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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION  
12

13 RUSSELL BRIMER,  
14 Plaintiff,  
15 v.

16 IT'SUGAR LLC, *et al.*  
17 Defendants.  
18

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  
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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  
16                                   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                                     Atty Info: J Miller Law Group  
              3155 SW 10th Street, Suite A                 5023 N. Parkway Calabasas  
              Deerfield Beach, FL 33442                     Calabasas, CA 91302  
   Attention: Janice L. Miller, Esq.

8             **Brimer**  
9             Proposition 65 Coordinator  
10            The Chanler Group  
11            2560 Ninth Street  
              Parker Plaza, Suite 214  
              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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1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

8 **AGREED TO:**

**AGREED TO:**

9  
10 Date: 6/7/2016

Date: \_\_\_\_\_

11  
12 By:  \_\_\_\_\_  
Russell Brimer

By: \_\_\_\_\_  
Jeff Rubin, CEO  
It'Sugar LLC

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7 and agree to all of the terms and conditions contained herein

8 **AGREED TO:**

**AGREED TO:**

9  
10 Date: \_\_\_\_\_

Date: June 2, 2016

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12 By: \_\_\_\_\_  
Russell Brimer

By:  \_\_\_\_\_  
Jeff Rubin, CEO  
It'Sugar LLC

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