

1 Laralei S. Paras (State Bar No. 203319)
Daniel Bornstein (State Bar No. 181711)
2 PARAS LAW GROUP
2560 Ninth Street, Suite 214
3 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 RUSSELL BRIMER

7 Gary A. Meyer (State Bar No. 94144)
Mary E. Henderson (State Bar No. 235256)
8 PARKER MILLIKEN CLARK O'HARA & SAMUELIAN
333 S. Hope Street, 27th Floor
9 Los Angeles, CA 90071
Tel: (213) 683-6683
10 Fax: (213) 683-6669

11 Attorneys for Defendant
12 WELLS MANUFACTURING USA, INC.

13 Jeffrey B. Margulies (State Bar No. 126002)
Rachel D. Stanger (State Bar No. 200733)
14 FULBRIGHT & JAWORSKI, LLP
555 South Flower Street, Forty-First Floor
Los Angeles, CA 90071
15 Tel: (213) 892-9200
Fax: (213) 892-9494

16 Attorneys for Defendant
17 MAY DEPARTMENT STORES COMPANY

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION
20

21 RUSSELL BRIMER,

22 Plaintiff,

23 v.

24 WELLS MFG. USA INC.; WELLS MFG INC.;
25 ROBINSONS-MAY DEPARTMENT STORE;
26 THE MAY DEPARTMENT STORES
COMPANY; and DOES 1 through 150,

27 Defendant.
28

ENDORSED
FILED
San Francisco County Superior Court

JAN 12 2006

GORDON PARK-LI, Clerk
BY: ERICKA LARNAUTI
Deputy Clerk

Case No. CGC 04-435221

**[PROPOSED] ORDER PURSUANT
TO TERMS OF STIPULATION AND
ORDER RE: CONSENT
JUDGMENT**

Date: January 12, 2006

Time: 9:30 A.M.

Dept.: 301

Judge: Hon. James L. Warren

[PROPOSED] ORDER PURSUANT TO TERMS OF STIPULATION AND ORDER RE CONSENT JUDGMENT

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

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

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

16 IT IS SO ORDERED.

17 Dated: January 12, 2006

JAMES L. WARREN

18 Hon. James L. Warren
19 JUDGE OF THE SUPERIOR COURT
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 Laralei S. Paras (State Bar No. 203319)
PARAS LAW GROUP
2 655 Redwood Highway, Suite 216
Mill Valley, CA 94941
3 Telephone: (415) 380-9222
Facsimile: (415) 380-9223
4

5 Clifford A. Chanler (State Bar No. 135534)
CHANLER LAW GROUP
71 Elm Street, Suite 8
6 New Canaan, CT 06840
Telephone: (203) 966-9911
7 Facsimile: (203) 801-5222

8 Attorneys for Plaintiff
RUSSELL BRIMER

9 Gary A. Meyer (State Bar No. 094144)
10 Mary E. Henderson (State Bar No. 235256)
PARKER, MILLIKEN, CLARK, O'HARA & SAMUELIAN
11 A Professional Corporation
333 South Hope St., 27th Floor
12 Los Angeles, CA 90071-1488
Telephone: (213) 683-6500
13 Facsimile: (213) 683-6669

14 Attorneys for Defendants
WELLS MFG. USA INC. and WELLS MFG. INC.

15 Jeffrey B. Margulies, (State Bar No. 126002).
16 Rachel D. Stanger (Bar No. 200733)
FULBRIGHT & JAWORSKI L.L.P.
17 555 S. Flower Street, 41st Floor
Los Angeles, California 90071
18 Telephone: (213) 892-9200
Facsimile: (213) 892-9494

19 Attorneys for Defendant
20 THE MAY DEPARTMENT STORES COMPANY

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA

22 CITY AND COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

23 RUSSELL BRIMER,

24 Plaintiff,

25 v.

26 WELLS MFG. USA INC.; et al.,

27 Defendants.

Case No. CGC-04-435221

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

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Settling Defendants.** This Consent Judgment is entered into by and
3 between plaintiff Russell Brimer (hereafter "Brimer" or "Plaintiff") and defendants WELLS
4 MFG. USA INC.; WELLS MFG. INC.; and THE MAY DEPARTMENT STORES COMPANY
5 (hereafter "Defendants"), with Plaintiff and Defendants collectively referred to as the "Parties"
6 and Brimer and Defendants each being a "Party."

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

10 **1.3 General Allegations.** Plaintiff alleges that Defendants have manufactured,
11 distributed and/or sold in the State of California glassware with colored artwork, designs or
12 markings on the exterior surface with materials that contain lead and/or cadmium that are listed
13 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code §§25249.5 *et seq.*, also known as Proposition 65, to cause cancer and birth defects
15 (or other reproductive harm). Lead and cadmium shall be referred to herein as "Listed
16 Chemicals."

17 **1.4 Product Descriptions.** The products that are covered by this Consent Judgment
18 are defined at Exhibit A. Such products collectively are referred to herein as the "Products."

19 **1.5 Notices of Violation.** Beginning on July 30, 2004, Brimer served Defendants and
20 various public enforcement agencies with documents, entitled "60-Day Notice of Violation"
21 ("Notice") that provided Defendants and such public enforcers with notice that alleged that
22 Defendants were in violation of Health & Safety Code §25249.6 for failing to warn purchasers
23 that certain products that they manufactured, sold and/or distributed expose users in California to
24 lead and/or cadmium.

25 **1.6 Complaint.** On October 5, 2004, Brimer, in the interest of the general public in
26 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the
27 Superior Court for the City and County of San Francisco against Defendants and Does 1 through
28 150, alleging violations of Health & Safety Code §25249.6 based on the alleged exposures to one

1 or more of the Listed Chemicals contained in certain products manufactured, sold and/or
2 distributed by Defendants.

3 **1.7 No Admission.** Defendants deny the material factual and legal allegations
4 contained in Plaintiff's Notice and Complaint and maintain that all products that they have
5 manufactured, sold and/or distributed in California including the Products have been and are in
6 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
7 by Defendants of any fact, finding, issue of law, or violation of law, nor shall compliance with
8 this Agreement constitute or be construed as an admission by Defendants of any fact, finding,
9 conclusion, issue of law or violation of law. However, this section shall not diminish or
10 otherwise affect the obligations, responsibilities and duties of Defendants under this Consent
11 Judgment.

12 **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
13 stipulate that this Court has jurisdiction over the allegations of violations contained in the
14 Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint, that
15 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
16 Consent Judgment and to enforce the provisions thereof.

17 **1.9 Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall be,
18 September 1, 2005.

19 **2. INJUNCTIVE RELIEF: PROPOSITION 65**

20 **2.1 WARNINGS AND REFORMULATION OBLIGATIONS**

21 **(a) Required Warnings.** After September 1, 2005, Defendants shall not
22 transmit to any retailer to sell or offer for sale in California any Products containing the Listed
23 Chemical unless warnings are given in accordance with one or more provisions in subsection 2.2
24 below.

25 **(b) Exceptions.** The warning requirements set forth in subsections 2.1(a) and
26 2.2 below shall not apply to:

27 **(i)** any Products manufactured before August 15, 2005, or
28

(ii) Reformulated Products as defined in subsection 2.3 below.

2.2 CLEAR AND REASONABLE WARNINGS

(a) **Product Labeling.** Defendants may satisfy their warning obligations, where applicable, by affixing a warning to the packaging, labeling or directly to or on a Product that states:

WARNING: The materials used as colored decorations on the exterior of this product contain lead and cadmium, chemicals known to the State of California to cause birth defects or other reproductive harm.

or

WARNING: The materials used as colored decorations on the exterior of these products contain chemicals known to the State of California to cause birth defects or other reproductive harm.

Warnings issued for Products pursuant to this subsection shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use or purchase. Any changes to the language or format of the warning required by this subsection shall only be made following: (1) approval from the California Attorney General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or (2) Court approval.

(b) **Point-of-Sale Warnings.** Defendants may execute their warning obligations through arranging for the posting of signs at retail outlets in the State of California at which Products are sold, in accordance with the terms specified in subsections 2.2(b)(i), 2.2(b)(ii), 2.2(b)(iii), and 2.2(b)(iv).

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

1 **WARNING:** The materials used as colored decorations on the
2 exterior of this product contain lead and
3 cadmium, chemicals known to the State of
4 California to cause birth defects or other
5 reproductive harm.

6
7
8
9 or

10 **WARNING:** The materials used as colored decorations on the
11 exterior of glassware products sold in this store
12 contain lead and cadmium, chemicals known to
13 the State of California to cause birth defects or
14 other reproductive harm.¹

15
16
17 or

18 **WARNING:** The materials used as colored decorations on the exterior of
19 the following glassware products sold in this store contain lead
20 and cadmium, chemicals known to the State of California to
21 cause birth defects or other reproductive harm.

22 *[List Each Product By Brand Name and Product Description]*

23 (ii) In lieu of displaying warnings with the language set forth above in
24 2.2(b)(i), each defendant subject to this agreement who owns or operates one or more retail
25 outlets in California may elect to combine any point-of-sale warning signs required under this
26 Consent Judgment with any Proposition 65 warnings it provides for ceramic tableware (as defined
27 in the Consent Judgment in *Environmental Defense Fund v. Pier 1 Imports (U.S.), Inc.*) or lead
28 crystal (as defined in the Consent Judgment in *Mateel Environmental Justice Foundation v. T.J.*
Maxx), through use of the warning signs in the form shown in Exhibit B and C. If one or more of
the Defendants elects to provide combined warnings through use of Exhibit B, then such
Defendant shall place the Designated Symbol (the yellow triangle shown in Exhibit B) next to
each display of the Products, ceramic tableware, and lead crystal for which a warning is to be
given. If one or more of the Defendants elects to provide combined warnings through use of
Exhibit C, then the Products for which the warning is to be given shall be identified by
manufacturer and pattern in the warning sign, and the Designated Symbols need not be displayed.

¹ This formulation of the warning may only be used where the store sells only Products which are not Reformulated Products as defined in subsection 2.3 below.

1 If a Defendant elects to combine its Products, ceramic tableware, and lead crystal warnings under
2 this subsection, display of warnings for ceramic tableware, leaded crystal and the Products in the
3 manner set forth in this subsection shall constitute compliance with Proposition 65 for all such
4 products.

5 (iii) A point of sale warning provided pursuant to subsection 2.2(b)(i)
6 and 2.2 (b)(ii) shall be prominently placed with such conspicuousness as compared with other
7 words, statements, designs, or devices as to render it likely to be read and understood by an
8 ordinary individual under customary conditions of purchase and shall be placed or written in a
9 manner such that the consumer understands to which *specific* Products the warnings apply so as
10 to minimize if not eliminate the chances that an overwarning situation will arise.

11 (iv) Any changes to the language or format of the warning required for
12 Products by section 2.2(b) shall only be made following: (1) approval from the California
13 Attorney General's Office, provided that written notice of at least fifteen (15) days is given to
14 Plaintiffs for the opportunity to comment; or (2) Court approval.

15 (v) If Defendants Wells Mfg. USA Inc. or Wells Mfg. Inc. intend to
16 utilize point of sale warnings to comply with this Consent Judgment, they must (1) provide notice
17 as required by this Consent Judgment to any retailer to whom Defendants ship the Products for
18 sale in California and (2) obtain the written consent of such retailer before shipping the Products.
19 Such notice shall include a copy of this Consent Judgment and any required warning materials
20 (including, as appropriate, signs and/or stickers). If Defendants have obtained the consent of such
21 retailer that it will provide warnings in the manner required by section 2.2(b) herein, Defendants
22 shall not be found to have violated this Consent Judgment if they have complied with the terms of
23 this Consent Judgment and have proof that they transmitted the requisite warnings in the manner
24 provided herein.

25 (c) **Mail Order and Internet Sales Warnings** After September 1, 2005,
26 Defendant The May Department Stores Company shall not sell or distribute any of the Products
27 by mail order catalog or the Internet to California residents, unless warnings are provided as set
28

1 forth below. For Products that require a warning pursuant to this Consent Judgment and that are
2 sold by the Defendant by mail order or from the Internet to California residents, a warning
3 containing the language in subsection 2.2(a) shall be included, at Defendant's sole option, either:
4 (a) in the mail order catalog (if any) or on the website (if any) pursuant to subsection 2.2 (c)(ii);
5 or (b) with the Product when it is shipped to an address in California pursuant to subsection 2.2
6 (c)(iii). Any warnings given in the mail order catalogs or on the website shall identify the *specific*
7 Products to which the warning applies. If Defendant May Company elects to provide warnings in
8 the mail order catalog, then such warnings (at a location designated in subsection 2.2 (c) (i)) shall
9 be included in any new galley prints of such catalogs sent to the printer at least ten (10) business
10 days after notice of entry of this Consent Judgment is served on Defendant. Nothing in this
11 subsection 2.2(c) shall require Defendant May Company to provide warnings for any Product
12 ordered from a mail order catalog printed prior to the date notice of entry of this Consent
13 Judgment is served on Defendant, or to modify any such mail order catalogs.

14 (i) **Mail Order Catalog** The Warning Message shall be stated within
15 the catalog, either (a) on the same page as any order form, or (b) on the same page as the price, in
16 the same type size as the surrounding, non-heading text, with the same language as that appearing
17 in subsection 2.2 (a).

18 (ii) **Internet Web Sites** The warning text, or a link to a page
19 containing the warning text, shall be displayed either (a) on the same page on which a Product is
20 displayed, (b) on the same page as any order form for a Product, (c) on the same page as the price
21 for any Product, (d) on one or more pages displayed to a purchaser over the Internet or via
22 electronic mail during the checkout and order confirmation process for sale of a Product, or (e) in
23 any manner such that is likely to be read and understood by an ordinary individual under
24 customary conditions of purchase of a Product, including the same language as that appearing in
25 subsection 2.2(a). If a link is used, it shall state "Warning information for California residents,"
26 and shall be of a size equal to the size of other links on the page.

27 (iii) **Package Insert or Label** Alternatively, a warning may be
28

1 provided with the Product when it is shipped directly to a consumer in California, by (a) product
2 labeling pursuant to subsection 2.2(a) above, (b) inserting a card or slip of paper measuring at
3 least 4" x 6" in the shipping carton, or (c) including the warning on the packing slip or customer
4 invoice identifying the Product in lettering of the same size as the description of the Product. The
5 warning shall include the language appearing in subsection 2.2(a) and shall inform the consumer
6 immediately after the warning is provided that he or she may return the product for a full refund
7 (including any and all shipping costs) within 30 days of receipt.

8 (iv) Any changes to the language or format of the warning required for
9 Products by section 2.2(c) shall only be made following: (1) written approval from the California
10 Attorney General's Office, provided that written notice of at least fifteen (15) days is given to
11 Plaintiff for the opportunity to comment; or (2) Court approval.

12 **2.3 REFORMULATION STANDARDS:** Products satisfying the conditions of
13 section 2.3(a) and 2.3(b) are referred to as "Reformulated Products" and are defined as follows:

14 (a) If the colored artwork, designs or markings on the exterior surface of the
15 Product do not extend into the top 20 millimeters of the ware (*i.e.*, below the exterior portion of
16 the lip and rim area as defined by American Society of Testing and Materials Standard Test
17 Method C 927-99, hereinafter the "Lip and Rim Area"), the Product must produce a test result no
18 higher than 1.0 micrograms (ug) of lead and 8.0 ug of cadmium using a Ghost Wipe™ test
19 applied to all portions of the exterior surface of the Product performed as outlined in NIOSH
20 method no. 9100, such Product is a Reformulated Product; or

21 (b) If the colored artwork, designs or markings on the exterior surface of the
22 Product do not extend into the top 20 millimeters of the ware Lip and Rim Area, the Product must
23 only utilize decorating materials for all colored artwork, designs or markings containing six one-
24 hundredths of one percent (0.06%) lead and forty-eight one-hundredths of one percent (0.48%)
25 cadmium by weight or less as measured by EPA Test Method 3050 at Defendants' option, either
26 before or after the material is fired onto (or otherwise affixed to) the Product, using a sample size
27 of the materials in question measuring approximately 50-100 mg and a test method of sufficient
28

1 sensitivity to establish a limit of quantitation (as distinguished from detection) of less than
2 600 parts per million ("ppm"), such Product is a Reformulated Product.²

3 (c) If the Product has artwork, designs or markings on the exterior surface
4 within Lip and Rim Area, it must utilize materials containing "no detectable lead or cadmium" for
5 all colored artwork, designs or markings within Lip and Rim Area. For purposes of this
6 subsection, "no detectable lead or cadmium" shall mean that neither lead nor cadmium is detected
7 at a level above two one-hundredths of one percent (0.02%) for lead or eight one-hundredths of
8 one percent (0.08%) for cadmium by weight, respectively, using EPA Test Method 3050b.

9 **2.4 REFORMULATION COMMITMENT.** By entering into this Stipulation and
10 Consent Judgment, Defendants Wells Mfg. USA Inc. and Wells Mfg. Inc. hereby commit that as
11 a continuing matter of corporate policy, they intend to undertake good faith efforts, taking into
12 consideration Wells Defendants' operational and product licensing restrictions, to ensure that as
13 many Products as reasonably possible shall qualify as Reformulated Products, with the
14 commitment to reach 80% (eighty percent) or more Reformulated Products for Products
15 manufactured, licensed, or offered for sale by Wells Defendants on or after July 1, 2006, and
16 reasonably likely to be sold in California, and the commitment to make commercially reasonable
17 efforts thereafter to reach 100% (one-hundred percent) Reformulated Products.

18 **2.5 AUTHORIZED ACTIVITY.** Notwithstanding any other provision of this
19 Consent Judgment, Defendants Wells Mfg. USA Inc. and Wells Mfg. Inc. shall not be required to
20 comply with the warning requirements set forth in subsections 2.1(a) and 2.2 hereof to the extent
21 (and only during the period) that Wells Defendants employ fewer than ten full and part time
22 employees.

23
24
25
26 ² If the Product is a Children's Product, it must meet this reformulation standard to be
27 considered a Reformulated Product. Children's Product is defined in this Consent Judgment to
28 mean: Any Product intended or marketed primarily for use by children such as Products with
designs on their exterior surface which are affiliated with children's toys or entertainment (e.g.,
Sesame Street, Looney Tunes, Barbie, and Winnie the Pooh).

1 **3. MONETARY PAYMENTS.**

2 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to
3 Health & Safety Code §25249.7(b), Defendants shall pay \$38,000 in civil penalties. The penalty
4 payment shall be made payable to "Chanler Law Group in Trust For Russell Brimer," and shall be
5 delivered to Plaintiff's counsel on or before September 1, 2005 at the following address:

6 CHANLER LAW GROUP
7 Attn: Clifford A. Chanler
8 71 Elm Street, Suite 8
 New Canaan, CT 06840

9 (a) In the event that Defendants pay any penalty and the Consent Judgment is
10 not thereafter approved and entered by the Court, Brimer shall return any penalty funds paid
11 under this agreement within fifteen (15) days of receipt of a written request from Defendants
12 following notice of the issuance of the Court's decision.

13 (b) The Parties agree that Defendants' potential interest in and ability to
14 acquire and market Reformulated Products is to be accounted for in this section and, since it is
15 not a remedy provided for by law, the absence of Defendants previously acquiring,
16 manufacturing, marketing or selling Reformulated Products is not relevant to the establishment of
17 a penalty amount pursuant to section 3.1 above.

18 (c) **Apportionment of Penalties Received.** After Court approval of this
19 Consent Judgment pursuant to section 6, all penalty monies received shall be apportioned by
20 Plaintiff in accordance with Health & Safety Code §25192, with 75% of these funds remitted to
21 the State of California's Office of Environmental Health Hazard Assessment and the remaining
22 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code
23 §25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of
24 California the appropriate civil penalties paid in accordance with this section.

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

26 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
27 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
28

1 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
2 Defendants then expressed a desire to resolve the fee and cost issue shortly after the other
3 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
4 the compensation due to Plaintiff and his counsel under the private attorney general doctrine
5 codified at Code of Civil Procedure §1021.5 for all work performed through the Effective Date of
6 the Agreement. Under the private attorney general doctrine codified at Code of Civil Procedure
7 §1021.5, Defendants shall reimburse Plaintiff and his counsel for fees and costs, incurred as a
8 result of investigating, bringing this matter to Defendants' attention, litigating and negotiating a
9 settlement in the public interest. Defendants shall pay Plaintiff and his counsel \$68,700 for all
10 attorneys' fees, expert and investigation fees, and litigation costs. The payment shall be made
11 payable to the "Chanler Law Group" and shall be delivered to Plaintiff's counsel on or before
12 September 1, 2005 at the following address:

13
14 CHANLER LAW GROUP
15 Attn: Clifford A. Chanler
16 71 Elm Street, Suite 8
17 New Canaan, CT 06840

18 In the event that Defendants pay any attorneys' fees, expert and investigation fees, and litigation
19 costs and the Consent Judgment is not thereafter approved and entered by the Court, Brimer shall
20 return any attorneys' fees, expert and investigation fees, and litigation costs paid under this
21 agreement within fifteen (15) days of receipt of a written request from Defendants following
22 notice of the issuance of the Court's decision.

23 4.2 Except as specifically provided in this Consent Judgment, Defendants shall have
24 no further obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with
25 regard to the Products covered in this Action.

26 5. RELEASE OF ALL CLAIMS

27 5.1 **Plaintiff's Release of Defendants.** In further consideration of the promises and
28 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors

1 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
2 participate in, directly or indirectly, any form of legal action and release all claims, including,
3 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
4 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
5 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
6 unknown, fixed or contingent (collectively "Claims"), against Defendants and each of their
7 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers,
8 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries and
9 their respective officers, directors, attorneys, representatives, shareholders, agents, and employees
10 (collectively, "Defendant Releasees") arising under Proposition 65, Business & Professions Code
11 §17200 *et seq.* and Business & Professions Code §17500 *et seq.*, related to Defendants' or
12 Defendant Releasees' alleged failure to warn about exposures to or identification of Listed
13 Chemicals contained in the Products and for all actions or statements made by Defendants or their
14 attorneys or representatives, in the course of responding to alleged violations of Proposition 65,
15 Business & Professions Code §§17200 and 17500 by Defendants. Provided however, Plaintiff
16 shall remain free to institute any form of legal action to enforce the provisions of this Consent
17 Judgment.

18 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
19 binding resolution of any violation of Proposition 65, Business & Professions Code §17200
20 *et seq.* and Business & Professions Code §§17500 *et seq.*, that has been or could have been
21 asserted in the Complaints against Defendants for their alleged failure to provide clear and
22 reasonable warnings of exposure to or identification of Listed Chemicals in the Products.

23 It is specifically understood and agreed that the Parties intend that Defendants'
24 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in
25 the future (so long as Defendants comply with the terms of the Consent Judgment) concerning
26 Defendants and the Defendant Releasees' compliance with the requirements of Proposition 65,
27
28

1 Business and Professions Code §§17200 *et. seq.* and Business & Professions Code §§17500 *et*
2 *seq.*, as to the Listed Chemicals in the Products.

3 5.2 **Defendants' Release of Plaintiff.** Defendants waive all right to institute any form
4 of legal action against Plaintiff, or his attorneys or representatives, for all actions taken or
5 statements made by Plaintiff and his attorneys or representatives, in the course of seeking
6 enforcement of Proposition 65, Business & Professions Code §§17200 *et seq.* or Business &
7 Professions Code §§17500 *et seq.* in this Action.

8 **6. COURT APPROVAL**

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

14 **7. DEFENDANTS' SALES DATA**

15 Defendants understand that the sales data provided to counsel for Brimer by WELLS
16 MFG. USA INC.; WELLS MFG. INC.; AND THE MAY DEPARTMENT STORES
17 COMPANY was a material factor upon which Brimer has relied to determine the amount of
18 payments made pursuant to Health & Safety Code §25249.7(b) in this Consent Judgment. To the
19 best of DEFENDANTS' knowledge, the sales data provided is true and accurate.

20 **8. SEVERABILITY**

21 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
22 Consent Judgment other than section 5.1 hereof are held by a court to be unenforceable, the
23 validity of the enforceable provisions remaining shall not be adversely affected.

24 **9. ATTORNEYS' FEES**

25 In the event that a dispute arises with respect to any provision(s) of this Consent
26 Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover
27

28

1 reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of
2 such dispute.

3 **10. GOVERNING LAW**

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

9 **11. NOTICES**

10 All correspondence and notices required to be provided pursuant to this Consent Judgment
11 shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail,
12 return receipt requested or (ii) overnight courier on either Party by the other at the following
13 addresses. (Either Party, from time to time, may, pursuant to the methods prescribed above,
14 specify a change of address to which all future notices and other communications shall be sent.)

15 To WELLS MFG. USA INC.; and WELLS MFG. INC:

16 Jackson You, President
17 WELLS MFG. USA INC.
18 9698 Telstar Ave. Unit #312
19 El Monte, CA 91731

20 With a copy to:

21 Gary A. Meyer, Esq.
22 PARKER, MILLIKEN, CLARK, O'HARA & SAMUELIAN
23 333 South Hope St., 27th Floor
24 Los Angeles, CA 90071-1488

25 To THE MAY DEPARTMENT STORES COMPANY:

26 THE MAY DEPARTMENT STORES COMPANY
27 611 Olive Street
28 St. Louis, MO 63101
Attn: General Counsel

With a copy to:

1 Jeffrey B. Margulies, Esq.
2 Rachel D. Stanger, Esq.
3 FULBRIGHT & JAWORSKI L.L.P.
4 555 S. Flower Street, 41st Floor
5 Los Angeles, California 90071

6 To Plaintiff:

7 Laralei S. Paras, Esq.
8 PARAS LAW GROUP
9 655 Redwood Highway, Suite 216
10 Mill Valley, CA 94941

11 Clifford A. Chanler, Esq.
12 CHANLER LAW GROUP
13 71 Elm Street, Suite 8
14 New Canaan, CT 06840

15 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

27 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

28 The Parties shall mutually employ their best efforts to support the entry of this Agreement
as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
manner. The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which

1 Plaintiff's counsel shall prepare, within a reasonable period of time after the Execution Date.
2 Plaintiff's counsel shall prepare a declaration in support of the Joint Motion which shall, *inter*
3 *alia*, set forth support for the fees and costs to be reimbursed pursuant to Section 4. Defendants
4 shall have no additional responsibility to Plaintiff's counsel pursuant to C.C.P. §1021.5 or
5 otherwise with regard to reimbursement of any fees and costs incurred with respect to the
6 preparation and filing of the Joint Motion and its supporting declaration or with regard to
7 Plaintiff's counsel appearing for a hearing or related proceedings thereon.

8 **15. MODIFICATION**

9 This Consent Judgment may be modified, including pursuant to section 2.3(e) above, only
10 by: (1) written agreement of the Parties and upon entry of a modified Consent Judgment by the
11 Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified
12 Consent Judgment by the Court. The Attorney General shall be served with notice of any
13 proposed modification to this Consent Judgment at least fifteen (15) days in advance of its
14 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
20 **AGREED TO:**

AGREED TO:

21
22 **Date:**

Date:

23
24 **By:**

By:

25 Plaintiff Russell Brimer

Defendants WELLS MFG. USA INC.; and
WELLS MFG. INC.

1 Plaintiff's counsel shall prepare, within a reasonable period of time after the Execution Date.
2 Plaintiff's counsel shall prepare a declaration in support of the Joint Motion which shall, *inter*
3 *alia*, set forth support for the fees and costs to be reimbursed pursuant to Section 4. Defendants
4 shall have no additional responsibility to Plaintiff's counsel pursuant to C.C.P. §1021.5 or
5 otherwise with regard to reimbursement of any fees and costs incurred with respect to the
6 preparation and filing of the Joint Motion and its supporting declaration or with regard to
7 Plaintiff's counsel appearing for a hearing or related proceedings thereon.

8 **15. MODIFICATION**

9 This Consent Judgment may be modified, including pursuant to section 2.3(e) above, only
10 by: (1) written agreement of the Parties and upon entry of a modified Consent Judgment by the
11 Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified
12 Consent Judgment by the Court. The Attorney General shall be served with notice of any
13 proposed modification to this Consent Judgment at least fifteen (15) days in advance of its
14 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
20 **AGREED TO:**

AGREED TO:

21
22 Date: 8.22.05

Date:

23
24 By: 

By:

25 Plaintiff Russell Brimer

Defendants WELLS MFG. USA INC.; and
WELLS MFG. INC.

1 Plaintiff's counsel shall prepare, within a reasonable period of time after the Execution Date,
2 Plaintiff's counsel shall prepare a declaration in support of the Joint Motion which shall, *inter*
3 *alia*, set forth support for the fees and costs to be reimbursed pursuant to Section 4. Defendants
4 shall have no additional responsibility to Plaintiff's counsel pursuant to C.C.P. §1021.5 or
5 otherwise with regard to reimbursement of any fees and costs incurred with respect to the
6 preparation and filing of the Joint Motion and its supporting declaration or with regard to
7 Plaintiff's counsel appearing for a hearing or related proceedings thereon.

8 **15. MODIFICATION**

9 This Consent Judgment may be modified, including pursuant to section 2.3(e) above, only
10 by: (1) written agreement of the Parties and upon entry of a modified Consent Judgment by the
11 Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified
12 Consent Judgment by the Court. The Attorney General shall be served with notice of any
13 proposed modification to this Consent Judgment at least fifteen (15) days in advance of its
14 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
20 **AGREED TO:**

21
22 **Date:**

23
24 **By:**

25 Plaintiff Russell Brimer

20 **AGREED TO:**

21
22 **Date:** 2/22/05

23
24 **By:**

25 Defendants WELLS MFG. USA INC.; and
26 WELLS MFG. INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Date:

By:

Defendant THE MAY DEPARTMENT STORES COMPANY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: August 25, 2005

Date:

PARAS LAW GROUP

PARKER, MILLIKEN, CLARK, O'HARA & SAMUELIAN

By: *Lara S. Paras*

By:

Lara S. Paras, Esq.
Attorneys for Plaintiff
RUSSELL BRIMER

Gary A. Meyer, Esq.
Attorney for Defendants
WELLS MFG. USA INC.; WELLS MFG. INC.,
THE MAY DEPARTMENT STORES
COMPANY

APPROVED AS TO FORM:

Date:

FULBRIGHT & JAWORSKI L.L.P

By:

Rachel D. Stanger
Attorney for Defendants
THE MAY DEPARTMENT STORES COMPANY

IT IS SO ORDERED.

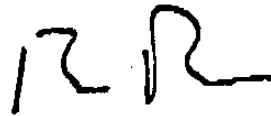
Date: _____

JUDGE OF THE SUPERIOR COURT

AUG 22 2005

AGREED TO:

Date: 8/25/05

By: 

B. Powers - CFO ROBINSONS-MAY
Defendant THE MAY DEPARTMENT
STORES COMPANY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date:

Date:

PARAS LAW GROUP

PARKER, MILLIKEN, CLARK, O'HARA &
SAMUELIAN

By:

By:

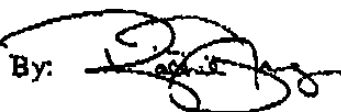
Laralei S. Paras, Esq.
Attorneys for Plaintiff
RUSSELL BRIMER

Gary A. Meyer, Esq.
Attorney for Defendants
WELLS MFG. USA INC.; WELLS MFG. INC.,
THE MAY DEPARTMENT STORES
COMPANY

APPROVED AS TO FORM:

Date: August 19, 2005

FULBRIGHT & JAWORSKI L.L.P.

By: 

Rachel D. Stanger
Attorney for Defendants
THE MAY DEPARTMENT STORES COMPANY

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Date:

By:

Defendant THE MAY DEPARTMENT STORES COMPANY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date:

Date: 8/23/05

PARAS LAW GROUP

PARKER, MILLIKEN, CLARK, O'HARA & SAMUELIAN

By:

By: Gary A. Meyer / by Mary Andersen

Laralei S. Paras, Esq.
Attorneys for Plaintiff
RUSSELL BRIMER

Gary A. Meyer, Esq.
Attorney for Defendants
WELLS MFG. USA INC.; WELLS MFG. INC.,
THE MAY DEPARTMENT STORES
COMPANY

APPROVED AS TO FORM:

Date:

FULBRIGHT & JAWORSKI L.L.P

By:

Rachel D. Stanger
Attorney for Defendants
THE MAY DEPARTMENT STORES COMPANY

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Wine glasses, goblets and other glassware intended for consumption of food and/or beverages with colored artwork or designs on the exterior.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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, or in certain ceramic tableware products, or handling products made of leaded crystal or certain glassware products with colored decorations on the exterior, will expose you to lead and/or cadmium, chemicals 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C

Combined Point of Sale Warnings

PROP 65
WARNING

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 and cadmium, chemicals 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.]

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."]

1 Laralei S. Paras (State Bar No. 203319)
2 Daniel Bornstein (State Bar No. 181711)
3 PARAS LAW GROUP
4 2560 Ninth Street, Suite 214
5 Berkeley, CA 94710-2565
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118

8 Attorneys for Plaintiff
9 RUSSELL BRIMER

10 Gary A. Meyer (State Bar No. 94144)
11 Mary E. Henderson (State Bar 235256)
12 PARKER MILLIKEN CLARK O'HARA & SAMUELIAN
13 333 S. Hope Street, 27th Floor
14 Los Angeles, CA 90071
15 Tel: (213) 683-6683
16 Fax: (213) 683-6669

17 Attorneys for Defendant
18 WELLS MANUFACTURING USA, INC.

19 Jeffrey B. Margulies (State Bar No. 126002)
20 Rachel D. Stanger (State Bar No. 200733)
21 FULBRIGHT & JAWORSKI, LLP
22 555 South Flower Street, Forty-First Floor
23 Los Angeles, CA 90071
24 Tel: (213) 892-9200
25 Fax: (213) 892-9494

26 Attorneys for Defendant
27 MAY DEPARTMENT STORES COMPANY

28 SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

WELLS MFG. USA, INC.; WELLS MFG INC.;
ROBINSONS-MAY DEPARTMENT STORE;
THE MAY DEPARTMENT STORES
COMPANY; and DOES 1 through 150,

Defendants.

Case No. CGC 04-435221

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

Date: January 12, 2006

Time: 9:30 A.M.

Dept.: 301

Judge: Hon. James L. Warren

ENDORSED
FILED
San Francisco County Superior Court

JAN 12 2006

GORDON PARK-LI, Clerk
BY: ERICKA LARNAUTI
Deputy Clerk

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendants WELLS MANUFACTURING USA, INC. and THE MAY DEPARTMENT STORES COMPANY, having agreed through their respective counsel that judgment be entered pursuant to the terms of the Consent Judgment entered into by the parties, and after issuing an Order Approving Proposition 65 Settlement Agreement and Consent Judgment on January 12, 2006.

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

IT IS SO ORDERED.

Dated: January 12, 2006

JAMES L. WARREN

Hon. James L. Warren
JUDGE OF THE SUPERIOR COURT