

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

7 Clifford A. Chanler (State Bar No. 135534)
8 CHANLER LAW GROUP
9 71 Elm Street, Suite 8
10 New Canaan, CT 06840
11 Telephone: (203) 966-9911
12 Facsimile: (203) 801-5222

13 Attorneys for Plaintiff
14 Russell Brimer

15 Andrea Sheridan Ordin (State Bar No. 038235)
16 MORGAN, LEWIS & BOCKIUS LLP
17 300 South Grand Avenue, Suite 2200
18 Los Angeles, CA 90071
19 Telephone: (213) 612-2500
20 Facsimile: (213) 612-2501

21 Attorneys for Defendant
22 Santa Barbara Ceramic Design

23 SUPERIOR COURT OF THE STATE OF CALIFORNIA
24 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
25 UNLIMITED CIVIL JURISDICTION

26 RUSSELL BRIMER,
27 Plaintiff,

28 v.

29 SANTA BARBARA CERAMIC DESIGN;
30 LONGS DRUG STORES CORPORATION,
31 INC.; and DOES 1 through 150,
32 Defendants.

Case No. CGC-04-436730

(JCA)

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

Date: October 31, 2005

Time: 9:30 A.M.

Place: Dept. 302

Judge: Hon. Ronald E. Quidachay

ENDORSED
FILED
San Francisco County Superior Court

OCT 31 2005

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant SANTA
2 BARBARA CERAMIC DESIGN, having agreed through their respective counsel that judgment
3 be entered pursuant to the terms of the Stipulation and ~~[Proposed]~~ Order Re: Consent Judgment
4 ("Consent Judgment") entered into by the parties and after issuing an Order Approving
5 Proposition 65 Settlement Agreement and Consent Judgment on October 31, 2005.

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

9 IT IS SO ORDERED.

RONALD EVANS QUIDACHAY

10 Dated: October 31, 2005

11 _____
12 Hon. Ronald E. Quidachay
13 JUDGE OF THE SUPERIOR COURT
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7 Clifford A. Chanler (State Bar No. 135534)
8 CHANLER LAW GROUP
9 71 Elm Street, Suite 8
10 New Canaan, CT 06840
11 Telephone: (203) 966-9911
12 Facsimile: (203) 801-5222

13 Attorneys for Plaintiff
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15 Andrea Sheridan Ordin (State Bar No. 038235)
16 MORGAN, LEWIS & BOCKIUS LLP
17 300 South Grand Avenue, Suite 2200
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28 Plaintiff,
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30 v.
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34 INC.; and DOES 1 through 150,
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36 Defendants.

ENDORSED
FILED
San Francisco County Superior Court
OCT 31 2005
GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

Case No. CGC-04-436730
(JCR)
[PROPOSED] ORDER PURSUANT TO
TERMS OF CONSENT JUDGMENT
Date: October 31, 2005
Time: 9:30 A.M.
Place: Dept. 302
Judge: Hon. Ronald E. Quidachay

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant SANTA
2 BARBARA CERAMIC DESIGN, having agreed through their respective counsel that judgment
3 be entered pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment
4 (“Consent Judgment”) entered into by the above-referenced parties and attached hereto as **Exhibit**
5 **A**; and after consideration of the papers submitted and the arguments presented, the Court finds
6 that the settlement agreement set out in the attached Consent Judgment meets the criteria
7 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 §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.

RONALD EVANS QUIDACHAY

17 Dated: October 31, 2005

18 Hon. Ronald E. Quidachay
19 JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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

7 Clifford A. Chanler (State Bar No. 135534)
8 CHANLER LAW GROUP
9 71 Elm Street, Suite 8
10 New Canaan, CT 06840
11 Telephone: (203) 966-9911
12 Facsimile: (203) 801-5222

13 Attorneys for Plaintiff
14 Russell Brimer

15 Andrea Sheridan Ordin (State Bar No. 038235)
16 Teresa A. MacDonald (State Bar No. 217053)
17 MORGAN, LEWIS & BOCKIUS LLP
18 300 South Grand Avenue, Suite 2200
19 Los Angeles, CA 90071
20 Telephone: (213) 612-2500
21 Facsimile: (213) 612-2501

22 Attorneys for Defendant
23 Santa Barbara Ceramic Design

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21 RUSSELL BRIMER,
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23 Plaintiff,
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25 v.
26 SANTA BARBARA CERAMIC DESIGN;
27 LONGS DRUG STORES CALIFORNIA, INC.;
28 and DOES 1 through 150,
29
30 Defendants.

Case No. CGC-04-436730

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

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and
3 between plaintiff Russell Brimer (hereafter "Brimer" or "Plaintiff") and Santa Barbara Ceramic
4 Design (hereafter "SBCD"), with Plaintiff and SBCD collectively referred to as the "Parties" and
5 Brimer and SBCD each being a "Party."

6 **1.2 Plaintiff.** Brimer is an individual residing in Alameda County, California who
7 seeks to promote awareness of exposures to toxic chemicals and improve human health by
8 reducing or eliminating hazardous substances contained in consumer and industrial products.

9 **1.3 Defendant.** SBCD is a California-based company founded by its current owner in
10 1976. SBCD manufactures and sells houseware products with artistic designs. SBCD asserts that
11 it has a long history of compliance with California Health & Safety Code §§ 25249.5, *et seq.*

12 **1.4 General Allegations.** Plaintiff alleges that SBCD has manufactured, distributed
13 and/or sold in the State of California oil bottles and other glassware products with colored
14 artwork, designs or markings on the exterior surface with materials that contain lead and/or
15 cadmium that are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986,
16 California Health & Safety Code §§ 25249.5 *et seq.*, also known as Proposition 65, to cause
17 cancer and birth defects (or other reproductive harm). Lead and/or cadmium shall be referred to
18 herein as "Listed Chemicals."

19 **1.5 Product Descriptions.** The products that are covered by this Consent Judgment
20 are defined as follows: glass oil bottles, glass beverage ware, glass oil and vinegar shakers, glass
21 salt and pepper shakers, and glass sugar pourers manufactured, sold and/or distributed by SBCD
22 with colored artwork, designs or markings on the exterior surface. Such products collectively are
23 referred to herein as the "Products."

24 **1.6 Notices of Violation.** Beginning on September 2, 2004, Brimer served SBCD and
25 various public enforcement agencies with documents, entitled "60-Day Notice of Violation"
26 ("Notice") that provided SBCD and such public enforcers with notice which alleged that SBCD
27 was in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain
28 products that it sold expose users in California to lead and/or cadmium.

1 1.7 **Complaint.** On December 1, 2004, Brimer, in the interest of the general public in
2 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the
3 Superior Court for the City and County of San Francisco against SBCD and Does 1 through 150,
4 alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to one or
5 more of the Listed Chemicals contained in certain products sold by SBCD.

6 1.8 **No Admission.** SBCD denies the material factual and legal allegations contained
7 in Plaintiff's Notice and Complaint and maintains that all products that it has sold and distributed
8 in California including the Products have been and are in compliance with all laws. Nothing in
9 this Consent Judgment shall be construed as an admission by SBCD of any fact, finding, issue of
10 law, or violation of law, nor shall compliance with this Agreement constitute or be construed as
11 an admission by SBCD of any fact, finding, conclusion, issue of law or violation of law. This
12 section, however, shall not diminish or otherwise affect the obligations, responsibilities and duties
13 of SBCD under this Consent Judgment.

14 1.9 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
15 stipulate that this Court has jurisdiction over the allegations of violations contained in the
16 Complaint and personal jurisdiction over SBCD as to the acts alleged in the Complaint, that
17 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
18 Consent Judgment and to enforce the provisions thereof.

19 1.10 **Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall be
20 April 1, 2005.

21 **2. INJUNCTIVE RELIEF**

22 2.1 **WARNINGS AND REFORMULATION OBLIGATIONS**

23 (a) **Required Warnings.** After the Effective Date, SBCD shall not transmit to
24 any entity to sell or offer for sale in California any Products containing the Listed Chemicals,
25 unless warnings are given in accordance with Section 2.2 below.

26 (b) **Exceptions.** The warning requirements set forth in Section 2.2 below shall
27 not apply to:

28 ///

- 1 (i) any Products manufactured before April 30, 2005, or
2 (ii) Reformulated Products as defined in subsection 2.3 below.

3 **2.2 CLEAR AND REASONABLE WARNINGS**

4 (a) **Product Labeling.** A warning is affixed to the packaging, labeling,
5 hangtag, backstamp or otherwise directly to or on a Product by SBCD, its agent, or the
6 manufacturer, importer, or distributor of the Product that states:

7 **WARNING:**

8

**The materials used as colored decorations
9 on this product contain lead and/or cadmium,
10 chemicals known to the State of California to cause birth
11 defects or other reproductive harm.**

12 Warnings issued for Products pursuant to this Section shall be in the form of Exhibit A
13 and shall be prominently placed with such conspicuousness as compared with other words,
14 statements, designs, or devices as to render it likely to be read and understood by an ordinary
15 individual under customary conditions of use or purchase. Any changes to the language or format
16 of the warning required by this Section shall only be made following: (1) approval of Plaintiff;
17 (2) approval from the California Attorney General's Office, provided that written notice of at
18 least fifteen (15) days is given to Plaintiff for the opportunity to comment; or (3) Court approval.

19 (b) **Point of Sale Warnings.** SBCD may execute its warning obligations,
20 where applicable, through arranging for the posting of signs at retail outlets in the State of
21 California at which Products are sold, in accordance with the terms specified in
22 subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii).

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

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

or

1 2.3 **REFORMULATION STANDARDS:** Products satisfying one of the
2 Reformulation Standards Regarding Lead, set forth in section 2.3(a)(i)-(ii) as well as 2.3(a)(iii)
3 below, and one of the Reformulation Standards Regarding Cadmium, set forth in 2.3(b)(i)-(ii) as
4 well as 2.3(b)(iii) below, are referred to as "Reformulated Products":

5 (a) Reformulation Standards Regarding Lead

6 (i) If the colored artwork, designs or markings on the exterior surface
7 of the Product that do not extend into the top 20 millimeters of the ware (*i.e.*, only appear below
8 the exterior portion of the lip and rim area as defined by American Society of Testing and
9 Materials Standard Test Method C 927-99, hereinafter the "Lip and Rim Area") produce a test
10 result no higher than 1.0 micrograms (ug) of lead using a Ghost Wipe™ test applied on the
11 decorated portions of the surface of the Product performed as outlined in NIOSH method
12 no. 9100, then such Product is a Reformulated Product; or

13 (ii) If the Product utilizes paints, decals, or other materials for colored
14 artwork, designs or markings containing six one-hundredths of one percent (0.06%) lead by
15 weight or less as measured at SBCD's option, either before or after the material is fired onto (or
16 otherwise affixed to) the Product, using a sample size of the materials in question measuring
17 approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of
18 quantitation (as distinguished from detection) of less than 600 parts per million ("ppm"), such
19 Product is a Reformulated Product; and

20 (iii) If the colored artwork, designs or markings on the exterior surface
21 of the Product do extend into the Lip and Rim Area, then the colored artwork, designs, or
22 markings appearing within the Lip and Rim Area must contain six one-hundredths of one percent
23 (0.06%) lead by weight or less as measured at SBCD's option, either before or after the material
24 is fired onto (or otherwise affixed to) the Product, using a sample size of the materials in question
25 measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit
26 of quantitation (as distinguished from detection) of less than 600 ppm, then such Product is a
27 Reformulated Product.

28 (b) Reformulation Standards Regarding Cadmium

1 (i) If the colored artwork, designs or markings on the exterior surface
2 of the Product that do not extend into the Lip and Rim Area produce a test result no higher than
3 4.0 micrograms (ug) of lead using a Ghost Wipe™ test applied on the decorated portions of the
4 surface of the Product performed as outlined in NIOSH method no. 9100, then such Product is a
5 Reformulated Product; or

6 (ii) If the Product utilizes paints, decals, or other materials for colored
7 artwork, designs or markings containing twenty-four one-hundredths of one percent (0.24%)
8 cadmium by weight or less as measured at SBCD's option, either before or after the material is
9 fired onto (or otherwise affixed to) the Product, using a sample size of the materials in question
10 measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit
11 of quantitation (as distinguished from detection) of less than 600 ppm, then such Product is a
12 Reformulated Product; and

13 (iii) If the colored artwork, designs or markings on the exterior surface
14 of the Product do extend into the Lip and Rim Area, then the colored artwork, designs, or
15 markings appearing within the Lip and Rim Area must contain eight one-hundredths of one
16 percent (0.08%) cadmium by weight or less as measured at SBCD's option, either before or after
17 the material is fired onto (or otherwise affixed to) the Product, using a sample size of the
18 materials in question measuring approximately 50-100 mg and a test method of sufficient
19 sensitivity to establish a limit of quantitation (as distinguished from detection) of less than
20 600 ppm, then such Product is a Reformulated Product.

21 **2.4 REFORMULATION COMMITMENT.** By entering into this Stipulation and
22 Consent Judgment, SBCD hereby commits that as a continuing matter of corporate policy, SBCD
23 intends to undertake good faith efforts, taking into consideration SBCD's operational and product
24 licensing restrictions, to ensure that as many Products as reasonably possible shall qualify as
25 Reformulated Products, with the commitment to reach 60% (sixty percent) or more Reformulated
26 Products for Products manufactured, licensed, or offered for sale by SBCD on or after January 1,
27 2006; the commitment to reach 80% (eighty percent) or more Reformulated Products for Products
28 manufactured, licensed, or offered for sale by SBCD on or after January 1, 2007 and the

1 commitment to make commercially reasonable efforts thereafter to reach 100% (one-hundred
2 percent) Reformulated Products.

3 **3. MONETARY PAYMENTS**

4 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to
5 Health & Safety Code Section 25249.7(b), SBCD shall pay twenty-five thousand two hundred
6 dollars (\$25,200) in civil penalties. The penalty payment shall be made payable to "Chanler Law
7 Group in Trust For Russell Brimer," and shall be delivered to Plaintiff's counsel in four equal
8 installments to be paid on or before April 30, 2005; July 31, 2005; November 30, 2005; and
9 December 31, 2005, respectively, at the following address:

10 CHANLER LAW GROUP
11 Attn: Clifford A. Chanler
12 71 Elm Street, Suite 8
New Canaan, CT 06840

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

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

22 **3.2 Apportionment of Penalties Received.** After Court approval of this Consent
23 Judgment pursuant to section 6, all penalty monies received shall be apportioned by Plaintiff in
24 accordance with Health & Safety Code § 25192, with 75% of these funds remitted to the State of
25 California's Office of Environmental Health Hazard Assessment and the remaining 25% of these
26 penalty monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d).
27
28

1 Plaintiff shall bear all responsibility for apportioning and paying to the State of California the
2 appropriate civil penalties paid in accordance with this section.

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

4 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
5 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
6 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
7 SBCD then expressed a desire to resolve the fee and cost issue shortly after the other settlement
8 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
9 compensation due to Plaintiff and his counsel under the private attorney general doctrine codified
10 at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date of the
11 Agreement. Under the private attorney general doctrine codified at Code of Civil Procedure
12 § 1021.5, SBCD shall reimburse Plaintiff and his counsel for fees and costs, incurred as a result
13 of investigating, bringing this matter to SBCD's attention, litigating and negotiating a settlement
14 in the public interest. SBCD shall pay Plaintiff and his counsel thirty-three thousand dollars
15 (\$33,000) for all attorneys' fees, expert and investigation fees, and litigation costs. The payment
16 shall be made payable to the "Chanler Law Group" and shall be delivered to Plaintiff's counsel in
17 four equal installments to be paid on or before April 30, 2005; July 31, 2005; November 30,
18 2005; and December 31, 2005, respectively, at the following address:

19 CHANLER LAW GROUP
20 Attn: Clifford A. Chanler
21 71 Elm Street, Suite 8
New Canaan, CT 06840

22 4.2 Except as specifically provided in this Consent Judgment, SBCD shall have no
23 further obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with
24 regard to the Products covered in this Action.

25 **5. RELEASE OF ALL CLAIMS**

26 5.1 **Plaintiff's Release of SBCD.** In further consideration of the promises and
27 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
28

1 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
2 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
3 participate in, directly or indirectly, any form of legal action and release all claims, including,
4 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
5 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
6 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
7 unknown, fixed or contingent (collectively "Claims"), against SBCD and each of its
8 manufacturers, distributors, wholesalers, licensors, licensees, auctioneers, retailers (including but
9 not limited to Longs Drug Stores California, Inc.), dealers, customers, owners, purchasers, users,
10 parent companies, corporate affiliates, subsidiaries and their respective officers, directors,
11 attorneys, representatives, shareholders, agents, and employees (collectively, "SBCD Releasees")
12 arising under Proposition 65, Business & Professions Code § 17200 *et seq.* and Business &
13 Professions Code § 17500 *et seq.*, related to SBCD's or SBCD Releasees' alleged failure to warn
14 about exposures to or identification of Listed Chemicals contained in the Products.

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

20 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waive all rights
21 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims
22 against the SBCD Releasees arising under Proposition 65, Business & Professions Code §§ 17200
23 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, related to each of the SBCD
24 Releasees' alleged failures to warn about exposures to or identification of Listed Chemicals
25 contained in the Products and for all actions or statements made by SBCD or its attorneys or
26 representatives, in the course of responding to alleged violations of Proposition 65, Business &
27 Professions Code §§ 17200 *et seq.* or Business & Professions Code §§ 17500 *et seq.* by SBCD.
28

1 Provided however, Plaintiff shall remain free to institute any form of legal action to enforce the
2 provisions of this Consent Judgment.

3 It is specifically understood and agreed that the Parties intend that SBCD's compliance
4 with the terms of this Consent Judgment resolves all issues and liability, now and in the future (so
5 long as SBCD complies with the terms of the Consent Judgment) concerning SBCD and the
6 SBCD Releasees' compliance with the requirements of Proposition 65, Business and Professions
7 Code §§ 17200 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, as to the Listed
8 Chemicals in the Products.

9 5.2 **SBCD's Release.** SBCD waives all rights to institute any form of legal action
10 against Plaintiff, or his attorneys or representatives, for all actions taken or statements made by
11 Plaintiff and his attorneys or representatives, in the course of seeking enforcement of
12 Proposition 65, Business & Professions Code §§ 17200 *et seq.* or Business & Professions Code
13 §§ 17500 *et seq.* in this Action.

14 **6. COURT APPROVAL**

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

20 **7. SALES DATA**

21 SBCD understands that the sales data provided to counsel for Brimer by SBCD was a
22 material factor upon which Brimer has relied to determine the amount of payments made pursuant
23 to Health & Safety Code §25249.7(b) in this Consent Judgment. To the best of SBCD's
24 knowledge, the sales data provided is true and accurate.

25 **8. SEVERABILITY**

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

1 **9. ATTORNEYS' FEES**

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

6 **10. GOVERNING LAW**

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

12 **11. NOTICES**

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

18 To SBCD: Raymond B. Markow, President
19 Santa Barbara Ceramic Design
20 426 E. Gutierrez Street
21 Santa Barbara, CA 93101

22 With a copy to: Andrea Sheridan Ordin, Esq.
23 Teresa A. MacDonald, Esq.
24 Morgan, Lewis & Bockius LLP
25 300 South Grand Avenue, Suite 2200
26 Los Angeles, CA 90071

27 To Plaintiff: Clifford A. Chanler, Esq.
28 Chanler Law Group
 71 Elm Street, Suite 8
 New Canaan, CT 06840

1 **12. NO ADMISSIONS**

2 Nothing in this Consent Judgment shall constitute or be construed as an admission by
3 SBCD of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance
4 with this Consent Judgment constitute or be construed as an admission by SBCD of any fact,
5 finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by
6 SBCD. SBCD reserves all of its rights and defenses with regard to any claim by any party under
7 Proposition 65 or otherwise. This section, however, shall not diminish or otherwise affect
8 SBCD's obligations, responsibilities and duties under this Consent Judgment.

9 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

21 **15. ADDITIONAL POST EXECUTION ACTIVITIES**

22 The Parties shall mutually employ their best efforts to support the entry of this Agreement
23 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
24 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
25 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
26 agree to file a Joint Motion to Approve and Enter the Consent Judgment ("Joint Motion"), the
27 first draft of which SBCD's counsel shall prepare, within a reasonable period of time after the
28 Effective Date (*i.e.*, not to exceed forty-five (45) days unless otherwise agreed to by the Parties'

1 counsel based on unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in
2 support of the Joint Motion which shall, inter alia, set forth support for the fees and costs to be
3 reimbursed pursuant to Section 4. SBCD shall have no additional responsibility to Plaintiff's
4 counsel pursuant to Code of Civil Procedure § 1021.5 or otherwise with regard to reimbursement
5 of any fees and costs incurred with respect to the preparation and filing of the Joint Motion and its
6 supporting declaration or with regard to Plaintiff's counsel appearing for a hearing or related
7 proceedings thereon.

8 **16. MODIFICATION**

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

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1 **16. AUTHORIZATION**

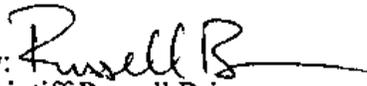
2 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
3 Parties and have read, understood and agree to all of the terms and conditions of this Consent
4 Judgment.

5 **AGREED TO:**

AGREED TO:

6
7 Date: 3-31-05

Date:

8
9 By: 
Plaintiff Russell Brimer

By:

Raymond B. Markow for
Defendant SANTA BARBARA CERAMIC
DESIGN

10
11
12 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

13 Date:

Date:

14
15 **PARAS LAW GROUP**

ANDREA SHERIDAN ORDIN
TERESA A. MACDONALD
MORGAN, LEWIS & BOCKIUS LLP

16 By:

By:

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

Teresa A. MacDonald
Attorneys for Defendant
SANTA BARBARA CERAMIC DESIGN

19
20
21
22 **IT IS SO ORDERED.**

23 Date: _____

JUDGE OF THE SUPERIOR COURT

24
25
26
27
28

1 **16. AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

6
7 **Date:**

Date:

8
9 **By:**
Plaintiff Russell Brimer

By:
Raymond B. Markow for
Defendant SANTA BARBARA CERAMIC
DESIGN

10
11
12 **APPROVED AS TO FORM:**

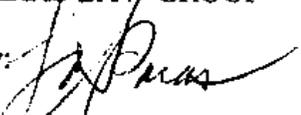
APPROVED AS TO FORM:

13 **Date:** 4/21/05

Date:

14
15 **PARAS LAW GROUP**

**ANDREA SHERIDAN ORDIN
TERESA A. MACDONALD
MORGAN, LEWIS & BOCKIUS LLP**

16 **By:** 
17 Laralei S. Paras, Esq.
18 Attorneys for Plaintiff
RUSSELL BRIMER

By:
Teresa A. MacDonald
Attorneys for Defendant
SANTA BARBARA CERAMIC DESIGN

19
20
21
22 **IT IS SO ORDERED.**

23 **Date:** _____

JUDGE OF THE SUPERIOR COURT

16. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date:

Date: 3/30/05

By: Plaintiff Russell Brimer

By: 
Raymond B. Markow for Defendant SANTA BARBARA CERAMIC DESIGN

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date:

Date:

PARAS LAW GROUP

ANDREA SHERIDAN ORDIN
TERESA A. MACDONALD
MORGAN, LEWIS & BOCKTUS LLP

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

By: 
Teresa A. MacDonald
Attorneys for Defendant
SANTA BARBARA CERAMIC DESIGN

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

WARNING:

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

EXHIBIT A