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Josh Voorhees, State Bar No. 241436
Warren M. Klein, State Bar No. 303958
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
RUSSELL BRIMER

RECEIVED

JUN 15 2016

FILED
ALAMEDA COUNTY

By Xian Xii Bowie
ALAMEDA COUNTY SUPERIOR COURT

AUG 10 2016

CLERK OF THE SUPERIOR COURT
By Danielle Hester
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

IT'SUGAR LLC, *et al.*

Defendants.

Case No. RG16818767

^{PIT}
[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: August 10, 2016
Time: 2:30 PM
Dept. 303
Judge: Hon. Dennis Hayashi

Reservation No. R- 1751170

1 Plaintiff Russell Brimer and Defendant It'Sugar LLC, having agreed through their
2 respective counsel that Judgment be entered pursuant to the terms of their settlement
3 agreement in the form of a consent judgment, and following this Court's issuance of an
4 order approving their Proposition 65 settlement and Consent Judgment, and for good cause
5 being shown,

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

11 **IT IS SO ORDERED.**

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Dated: 8/10/16


JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

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Clifford A. Chanler, State Bar No. 135534
Josh Voorhees, State Bar No. 241436
Warren M. Klein, State Bar No. 303958
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,

v.

IT'SUGAR LLC, *et al.*
Defendants.

Case No. RG16818767

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”),
4 and It’Sugar LLC (“It’Sugar”), with Brimer and It’Sugar each individually referred to as a “Party”
5 and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 It’Sugar employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that It’Sugar manufactures, imports, sells, or distributes for sale in California,
16 mugs with exterior designs that contain lead without first providing the exposure warning required by
17 Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of
18 California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are certain mugs with exterior designs
21 containing lead that are manufactured, imported, sold, or distributed by It’Sugar, for sale in
22 California, for example: *Saturday Night Live “Nothing Like A Schweddy Ball” Mug, UPC #8 19146*
23 *01321 4*, hereinafter the “Products”.

24 **1.6 Notice of Violation**

25 On or about January 29, 2016, Brimer served It’Sugar, and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation AG No. 2016-00077” (“Notice”) alleging
27 that It’Sugar violated Proposition 65 by failing to warn its customers and consumers in California that
28

1 the Products expose users to lead. 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 **1.7 Complaint**

4 On June 1, 2016, Brimer filed the instant action ("Complaint") naming It'Sugar as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 It'Sugar denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
14 not, however, diminish or otherwise affect It'Sugar's obligations, responsibilities, and duties under
15 this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over It'Sugar as to the allegations contained in the Complaint, that venue is proper in the
19 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the Motion to Approve the Consent Judgment is granted by the Court.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulated Products**

26 Commencing on the August 31, 2016, and continuing thereafter, It'Sugar shall only
27 manufacture, sell, or distribute for sale in California, "Reformulated Products." For purposes of this
28 Consent Judgment, "Reformulated Products" are defined as those Products manufactured, sold or

1 distributed after August 31, 2016 of the Consent Judgment containing a maximum of 90 parts per
2 million of lead by weight in any accessible component (i.e., any component that can be touched or
3 handled during reasonably foreseeable use, such as exterior decorations) when analyzed pursuant to
4 Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that yield a result
5 of less than 1.0 micrograms of lead when analyzed pursuant to the NIOSH 9100 testing protocol as
6 applied to exterior decorations of glass and ceramic drinking vessels. In addition, Reformulated
7 Products shall yield a result of no detectable lead in the "Lip and Rim Area", when analyzed
8 according to any test methodology authorized under Proposition 65. "Lip and Rim Area" is defined
9 as the exterior top 20 millimeters of a Product.

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Civil Penalty Payment**

12 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
13 this Consent Judgment, It'Sugar shall pay \$3,750 in civil penalties to "Russell Brimer, Client Trust
14 Account." The civil penalty payment shall be allocated according to Health and Safety Code section
15 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of
16 Environmental Health Hazard Assessment ("OEHHA") by Brimer, and twenty-five percent (25%) of
17 the funds remitted to Brimer.

18 **3.2 Reimbursement of Attorney's Fees and Costs**

19 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
21 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
22 other settlement terms had been finalized, It'Sugar expressed a desire to resolve Brimer's fees and
23 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Brimer
24 and his counsel under general contract principles and the private attorney general doctrine codified at
25 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
26 execution of this Consent Judgment. It'Sugar shall pay \$24,000 for the fees and costs incurred by
27 Brimer investigating, bringing this matter to It'Sugar's attention, litigating and negotiating a
28 settlement in the public interest.

1 **3.3 Payments Held in Trust**

2 All payments due under this Consent Judgment shall be held in trust until such time as the
3 Court approves the Parties' settlement. All payments due under this agreement shall be delivered
4 within thirty (30) business days of the mutual execution on this Consent Judgment, and held in trust
5 by It'Sugar's counsel until the Court grants the motion for approval of this Consent Judgment
6 contemplated by Section 5. Within ten (10) business days of the Effective Date, It'Sugar's counsel
7 shall tender the civil penalty payments and attorneys' fee and costs reimbursements required by
8 Sections 3.1 and 3.2.

9 **3.4 Payment Address**

10 All payments required by this Consent Judgment shall be delivered to the following
11 address:

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

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Brimer's Public Release of Proposition 65 Claims**

18 Brimer, acting on his own behalf and in the public interest, releases It'Sugar and it's parents,
19 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
20 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
21 Products including, but not limited to, it's downstream distributors, wholesalers, customers,
22 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
23 any violations arising under Proposition 65 for unwarned exposures to lead from Products sold by
24 It'Sugar prior to August 31, 2016, as set forth in the Notice.

25 **4.2 Brimer's Individual Release of Claims**

26 Brimer, in his individual capacity only and *not* in his representative capacity, also provides a
27 release to It'Sugar, Releasees, and Downstream Releasees which shall be effective as a full and final
28 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,

1 attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any nature, character or
2 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
3 exposures to lead in the Products sold or distributed for sale by It'Sugar before August 31, 2016.

4 **4.3 It'Sugar's Release of Brimer**

5 It'Sugar, on its own behalf, and on behalf of its past and current agents, representatives,
6 attorneys, successors, and assignees, hereby waives any and all claims against Brimer and his
7 attorneys and other representatives, for any and all actions taken or statements made by Brimer and
8 his attorneys and other representatives, whether in the course of investigating claims, otherwise
9 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and shall
12 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
13 has been fully executed by the Parties.

14 **6. SEVERABILITY**

15 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
16 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
17 adversely affected.

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the state of California
20 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
21 otherwise rendered inapplicable by reason of law generally, or as to the Products, then It'Sugar may
22 provide written notice to Brimer of any asserted change in the law, and shall have no further
23 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
24 so affected. Nothing in this Consent Judgment shall be interpreted to relieve It'Sugar from any
25 obligation to comply with any pertinent state or federal toxics control laws.

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1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment
3 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
4 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

5 **It'Sugar**
6 Jeff Rubin, Chief Executive Officer
7 It'Sugar LLC
8 3155 SW 10th Street, Suite A
9 Deerfield Beach, FL 33442

Atty Info: J Miller Law Group
5023 N. Parkway Calabasas
Calabasas, CA 91302
Attention: Janice L. Miller, Esq.

8 **Brimer**
9 Proposition 65 Coordinator
10 The Chanler Group
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710-2565

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

18 **10. POST EXECUTION ACTIVITIES**

19 Brimer agrees to comply with the reporting form requirements referenced in Health and
20 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
21 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
22 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
23 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
24 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
25 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
26 supporting the motion, and appearing at the hearing before the Court.

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11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any Party, and the entry of a modified consent judgment by the Court.

12. AUTHORIZATION

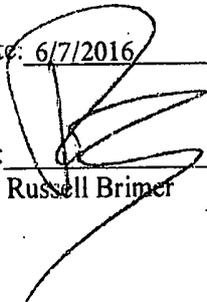
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein

AGREED TO:

AGREED TO:

Date: 6/7/2016

Date: _____

By: 

Russell Brimer

By: _____
Jeff Rubin, CEO
It'Sugar LLC

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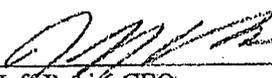
AGREED TO:

AGREED TO:

Date: _____

Date: June 2, 2016

By: _____
Russell Brimer

By:  _____
Jeff Rubin, CEO
It'Sugar LLC

GEORGE E MCDONALD HALL OF JUSTICE

Case # RG16-818767 Case Name Brimer V It'Sugar

DECLARATION OF SERVICE BY MAIL (C.C.P. 1013A (1), 2015.5)

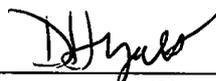
My business address is 2233 Shoreline Drive, Alameda, California 94501. I am, and was at the time the herein mentioned mailing took place, a citizen of the United States, employed in the County where said mailing occurred, over the age of eighteen years and not a party to the above entitled cause.

On August 10, 2016 I served the foregoing document by depositing a copy thereof, enclosed in a separate, sealed envelope, with the postage thereon fully prepaid, in the United States mail box at Alameda, County of Alameda, California, each of which envelopes was addressed respectively as follows:

Warren M. Klein
The Chanler Group
2560 Ninth Street, Suite 214
Berkeley, CA 94710

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 10, 2016, at Alameda, California.



(Signature of Declarant)