6

1. INTRODUCTION

1.1 Russell Brimer and Aramco Imports, Inc.

This Consent Judgment is entered into by and between Russell Brimer (hereinafter "Brimer") and Aramco Imports, Inc. (hereinafter "Aramco"), with Brimer and Aramco collectively referred to as the "Parties."

1.2 Plaintiff

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

1.3 Defendant

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

1.4 General Allegations

Brimer alleges that Aramco has manufactured, distributed and/or sold in the State of California mugs with colored artwork or designs on the exterior containing lead. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 et seq. ("Proposition 65"), as a chemical known to the State of California to cause birth defects and other reproductive harm. Lead is referred to herein as the "Listed Chemical."

1.5 Product Description

The products that are covered by this Consent Judgment are defined as follows: mugs with colored artwork or designs on the exterior containing the Listed Chemical including, but not limited to, *Cafe Mug, #SWM2-11, (#643700053237).* All such items shall be referred to herein as the "Products."

1.6 Notice of Violation

On December 23, 2008, Brimer served Aramco and various public enforcement agencies with a document entitled "60-Day Notice of Violation" that provided Aramco and such public enforcers with notice that alleged that Aramco was in violation of California Health & Safety

Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to lead. No public enforcer has diligently prosecuted the allegations set forth in the 60-Day Notice of Violation ("Notice").

1.7 Complaint

On July 22, 2009, Brimer, who was and is acting in the interest of the general public in California, filed a complaint in the Superior Court in and for the County of Alameda against Aramco, and Does 1 through 150, alleging violations of Health & Safety Code §25249.6 based on the alleged exposures to lead contained in mugs with colored artwork or designs on the exterior manufactured, distributed and/or sold by Aramco ("Complaint").

1.8 No Admission

Aramco denies the material, factual, and legal allegations contained in Brimer's Notice, and expressly denies any wrongdoing whatsoever. Aramco further maintains that all products manufactured, distributed and/or sold by it in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Aramco 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 Aramco of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Aramco. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Aramco 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 Aramco 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.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean August 31, 2009.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date, Aramco shall not ship, sell or offer to be shipped for sale in California any Product unless such Product is Lead Free. For purposes of this Consent Judgment, "Lead Free" shall mean products containing less than or equal to 300 ppm of lead when analyzed pursuant to EPA testing methodologies, 3050B and 601 OB, or equivalent methods as may be allowed under Proposition 65.

3. MONETARY PAYMENTS

3.1 Payments Pursuant to Health & Safety Code §25249.7(b)

3.1.1 In settlement of all claims related to the Covered Products and Listed Chemicals referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety Code §25249.7(b), Aramco shall pay $2,000 in civil penalties.

3.1.2 Civil penalties are to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Russell Brimer as provided by California Health & Safety Code §25249.12(d). Aramco shall issue two separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP in Trust for OEHHA" in the amount of $1,500, representing 75% of the total penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Russell Brimer" in the amount of $500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above-payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Russell Brimer, whose information shall be provided five calendar days before the payment is due.

3.1.3 Payment shall be delivered on or before September 15, 2009 to Brimer's counsel at the following address:

Hirst & Chanler LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, California 94710

4. REIMBURSEMENT OF FEES AND COSTS

4.1 Attorney Fees and Costs

The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Aramco then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5. Aramco shall reimburse Brimer and his counsel a total of $25,000 for fees and costs incurred as a result of investigating, bringing this matter to Aramco's attention, and litigating and negotiating a settlement in the public interest. The payment shall be issued in eight equal monthly installments of $3,125 each. The payments shall be delivered on or before September 15, 2009; October 15, 2009; November 15, 2009; December 15, 2009; January 15, 2010; February 15, 2010; March 15, 2010 and April 15, 2010 at the following address:

Hirst & Chanler LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, California 94710

Aramco shall issue a separate 1099 for fees and costs paid in the amount of $25,000 to Hirst & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California 94710.

5. RELEASE OF ALL CLAIMS

5.1 Brimer's Release of Aramco

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action,

in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Aramco and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Aramco's alleged failure to warn about exposures to or identification of lead contained in the Products.

The Parties further understand and agree that the above releases shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Aramco.

5.2 Aramco's Release of Brimer

Aramco waives any and all claims against Brimer, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Brimer and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

6. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all parties, in which event any monies that have been provided to Brimer, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days after receiving written notice from Aramco that the one-year period has expired.

7. SEVERABILITY

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

8. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Aramco shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

9. NOTICES

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

For Aramco:

Raffy Soulahian, President
Aramco Imports, Inc.
6431 Bandini Boulevard
Commerce, California 90040

With copies to:

Malcolm C. Weiss, Esq.
Catherine Allen, Esq.
Hunton & Williams LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627

For Brimer:

Proposition 65 Coordinator
Hirst & Chanler, LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, California 94710

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

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

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

12. ADDITIONAL POST EXECUTION ACTIVITIES

The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Brimer and Aramco and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.

13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen days in advance of its consideration by the Court.

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14. 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 hereof.

AGREED TO:

Date: 8.20.09

By: _____
RUSSELL BRIMER

AGREED TO:

Date: _____

By: _____
Raffy Soulahian, President
ARAMCO IMPORTS, INC.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT

14. 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 hereof.

AGREED TO:

Date: _____

By: _____
RUSSELL BRIMER

AGREED TO:

Date: 08/20/09

By: _____
Raffy Soulahian, President
ARAMCO IMPORTS, INC.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT

CLERK'S CERTIFICATE OF MAILING

Action No: RG09-464344
Case Name: Brimer Vs. Aramco Imports, Inc.,
I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served the Judgment Pursuant To Terms OF Consent Judgment by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices and by faxing to the fax #'s indicated below.

Dated: NOV 23 2009

PAT SWEETEN
Executive Officer/Clerk of the Superior Court

By Nancy A. Bole

Clifford A. Chanler, Esq.
Hirst & Chanler LLP
2560 Ninth St., Parker Plaza, Ste. 214
Berkeley, CA. 94710-2565

Raffy Soulahian, President
Aramco Imports, Inc.
6431 Bandini Blvd.,
Commerce, Ca. 90040

Continued – Clerks Certificate of Mailing

Case Name: Brimer V. Aramco Imports, Inc.

Case Number: RG09-464344

Malcolm C. Weiss, Esq.
Catherine Allen, Esq.
Hunton & Williams, LLP
550 S. Hope St., Ste. 2000
Los Angeles, CA. 90071-2627

Proposition 65 Coordinator
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2560 Ninth St., Parker Plaza, Ste. 214
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