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11 Attorneys for Defendant
12 ARAMCO IMPORTS, INC.

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF ALAMEDA**
16 **UNLIMITED CIVIL JURISDICTION**

17 RUSSELL BRIMER,

18 Plaintiff,

19 v.

20 ARAMCO IMPORTS, INC.; and DOES 1
21 through 150 inclusive,

22 Defendant.

CASE NO.: RG 09464344

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code §25249.6

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[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Aramco Imports, Inc.**

3 This Consent Judgment is entered into by and between Russell Brimer (hereinafter “Brimer”)
4 and Aramco Imports, Inc. (hereinafter “Aramco”), with Brimer and Aramco collectively referred to
5 as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Brimer alleges that Aramco has manufactured, distributed and/or sold in the State of
16 California mugs with colored artwork or designs on the exterior containing lead. Lead is listed
17 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
18 Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical known to the State of California to
19 cause birth defects and other reproductive harm. Lead is referred to herein as the “Listed Chemical.”

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: mugs with
22 colored artwork or designs on the exterior containing the Listed Chemical including, but not limited
23 to, *Cafe Mug, #SWM2-11, (#643700053237)*. All such items shall be referred to herein as the
24 “Products.”

25 **1.6 Notice of Violation**

26 On December 23, 2008, Brimer served Aramco and various public enforcement agencies
27 with a document entitled “60-Day Notice of Violation” that provided Aramco and such public
28 enforcers with notice that alleged that Aramco was in violation of California Health & Safety

1 Code §25249.6 for failing to warn consumers and customers that the Products exposed users in
2 California to lead. No public enforcer has diligently prosecuted the allegations set forth in the 60-
3 Day Notice of Violation (“Notice”).

4 **1.7 Complaint**

5 On July 22, 2009, Brimer, who was and is acting in the interest of the general public in
6 California, filed a complaint in the Superior Court in and for the County of Alameda against
7 Aramco, and Does 1 through 150, alleging violations of Health & Safety Code §25249.6 based on
8 the alleged exposures to lead contained in mugs with colored artwork or designs on the exterior
9 manufactured, distributed and/or sold by Aramco (“Complaint”).

10 **1.8 No Admission**

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

20 **1.9 Consent to Jurisdiction**

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

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean August 31,
27 2009.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Commitment**

3 Commencing on the Effective Date, Aramco shall not ship, sell or offer to be shipped for
4 sale in California any Product unless such Product is Lead Free. For purposes of this Consent
5 Judgment, "Lead Free" shall mean products containing less than or equal to 300 ppm of lead when
6 analyzed pursuant to EPA testing methodologies, 3050B and 601 OB, or equivalent methods as may
7 be allowed under Proposition 65.

8 **3. MONETARY PAYMENTS**

9 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

10 **3.1.1** In settlement of all claims related to the Covered Products and Listed
11 Chemicals referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety
12 Code §25249.7(b), Aramco shall pay \$2,000 in civil penalties.

13 **3.1.2** Civil penalties are to be apportioned in accordance with California Health &
14 Safety Code §25192, with 75% of these funds remitted to the State of California's Office of
15 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
16 remitted to Russell Brimer as provided by California Health & Safety Code §25249.12(d). Aramco
17 shall issue two separate checks for the penalty payment: (a) one check made payable to "Hirst &
18 Chanler LLP in Trust for OEHHA" in the amount of \$1,500, representing 75% of the total penalty;
19 and (b) one check to "Hirst & Chanler LLP in Trust for Russell Brimer" in the amount of \$500,
20 representing 25% of the total penalty. Two separate 1099s shall be issued for the above-payments:
21 (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Russell Brimer,
22 whose information shall be provided five calendar days before the payment is due.

23 **3.1.3** Payment shall be delivered on or before September 15, 2009 to Brimer's counsel at
24 the following address:

25
26 Hirst & Chanler LLP
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, California 94710

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

2 **4.1 Attorney Fees and Costs**

3 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
4 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
5 issue to be resolved after the material terms of the agreement had been settled. Aramco then
6 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
7 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
8 Brimer and his counsel under general contract principles and the private attorney general doctrine
9 codified at California Code of Civil Procedure section 1021.5. Aramco shall reimburse Brimer and
10 his counsel a total of \$25,000 for fees and costs incurred as a result of investigating, bringing this
11 matter to Aramco's attention, and litigating and negotiating a settlement in the public interest. The
12 payment shall be issued in eight equal monthly installments of \$3,125 each. The payments shall be
13 delivered on or before September 15, 2009; October 15, 2009; November 15, 2009; December 15,
14 2009; January 15, 2010; February 15, 2010; March 15, 2010 and April 15, 2010 at the following
15 address:

16
17 Hirst & Chanler LLP
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, California 94710

22 Aramco shall issue a separate 1099 for fees and costs paid in the amount of \$25,000 to Hirst
23 & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California 94710.

24 **5. RELEASE OF ALL CLAIMS**

25 **5.1 Brimer's Release of Aramco**

26 In further consideration of the promises and agreements herein contained, and for the
27 payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, his past and
28 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
general public, hereby waives all rights to institute or participate in, directly or indirectly, any form
of legal action and releases all claims, including, without limitation, all actions, and causes of action,

1 in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
2 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any
3 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against
4 Aramco and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers,
5 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
6 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
7 shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This
8 release is limited to those claims that arise under Proposition 65, as such claims relate to Aramco's
9 alleged failure to warn about exposures to or identification of lead contained in the Products.

10 The Parties further understand and agree that the above releases shall not extend upstream to
11 any entities that manufactured the Products or any component parts thereof, or any distributors or
12 suppliers who sold the Products or any component parts thereof to Aramco.

13 **5.2 Aramco's Release of Brimer**

14 Aramco waives any and all claims against Brimer, his attorneys and other representatives, for
15 any and all actions taken or statements made (or those that could have been taken or made) by
16 Brimer and his attorneys and other representatives, whether in the course of investigating claims or
17 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
18 Products.

19 **6. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and shall
21 be null and void if, for any reason, it is not approved and entered by the Court within one year after
22 it has been fully executed by all parties, in which event any monies that have been provided to
23 Brimer, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen
24 (15) days after receiving written notice from Aramco that the one-year period has expired.

25 **7. SEVERABILITY**

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

1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
4 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
5 Aramco shall have no further obligations pursuant to this Consent Judgment with respect to, and to
6 the extent that, the Covered Products are so affected.

7 **9. NOTICES**

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

12 For Aramco:

13
14 Raffy Soulahian, President
15 Aramco Imports, Inc.
6431 Bandini Boulevard
Commerce, California 90040

16 With copies to:

17
18 Malcolm C. Weiss, Esq.
19 Catherine Allen, Esq.
20 Hunton & Williams LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627

21 For Brimer:

22
23 Proposition 65 Coordinator
24 Hirst & Chanler, LLP
25 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, California 94710

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

28

1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

6 Brimer agrees to comply with the reporting form requirements referenced in California
7 Health & Safety Code §25249.7(t).

8 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

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

14 **13. MODIFICATION**

15 This Consent Judgment may be modified only: (1) by written agreement of the parties and
16 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
17 any party and entry of a modified consent judgment by the Court. The Attorney General shall be
18 served with notice of any proposed modification to this Consent Judgment at least fifteen days in
19 advance of its consideration by the Court.

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14. AUTHORIZATION

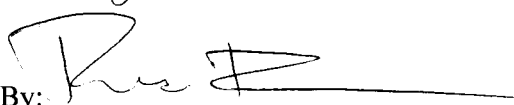
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions hereof.

AGREED TO:

AGREED TO:

Date: 8-20-09

Date: _____

By: 

By: _____

RUSSELL BRIMER

Raffy Soulahian, President
ARAMCO IMPORTS, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1 **14. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective parties and have read, understood, and agree to all of the terms and conditions hereof.
4

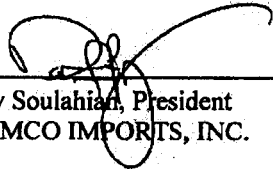
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6 **AGREED TO:**

AGREED TO:

7 Date: _____
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Date: 08/20/09

9 By: _____
10 **RUSSELL BRIMER**

By: 
11 **Raffy Soulahian, President**
12 **ARAMCO IMPORTS, INC.**

13 **IT IS SO ORDERED.**

14
15 Date: _____

16 **JUDGE OF THE SUPERIOR COURT**

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