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18 Attorneys for Defendants
19 SOLO CUP COMPANY; SOLO CUP
20 OPERATING CORPORATION;
21 CREATIVE EXPRESSIONS, INC.

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 COUNTY OF SAN FRANCISCO
24 UNLIMITED JURISDICTION

25 RUSSELL BRIMER,

26 Plaintiff,

27 v.

28 SOLO CUP COMPANY; SOLO CUP
OPERATING CORPORATION; CREATIVE
EXPRESSIONS GROUP, INC.; and DOES 1
through 150

Defendants.

Case No. CGC-07-462137

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

CONSENT JUDGMENT
Case No. CGC-07-462137

1 **1. INTRODUCTION**

2 1.1 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and
3 between plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”) and defendants Solo Cup
4 Company and Solo Cup Operating Corporation (hereinafter “Solo Cup” or “Defendant”),¹ with
5 Plaintiff and Defendant collectively referred to as the “Parties” and Brimer and Defendant each
6 being a “Party.”

7 1.2 **Plaintiff.** Brimer is an individual residing in California who seeks to promote
8 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer products.

10 1.3 **General Allegations.** Plaintiff alleges that Defendant has manufactured,
11 distributed and/or sold in the State of California mugs and other ceramic containers, intended for
12 the consumption of food or beverages, with colored artwork or designs on the exterior surface
13 containing lead, which is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act
14 of 1986, California Health & Safety Code §§25249.5 et seq., also known as Proposition 65, to
15 cause cancer and birth defects (and other reproductive harm). Lead (and/or lead compounds)
16 shall be referred to herein as the “Listed Chemical.”

17 1.4 **Product Description.** The products that are covered by this Consent Judgment
18 are defined as follows: mugs and other ceramic containers, intended for the consumption of food
19 or beverages, with colored artwork or designs on the exterior surface containing lead,
20 manufactured, sold and/or distributed by Defendant in California. Such products collectively are
21 referred to herein as the “Products.”

22 1.5 **Notices of Violation.** Beginning on January 12, 2007, Brimer served Defendant
23 and various public enforcement agencies with a document entitled “60-Day Notice of Violation”
24 (“Notice”), that provided Defendant and such public enforcers with notice that alleged that
25 Defendant was in violation of Health & Safety Code §25249.6 for failing to warn purchasers that
26 certain Products that they sold expose users in California to the Listed Chemical.

27 ¹ Defendant Creative Expressions Group is a division of Solo Cup Operating Corporation and,
28 hence, is subsumed within the term “Defendant” herein.

1 1.6 **Complaint.** On April 6, 2007, Brimer, in the interest of the general public in
2 California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the
3 Superior Court for the City and County of San Francisco against Defendant and Does 1 through
4 150, alleging violations of Health & Safety Code §25249.6 based on the alleged exposures to the
5 Listed Chemical contained in certain Products sold by Defendant.

6 1.7 **No Admission.** Defendant denies the material factual and legal allegations
7 contained in Plaintiff’s Notices and Complaint and maintains that all products that it has sold and
8 distributed in California including the Products have been and are in compliance with all laws.
9 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
10 finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or
11 be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or
12 violation of law. However, this section shall not diminish or otherwise affect the obligations,
13 responsibilities and duties of Defendant under this Consent Judgment.

14 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
15 stipulate that this Court has jurisdiction over the Parties and concerning the alleged violations at
16 issue and personal jurisdiction over Defendant as to the acts alleged, that venue is proper in the
17 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment and
18 to enforce the provisions thereof.

19 1.9 **Effective Date.** For purposes of this Consent Judgment, “Effective Date” shall be
20 August 31, 2007.

21 **2. INJUNCTIVE RELIEF: REFORMULATION**

22 2.1 **Representation and Commitment To Sell Only of Lead-Free Products To**
23 **California.**

24 Defendant represents and warrants that it will not sell any Products to California
25 customers unless those Products comply with Section 2.2 below.

26 2.2 **Reformulation Commitment**

27 (a) Defendant hereby makes the following commitment, which shall be
28 deemed to be sufficient in lieu of providing Proposition 65 warnings for the Products: as of the

1 Effective Date, Defendant shall not ship or offer to ship for sale in California any Products
2 containing the Listed Chemical, unless such Products meet the applicable Reformulation
3 Standards set forth in section 2.2(c) below.

4 (b) Reformulation Definitions. For purposes of this section, the following
5 definitions apply:

6 "Children's Product" is defined as any Product whose use in the household is reasonably
7 anticipated substantially for use by children rather than substantially by adults such as: Products
8 with designs on their exterior surface which are affiliated with children's toys or entertainment
9 (e.g., cartoon characters), Products of a reduced size so as to be marketed primarily for children
10 (e.g., reduced-size mugs intended for use by children), or Products of a type or category which
11 typically would be used by children, and all similar items.

12 "Exterior Decorations" is defined as all colored artwork, designs and/or markings on the
13 exterior surface of the Product.

14 "Lip and Rim Area" is defined as the interior and exterior top 20 millimeters of a
15 hollowware food/beverage Product, as defined by American Society of Testing and Materials
16 Standard Test Method C927-99.

17 "No Detectable Lead" shall mean that no lead is detected at a level above two one-
18 hundredths of one percent (0.02%) by weight using a sample size of the materials in question
19 measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit
20 of quantitation of less than 200 ppm.²

21 "Product" shall mean mugs and other ceramic containers, intended for the consumption of
22 food or beverages, with colored artwork or designs on the exterior surface.

23 "Reformulated Product" refers to any Product that meets the Reformulation Standards set
24 forth below, as applicable.

25

26

27 ² If the decoration is tested after it is affixed to the Product, the percentage of the Listed
28 Chemical by weight must relate only to the decorating material and must not include any quantity
attributable to non-decorating material (e.g., the substrate).

1 (c) Reformulation Standard: a Product is a Reformulated Product if it satisfies
2 the standards outlined in subsections 2.2.(c)(i), (ii) or (iii), subject to the following
3 qualifications:

4 All Children's Products must meet the Decorating Materials Content-Based
5 Standard outlined in subsection 2.2(c)(i) to be considered a Reformulated Product; and
6 if the Product is decorated in the Lip and Rim Area, it must also satisfy subsection
7 2.2(c)(iv) to be considered a Reformulated Product.

8 **i. Decorating Material Content-Based Standard.** The Exterior Decorations,
9 exclusive of the Lip and Rim Area, must only utilize decorating materials that
10 contain six one-hundredths of one percent (0.06%) lead by weight or less as
11 measured either before or after the material is fired onto (or otherwise affixed to)
12 the Product, using EPA Test Method 3050B.³

13 **ii. Wipe Test-Based Standard.** The Product must produce a test result no higher
14 than 1.0 micrograms (ug) of lead as applied to the Exterior Decorations and
15 performed as outlined in NIOSH method no. 9100.

16 **iii. Total Acetic-Acid Immersion Test Based Standard.** The Product must
17 achieve a result of 0.99 ppm or less for lead after correction for internal volume
18 when tested under the protocol attached hereto as Exhibit A (the ASTM C927-99
19 test method, modified for total immersion with results corrected for internal
20 volume).⁴

21 **iv. Lip and Rim Area Decoration.** If the Product contains Exterior Decorations
22 in the Lip and Rim Area:

23
24
25 ³ If the decoration is tested after it is affixed to the Product, the percentage of the Listed
26 Chemical by weight must relate only to the decorating material and must not include any quantity
attributable to non-decorating material (e.g., the substrate).

27 ⁴ Because this method requires correction for internal volume, this method is only appropriate for
28 ceramic hollowware.

1 (A) Any Exterior Decorations that extend into the Lip and Rim Area must only
2 utilize decorating materials that contain No Detectable Lead, or

3 (B) The Product must yield a test result showing a concentration level of 0.5
4 ug/ml or less of lead using ASTM method C 927-99.⁵

5 **3. MONETARY PAYMENTS.**

6 3.1 **Payments Pursuant to Health & Safety Code § 25249.7(b).** Solo Cup shall pay
7 \$1,000 in civil penalties. This payment shall be made payable to “Hirst & Chanler LLP in Trust
8 For Russell Brimer,” on or before September 7, 2007, and shall be delivered to Plaintiff’s counsel
9 at the following address:

10 HIRST & CHANLER LLP
11 Attn: Prop 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

14 After Court approval of this Consent Judgment pursuant to section 6, the \$1,000 sum shall be
15 apportioned by Plaintiff in accordance with Health & Safety Code §25192, with 75% of these
16 funds remitted to the State of California’s Office of Environmental Health Hazard Assessment
17 and remaining 25% of these monies retained by Plaintiff as provided by Health & Safety Code
18 § 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of
19 California the appropriate amounts paid in accordance with this subsection.

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

21 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
22 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
23 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
24 Defendant then expressed a desire to resolve the fee and cost issue shortly after the other
25 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
26 the compensation due to Plaintiff and his counsel under the private attorney general doctrine

27 ⁵ The result must be evaluated without correction for internal volume; this method is only
28 appropriate for ceramic hollowware.

1 codified at Code of Civil Procedure §1021.5 for all work performed through the Court's approval
2 of the Agreement. Under the private attorney general doctrine codified at Code of Civil
3 Procedure §1021.5, Defendant shall reimburse Plaintiff and his counsel for fees and costs,
4 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating and
5 negotiating a settlement in the public interest, and seeking the Court's approval of this Consent
6 Judgment.

7 Specifically, Defendant shall pay Plaintiff and his counsel \$20,000 for all attorneys' fees,
8 expert and investigation fees, and litigation costs. The payment shall be made payable to Hirst &
9 Chanler LLP and shall be delivered to Plaintiff's counsel on or before August 31, 2007, at the
10 following address:

11 HIRST & CHANLER LLP
12 Attn: Prop 65 Controller
13 2560 Ninth Street
14 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

15 Except as specifically provided in this Consent Judgment, Defendant shall have no further
16 obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the
17 Products covered in this Action.

18 **5. RELEASE OF ALL CLAIMS**

19 5.1 **Plaintiff's Release of Defendant.** In further consideration of the representations,
20 warranties and commitments herein contained, and for the payments to be made pursuant to
21 sections 3 and 4, Plaintiff, on behalf of himself, his past and current agents, representatives,
22 attorneys, successors assignees, or any person or entity who may now or in the future claim
23 through him in a derivative manner, and in the interest of the general public, hereby waives all
24 rights to institute or participate in, directly or indirectly, any form of legal action and release all
25 claims, including, without limitation, all actions, causes of action, in law or in equity, suits,
26 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including,
27 but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever,
28 whether known or unknown, fixed or contingent (collectively "Claims"), against Defendant and

1 each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers, customers,
2 owners, purchasers, users, parent companies, corporate affiliates, divisions, subsidiaries and their
3 respective officers, directors, attorneys, representatives, shareholders, agents, representatives,
4 insurers and employees and any other persons or entities to whom Defendant may be liable
5 (collectively, "Defendant's Releasees") arising under Proposition 65 related to Defendant's or
6 Defendant's Releasees' alleged failure to warn about exposures to or identification of the Listed
7 Chemical contained in the Products. It is specifically understood and agreed that the Parties and
8 the Court intend that Defendant's compliance with the terms of this Consent Judgment resolves
9 all issues and liability, now and in the future (so long as Defendant complies with the terms of the
10 Consent Judgment) concerning Defendant and the Defendant's Releasees' compliance with the
11 requirements of Proposition 65 as to the Listed Chemical in exterior decorations on the Products.

12 **5.2 Defendant's Release of Plaintiff.** Defendant waives all rights to institute any
13 form of legal action against Plaintiff, or their attorneys or representatives, for all actions taken or
14 statements made by Plaintiff or his attorneys or representatives, in the course of seeking
15 enforcement of Proposition 65 in association with this Action.

16 **6. COURT APPROVAL**

17 This Consent Judgment is not effective until it is approved and entered by the Court and
18 shall be null and void if, for any reason, it is not approved and entered by the Court within one
19 year after it has been fully executed by all Parties, in which event any monies that have been
20 provided to Plaintiff or his counsel pursuant to section 3 and section 4 above, shall be refunded
21 within fifteen (15) days.

22 **7. 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.

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27 ///
28 ///

1 **8. ATTORNEYS' FEES**

2 In the event that, after Court approval: (1) Solo Cup or any third party seeks modification
3 of this Consent Judgment pursuant to Section 14 below; or (2) Brimer takes reasonable and
4 necessary steps to successfully enforce the terms of this Consent Judgment, Brimer shall be
5 entitled to his reasonable attorneys' fees and costs pursuant to CCP §1021.5.

6 **9. GOVERNING LAW**

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

12 **10. NOTICES**

13 All correspondence and notices required to be provided pursuant to this Consent Judgment
14 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
15 return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed
16 below. Either Party, from time to time, may specify a change of address to which all notices and
17 other communications shall be sent.

<p>18 For Plaintiff:</p> <p>19 Russell Brimer</p> <p>20 c/o Hirst & Chanler LLP</p> <p>21 2560 Ninth Street</p> <p>22 Parker Plaza, Suite 214</p> <p>Berkeley, CA 94710-2565</p>	<p>For Defendant:</p> <p>General Counsel</p> <p>Solo Cup Company</p> <p>1700 Old Deerfield Road</p> <p>Highland Park, IL 60035</p>
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23 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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1 **12. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(F)**

2 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
3 Safety Code §25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
4 present this Consent Judgment to the California Attorney General’s Office within two (2) days
5 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment
6 will then be served on the Attorney General’s Office at least forty-five (45) days prior to the date
7 a hearing is scheduled on such motion in the Superior Court for the City and County of
8 San Francisco unless the Court allows a shorter period of time.

9 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

10 The Parties shall mutually employ their best efforts to support the entry of this Agreement
11 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
12 manner. The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
13 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
14 agree to file a Joint Motion to Approve the Agreement (“Joint Motion”), the first draft of which
15 Plaintiff’s counsel shall prepare, within a reasonable period of time after the Execution Date (*i.e.*,
16 not to exceed thirty (30) days unless otherwise agreed to by the Parties’ counsel based on
17 unanticipated circumstances). Plaintiff’s counsel shall prepare a declaration in support of the
18 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed
19 pursuant to Section 4. Defendant shall have no additional responsibility to Plaintiff’s counsel
20 pursuant to C.C.P. §1021.5 or otherwise with regard to reimbursement of any fees and costs
21 incurred with respect to the preparation and filing of the Joint Motion and its supporting
22 declaration or with regard to Plaintiff’s counsel appearing for a hearing or related proceedings
23 thereon.

24 **14. MODIFICATION**

25 This Consent Judgment may be modified only by: (1) written agreement of the Parties
26 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party
27 as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney
28

1 General shall be served with notice of any proposed modification to this Consent Judgment at
2 least fifteen (15) days in advance of its consideration by the Court.

3 **15. ENTIRE AGREEMENT**

4 **This Consent Judgment sets forth the entire agreement between Plaintiff and**
5 **Defendant relating to the subject mater hereof and hereby supersedes any and all prior oral**
6 **or written agreements or understandings.**

7 **16. AUTHORIZATION**

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

11	AGREED TO:	AGREED TO:
12		
13	Date: <u>9-5-07</u>	Date: <u>J S Reed</u>
14	By: <u>Russell Brimer</u>	By: Jan Stern Reed
15	Plaintiff Russell Brimer	Defendant Solo Cup Company

16	APPROVED AS TO FORM:	APPROVED AS TO FORM:
17		
18	Date: <u>9-5-07</u>	Date: _____
19	HIRST & CHANLER LLP	GORDON REES LLP
20	By: <u>George W. Dowell</u>	By: _____
21	George W. Dowell	Brian M. Ledger
22	Attorneys for Plaintiff	Attorneys for Defendant
23	RUSSELL BRIMER	SOLO CUP COMPANY; SOLO CUP
24		OPERATING CORPORATION; CREATIVE
25		EXPRESSIONS, INC.

24 **IT IS SO ORDERED.**

26	Date: _____	_____
27		JUDGE OF THE SUPERIOR COURT

sf-2266856

1 General shall be served with notice of any proposed modification to this Consent Judgment at
2 least fifteen (15) days in advance of its consideration by the Court.

3 **15. ENTIRE AGREEMENT**

4 This Consent Judgment sets forth the entire agreement between Plaintiff and
5 Defendant relating to the subject matter hereof and hereby supersedes any and all prior oral
6 or written agreements or understandings.

7 **16. AUTHORIZATION**

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

11 **AGREED TO:**

AGREED TO:

12
13 Date: _____

Date: Jan Stern Reed

14 By:
15 Plaintiff Russell Brimer

9/4/07
By: Jan Stern Reed
Defendant Solo Cup Company

16 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

17
18 Date: _____
HIRST & CHANLER LLP

Date: Brian M. Ledger
GORDON REES LLP

19 By:
20 George W. Dowell
Attorneys for Plaintiff
21 RUSSELL BRIMER

By: 9/6/07
Brian M. Ledger
Attorneys for Defendant
SOLO CUP COMPANY, SOLO CUP
OPERATING CORPORATION, CREATIVE
EXPRESSIONS, INC.

22
23
24 **IT IS SO ORDERED.**

25
26 Date: _____

JUDGE OF THE SUPERIOR COURT