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ENDORSED
FILED
San Francisco County Superior Court

APR 26 2005

7 Stephen S. Sayad, State Bar No. 104866
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GORDON PARK-LI, Clerk
BY: S. PENG
Deputy Clerk

14 Attorneys for Plaintiff
15 RUSSELL BRIMER

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 IN AND FOR THE COUNTY OF SAN FRANCISCO
18 UNLIMITED CIVIL JURSDICTION

19 RUSSELL BRIMER,)
20)
21 Plaintiff,)
22)
23 v.)
24)
25 SAKS, INC.; and DOES 1 through 150,)
26)
27 Defendants.)
28 _____)

No. CGC 04-435217

~~PROPOSED~~ JUDGMENT
PURSUANT TO TERMS OF
CONSENT JUDGMENT

Date: April 26, 2005
Time: 9:30 am
Dept: 301
Judge: Hon. James L. Warren

1 In the above-entitled action, Plaintiff Russell Brimer and Defendant Saks, Inc., having
2 agreed through their respective counsel that judgment be entered pursuant to the terms of the
3 Consent Judgment entered into by the parties, and after issuing an Order Approving Proposition 65
4 Settlement Agreement and Consent Judgment on April ²⁶27, 2005.

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil
6 Procedure section 664.5, judgment is entered in accordance with the terms of the Order Approving
7 Proposition 65 Settlement Agreement and Consent Judgment, between the parties.

8 **IT IS SO ORDERED.**

9 Dated: .

10 APR 26 2005

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Hon. James L. Warren J. McBride
JUDGE OF THE SUPERIOR COURT

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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 IN AND FOR THE COUNTY OF SAN FRANCISCO
19 UNLIMITED CIVIL JURSDICTION

20 RUSSELL BRIMER,

21 Plaintiff,

22 v.

23 SAKS, INC.; and DOES 1 through 150,

24 Defendants.

) No. CGC-04-435217

) **[PROPOSED] ORDER PURSUANT TO**
) **TERMS OF CONSENT JUDGMENT**

) Date: April 26, 2005

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ENDORSED
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APR 26 2005

GORDON PARK-LI, Clerk
BY: S. PENG
Deputy Clerk

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant SAKS, INC.,
2 (“Settling Defendant”), having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the Consent Judgment entered into by the above-referenced parties and
4 attached hereto as **Exhibit A**; and after consideration of the papers submitted and the arguments
5 presented, the Court finds that the settlement agreement set out in the attached Consent Judgment
6 meets the criteria established by Senate Bill 471, in that:

- 7 1. The health hazard warning that is required by the Consent Judgment complies with
8 Health & Safety Code section 25249.7 (as amended by Senate Bill 471);
9 2. The reimbursement of fees and costs to be paid pursuant to the parties’ Consent
10 Judgment is reasonable under California law; and
11 3. The civil penalty amount to be paid pursuant to the parties’ Consent Judgment is
12 reasonable,

13 IT IS HEREBY ORDERED that judgment be entered in this case, in accordance with the
14 terms of the Consent Judgment, attached hereto as **Exhibit A**.

15 IT IS SO ORDERED.

16 Dated:

17 APR 26 2005

18 ~~Hon. James L. Warren~~ *J. McBride*
19 JUDGE OF THE SUPERIOR COURT
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EXHIBIT A

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1.2 Plaintiff

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

1.3 Defendant

Saks is a corporation that sells, among other products, stemware and other glassware with exterior colored artwork or decorations intended to be used for the consumption of food and beverages by California citizens.

1.4 General Allegations

Plaintiff alleges that Settling Defendant has distributed and/or sold through direct and indirect subsidiaries in the State of California certain stemware and other glassware with colored artwork or designs which contain lead and cadmium on the exterior. Lead (and lead compounds) and cadmium (and cadmium compounds) are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 et seq. (“Proposition 65”), to cause cancer and birth defects. Lead (and lead compounds) and cadmium (and cadmium compounds) as listed under Proposition 65 shall be referred to herein as the Listed Chemicals.

1.5 Products Descriptions

A list of products sold or to be sold to California residents which are covered by this Agreement is provided in Exhibit A (all such products to be collectively referred to hereinafter as the “Products”).

1.6 Notices of Violation

On or about July 30, 2004, Brimer served Settling Defendant and various public enforcement agencies with the document, entitled “60-Day Notice of Violation” (“Notice”) that provided Settling Defendant and such public enforcers with notice that alleged that Settling Defendant was in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products that it sold expose users in California to the Listed Chemicals.

1 **1.7 Complaint**

2 On October 4, 2004, Brimer, in the interest of the general public in California, filed a
3 complaint (hereinafter “Complaint” or “Action”) in the Superior Court for the City and County of
4 San Francisco against Settling Defendant alleging violations of Health & Safety Code § 25249.6
5 based on the alleged exposures to the Listed Chemicals contained in the Products sold by Settling
6 Defendant.

7 **1.8 No Admission**

8 Settling Defendant denies the material factual and legal allegations contained in Plaintiff’s
9 Notice and Complaint and maintains that all products that it has sold and distributed 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 by Settling Defendant or any Defendant Releasee (as
12 defined in Section 5) of any fact, finding, issue of law, or violation of law, nor shall compliance
13 with this Agreement constitute or be construed as an admission by Settling Defendant or any
14 Defendant Releasee of any fact, finding, conclusion, issue of law or violation of law, such being
15 specifically denied by Settling Defendant. Nothing in this Consent Judgment shall apply to, or be
16 used as evidence regarding compliance for any product sold other than those identified in Exhibit
17 A by Settling Defendant or any Defendant Releasee with Proposition 65 or any other statute or
18 regulation. However, this section shall not diminish or otherwise affect the obligations,
19 responsibilities and duties of Settling Defendant 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 the allegations of violations contained in the Complaint and personal jurisdiction
23 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County
24 of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment and to
25 enforce the provisions thereof.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean December 2,
28 2004.

1 **2. INJUNCTIVE RELIEF**

2 **2.1** After January 31, 2005, Settling Defendant shall not sell or offer for sale in
3 California any of the Products containing the Listed Chemicals in exterior colored decorations
4 unless such Products comply with sections 2.2, 2.3 or 2.4, below.

5 **2.2 Product Warnings**

6 Subject to Section 2.3, after January 31, 2005, Settling Defendant shall not sell any of the
7 Products in its California stores unless warnings are provided as set forth below in subsection 2.2.i
8 or 2.2.ii.

9 **2.2.i Warning on the Products or Product Packaging**

10 A warning is affixed to the packaging, labeling or directly to or on a Product by the
11 manufacturer, importer, distributor or Saks that states:

12 **WARNING: The materials used as colored decorations on this product**
13 **contain lead, a chemical known to the State of California**
to cause birth defects or other reproductive harm.

14 Warnings issued for Products pursuant to this subsection shall be prominently placed with such
15 conspicuousness as compared with other words, statements, designs, or devices as to render it
16 likely to be read and understood by an ordinary individual under customary conditions of use or
17 purchase.

18 **2.2.ii Point of Sale Warnings**

19 Saks may execute its warning obligations, where applicable, through the posting of
20 signs at retail outlets in the State of California at which Products are sold, in accordance with the
21 terms specified in subsections (a) and (b) below. Any warnings given by in-store signage shall
22 identify the *specific* Products at issue so as to minimize, if not eliminate, the chances that an
23 “over-warning” situation would arise.

24 (a) Point of Sale warnings may be provided through one or more signs posted at or
25 near the point of sale or display of the Products that state:

26 **WARNING: The materials used as colored decorations on this product**
27 **contain lead, a chemical known to the State of California**
to cause birth defects or other reproductive harm.

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1 (b) Any Point of Sale warning provided pursuant to this Section 2.2ii shall be
2 prominently placed with such conspicuousness as compared with other words, statements, designs
3 or devices as to render it likely to be read and understood by an ordinary individual under
4 customary conditions of use or purchase and shall be placed or written in a manner such that the
5 consumer understands to which *specific* Products the warnings apply so as to minimize, if not
6 eliminate, the chances that an overwarning situation will arise.

7 (c) In lieu of displaying warnings with the language set forth above in 2.2ii(a), Saks
8 may elect to combine any Point-of-Sale warning signs required under this Consent Judgment with
9 any warnings it provides for ceramic tableware (as defined in the Consent Judgment in
10 *Environmental Defense Fund v. Pier 1 Imports (U.S.), Inc.*) or lead crystal (as defined in the
11 Consent Judgment in *Mateel Environmental Justice Foundation v. T.J. Maxx*), through use of the
12 warning signs in the form of Exhibits B or C. If Saks elects to provide combined warnings
13 through use of Exhibit B, then Saks shall place the Designated Symbol (the yellow triangle shown
14 in Exhibit B) next to each display of Products, ceramic tableware, and lead crystal for which a
15 warning is to be given. If Saks elects to provide combined warnings through use of Exhibit C,
16 then the Products for which the warning is to be given shall be identified by manufacturer and
17 pattern in the warning sign, and Designated Symbols need not be displayed. If Saks elects to
18 combine its Products, ceramic tableware, and lead crystal warnings under this subsection, display
19 of warnings for ceramic tableware, leaded crystal, and the Products in the manner set forth in this
20 subsection shall constitute compliance with Proposition 65 for all such products. Any changes to
21 the language or format of the warning required under this Section 2.2ii for Products shall only be
22 made following: (1) approval of Plaintiff; (2) approval from the California Attorney General's
23 Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for the
24 opportunity to comment; or (3) Court approval pursuant to Section 15.

25 Subject to section 2.4, after January 31, 2005, Settling Defendant shall not sell or distribute
26 any of the Products by mail order catalog or the Internet to a California address, unless warnings
27 are provided as set forth below.

28 **2.2.0 Mail Order and Internet Sales**

1 For Products that require a warning pursuant to this Consent Judgment and that are
2 sold by Settling Defendant by mail order or from the Internet to a California address, a warning
3 containing the language in subsection 2.2 shall be included, at Settling Defendant's sole option,
4 either: (a) in the mail order catalog (if any) or on the website (if any) pursuant to subsection 2.2.1
5 or 2.2.2; or (b) with the Product when it is shipped to an address in California pursuant to
6 subsection 2.2.3. Any warnings given in the mail order catalogs or on the website shall identify
7 the *specific* Products so as to minimize, if not eliminate, the chances that an "over warning"
8 situation will arise. If Settling Defendant elects to provide warnings in the mail order catalog,
9 then such warnings (at a location designated in subsection 2.2.1) shall be included in any new
10 galley prints of such catalogs sent to the printer after this Consent Judgment is approved by the
11 Court.

12 **2.2.1 Mail Order Catalog**

13 The warning text set forth in Section 2.2ii(a) or 2.2ii(c) shall be stated within the
14 catalog, either (a) on the inside front cover of any catalog, (b) on the same page as any order form,
15 or (c) on the same page as the price, in the same type size as the surrounding, non-heading text,
16 with the same language and specifics as that appearing in subsection 2.2 so the reader can easily
17 discern which *specific* product the warning applies to. No warning shall be required under this
18 subsection if Saks does not sell Products via catalogues to California addresses.

19 **2.2.2 Internet Web Sites**

20 The warning text set forth in Section 2.2ii(a) or 2.2ii(c), or a link to a page
21 containing such warning text, shall be displayed either (a) on the same page on which a Product is
22 displayed, (b) on the same page as any order form for a Product, (c) on the same page as the price
23 for any Product, (d) on one or more pages displayed to a purchaser over the Internet or via
24 electronic mail during the checkout and order confirmation process for sale of a Product, or (e) in
25 any manner such that is likely to be read and understood by an ordinary individual under
26 customary conditions of purchase of a Product, including the same language as that appearing in
27 subsection 2.2. If a link is used, it shall state "Warning information for California residents," and
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1 shall be of a size equal to the size of other links on the page. No warning shall be required under
2 this subsection if Saks does not sell Products via the Internet to California addresses.

3 **2.2.3 Package Insert or Label**

4 Alternatively, a warning may be provided with the Product when it is shipped
5 directly to a consumer in California, by (a) product labeling pursuant to subsection 2.2i, above, (b)
6 inserting a card or slip of paper measuring at least 4" x 6" in the shipping carton, or (c) including
7 the warning on the packing slip or customer invoice identifying the Product in lettering of the
8 same size as the description of the Product. The warning shall consist of the warning text set forth
9 in Section 2.2ii(a) or 2.2ii(c) and shall inform the consumer that he or she may return the product
10 for a full refund within thirty (30) days of receipt.

11 **2.3 Reformulated Products**

12 The Products shall be deemed to comply with Proposition 65 and be exempt from any
13 Proposition 65 warning requirements under Sections 2.1 through 2.2, if all designs applied to the
14 exterior surface of any Products that are sold in California which contain less than 0.06% lead by
15 weight in the decoration either before or after the decoration is applied to the Product, using a test
16 method of sufficient sensitivity to establish a limit of quantitation of less than 600 parts per
17 million (ppm), or if such Products were manufactured on or before January 31, 2005.

18 Reformulated Products shall include those stemware and other glassware products with exterior
19 colored decorations containing Listed Chemicals manufactured or distributed by persons obligated
20 under consent judgments or other agreements entered into with Plaintiff or other persons pursuant
21 to Proposition 65 and approved by a California court so long as such products constitute
22 Reformulated Products under such agreements.

23 **2.4 Future Settlements or Standards**

24 Should any court of this state enter an order in a case brought by the People of the State of
25 California that sets forth the standards defining when Proposition 65 warnings will or will not be
26 required for products substantially similar to the type and function of Products at issue here
27 ("Alternative Standards"), or if the California Attorney General's Office or Office of
28 Environmental Health Hazard Assessment ("OEHHA") otherwise provide written endorsement

1 (i.e. a writing that is circulated by the Attorney General that is not intended for the purposes of
2 soliciting further input or comments) of Alternative Standards applicable to products that are of
3 the same type and function as the Products, Saks shall be entitled to seek a modification of this
4 Consent Judgment so as to enable it to utilize and rely on such Alternative Standards in lieu of
5 those set forth in subsection 2.3 above. Brimer shall not unreasonably withhold consent to any
6 proposed stipulation to effectuate such a modification.

7 **3. MONETARY PAYMENTS**

8 **3.1 Penalties Pursuant To Health & Safety Code §25249.7(b)**

9 Pursuant to Health & Safety Code section 25249.7(b), Settling Defendant shall pay
10 \$30,000 in civil penalties in two installments. The first penalty payment of \$10,000 shall be
11 made not later than fifteen (15) calendar days after the Effective Date, and made payable to
12 “Chanler Law Group in Trust For Russell Brimer.” The second payment of \$20,000 shall be made
13 on February 1, 2006; however, this payment shall be waived if Settling Defendant certifies by
14 January 2, 2006 that 50% or more of the Products it sold in California in calendar year 2005 were
15 either: (a) Reformulated Products; or (b) that it sold no Products with exterior colored decorations
16 which required a warning under the criteria in Section 2.3. Any such certification with respect to
17 the percentage of Reformulated Products sold shall specify the Product (by Product name, SKU or
18 UPC Code) and the number of units sold for each such Product. The certification shall be in
19 writing, signed by an executive or in-house legal counsel for Saks and received by Brimer by
20 January 16, 2006.

21 **3.2 Apportionment of Penalties Received**

22 All penalty monies received shall be apportioned by Plaintiff in accordance with Health &
23 Safety Code § 25192, with 75% of these funds remitted by Plaintiff to the State of California’s
24 Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty
25 monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d). Plaintiff shall
26 bear all responsibility for apportioning and paying to the State of California the appropriate civil
27 penalties paid in accordance with this Section.

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

2 The parties acknowledge that Brimer and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this fee
4 issue to be resolved after the material terms of the agreement had been settled. Settling Defendant
5 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
6 been finalized. Shortly thereafter the Parties then reached an accord on the compensation due to
7 Plaintiff and its counsel under the private attorney general doctrine codified at Code of Civil
8 Procedure § 1021.5 for all work performed through the Effective Date of the Agreement as well as
9 all future efforts undertaken to seek Court approval of the Settlement Agreement and future efforts
10 to monitor compliance with the terms of the Settlement Agreement. Under Code of Civil
11 Procedure § 1021.5 Settling Defendant agrees to reimburse Plaintiff and its counsel for fees and
12 costs incurred as a result of investigating, bringing this matter to Settling Defendant's attention,
13 litigating and negotiating a settlement in the public interest. In recognition of the immediate, good
14 faith cooperation of Settling Defendant, and the swift resolution of this matter in the public
15 interest, Settling Defendant shall pay Plaintiff and his counsel \$35,000 for all attorneys' fees,
16 expert and investigation fees, and litigation costs. The payment shall be delivered to Plaintiff's
17 counsel at the address set forth in Section 11, below, within fifteen (15) calendar days of the
18 Effective Date. Except as specifically provided in this Consent Judgment, Settling Defendant
19 shall have no further obligation with regard to reimbursement of Plaintiff's attorney's fees and
20 costs with regard to the Products covered in these Actions.

21 **5. RELEASE OF ALL CLAIMS**

22 **5.1 Release of Settling Defendant**

23 In further consideration of the promises and agreements herein contained, and for the
24 payments to be made pursuant to Sections 3 and 4, Plaintiff, on behalf of himself, his past and
25 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
26 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
27 form of legal action and releases all claims, including, without limitation, all actions, causes of
28 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,

1 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys'
2 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively
3 "Claims"), against Settling Defendant and each of its licensors, licensees, auctioneers, retailers,
4 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,
5 direct and indirect subsidiaries and their respective officers, directors, attorneys, representatives,
6 shareholders, agents, and employees (collectively, "Defendant Releasees") arising under
7 Proposition 65, Business & Professions Code § 17200 et seq. and Business & Professions Code §
8 17500 et seq., related to Settling Defendant's or any Defendant Releasee's alleged failure to warn
9 about exposures to or identification of Listed Chemicals contained in the Products, including all
10 Claims which were raised in the Action or which could have been raised based on the facts alleged
11 therein. Provided however, Plaintiff shall remain free to institute any form of legal action to
12 enforce the provisions of this Consent Judgment.

13 It is specifically understood and agreed that the Parties intend that Settling Defendant's
14 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in
15 the future (so long as Settling Defendant complies with the terms of the Consent Judgment)
16 concerning Settling Defendant and any Defendant Releasee's compliance with the requirements of
17 Proposition 65, Business and Professions Code §§ 17200 et seq. and Business & Professions Code
18 §§ 17500 et seq., as to the Listed Chemicals in the Products.

19 This release (Paragraph 5.1) specifically excludes any release of the Settling Defendant's
20 upstream vendors (i.e., those entities that supplied the Products to Settling Defendant).

21 **5.2 Settling Defendant's Release of Plaintiff**

22 Settling Defendant waives all rights to institute any form of legal action against Plaintiff,
23 his attorneys or representatives, for all actions taken or statements made by Plaintiff and his
24 attorneys or representatives, in the course of seeking enforcement of Proposition 65, Business &
25 Professions Code §§ 17200 et seq. or Business & Professions Code §§ 17500 et seq. in this
26 Action.

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1 **6. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one
4 year after the Effective Date, in which event any monies that have been provided to Plaintiff or his
5 counsel pursuant to Sections 5 or 6, above, shall be refunded within fifteen (15) days of notice by
6 the Court that the Court will not approve the Consent Judgment.

7 **7. SALES DATA**

8 Saks understands that the sales data provided to counsel for Brimer by Saks was a material
9 factor upon which Brimer has relied to determine the amount of payments made pursuant to
10 Health & Safety Code § 25249.7(b) in this Agreement. To the best of Saks' knowledge, the sales
11 data provided is true and accurate. In the event that Brimer discovers facts that demonstrate to a
12 reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in
13 a good faith attempt to resolve the matter within ten (10) days of Saks' receipt of notice from
14 Brimer of his intent to challenge the accuracy of the sales data. If this good faith attempt fails to
15 resolve Brimer's concerns, Brimer shall have the right to re-institute an enforcement action against
16 Saks, for those additional Products, based upon any existing 60 Day Notices of Violation served
17 on Saks. In such case, all applicable statutes of limitation shall be deemed tolled for the period
18 between the date Brimer filed the instant action and the date Brimer notifies Saks that he is re-
19 instituting the action for the additional Products. Provided, however, that Saks shall have no
20 additional liability, and Brimer waives any claims that might otherwise be asserted, from the
21 Effective Date until the date that Brimer provides notice under this Paragraph 7, so long as Saks
22 has complied with the requirements of Section 2.0 for all of the Products.

23 **8. SEVERABILITY**

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

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1 **9. ATTORNEYS' FEES**

2 In the event that a dispute arises with respect to any provision(s) of this Consent Judgment,
3 the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable
4 and necessary costs and reasonable attorneys' fees incurred from the resolution of such dispute.

5 **10. GOVERNING LAW**

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

11 **11. NOTICES**

12 All correspondence and notices required to be provided pursuant to this Consent Judgment
13 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
14 return receipt requested or (ii) overnight courier on any Party by the others at the following
15 addresses:

16 To Settling Defendant:

17 Meredith Fogel, Esq.,
18 Assistant General Counsel
19 Saks Incorporated
12 East 49th Street
New York, NY 10017
20 212-451-3698; fax 212-940-5291

21 With a copy to:

22 Judith M. Praitis, Esq.
23 SIDNEY AUSTIN BROWN & WOOD LLP
555 West Fifth Street, 40th Floor
Los Angeles, CA 90013
24 213-896-6637; fax 213-896-6600

25 To Plaintiff:

26 Clifford A. Chanler, Esq.
27 CHANLER LAW GROUP
71 Elm Street, Suite 200
New Canaan, CT 06840

28 Laralei S. Paras
PARAS LAW GROUP
655 Redwood Highway, Suite 216

1 Mill Valley, CA 94941

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

4 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

8 **13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

16 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

17 The Parties shall mutually employ their best efforts to support the entry of this Agreement
18 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
19 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
20 motion is required to obtain judicial approval of this Consent Judgment. Except as specifically
21 provided in this Consent Judgment, Saks shall have no further obligation with regard to
22 reimbursement of plaintiff's attorney's fees and costs, including for any proceedings to obtain
23 approval of this Consent Judgment.

24 In the event that any third party, including the Attorney General or any other public
25 enforcer, objects or otherwise comments to one or more provisions of this Agreement, Saks agrees
26 to undertake its best efforts to satisfy such concerns or objections and support the terms of this
27 Agreement, unless the concerns or objections are directed solely to Plaintiff and Plaintiff is the
28 only party able to address or resolve the concerns or objections. If Plaintiff incurs additional legal

1 fees or costs as a result of objections to this Consent Judgment which concern both parties or the
2 Agreement as a whole ("Additional Fees"), Saks agrees to meet and confer with Plaintiff
3 regarding its reimbursement to Plaintiff and his counsel of any claimed Additional Fees if those
4 Additional Fees allegedly exceed \$3,000. Should the Parties not reach agreement within 30 days
5 of Plaintiff's written notice of any claimed Additional Fees, Plaintiff may file a motion under CCP
6 § 1021.5 seeking an award of Additional Fees. Nothing in this Consent Judgment shall be
7 construed as to relieve Plaintiff of his burden of demonstrating both the entitlement to and
8 reasonableness of any such claimed Additional Fees.

9 **15. MODIFICATION**

10 This Consent Judgment may be modified only by: (1) written agreement of the Parties and
11 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as
12 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney
13 General shall be served with notice of any proposed modification to this Consent Judgment at least
14 fifteen (15) days in advance of its consideration by the Court.

15 **16. AUTHORIZATION**

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

19 **AGREED TO:**

20 DATE: 12.03.04

21 

22 Plaintiff Russell Brimer

AGREED TO:

DATE: _____

Defendant Saks Incorporated

24 **APPROVED AS TO FORM:**

25 DATE: _____

27 Clifford A. Chanler
28 CHANLER LAW GROUP
Attorneys for Plaintiff Russell Brimer

APPROVED AS TO FORM:

DATE: _____

Judith M. Praitis
SIDNEY AUSTIN BROWN & WOOD LLP
Attorneys for Defendant Saks Incorporated

1 fees or costs as a result of objections to this Consent Judgment which concern both parties or the
2 Agreement as a whole ("Additional Fees"), Saks agrees to meet and confer with Plaintiff
3 regarding its reimbursement to Plaintiff and his counsel of any claimed Additional Fees if those
4 Additional Fees allegedly exceed \$3,000. Should the Parties not reach agreement within 30 days
5 of Plaintiff's written notice of any claimed Additional Fees, Plaintiff may file a motion under CCP
6 § 1021.5 seeking an award of Additional Fees. Nothing in this Consent Judgment shall be
7 construed as to relieve Plaintiff of his burden of demonstrating both the entitlement to and
8 reasonableness of any such claimed Additional Fees.

9 **15. MODIFICATION**

10 This Consent Judgment may be modified only by: (1) written agreement of the Parties and
11 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as
12 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney
13 General shall be served with notice of any proposed modification to this Consent Judgment at least
14 fifteen (15) days in advance of its consideration by the Court.

15 **16. AUTHORIZATION**

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

19 **AGREED TO:**

20 DATE: _____

21 _____

22 Plaintiff Russell Brimer

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24 **APPROVED AS TO FORM:**

25 DATE: _____

26 _____

27 Clifford A. Chanler
28 CHANLER LAW GROUP
Attorneys for Plaintiff Russell Brimer

AGREED TO:

DATE: December 6, 2004



Defendant Saks Incorporated

APPROVED AS TO FORM:

DATE: _____

Judith M. Praitis
SIDNEY AUSTIN BROWN & WOOD LLP
Attorneys for Defendant Saks, Inc.

CONSENT JUDGMENT

1 fees or costs as a result of objections to this Consent Judgment which concern both parties or the
2 Agreement as a whole ("Additional Fees"), Saks agrees to meet and confer with Plaintiff
3 regarding its reimbursement to Plaintiff and his counsel of any claimed Additional Fees if those
4 Additional Fees allegedly exceed \$3,000. Should the Parties not reach agreement within 30 days
5 of Plaintiff's written notice of any claimed Additional Fees, Plaintiff may file a motion under CCP
6 § 1021.5 seeking an award of Additional Fees. Nothing in this Consent Judgment shall be
7 construed as to relieve Plaintiff of his burden of demonstrating both the entitlement to and
8 reasonableness of any such claimed Additional Fees.

9 **15. MODIFICATION**

10 This Consent Judgment may be modified only by: (1) written agreement of the Parties and
11 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as
12 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney
13 General shall be served with notice of any proposed modification to this Consent Judgment at least
14 fifteen (15) days in advance of its consideration by the Court.

15 **16. AUTHORIZATION**

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

19 **AGREED TO:**

AGREED TO:

20 DATE: _____

DATE: _____

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22 _____
Plaintiff Russell Brimer

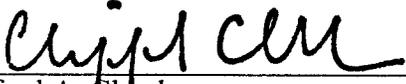
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22 _____
Defendant Saks Incorporated

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24 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

25 DATE: 12/3/04

DATE: _____

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27 _____
Clifford A. Chanler
CHANLER LAW GROUP
28 Attorneys for Plaintiff Russell Brimer

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27 _____
Judith M. Praitis
SIDNEY AUSTIN BROWN & WOOD LLP
Attorneys for Defendant Saks Incorporated

1 fees or costs as a result of objections to this Consent Judgment which concern both parties or the
2 Agreement as a whole ("Additional Fees"), Saks agrees to meet and confer with Plaintiff
3 regarding its reimbursement to Plaintiff and his counsel of any claimed Additional Fees if those
4 Additional Fees allegedly exceed \$3,000. Should the Parties not reach agreement within 30 days
5 of Plaintiff's written notice of any claimed Additional Fees, Plaintiff may file a motion under CCP
6 § 1021.5 seeking an award of Additional Fees. Nothing in this Consent Judgment shall be
7 construed as to relieve Plaintiff of his burden of demonstrating both the entitlement to and
8 reasonableness of any such claimed Additional Fees.

9 **15. MODIFICATION**

10 This Consent Judgment may be modified only by: (1) written agreement of the Parties and
11 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as
12 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney
13 General shall be served with notice of any proposed modification to this Consent Judgment at least
14 fifteen (15) days in advance of its consideration by the Court.

15 **16. AUTHORIZATION**

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

19 **AGREED TO:**
20 DATE: _____

AGREED TO:
DATE: _____

21
22 _____
23 Plaintiff Russell Brimer

_____ Defendant Saks Incorporated

24 **APPROVED AS TO FORM:**
25 DATE: _____

APPROVED AS TO FORM:
DATE: 12/5/09 _____

26
27 Clifford A. Chanler
CHANLER LAW GROUP
28 Attorneys for Plaintiff Russell Brimer


Judith M. Praitis
SIDNEY AUSTIN BROWN & WOOD LLP
Attorneys for Defendant Saks Incorporated

EXHIBIT A

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Stemware and other glassware with colored artwork or designs (containing Listed Chemicals) on the exterior, including, but not limited to: Jaguar Martini glasses, Monkey Martini Glass, Iced Tea, Martini Pitcher, Jaguar Iced Tea and Martini Pitcher Jaguar.

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EXHIBIT B

Combined Point of Sale Warnings [Yellow Triangle]

PROP 65

WARNING

Consuming foods or beverages that have been kept or served in leaded crystal products, certain ceramic tableware products, certain glassware products with colored decorations on the exterior, or handling products made of leaded crystal will expose you to lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

The products for which this warning is given are identified with this symbol:



displayed on or next to the product

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EXHIBIT C

Combined Point of Sale Warnings

PROP 65

WARNING

Consuming foods or beverages that have been kept or served in leaded crystal products or handling products made of leaded crystal will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. [If any of the following products are sold, include: "This warning does not apply to Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots."]

Use of the following ceramic tableware products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm: [List each manufacturer and pattern name for which a warning is given].

The materials used as colored decorations on the exterior of the following glassware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm: [List each manufacturer and pattern name for which a warning is given].