

ENDORSED  
FILED  
San Francisco County Superior Court

AUG 31 2010

CLERK OF THE COURT  
BY: MELINKA JONES  
Deputy Clerk

1 Clifford A. Chanler, State Bar No. 135534  
2 Daniel Bornstein, State Bar No. 181711  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
8 UNLIMITED CIVIL JURISDICTION

10 RUSSELL BRIMER,

11 Plaintiff,

12 v.

13 THE FAUCET QUEENS, *et al.*,

14 Defendants.

Case No. CGC- 10-496695

ASSIGNED FOR ALL PURPOSES TO:

**~~PROPOSED~~ JUDGMENT PURSUANT  
TO TERMS OF CONSENT TO  
JUDGMENT AS TO DEFENDANT THE  
FAUCET QUEENS, INC.**

Date: August 31, 2010  
Time: 9:30 a.m.  
Dept: 301

Action Filed: February 5, 2010  
Trial Date: Not Set

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant THE FAUCET  
2 QUEENS, INC., having agreed through their respective counsel that judgment be entered pursuant to  
3 the terms of the Proposition 65 settlement agreement in the form of a Consent To Judgment entered  
4 into by the parties, and following issuance of an order approving this Proposition 65 settlement  
5 agreement on August 31, 2010.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety  
7 Code § 25249.7(f)(4) and Code of Civil Procedure §664.6, judgment is entered in accordance with  
8 the terms of the Consent To Judgment attached hereto as Exhibit 1. By stipulation of the parties, the  
9 Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

10 **IT IS SO ORDERED.**

11  
12 Dated: AUG 31 2010

12 PETER J. BISHOP  
13 JUDGE OF THE SUPERIOR COURT

# **Exhibit 1**

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Clifford A. Chanler, State Bar No. 135534  
Daniel Bornstein, State Bar No. 181711  
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Attorneys for Plaintiff  
**RUSSELL BRIMER**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN FRANCISCO**  
**UNLIMITED JURISDICTION**

**RUSSELL BRIMER,** )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
**THE FAUCET QUEENS, INC.; RITE AID** )  
**CORPORATION; and DOES 1-150, inclusive,** )  
 )  
Defendants. )

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Case No. CGC- 10-496695

**[PROPOSED] CONSENT JUDGMENT**

1       **1. INTRODUCTION**

2               **1.1 The Parties**

3               This Consent Judgment is entered into by and between Plaintiff Russell Brimer (“Brimer”  
4 or “Plaintiff”) and Defendant The Faucet Queens, Inc. (referred to as “Faucet Queens” or  
5 “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties.”

6               **1.2 Plaintiff**

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

10              **1.3 Faucet Queens**

11              Faucet Queens employs 10 or more persons and is a person in the course of doing  
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
13 Health & Safety Code § 25249.6 et seq. (Proposition 65).

14              **1.4 General Allegations**

15              Brimer alleges that Faucet Queens has manufactured, distributed and/or sold, in the State  
16 of California, jumper cable and/or booster cables (“Products”) that expose users to lead, without  
17 first providing “clear and reasonable warning” under Proposition 65. Lead is listed as a  
18 reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter  
19 as the “Listed Chemical.” Faucet Queens denies Brimer’s allegations.

20              **1.5 Notices of Violation**

21              On August 14, 2009, Brimer served Faucet Queens and various public enforcement  
22 agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers  
23 and Faucet Queens with notice of alleged violations of Health & Safety Code § 25249.6 for  
24 failing to warn consumers that the Products that Faucet Queens manufactured, distributed and/or  
25 sold exposed users in California to lead.

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1           **1.6 Complaint**

2           On February 5, 2010 Brimer, acting in a representative capacity in the interest of the  
3 general public in California, filed a complaint in the Superior Court for the County of San  
4 Francisco, alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures  
5 to lead contained in the Products manufactured, distributed and/or sold by Faucet Queens. This  
6 action shall hereinafter be referred to as the "Action."

7           **1.7 No Admission**

8           Faucet Queens denies the material factual and legal allegations contained in the Notice  
9 and Complaint and maintains that all Products it has manufactured, distributed and/or sold in  
10 California have been and are in compliance with all applicable laws. Nothing in this Consent  
11 Judgment shall be construed as an admission by Faucet Queens of any fact, finding, issue of law,  
12 or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as  
13 an admission by Faucet Queens of any fact, finding, conclusion, issue of law, or violation of law,  
14 such being specifically denied by Faucet Queens.

15           **1.8 Consent to Jurisdiction**

16           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
17 jurisdiction over Faucet Queens as to the allegations contained in the Complaint, that venue is  
18 proper in the County of San Francisco, and that this Court has jurisdiction to enter and enforce the  
19 provisions of this Consent Judgment.

20           **1.9 Full and Final Settlement**

21           The Parties enter into this Consent Judgment pursuant to a full and final settlement of any  
22 and all claims between the Parties. However, this Section shall not diminish or otherwise affect  
23 Faucet Queens' obligations, responsibilities, and duties under this Consent Judgment.

24           **1.10 Effective Date**

25           For purposes of this Consent Judgment, the term "Effective Date" shall mean May 21,  
26 2010.

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1     **2.     INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2             **2.1     Reformulation Level:** For purposes of this Consent Judgment, "Lead Free"  
3     Products shall mean Products containing components that may be handled, touched or mouthed  
4     by a consumer, and which components (a) yield less than 1.0 microgram of lead when using a  
5     wipe test pursuant to NIOSH Test Method 9100 as directly applied to each component being  
6     analyzed, net of any lead present on a sample wipe in the same box or batch used, provided that  
7     no wipe shall be used if the sample contains in excess of 0.1 ug of lead, and subject to alternative  
8     wipe test criteria and procedures set forth in Section 2.4 below, and (b) yield less than 100 parts  
9     per million ("ppm") lead when analyzed pursuant to EPA testing methodologies 3050B and  
10    6010B, or equivalent methodologies utilized by federal or state agencies for the purpose of  
11    determining lead content in a solid substance. Products that are Lead Free are referred to  
12    hereinafter as "Reformulated Products."

13             **2.2     Product Warnings:**

14             Commencing on the Effective Date, Faucet Queens shall provide Proposition 65 warnings  
15    with respect to all Products shipped, sold, or offered for sale in California, as follows:

16             **(a)     Retail Store Sales.**

17                     **(i)     Product Labeling.** Faucet Queens may affix a warning to the  
18    packaging, labeling, or directly on each Product sold in retail outlets in California by Faucet  
19    Queens or its agents, containing the following language:

20                             **WARNING:** This product contains lead, a chemical  
21                                     known to the State of California to cause  
22                                     birth defects and other reproductive  
                                   harm.

23                     **Point-of-Sale Warnings.** Alternatively, Faucet Queens may provide  
24    warning signs in the form below to its customers in California with instructions to post the  
25    warnings in close proximity to the point of display of the Products.

26                             **WARNING:** This product contains lead, a chemical known  
27                                     to the State of California to cause birth  
                                   defects and other reproductive harm.

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 2.1 or Products  
3 distributed prior to the Effective Date), the following statement must be used:<sup>1</sup>

4                   **WARNING:** These 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                   **(b) Mail Order Catalog and Internet Sales.** In the event that Faucet Queens  
9 sells Products via mail order catalog or internet to customers located in California after the  
10 Effective Date that are not Reformulated Products, Faucet Queens shall provide a warning for  
11 Products sold via mail order catalog or the Internet to California residents: (1) in the mail order  
12 catalog; or (2) on the website. Warnings given in the mail order catalog or on the website shall  
13 identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i)  
14 and (ii).

15                                   **(i) Mail Order Catalog Warning.** Any warning provided in a mail  
16 order catalog must be in the same type size or larger than the Product description text within the  
17 catalog. The following warning shall be provided on the same page and in the same location as  
18 the display and/or description of the Product:

19                                   **WARNING:** This product contains lead, a chemical known  
20   to the State of California to cause birth  
21   defects and other reproductive harm.

22           Where it is impracticable to provide the warning on the same page and in the same  
23 location as the display and/or description of the Product, Faucet Queens may utilize a designated  
24 symbol to cross reference the applicable warning and shall define the term "designated symbol"  
25 with the following language on the inside of the front cover of the catalog or on the same page as  
26 any order form for the Product(s):

27 <sup>1</sup>For purposes of the consent judgment, "sold in proximity" shall mean that the Product and another product are  
28 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                   **WARNING:** Certain products identified with this  
2                   symbol ▼ and offered for sale in this  
3                   catalog contain lead, a chemical known to  
                  the State of California to cause birth  
                  defects and other reproductive harm.

4                   The designated symbol must appear on the same page and in close proximity to the  
5                   display and/or description of the Product. On each page where the designated symbol appears,  
6                   Faucet Queens must provide a header or footer directing the consumer to the warning language  
7                   and definition of the designated symbol.

8                   If Faucet Queens elects to provide warnings in the mail order catalog, then the warnings  
9                   must be included in all catalogs offering to sell one or more Products printed after the Effective  
10                  Date.

11                               (ii)    **Internet Website Warning.** A warning may be given in  
12                   conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the  
13                   same web page on which the Product is displayed; (b) on the same web page as the order form for  
14                   the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages  
15                   displayed to a purchaser during the checkout process. The following warning statement shall be  
16                   used and shall appear in any of the above instances adjacent to or immediately following the  
17                   display, description, or price of the Product for which it is given in the same type size or larger  
18                   than the Product description text:

19                               **WARNING:** This product contains lead, a chemical known  
20                               to the State of California to cause birth  
                  defects and other reproductive harm.

21                   Alternatively, the designated symbol may appear adjacent to or immediately following the  
22                   display, description, or price of the Product for which a warning is being given, provided that the  
23                   following warning statement also appears elsewhere on the same web page, as follows:

24                               **WARNING:** Products identified on this page with the  
25                               following symbol contain lead, a chemical  
26                               known to the State of California to cause  
                  birth defects and other reproductive harm:  
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**2.3 Exceptions To Warning Requirements**

The warning requirements set forth in Section 2.2 shall not apply to:

- (i) Reformulated Products (as defined in Section 2.1 above).

**2.4 Alternative Wipe Test Criteria**

2.4.1 Notwithstanding the 1.0 ug wipe test criteria set forth in Section 2.1(a), Faucet Queens may, within its discretion, submit to Brimer an assessment demonstrating that an alternative wipe test criteria would result in exposure to average users of the Covered Products at a rate less than the applicable Maximum Allowable Dose Level.

2.4.1.1 Any assessment conducted by Faucet Queens in efforts to meet its burden of demonstrating an alternative wipe test criteria shall be consistent with Cal. Code Reg. tit. 27 §25721.

2.4.1.2 If Faucet Queens elects to propose an alternative wipe test criteria, it shall submit its assessment to Brimer between February 1, 2011 and February 10, 2011.

2.4.1.3 For the purposes of this Section 2.4.1, "average users" shall be the upper bound of the 85<sup>th</sup> percentile of users of the Products.

2.4.1.4 If Brimer agrees with Faucet Queens' assessment (or fails to dispute such assessment within the thirty (30) day period set forth in Section 2.4.2 below), the alternative wipe test criteria shall replace the 1.0 ug wipe test criteria at Section 2.1(a).

2.4.2 If Brimer disputes the assessment submitted by Faucet Queens, Brimer shall provide notice to Faucet Queens within thirty (30) days of receipt of the assessment. The Parties shall engage in good faith, informal negotiation in an attempt to resolve such dispute. If the Parties cannot resolve the dispute informally, Faucet Queens may elect to submit the dispute to arbitration by a former judge who is knowledgeable with respect to Proposition 65 and, ideally, cases involving lead exposure resulting from use of consumer products. The arbitration shall be administered in accordance with the American Arbitration Association ("AAA"), Commercial Arbitration Rules, Expedited Procedures, and shall be held in San Francisco, California. If the Parties cannot agree within ten (10) days on a qualified arbitrator, each side shall submit three

1 names to AAA in San Francisco for its selection of an arbitrator. The decision of the arbitrator  
2 shall be binding on the Parties. Faucet Queens shall pay all costs and fees charged by AAA and  
3 the selected arbitrator for his or her services.

4           2.4.3 Under general contract principles and the private attorney general doctrine  
5 codified at California Code of Civil Procedure § 1021.5, Faucet Queens shall pay Brimer fifty per  
6 cent (50%) of his reasonable costs and attorneys' fees, at their current billing rates, incurred as a  
7 result of disputing Faucet Queens' assessment, beginning on the day Brimer receives any such  
8 assessment contemplated in § 2.4.1. above, and continuing through the final decision of the  
9 arbitrator. Faucet Queens shall pay Brimer for said incurred costs and attorneys' fees within 10  
10 business days of receiving an invoice from Brimer. If the arbitrator does not agree with Faucet  
11 Queens' assessment, however, it shall be responsible for the remaining portion of Brimer's costs  
12 and attorneys' fees (i.e. the unpaid 50%). In all circumstances, and regardless of the result of the  
13 arbitration, Faucet Queens shall be solely responsible for its own attorneys' fees and costs. If the  
14 arbitrator agrees with Faucet Queens' assessment (or orders another concentration level as being  
15 appropriate to ensure exposure less than the applicable Maximum Allowable Dose Level), or if  
16 the Parties otherwise agree to an alternative wipe test criteria level, such alternative wipe test  
17 criteria shall replace the 1.0 ug wipe test criteria at Section 2.1(a). The Parties agree to ensure  
18 that the alternative dispute resolution process be concluded with a final decision on or before  
19 April 20, 2011.

### 20 **3. MONETARY PAYMENTS**

#### 21 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

22           3.1.1. In settlement of all claims related to the Covered Products and Listed  
23 Chemical referred to in the Complaint, and this Consent Judgment, pursuant to Health & Safety  
24 Code § 25249.7(b), Faucet Queens shall pay civil penalties as follows:

25           3.1.1.1 **Initial Civil Penalty:** Faucet Queens shall pay an initial civil  
26 penalty of \$16,000 no later than ten (10) days after the Effective Date. Faucet Queens shall  
27 issue two separate checks for the Initial Penalty payment pursuant to Health & Safety Code  
28 § 25192: (a) one check made payable to The Chanler Group in Trust for the State of

1 California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of  
2 \$12,000, representing 75% of the total; and (b) one check to The Chanler Group in Trust for  
3 Brimer in the amount of \$4,000, representing 25% of the total. Two separate 1099s shall be  
4 issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010,  
5 Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$12,000. The second 1099 shall be  
6 issued in the amount of \$4,000 to Brimer, whose address and tax identification number shall be  
7 furnished, upon execution of this Agreement. The payments shall be delivered within ten (10)  
8 days of the Effective Date, to the following address:

9           The Chanler Group  
10           Attn: Proposition 65 Controller  
11           2560 Ninth Street  
12           Parker Plaza, Suite 214  
13           Berkeley, CA 94710-2565

14                           **3.1.1.2 Final Civil Penalty:** Faucet Queens shall pay a final civil  
15 penalty of \$41,000 on May 31, 2011; provided, however, as an incentive for achievement  
16 reformulating the Products, if an Officer of Faucet Queens certifies in writing that Faucet  
17 Queens, as of May 1, 2011 has sold, shipped and offered for sale in California only Reformulated  
18 Products and that Faucet Queens will continue to sell, ship and offer for sale in California only  
19 Reformulated Products, the Final Civil Penalty shall be waived in its entirety. Such Certification  
20 must be received by The Chanler Group on or before May 15, 2011.

21           Faucet Queens shall issue two separate checks the final payment pursuant to Health &  
22 Safety Code § 25192: (a) one check made payable to The Chanler Group in Trust for the State  
23 of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of  
24 \$30,750, representing 75% of the total; and (b) one check to The Chanler Group in Trust for  
25 Brimer in the amount of \$10,250, representing 25% of the total. Two separate 1099s shall be  
26 issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010,  
27 Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$30,750. The second 1099 shall be  
28

1 issued in the amount of \$10,250 to Brimer, whose address and tax identification number shall be  
2 furnished, upon execution of this Agreement. The payments shall be delivered on or before  
3 May 31, 2011, to the following address:

4           The Chanler Group  
5           Attn: Proposition 65 Controller  
6           2560 Ninth Street  
7           Parker Plaza, Suite 214  
8           Berkeley, CA 94710-2565

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

8           **4.1 Attorney Fees and Costs**

9           4.1.1 The parties reached an accord on the compensation due to Brimer and his  
10 counsel under general contract principles and the private attorney general doctrine codified at  
11 California Code of Civil Procedure § 1021.5, for all work performed through the mutual  
12 execution of this agreement and approval by the trial court, excluding any fees on appeal. Faucet  
13 Queens shall pay Brimer and his counsel a total of \$42,500 for fees and costs incurred as a result  
14 of investigating, bringing this matter to Faucet Queens' attention, and litigating and negotiating a  
15 settlement in the public interest. These fees and costs include those that will be reasonably  
16 incurred in the future to support entry of this agreement including, but not limited to fulfilling  
17 reporting requirements, filing a motion to approve, providing notice of entry of judgment and  
18 such other activities as may be necessary.

19           4.1.2 Payment shall be delivered to Brimer's counsel within ten (10) days after  
20 the Effective Date, at the following address:

21           The Chanler Group  
22           Attn: Proposition 65 Controller  
23           2560 Ninth Street  
24           Parker Plaza, Suite 214  
25           Berkeley, CA 94710-2565

24 **5. CLAIMS COVERED AND RELEASE**

25           **5.1 Brimer's Release of Faucet Queens and its Chain of Distribution**

26           5.1.1 This Consent Judgment is a full, final, and binding resolution between  
27 Brimer and Faucet Queens, and its owners, subsidiaries, affiliates, sister and related companies,  
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1 employees, shareholders, directors, insurers, attorneys, successors, and assigns ("Defendant  
2 Releasees"), and all entities to whom they directly or indirectly distribute or sell Products,  
3 including but not limited to Rite Aid Corporation, and any other distributors, wholesalers,  
4 customers, retailers, franchisees, cooperative members, and licensees ("Downstream Defendant  
5 Releasees") of any violation of Proposition 65 that has been or could have been asserted against  
6 Defendant Releasees and Downstream Defendant Releasees regarding the failure to warn about  
7 exposure to the Listed Chemical arising in connection with Products manufactured, sourced,  
8 distributed, or sold by Defendant Releasees prior to execution of this agreement. Defendant  
9 Releasees' compliance with this Consent Judgment shall constitute compliance with Proposition  
10 65 with respect to the Listed Chemical in Products after execution of this agreement.

11           5.1.2 Brimer on behalf of himself, his past and current agents, representatives,  
12 attorneys, successors, and/or assignees, and in the interest of the general public, in his  
13 representative capacity, hereby waives with respect to Products all rights to institute or participate  
14 in, directly or indirectly, any form of legal action and releases all claims, including, without  
15 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,  
16 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,  
17 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or  
18 unknown, fixed or contingent (collectively "claims"), against Defendant Releasees and  
19 Downstream Defendant Releasees that arise under Proposition 65 or any other statutory or  
20 common law claims that were or could have been asserted in the public interest, as such claims  
21 relate to Defendant Releasees' and Downstream Defendant Releasees' alleged failure to warn  
22 about exposures to the Listed Chemical contained in the Products.

23           5.1.3 Brimer also, on behalf of himself, his past and current agents,  
24 representatives, attorneys, successors, and/or assignees and *not* in his representative capacity,  
25 provides a general release herein which shall be effective as a full and final accord and  
26 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
27 damages, losses, claims, liabilities and demands of any nature, character or kind, known or

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1 unknown, suspected or unsuspected, against Defendant Releasees and Downstream Defendant  
2 Releasees arising under Proposition 65, as such claims relate to Defendant Releasees' alleged  
3 failure to warn about exposures to or identification of any chemicals listed under Proposition 65  
4 contained in any products sold by Defendant Releasees. Brimer acknowledges that he is familiar  
5 with Section 1542 of the California Civil Code, which provides as follows:

6           **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
7           **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT**  
8           **THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**  
9           **MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE**  
10           **DEBTOR.**

11 Brimer, in his individual capacity only and *not* in his representative capacity, and on behalf of  
12 himself, his past and current agents, representatives, attorneys, successors, and/or assignees  
13 expressly waives and relinquishes any and all rights and benefits which he may have under, or  
14 which may be conferred on him by the provisions of Section 1542 of the California Civil Code as  
15 well as under any other state or federal statute or common law principle of similar effect, to the  
16 fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.  
17 In furtherance of such intention, the release hereby given shall be and remain in effect as a full  
18 and complete release notwithstanding the discovery or existence of any such additional or  
19 different claims or facts arising out of the released matters.

20           5.1.4 Upon court approval of the Consent Judgment, the Parties waive their  
21 respective rights to a hearing or trial on the allegations of the Complaints.

22           5.1.5 The Parties further understand and agree that, except as provided for above,  
23 this release shall not extend upstream to any third parties that manufactured the Products or any  
24 component parts thereof, or any distributors or suppliers who sold the Products or any component  
25 parts thereof to Faucet Queens.

26           **5.2 Faucet Queens' Release of Brimer**

27           5.2.1 Faucet Queens waives any and all claims against Brimer, his attorneys, and  
28 other representatives for any and all actions taken or statements made (or those that could have

1 been taken or made) by Brimer and his attorneys and other representatives, whether in the course  
2 of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this  
3 matter, and/or with respect to the Products.

4 5.2.2 Faucet Queens also provides a general release herein which shall be  
5 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
6 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of  
7 Faucet Queens of any nature, character or kind, known or unknown, suspected or unsuspected,  
8 arising out of the subject matter of the Action. Faucet Queens acknowledges that it is familiar  
9 with Section 1542 of the California Civil Code, which provides as follows:

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
11 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT  
12 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
13 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
14 DEBTOR.

15 Faucet Queens expressly waives and relinquishes any and all rights and benefits which it  
16 may have under, or which may be conferred on it by the provisions of Section 1542 of the  
17 California Civil Code as well as under any other state or federal statute or common law principle  
18 of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining  
19 to the released matters. In furtherance of such intention, the release hereby given shall be and  
20 remain in effect as a full and complete release notwithstanding the discovery or existence of any  
21 such additional or different claims or facts arising out of the released matters.

## 22 6. SEVERABILITY

23 If, subsequent to court approval of this Consent Judgment, any of the provisions of this  
24 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
25 provisions remaining shall not be adversely affected, unless the Court finds that any  
26 unenforceable provision is not severable from the remainder of the Consent Judgment.

## 27 7. COURT APPROVAL

28 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 nine



1 months after it has been fully executed by all Parties. If the Superior Court does not approve the  
2 motion to approve this Consent Judgment within one year of execution, all payments made by  
3 Defendant shall be returned to counsel for Defendant.

4 **8. GOVERNING LAW**

5 The terms of this Consent Judgment shall be governed by the laws of the State of  
6 California.

7 **9. NOTICES**

8 When any Party is entitled to receive any notice under this Consent Judgment, the notice  
9 shall be sent by certified mail and electronic mail to the person(s) identified below:

10 To Faucet Queens:  
11 Ken Young  
12 VP Finance & CFO  
13 The Faucet-Queens, Inc.  
650 Forest Edge Drive  
Vernon Hills, IL 60061

14 With a copy to:  
15 Joshua A. Bloom  
16 Barg Coffin Lewis & Trapp, LLP  
17 350 California Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94101-1435

18 To Brimer:  
19 The Chanler Group  
20 Attn: Proposition 65 Controller  
21 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

22 Any Party may modify the person and address to whom the notice is to be sent by sending  
23 each other Party notice by certified mail and/or other verifiable form of written communication.

24 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

25 Brimer agrees to comply with the reporting form requirements referenced, in California  
26 Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.  
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1     **11.    MODIFICATION**

2           This Consent Judgment may be modified only: (1) by written agreement of the Parties; or  
3     (2) upon a successful motion of any party and entry of a modified Consent Judgment by the  
4     Court.

5     **12.    ADDITIONAL POST-EXECUTION ACTIVITIES**

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

11    **13.    ENTIRE AGREEMENT**

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

18    **14.    ATTORNEY'S FEES**

19           14.1    A Party who unsuccessfully brings or contests an action arising out of this Consent  
20    Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs  
21    unless the unsuccessful Party has acted with substantial justification. For purposes of this  
22    Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
23    Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

24           14.2    Except as specifically provided in the above paragraph and in Section 4.1, each  
25    Party shall bear its own costs and attorney's fees in connection with this action.

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**15. COUNTERPARTS, FACSIMILE SIGNATURES**

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

**16. 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:**

Dated: May 14 2010

Dated: May \_\_, 2010

By:   
Plaintiff Russell Brimer

By: \_\_\_\_\_  
The Faucet Queens, Inc.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Judge of the Superior Court

1 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

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4 together, shall constitute one and the same documents.

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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 Dated: May \_\_, 2010

Dated: May 13, 2010

12  
13 By: \_\_\_\_\_  
14 Plaintiff Russell Brimer

By:   
The Faucet Queens, Inc.

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20 **IT IS SO ORDERED.**

21  
22 Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Judge of the Superior Court