

1 Clifford A. Chanler, State Bar No. 135534  
2 Gregory M. Sheffer, State Bar No. 173124  
3 THE CHANLER GROUP  
4 81 Throckmorton Avenue, Suite #202  
5 Mill Valley, CA 94941  
6 Telephone: (415) 388-0911  
7 Facsimile: (415) 388-9911

8 Attorneys for Plaintiff  
9 RUSSELL BRIMER

**FILED**

DEC 06 2011

KIM T. R. JER  
Court Law Clerk Officer  
MARIN COUNTY SUPERIOR COURT  
By: S. D. [Signature] Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF MARIN  
12 UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER,  
14 Plaintiff,  
15 v.

16 HYPNOTIC HATS, LTD. and DOES 1-150,  
17 Defendants.

Case No. CIV1101583

**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF PROPOSITION 65  
SETTLEMENT AGREEMENT**

Action Filed : March 25, 2011

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant HYPNOTIC HATS,  
2 LTD., having agreed through their respective counsel that a judgment be entered pursuant to the terms  
3 of the Consent To Judgment entered into by the parties in resolution of this Proposition 65 action, and  
4 following the issuance of an order approving the Parties' Consent to Judgment on this day, IT IS  
5 HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety Code §  
6 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the  
7 terms of the Consent To Judgment attached hereto as Exhibit A. By stipulation of the parties, the Court  
8 will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.  
9

10 **IT IS SO ORDERED.**

11  
12 Dated: 1/6/11

*Uma D. ...*  
13 JUDGE OF THE SUPERIOR COURT

# Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534  
2 Gregory M. Sheffer, State Bar No. 173124  
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

9 Attorneys for Plaintiff  
10 RUSSELL BRIMER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 HYPNOTIC HATS LTD. and DOES 1-150,  
18 inclusive,

19 Defendants.

Case No. CIV1101583

**CONSENT TO JUDGMENT AS TO  
DEFENDANT HYPNOTIC HATS LTD.**

Trial Date: Not Yet Assigned  
Action Filed: March 25, 2011

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent To Judgment is entered into by and between Plaintiff Russell Brimer  
4 ("Brimer" or "Plaintiff") and Defendant Hypnotic Hats Ltd. ("Hypnotic Hats"). For purposes of  
5 this Consent to Judgment, Brimer and Hypnotic Hats shall hereafter be collectively referred to as  
6 the "Parties."

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Hypnotic Hats employs 10 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, California  
14 Health & Safety Code §§ 25249.6 *et seq.* ("Proposition 65").

15 **1.4 General Allegations**

16 Brimer alleges that Hypnotic Hats manufactured, distributed and/or sold, in the State of  
17 California, Pink Cookie Fashion Belts (including, but not limited to, Item No. 11693) that  
18 exposed users to lead during the reasonably foreseeable use of the belts. Brimer further alleges  
19 that Hypnotic Hats did not provide a Proposition 65 compliant "clear and reasonable warning"  
20 along with the sale or other distribution of the subjects belts. Lead is identified pursuant to  
21 Proposition 65 as a reproductive and developmental toxicant and shall be referred to hereinafter  
22 as the "Listed Chemical."

23 **1.5 Notice of Violation**

24 On November 12, 2010, Brimer served Defendant and various public enforcement  
25 agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided public  
26 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6  
27 for failing to warn consumers of the presence of lead found in and on their Pink Cookie fashion  
28

1 belt products sold in California. To the best of the Parties' knowledge, no public enforcer has  
2 commenced and is diligently prosecuting the allegations set forth in the Notice.

3 **1.6 Complaint**

4 On March 25, 2011, Brimer, acting, in the interest of the general public in California, filed  
5 a Complaint in the Marin County Superior Court, alleging violations by Defendant of Health &  
6 Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to lead contained in the  
7 referenced belt products (the "Action").

8 **1.7 No Admission**

9 This Consent To Judgment resolves claims that are denied and disputed by Hypnotic  
10 Hats. The Parties enter into this Consent Judgment pursuant to a full and final settlement of any  
11 and all claims between the Parties for the purpose of avoiding prolonged litigation. Defendant  
12 denies the material factual and legal allegations contained in the Notice and Action, maintains  
13 that they did not knowingly or intentionally expose California consumers to lead through the  
14 reasonably foreseeable use of the Covered Products and otherwise contends that all Covered  
15 Products they have manufactured, distributed and/or sold in California have been and are in  
16 compliance with all applicable laws. Nothing in this Consent Judgment shall be construed as an  
17 admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall  
18 compliance with this Consent Judgment constitute or be construed as an admission by either  
19 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
20 specifically denied by Defendant. However, notwithstanding the foregoing, this section shall not  
21 diminish or otherwise affect Hypnotic Hats' obligations, responsibilities, and duties under this  
22 Consent Judgment.

23 **1.8 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25 jurisdiction over Hypnotic Hats as to the allegations contained in the Complaint, that venue is  
26 proper in Marin County, and that this Court has jurisdiction to enter and enforce the provisions  
27 of this Consent Judgment. As an express part of this Agreement, pursuant to C.C.P. §664.6 the  
28

1 Court in which this action was filed shall retain jurisdiction over the parties to enforce the  
2 settlement until performance in full of the terms of the settlement.

3 **2. DEFINITIONS**

4 **2.1** The term "Complaint" shall mean the March 25, 2011, Complaint.

5 **2.2** The term "Covered Products" means any Pink Cookie Fashion Belts composed of  
6 any material containing lead, including, but not limited to, Item No. 11693, Product No. 6  
7 61128 29650 0, manufactured or caused to be manufactured for distribution or sale into  
8 California or distributed, caused to be distributed, sold or caused to be sold into California by  
9 Defendant.

10 **2.3** The term "Effective Date" shall mean August 29, 2011.

11 **2.4** The term "Lead Free" Covered Products shall mean Covered Products containing  
12 materials or other components that may be handled, touched or mouthed by a consumer, and  
13 which components yield less than 1.0 microgram of lead when using a wipe test pursuant to  
14 NIOSH Test Method 9100, and yield less than 300 parts per million ("ppm") lead when analyzed  
15 pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized  
16 by federal or state agencies for the purpose of determining lead content in a solid substance.

17 **3. INJUNCTIVE RELIEF**

18 **3.1 Formulation Commitment**

19 3.1.1 As of the Effective Date, Defendant shall not order, cause to be ordered,  
20 manufacture or cause to be manufactured any Covered Product for distribution to or sale in  
21 California that is not Lead Free and Defendant shall also not distribute, cause to be distributed,  
22 sell or cause to be sold, in California, any Covered Product that is not Lead Free.

23 3.1.2 For every Covered Product ordered, caused to be ordered, manufactured or  
24 caused to be manufactured for distribution to or sale in California after the Effective Date, and  
25 for every Covered Product distributed, caused to be distributed, sold or caused to be sold in  
26 California by Defendant, Defendant shall maintain copies of all testing of such products  
27 demonstrating compliance with this section.

28

1           **3.2    Previously Obtained or Distributed Covered Products.**

2           **3.2.1   Customer Notification**

3           Within twenty (20) days of the Effective Date, Hypnotic Hats shall issue an express,  
4 written letter (electronic or otherwise) notice to (1) each, individual, California retail store or  
5 establishment to which it supplied any Covered Products within one year prior to the Effective  
6 Date, (2) any California store or establishment from which defendant sold any Covered Products  
7 and (3) any other store or establishment, or its corporate retail parent, that the party is  
8 reasonably is aware of having sold any Covered Product in California within two years prior to  
9 the Effective Date, that identifies the Covered Product (by brand and trade name, SKU, ISB and  
10 any other identifying name or number utilized by defendant in the sale of the Covered Product),  
11 advises the recipient that each such identified Covered Product “contains LEAD, a chemical  
12 known to the State of California to cause birth defects and other reproductive harm”, and  
13 requests such recipient to either label the Covered Product with the product label identified in  
14 Section 3.2.2(a)(i) or to return the Covered Product to either such defendant at that defendant’s  
15 sole expense. Hypnotic Hats shall maintain records of all compliance correspondence or other  
16 communication generated pursuant to this Section for two (2) years from the Effective Date and  
17 shall produce copies of such records upon written request by Brimer.

18           **3.2.2   Product Warnings**

19           Commencing on the Effective Date, and until such date six (6) months thereafter,  
20 Hypnotic Hats shall not sell, ship, or offer to be sold or shipped for sale in California any  
21 Covered Products unless such Covered Products are sold or shipped with clear and reasonable  
22 warning labels containing the following language:

23                           **WARNING:** This product contains LEAD, a chemical  
24   known to the State of California to cause birth  
  defects and other reproductive harm.

25           Hypnotic Hats shall either affix such warning to the packaging, labeling, or directly on  
26 any Covered Products with such conspicuousness as compared with other words, statements,  
27 designs, or devices as to render it likely to be read and understood by an ordinary individual  
28 under customary conditions *before* purchase or use or Hypnotic Hats shall include in any

1 shipment of Covered Products a quantity of product hang tags or self-adhesive stickers,  
2 containing this warning language, in an amount equal to 120% of the units of Covered Product  
3 in the shipment.

4 3.2.3 Commencing six (6) months after the Effective Date, Hypnotic Hats shall  
5 discontinue all sales or other distribution into California of any Covered Products that are not  
6 Lead Free, regardless of compliance with Section 3.2.2.

7 3.2.4 Hypnotic Hats shall maintain records of all compliance correspondence,  
8 inventory reports or other communication generated pursuant to §3.2.3 and §3.2.4 for three (3)  
9 years from the Effective Date and shall produce copies of such records upon written request by  
10 Brimer.

#### 11 4. MONETARY PAYMENTS

##### 12 4.1 Payments Pursuant to Health & Safety Code § 25249.7(b)

13 Subject to the potential offsets described in Section 4.2 below, Defendant shall be pay a  
14 total of \$12,000.00 in civil penalties to be apportioned in accordance with California Health &  
15 Safety Code §25192 (c)(1), with 75% of these funds remitted to the State of California's Office of  
16 Environmental Health Hazard Assessment and the remaining 25% of these penalty monies  
17 remitted to Brimer as provided by California Health & Safety Code §25249.12(d).

18 Defendant shall issue two separate checks for the penalty payment: (a) one check made  
19 payable to The Chanler Group in Trust for the State of California's Office of Environmental  
20 Health Hazard Assessment ("The Chanler Group in Trust for OEHHA") for 75% of the total  
21 penalty required and (b) one check to "The Chanler Group in Trust for Russell Brimer" for the  
22 remaining 25% of the total penalty required. Two separate 1099s shall be issued for the above  
23 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN:  
24 68-0284486). The second 1099 shall be issued to Brimer, whose address and tax identification  
25 number shall be furnished, upon request, at least five calendar days before payment is due. The  
26 payments shall be delivered on or before thirty (30) days after the Effective Date, at the following  
27 address:  
28

1 The Chanler Group  
2 Attn: Proposition 65 Controller  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710-2565

4 **4.2 Reduction in Penalty Payments**

5 Hypnotic Hats may reduce the total penalty payment due pursuant to section 4.1 above  
6 by satisfying the following penalty offset options (in which event the division of remaining total  
7 penalties due shall be proportioned between OEHHA and Brimer in the same ratio as set forth in  
8 section 4.1 above):

9 (a) Hypnotic Hats may realize a \$1,000.00 reduction in the total penalty amount due  
10 under section 4.1 above if, no later than twenty (20) days of the Effective Date, Hypnotic Hats  
11 provides to Plaintiff, care of his attorneys, a letter certification, signed by a director or officer,  
12 confirming that as of the date of the letter certification, said party either has no Covered Products  
13 in its custody, control or possession or has destroyed any Covered Products in its custody,  
14 control or possession of said party and is in possession of letters, inventory reports or other  
15 individual written confirmation from its California clients of the Covered Products confirming  
16 that there are no Covered Products remaining in the possession of any California retail store or  
17 internet distribution warehouse controlled by such client.

18 (b) Hypnotic Hats may realize a \$2,500.00 reduction in the total penalty amount due  
19 under section 4.1 above if that party agrees, by express, written confirmation to counsel for  
20 plaintiff, that, no later than thirty (30) days after the Effective Date, the term "in California" in  
21 section 3.1 above shall be deemed to have been replaced by the term "within the United States."

22 (c) Hypnotic Hats may realize a \$2,500.00 reduction in the total penalty amount due  
23 under section 4.1 above if that party agrees, by express, written confirmation to counsel for  
24 plaintiff, no later than thirty (30) days after the Effective Date, that the definition of the term  
25 "Lead Free" in section 2.4 above shall be deemed to have been replaced by the following  
26 definition: The term "Lead Free" Covered Products shall mean Covered Products containing  
27 components that may be handled, touched or mouthed by a consumer, and which components  
28 yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method

1 9100, and yield less than 100 parts per million (“ppm”) lead when analyzed pursuant to EPA  
2 testing methodologies 3050B and 6010B, or equivalent methodologies utilized by federal or state  
3 agencies for the purpose of determining lead content in a solid substance

4 **4.3 Augmentation of Penalty Payments**

5 For purposes of the penalty assessment under this Consent to Judgment, plaintiff is  
6 relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of  
7 the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date,  
8 plaintiff discovers and presents to Defendant evidence that the Covered Products have been  
9 distributed by Hypnotic Hats in sales volumes materially different than those identified by  
10 Defendant prior to execution of this Agreement, then Defendant shall be liable for an additional  
11 penalty amount of \$100 per quantity of Covered Product sold prior to execution of this  
12 Agreement but not identified by Defendant to plaintiff. Defendant shall also be liable for any  
13 reasonable, additional attorney fees expended by plaintiff in discovering such additional  
14 retailers or sales. Plaintiff agrees to provide Defendant with a written demand for all such  
15 additional penalties and attorney fees under this Section. After service of such demand,  
16 defendant shall have thirty (30) days to agree to the amount fees and penalties owing by  
17 Defendant and submit such payment to plaintiff in accordance with the method of payment of  
18 penalties and fees identified in Sections 4.1 and 4.4. Should this thirty (30) day period pass  
19 without any such resolution between the parties and payment of such additional penalties and  
20 fees, plaintiff shall be entitled to file a formal legal claim for damages for breach of this contract  
21 and shall be entitled to all reasonable attorney fees and costs relating to such claim.

22 **4.4 Penalty Payment Terms**

23 Payment of the amount due pursuant to sections 4.1 and 4.2 shall be delivered to Brimer’s  
24 counsel on or before thirty (30) days after the Effective Date, at the following address:

25 The Chanler Group  
26 Attn: Proposition 65 Controller  
27 2560 Ninth Street  
28 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

1  
2 **5. REIMBURSEMENT OF FEES AND COSTS**

3 **5.1 Attorney Fees and Costs**

4 5.1.1 The Parties reached an accord on the compensation due to Brimer and his  
5 counsel under general contract principles and the private attorney general doctrine codified at  
6 California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual  
7 execution of this agreement and approval of the Consent Judgment by the trial court, excluding  
8 any fees on appeal. Hypnotic Hats shall pay Brimer and his counsel a total of \$35,000.00 as  
9 compromise reimbursement of a portion of the fees and costs incurred by Brimer and his counsel  
10 as a result of investigating, bringing this matter to Hypnotic Hats' attention, litigating,  
11 negotiating and proposing the entry of a consent judgment in the public interest. It is expressly  
12 understood that the sum of \$35,000.00 shall include compensation for Brimer and his counsel as  
13 reimbursement for a portion of the additional attorney fees and costs that Brimer's counsel will  
14 expend in drafting, filing and appearing for hearing(s) on a motion for Court approval of this  
15 Consent to Judgment and for all statutory reporting and other activities reasonably necessary to  
16 secure conclusion of the statutory and legal procedures in the case.

17 5.1.2 Payment of the amount due pursuant to section 5.1.1 shall be delivered to  
18 Brimer's counsel on or before thirty (30) days after the Effective Date, at the following address:

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

24 **6. CLAIMS COVERED AND RELEASE**

25 **6.1 Brimer's Releases of Hypnotic Hats**

26 6.1.1 This Consent To Judgment is a full, final, and binding resolution between Brimer,  
27 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or  
28 assignees, and in the interest of the general public, and Hypnotic Hats and its attorneys,  
successors, and assigns ("Defendant Releasees"), and all entities to whom Hypnotic Hats directly  
or indirectly distribute or sell Covered Products, including but not limited to distributors,

1 wholesalers, customers, retailers, franchisees, cooperative members, and licensees  
2 (“Downstream Defendant Releasees”) of any violation of Proposition 65 that has been or could  
3 have been asserted against Defendant Releasees and Downstream Defendant Releasees  
4 regarding the failure to warn about exposure to the Listed Chemical arising in connection with  
5 Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to  
6 the Effective Date. Hypnotic Hats’ compliance with this Consent Judgment shall constitute  
7 compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products  
8 after the Effective Date.

9           6.1.2 Brimer on behalf of himself, his past and current agents, representatives,  
10 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives  
11 with respect to Covered Products all rights to institute or participate in, directly or indirectly,  
12 any form of legal action and releases all claims, including, without limitation, all actions, and  
13 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
14 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and  
15 attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
16 (collectively “claims”), against Defendant Releasees and Downstream Defendant Releasees that  
17 arise under Proposition 65 or any other statutory or common law claims that were or could have  
18 been asserted in the public interest, as such claims relate to Defendant Releasees’ and  
19 Downstream Defendant Releasees’ alleged failure to warn about exposures to the Listed  
20 Chemical contained in the Covered Products.

21           6.1.3 Brimer also, in his individual capacity only and *not* in his representative capacity,  
22 provides a general release herein which shall be effective as a full and final accord and  
23 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,  
24 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,  
25 known or unknown, suspected or unsuspected, arising out of the subject matter of the  
26 Complaint as to Covered Products manufactured, distributed or sold by Defendant Releasees.  
27 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which  
28 provides as follows:

1           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
3 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
4 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
5 WITH THE DEBTOR.

6           Brimer, in his individual capacity only and *not* in his representative capacity, expressly  
7 waives and relinquishes any and all rights and benefits which he may have under, or which may  
8 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as  
9 under any other state or federal statute or common law principle of similar effect, to the fullest  
10 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In  
11 furtherance of such intention, the release hereby given shall be and remain in effect as a full and  
12 complete release notwithstanding the discovery or existence of any such additional or different  
13 claims or facts arising out of the released matters.

14           This release is expressly limited to those claims that arise under Proposition 65, as such  
15 claims relate to Defendant's alleged failure to warn about exposures to or identification of the  
16 Listed Chemical contained in the Covered Products and as such claims are identified in the  
17 Proposition 65 60-Day Notice to Defendant and to the extent that any alleged violations occur  
18 prior to one month after the Effective Date. This Release does not release any person, party or  
19 entity from any liability for any violations of Proposition 65 regarding the Covered Products that  
20 occur more than one month after the Effective Date.

21           The Parties further understand and agree that this release shall not extend upstream to  
22 any entities, other than Defendant, that manufactured the Covered Products or any component  
23 parts thereof, or any distributors or suppliers who sold the Covered Products or any component  
24 parts thereof to Defendant.

25           6.1.4 Upon court approval of the Consent Judgment, the Parties waive their respective  
26 rights to a hearing or trial on the allegations of the Complaint.

27           **6.2 Hypnotic Hats' Release of Brimer**

28           6.2.1 Hypnotic Hats waive 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

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

4 6.2.2 Hypnotic Hats also provide a general release herein which shall be effective as a  
5 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
6 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Hypnotic Hats of  
7 any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the  
8 subject matter of the Action. Hypnotic Hats acknowledges that it is familiar with Section 1542 of  
9 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 OR HER FAVOR  
12 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
13 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
14 WITH THE DEBTOR.

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

## 23 7. SEVERABILITY

24 If, subsequent to court approval of this Consent Judgment, any of the provisions of this  
25 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
26 provisions remaining shall not be adversely affected, unless the Court finds that any  
27 unenforceable provision is not severable from the remainder of the Consent Judgment.  
28

1 **8. COURT APPROVAL**

2 This Consent To Judgment is not effective until it is approved and entered by the Court  
3 and shall be null and void if, for any reason, it is not approved and entered by the Court within  
4 nine months after it has been fully executed by all Parties.

5 **9. GOVERNING LAW**

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

8 **10. NOTICES**

9 When any Party is entitled to receive any notice under this Consent To Judgment, the  
10 notice shall be sent by certified mail and electronic mail to the following:

11 For Hypnotic Hats Group LLC to:

12 Howard Levy, President  
13 Hypnotic Hats, Ltd.  
14 10 East 34<sup>th</sup> Street, Floor 6  
New York, NY 10016

15 With copy to their counsel at

16 Steven Soule, Esq.  
17 Kirkland & Ellis LLP  
333 South Hope Street  
18 Los Angeles, CA 90071

19 For Brimer to:

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

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

25 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

26 Brimer agrees to comply with the reporting form requirements referenced, in California  
27 Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.  
28

1 **12. 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 **13. 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 To Judgment. In furtherance of  
8 obtaining such approval, Brimer and Hypnotic Hats and their respective counsel agree to  
9 mutually employ their best efforts to support the entry of this agreement as a Consent To  
10 Judgment and obtain approval of the Consent To Judgment - sufficient to render a formal  
11 judgment approving this agreement - by the Court in a timely manner. Any effort by Hypnotic  
12 Hats to impede judicial approval of this Consent To Judgment shall subject Hypnotic Hats to  
13 liability for attorney fees and costs incurred by plaintiff or his counsel in their efforts to meet or  
14 oppose Hypnotic Hats' impeding conduct.

15 **14. ENTIRE AGREEMENT**

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

22 **15. ATTORNEY'S FEES**

23 **15.1** A Party who unsuccessfully brings or contests an action arising out of this  
24 Consent To Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees  
25 and costs unless the unsuccessful Party has acted with substantial justification. For purposes of  
26 this Consent To Judgment, the term substantial justification shall carry the same meaning as  
27 used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

1           15.2 Except as specifically provided in the above paragraph and in Section 5.1, each  
2 Party shall bear its own costs and attorney's fees in connection with this action.

3           15.3 Nothing in this Section 15 shall preclude a Party from seeking an award of  
4 sanctions pursuant to law.

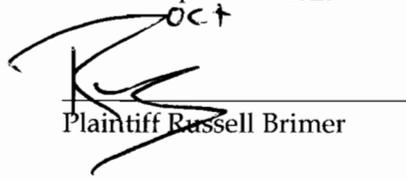
5 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

9 **17. AUTHORIZATION**

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

13 **IT IS SO AGREED**

<p>14           Dated: <del>September</del> <sup>3</sup>, 2011 15           OC† 16            17           Plaintiff Russell Brimer</p>	<p>14           Dated: September __, 2011 15           _____ 16           Howard Levy, President 17           Hypnotic Hats, Ltd.</p>
--	---

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1           15.2 Except as specifically provided in the above paragraph and in Section 5.1, each  
2 Party shall bear its own costs and attorney's fees in connection with this action.

3           15.3 Nothing in this Section 15 shall preclude a Party from seeking an award of  
4 sanctions pursuant to law.

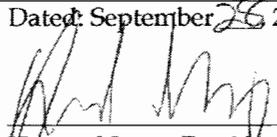
5 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

9 **17. AUTHORIZATION**

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

13 **IT IS SO AGREED**

14           Dated: September __, 2011  15 16           _____ 17           Plaintiff Russell Brimer	14           Dated: September 28 2011  15  16           _____ 17           Howard Levy, President 18           Hypnotic Hats, Ltd.
---	--

19  
20  
21  
22  
23  
24  
25  
26  
27  
28