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9 Attorneys for Plaintiff
10 RUSSELL BRIMER

(ENDORSED)
FILED

MAR 12 2013

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA
14 UNLIMITED CIVIL JURISDICTION
15

16 RUSSELL BRIMER,

17 Plaintiff,

18 v.

19 SAKAR INTERNATIONAL, INC.; *et al.*,

20 Defendants.

) Case No.: 1-12-CV-234766

)
) ~~PROPOSED~~ JUDGMENT
) PURSUANT TO TERMS OF
) PROPOSITION 65 SETTLEMENT
) AND CONSENT JUDGMENT

) Date: March 5, 2013

) Time: 9:00 a.m.

) Dept.: 8

) Judge: Hon. Peter Kirwan

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In the above-entitled action, plaintiff Russell Brimer and defendant Sakar International, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment on [DATE]:

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

IT IS SO ORDERED.

Dated: MAR - 6 2013

Peter H. Kirwan

JUDGE OF THE SUPERIOR COURT

Peter H. Kirwan

Exhibit 1

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
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
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SANTA CLARA
14 UNLIMITED CIVIL JURISDICTION
15

16 RUSSELL BRIMER,
17 Plaintiff,
18 v.

19 SAKAR INTERNATIONAL, INC.; and DOES
20 1-150, inclusive,
21 Defendants.

) Case No. 1-12-CV-234766
)
)

) **[PROPOSED] CONSENT JUDGMENT**
)

) Dept:
) Judge:
) Date: None set
)

) Action Filed: October 23, 2012
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1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Sakar International, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer” or
4 “Plaintiff”) and defendant Sakar International, Inc. (“Sakar” or “Defendant”), with Plaintiff and
5 Defendant collectively referred to as the “parties.”

6 **1.2 Russell Brimer**

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

10 **1.3 Sakar International, Inc.**

11 Brimer alleges that Sakar employs ten 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 Sakar has manufactured, imported, distributed and/or sold flashlights
16 that contain lead without the requisite Proposition 65 warnings. Lead is on the Proposition 65 list as
17 known to cause birth defects and other reproductive harm.

18 **1.5 Product Description**

19 The products that are covered by this Consent Judgment are defined as flashlights containing
20 lead including, but not limited to, *M Concepts Compact Keychain Flashlight, Item #39722, MID*
21 *0790310 (#0 21331 59203 3)* manufactured, imported, distributed, sold and/or offered for sale in
22 California by Sakar, hereinafter “Products.” As of the date this agreement is executed, Brimer,
23 through his counsel and to the best of their knowledge, are unaware of any Sakar products, other
24 than the Products, that are manufactured, imported, distributed, sold and/or offered for sale in
25 California that violate Proposition 65.

26 **1.6 Notice of Violation**

27 On September 21, 2011, Brimer served Sakar and various public enforcement agencies with
28 a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with

1 notice of alleged violations of California Health & Safety Code § 25249.6 based on Sakar’s alleged
2 failure to warn consumers that the Products exposed users in California to lead. To the best of the
3 parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On October 23, 2012, Brimer filed a complaint in the Superior Court in and for the County
6 of Santa Clara against Sakar International, Inc. and Does 1 through 150, *Brimer v. Sakar*
7 *International, Inc., et al.*, Case No. 1-12-CV-234766 (the “Action”), alleging violations of
8 California Health & Safety Code § 25249.6, based on the alleged exposures to lead contained in
9 certain flashlights sold by Sakar.

10 **1.8 No Admission**

11 Sakar denies the material, factual and legal allegations contained in Brimer’s Notice and
12 Complaint and maintains that all products that it has sold, manufactured, imported and/or
13 distributed in California, including the Products, have been and are in compliance with all laws.
14 Nothing in this Consent Judgment shall be construed as an admission by Sakar of any fact, finding,
15 issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be
16 construed as an admission by Sakar of any fact, finding, conclusion, issue of law or violation of law.
17 However, this section shall not diminish or otherwise affect Sakar’s obligations, responsibilities,
18 and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the parties stipulate that this Court has
21 jurisdiction over Sakar as to the allegations contained in the Complaint, that venue is proper in the
22 County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of this
23 Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean December 31,
26 2012.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Standards**

3 “Reformulated Products” are defined as those Products containing less than or equal to 90
4 parts per million (“ppm”) of lead in paint and surface coating, and 100 ppm in substrates, when
5 analyzed pursuant to EPA testing methodologies 3050B and 6010B or equivalent methodologies
6 utilized by federal or state agencies for the purpose of determining lead content in a solid substance.

7 **2.2 Reformulation Commitment**

8 As of the Effective Date, Sakar shall only manufacture, cause to be manufactured, import
9 and distribute for sale in the State of California Products that qualify as Reformulated Products as
10 defined in section 2.1 above.

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

12 In settlement of all the claims referred to in this Consent Judgment, Sakar shall pay \$10,500
13 in civil penalties as follows:

14 **3.1 Initial Civil Penalty**

15 Sakar shall make an initial civil payment of \$3,500 to be apportioned in accordance with
16 Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds
17 earmarked for the State of California’s Office of Environmental Health Hazard Assessment
18 (“OEHHA”) and the remaining 25% of these penalty monies earmarked for Russell Brimer.

19 **3.2 Final Civil Penalty**

20 Pursuant to Health & Safety Code § 25249.7(b), on June 15, 2013, Sakar shall pay a final
21 civil penalty in the amount of \$7,000. The final civil penalty shall be waived in its entirety if an
22 officer of Sakar certifies to Brimer’s counsel in writing that as of the Effective Date Sakar has
23 manufactured, caused to be manufactured, imported and distributed for sale in the State of
24 California only Reformulated Products and that Sakar will continue to manufacture, cause to be
25 manufactured, import and distribute for sale in the State of California only Reformulated Products.
26 This certification must be received by the Chanler Group on or before June 1, 2013.

1 Unless waived, the final civil penalty shall be allocated according to Health & Safety Code §
2 25249.7(c)(1) and (d), with seventy-five percent of the penalty payment earmarked for OEHHA,
3 and the remaining twenty-five percent of the penalty earmarked for Brimer.

4 **3.3 Reimbursement of Plaintiff's Fees and Costs**

5 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
6 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
7 issue to be resolved after the material terms of the agreement had been settled. Sakar then
8 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
9 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
10 Brimer and his counsel under general contract principles and the private attorney general doctrine
11 codified at California Code of Civil Procedure section 1021.5, for all work performed in this
12 matter, except fees that may be incurred on appeal. Under these legal principles, Sakar shall pay
13 the amount of \$22,500 for fees and costs incurred investigating, litigating and enforcing this
14 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
15 obtaining the Court's approval of this Consent Judgment in the public interest.

16 **3.4 Payment Procedures**

17 **3.4.1 Funds Held In Trust:** All payments required by Sections 3.1 through 3.3
18 shall be delivered on or before January 11, 2013, to The Chanler Group and shall be held in trust
19 pending the Court's approval of this Consent Judgment.

20 Payments delivered to The Chanler Group shall be made payable, as follows:

- 21 (a) One check made payable to "The Chanler Group in Trust for
22 OEHHA" in the amount of \$2,625;
- 23 (b) One check made payable to "The Chanler Group in Trust for Russell
24 Brimer" in the amount of \$875; and
- 25 (c) One check made payable to "The Chanler Group in Trust" in the
26 amount of \$22,500.
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1 **3.4.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
2 Sakar shall issue three separate 1099 forms, as follows:

- 3 (a) The first 1099 shall be issued to the Office of Environmental Health
4 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
5 68-0284486) in the amount of \$2,625;
6 (b) The second 1099 shall be issued to Russell Brimer in the amount of
7 \$875, whose address and tax identification number shall be furnished
8 upon request; and
9 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
10 3171522) in the amount of \$22,500.

11 **3.4.3 Payment Address:** All payments to the Chanler Group shall be delivered to
12 the following payment address:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 Brimer's Public Release of Proposition 65 Claims**

20 Brimer acting on his own behalf and in the public interest releases Sakar, its sister and
21 parent entities, affiliated entities, and subsidiaries, that are under common ownership, and their
22 respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and
23 any or all or each entity to whom Sakar directly or indirectly distributes or sells Products, including
24 but not limited to wholesalers, licensors, licensees, auctioneers, retailers, downstream distributors,
25 franchisees, downstream suppliers, dealers, customers, owners, purchasers, and users (collectively
26 "Downstream Releasees"), from all claims for violations of Proposition 65 up through the Effective
27 Date based on exposure to lead from the Products as set forth in the Notice. Compliance with the
28 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
29 exposures to lead from the Products as set forth in the Notice.

1 **4.2 Brimer’s Individual Release of Claims**

2 Plaintiff also, in his individual capacity only and *not* in his representative capacity, provides
3 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
4 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
5 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
6 suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead in the
7 Products manufactured, distributed or sold by Sakar.

8 **4.3 Sakar’s Release of Brimer**

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

15 **5. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and
17 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
18 after it has been fully executed by all parties.

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
26 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
27 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
28 preemption or rendered inapplicable by reason of law generally as to the Products, then Sakar shall

1 provide written notice to Brimer of any asserted change in the law, and shall have no further
2 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
3 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Sakar from any
4 obligation to comply with any pertinent state or federal toxics control law.

5 **8. NOTICES**

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

10 To Sakar:

11 Ralph J. Sasson, Vice President
12 Sakar International, Inc.
13 195 Carter Drive
Edison, NJ 08817

To Brimer:

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

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

16 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

17 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
18 each of which shall be deemed an original, and all of which, when taken together, shall constitute
19 one and the same document. A facsimile or pdf signature shall be as valid as the original.

20 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

21 Brimer and his attorneys agree to comply with the reporting form requirements referenced in
22 California Health & Safety Code § 25249.7(f).

23 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

24 Brimer and Sakar agree to mutually employ their best efforts to support the entry of this
25 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
26 timely manner. The parties acknowledge that, pursuant to California Health & Safety Code
27 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
28

1 Brimer shall draft and file, and Sakar shall join. If any third party objection to the noticed motion is
2 filed, Brimer and Sakar shall work together to file a joint reply and appear at any hearing before the
3 Court. This provision is a material component of the Consent Judgment and shall be treated as such
4 in the event of a breach.

5 **12. MODIFICATION**

6 This Consent Judgment may be modified only: (1) by written agreement of the parties and
7 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
8 of any party and entry of a modified Consent Judgment by the Court.

9 **13. AUTHORIZATION**

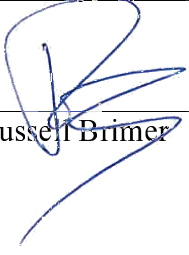
10 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective parties and have read, understood, and agree to all of the terms and conditions of this
12 Consent Judgment.

13
14 AGREED TO:

AGREED TO:

15
16 Date: January 9, 2013

Date: _____

17
18 By:  _____
Russell Brimer

By: _____
Ralph J. Sasson, Vice President
Sakar International, Inc.

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Brimer shall draft and file, and Sakar shall join. If any third party objection to the noticed motion is filed, Brimer and Sakar shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. 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.

13. 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: _____

Date: 01/04/13

By: Russell Brimer

By: 
Ralph J. Sason, Vice President
Sakar International, Inc.