

1 CLIFFORD A. CHANLER (S.B. NO. 135534)
2 CHANLER LAW GROUP
3 71 Elm Street, Suite 8
4 New Canaan, CT 06840
5 Tel: (203) 966-9911
6 Fax: (203) 801-5222

FILED
SEP 23 2005

MARIN COUNTY SUPERIOR COURT
BY: E. TURNER, DEPUTY

5 STEPHEN S. SAYAD (S.B. No. 104866)
6 DANIEL BORNSTEIN (S.B. No. 181711)
7 LARALEI S. PARAS (S.B. No. 203319)
8 PARAS LAW GROUP
9 655 Redwood Highway, Suite 216
10 Mill Valley, CA 94941
11 Tel: (415) 380-9222
12 Fax: (415) 380-9223

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

11 ROBERT L. FALK (S.B. NO. 142007)
12 WILLIAM F. TARANTINO (S.B. NO. 215343)
13 MILES H. IMWALLE (S.B. NO. 230244)
14 MORRISON & FOERSTER LLP
15 425 Market Street
16 San Francisco, California 94105-2482
17 Tel: (415) 268 7000
18 Fax: (415) 268-7522

15 Attorneys for Defendants
16 HEARTHMARK, INC., JARDEN HOME BRANDS, and JARDEN CORPORATION

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF MARIN, UNLIMITED JURISDICTION

20	RUSSELL BRIMER,	)	Case No. CV 045306
)	
21	Plaintiff,	)	[PROPOSED] JUDGMENT PURSUANT
		)	TO TERMS OF CONSENT JUDGMENT
22	v.)	
)	
23	HEARTHMARK, INC.; ALLTRISTA	)	Date: September 23, 2005
	CONSUMER PRODUCTS COMPANY;	)	Time: 9:00 am
24	JARDEN CORPORATION; ALBERTSON'S,	)	Dept: H
	INC.; and DOES 1 through 150,	)	Judge: Hon. John Sutro
25		)	Action Filed: February 14, 2005
		)	Trial date: None set
26	Defendants.)	

[PROPOSED] JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT
CASE NO. CV 045306

1 In the above-entitled action. Plaintiff Russell Brimer and Defendants Hearthmark, Inc.,
2 Jarden Home Brands (formerly known as Alltrista Consumer Products Company), and Jarden
3 Corporation, having agreed through their respective counsel that judgment be entered pursuant to
4 the terms of the Consent Judgment entered into by the parties, and after issuing an Order Approving
5 Proposition 65 Settlement Agreement and Consent Judgment on September 23, 2005;

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

9 IT IS SO ORDERED.

JOHN A. SUTRO, JR.

10 Dated: **SEP 23 2005**

11 Hon. John Sutro
12 JUDGE OF THE SUPERIOR COURT

FILED

SEP 23 2005

MARIN COUNTY SUPERIOR COURT
KYLE E. TURNER, DEPUTY

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

CLIFFORD A. CHANLER (S.B. NO. 135534)
CHANLER LAW GROUP
71 Elm Street, Suite 8
New Canaan, CT 06840
Tel: (203) 966-9911
Fax: (203) 801-5222

Stephen S. Sayad (S.B. No. 104866)
Daniel Bornstein, (S.B. No. 181711)
Laralei S. Paras, (S.B. No. 203319)
PARAS LAW GROUP
655 Redwood Highway, Suite 216
Mill Valley, CA 94941
Tel: (415) 380-9222
Fax: (415) 380-9223

Attorneys for Plaintiff
RUSSELL BRIMER

ROBERT L. FALK (S.B. NO. 142007)
WILLIAM F. TARANTINO (S.B. NO. 215343)
MILES H. IMWALLE (S.B. NO. 230244)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105 2482
Tel: (415) 268 7000
Fax: (415) 268-7522

Attorneys for Defendants
HEARTHMARK, INC.; JARDEN HOME BRANDS; AND
JARDEN CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN, UNLIMITED JURISDICTION

RUSSELL BRIMER,	)	Case No. CV 045306
)	
Plaintiff,	)	[PROPOSED] ORDER APPROVING
	)	PROPOSITION 65 SETTLEMENT AND
v.	)	CONSENT JUDGMENT
)	
HEARTHMARK, INC.; ALLTRISTA	)	Hearing: September 23, 2005
CONSUMER PRODUCTS COMPANY;	)	Time: 9:00 am
JARDEN CORPORATION; ALBERTSON'S,	)	Dept: H
INC.; and DOES 1 through 150,	)	Judge: Hon. John Sutro
	)	Action Filed: February 14, 2005
Defendants.	)	Trial Date: None set

[Proposed] Order Approving Proposition 65 Settlement and Consent Judgment
Case No. CV 045306

1 Plaintiff RUSSELL BRIMER and Defendants HEARTHMARK, INC., JARDEN HOME
2 BRANDS (formerly known as ALLTRISTA CONSUMER PRODUCTS COMPANY), and
3 JARDEN CORPORATION ("Defendants"), having agreed through their respective counsel that
4 judgment be entered pursuant to the terms of the Consent Judgment entered into by the above-
5 referenced parties and attached hereto as Exhibit 1; and after consideration of the papers submitted
6 and the arguments presented, the Court finds that the settlement agreement set out in the attached
7 Consent Judgment meets the criteria established by Health & Safety Code section 25249.7, in that:

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

15 Accordingly, IT IS HEREBY ORDERED that Judgment be entered in the case referenced
16 above, in accordance with the terms of the Consent Judgment, attached hereto as Exhibit 1.

17
18 JOHN A. SUTRO, JR.

19 Dated: 9/23, 2005

20 _____
21 Hon. John Sutro
22 Judge of the Marin Superior Court

Exhibit 1

1 CLIFFORD A. CHANLER (State Bar No. 135534)
2 CHANLER LAW GROUP
3 71 Elm Street, Suite 8
4 New Canaan, CT 06840
5 Telephone: (203) 966-9911
6 Facsimile (203) 801-5222

7 Attorneys for Plaintiff
8 Russell Brimer

9 ROBERT L. FALK (State Bar No. 142007)
10 WILLIAM F. TARANTINO (State Bar No. 215343)
11 MORRISON & FOERSTER LLP
12 425 Market Street
13 San Francisco, California 94105-2482
14 Telephone: (415) 268-7000
15 Facsimile: (415) 268-7522

16 Attorneys for Defendants
17 Hearthmark, Inc.,
18 Alltrista Consumer
19 Products, Inc., and
20 Jarden Corporation

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF MARIN
23 UNLIMITED JURISDICTION

24 RUSSELL BRIMER,
25 Plaintiff,

26 v.

27 HEARTHMARK, INC.; ALLTRISTA
28 CONSUMER PRODUCTS COMPANY;
JARDEN CORPORATION; ALBERTSON'S,
INC.; and DOES 1 through 150,
Defendants.

Case No. CV 045306

CONSENT JUDGMENT

1. INTRODUCTION

1.1 Plaintiff and Settling Defendants. This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereafter "Brimer" or "Plaintiff") and Hearthmark, Inc., Alltrista Consumer Products, Inc. and Jarden Corporation (hereafter collectively referred to as

1 "Defendants" or "Jarden"), with Plaintiff and Defendants collectively referred to as the "Parties"
2 and Brimer and the Defendants each being a "Party."

3 1.2 **Plaintiff.** Brimer is an individual residing in California who seeks to promote
4 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
5 hazardous substances contained in consumer and industrial products.

6 1.3 **General Allegations.** Plaintiff alleges that Jarden has manufactured, distributed
7 and/or sold in the State of California "sun tea" jars, drinking glasses, and other glass tableware
8 products with colored artwork, designs or markings on the exterior surface with materials in that
9 colored artwork, designs or markings that contain lead and/or lead compounds, which are listed
10 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
11 Safety Code §§ 25249.5 et seq., also known as Proposition 65, to cause cancer and birth defects
12 and other reproductive harm. Lead and/or lead compounds shall be referred to herein as "Listed
13 Chemicals."

14 1.4 **Product Descriptions.** The products that are covered by this Consent Judgment
15 are defined as follows: glassware products manufactured, sold and/or distributed in California by
16 Defendants with colored artwork, designs or markings on the exterior surface including, by way
17 of example and without limitation, glassware products contained in the items listed at Exhibit A.
18 Such products collectively are referred to herein as the "Products."

19 1.5 **Notices of Violation.** Beginning on September 2, 2004, Brimer served
20 Defendants and various public enforcement agencies with documents, entitled "60-Day Notice of
21 Violation" ("Notice") that provided Defendants and such public enforcers with notice that alleged
22 that Defendants was in violation of Health & Safety Code § 25249.6 for failing to warn
23 purchasers that certain products that it sold expose users in California to lead and lead
24 compounds.

25 1.6 **Complaint.** On December 6, 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 Marin against Defendants and Does 1 through 150,
28

1 alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to one or
2 more of the Listed Chemicals contained in certain products sold by Defendants.

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

11 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
12 stipulate that this Court has jurisdiction over the allegations of violations contained in the
13 Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint, that
14 venue is proper in the County of Marin, and that this Court has jurisdiction to enter this Consent
15 Judgment and to enforce the provisions thereof.

16 1.9 **Effective Date.** For purposes of this Consent Judgment, the "Effective Date" shall
17 be June 1, 2005.

18 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

19 2.1 **Warning Obligations for Products**

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

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

- 26 (i) any Products manufactured before the Effective Date, or
27 (ii) Reformulated Products.

28

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

2.2 Clear and Reasonable Warnings

(a) Product Labeling. A warning is affixed to the packaging, labeling or directly to or on a Product by Defendants, its agent, or the manufacturer, importer, or distributor of the Product that states:

WARNING: The materials used as colored decorations on the exterior of this product contain lead, a chemical 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 the following products contain lead, a chemical 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 of Plaintiff; (2) 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 (3) Court approval.

(b) Point-of-Sale Warnings. Defendants may execute their warning obligations, where applicable, 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) and 2.2(b)(iii).

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

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

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

or

WARNING: The materials used as colored decorations on the exterior of tableware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.¹

or

WARNING: The materials used as colored decorations on the exterior of the following tableware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm:
[Insert list of Products by specific brand name and/or name of manufacturer and description, e.g. *Jarden Sunflower 120 oz.*]

(ii) A point of sale warning provided pursuant to subsection 2.2(b)(i) 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 and shall be placed or written in a manner such that the consumer understands to which *specific* Products the warnings apply so as to minimize if not eliminate the chances that an overwarning situation will arise. Any changes to the language or format of the warning required for Products by this subsection shall only be made following: (1) approval of Plaintiff; (2) 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 (3) Court approval.

(iii) If Defendants intend to utilize point of sale warnings to comply with this Consent Judgment, they must provide notice as required by this Consent Judgment to each retailer to whom Defendants ship the Products for sale in California and obtain the written consent of such retailer before shipping the Products. Such notice shall include a copy of this Consent Judgment and any required warning materials (including, as appropriate, signs and/or stickers). If Defendants have obtained the consent of a retailer, Defendants shall not be found to

¹ This formulation of the warning may only be used where the store in which the Products are sold sells only non-Reformulated Products, as such phrase is defined in Section 2.3.

1 have violated this Consent Judgment if they have complied with the terms of this Consent
2 Judgment and has proof that it transmitted the requisite warnings in the manner provided herein.

3 **2.3 Reformulation Standards.** Products satisfying the conditions set forth below
4 qualify as "Reformulated Products."

5 (a) The Product must produce a test result no higher than 1.0 micrograms (ug)
6 of lead using a Ghost Wipe™ test applied to the colored decorations on the exterior surface of
7 the Product, performed as outlined in NIOSH method no. 9100, or

8 (b) The colored artwork, designs or markings on the exterior surface of the
9 Product must only utilize decorating materials containing six one-hundredths of one percent
10 (0.06%) lead by weight or less as measured at Defendants' option, either before or after the
11 material is fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050b.²

12 (c) If the colored artwork, designs or markings on the exterior surface of the
13 Product extends into the top 20 millimeters of the ware (*i.e.*, the exterior portion of the lip and rim
14 area as defined by American Society of Testing and Materials Standard Test Method C927-99,
15 hereinafter the "Lip and Rim Area"), the Product must produce test results acceptable under
16 section 2.3(a) or 2.3(b) above, and the decorative materials used in the Lip and Rim Area of the
17 Products must contain no detectable lead.³

18 **2.4 Reformulation Commitment.** By entering into this Stipulation and Consent
19 Judgment, Defendants hereby commit that as a continuing matter of corporate policy, Defendants
20 intend to undertake good faith efforts, taking into consideration Defendants' operational and
21 product licensing restrictions, to ensure that as many Products as reasonably possible shall qualify
22 as Reformulated Products, with the commitment to reach 80% (eighty percent) or more
23

24 ² If the Defendants tests the decoration after it is affixed to the Product, the percentage of
25 lead by weight must relate only to the other portions of the decorating material and not include
any calculation of non-decorating material.

26 ³ For purposes of this subsection, "no detectable lead" shall mean that neither lead
27 detected at a level above .02% (for lead) by weight, respectively, using a sample size of the
28 materials in question measuring approximately 50-100 mg and a test method of sufficient
sensitivity to establish a limit of quantitation of less than 200 ppm.

1 Reformulated Products for Products manufactured on or after December 1, 2006 and the
2 commitment to make commercially reasonable efforts thereafter to reach 100% (one-hundred
3 percent) Reformulated Products.

4 **3. MONETARY PAYMENTS.**

5 3.1 In settlement of all of the claims referred to in this Consent Judgment, Defendants
6 shall pay \$20,000 in civil fines to be apportioned by Plaintiff in accordance with Health & Safety
7 Code § 25192, with 75% of these funds remitted to the State of California's Office of
8 Environmental Health Hazard Assessment and the remaining 25% of these penalty monies
9 retained by Plaintiff as provided by Health & Safety Code § 25249.12(d). Plaintiff shall bear all
10 responsibility for apportioning and paying to the State of California the appropriate civil penalties
11 paid in accordance with this section; and

12 3.2 **Payment Schedule.** The payment set forth in this paragraph shall be made on or
13 before May 18, 2005, and be delivered to Plaintiff's counsel at the following address:

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

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

19 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
20 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
21 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
22 Defendants then expressed a desire to resolve the fee and cost issue shortly after the other
23 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
24 the compensation due to Plaintiff and his counsel under the private attorney general doctrine
25 codified at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date
26 of the Agreement. Under the private attorney general doctrine, Defendants shall reimburse
27 Plaintiff and his counsel for fees and costs, incurred as a result of investigating, bringing this
28 matter to Defendants' attention, litigating and negotiating a settlement in the public interest.

1 Defendants shall pay Plaintiff and his counsel \$45,000 for all attorney's fees, expert and
2 investigation fees, and litigation costs. The payment shall be made payable to the "Chanler Law
3 Group" and shall be delivered to Plaintiff's counsel on or before May 18, 2005, at the following
4 address:

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

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

11 **5. RELEASE OF ALL CLAIMS**

12 5.1 **Plaintiff's Release of Defendants.** In further consideration of the promises and
13 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
14 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
15 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
16 participate in, directly or indirectly, any form of legal action and release all claims, including,
17 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
18 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
19 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
20 unknown, fixed or contingent (collectively "Claims"), against Defendants and each of their
21 distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers, customers, owners,
22 purchasers, users, parent companies, corporate affiliates, subsidiaries and their respective officers,
23 directors, attorneys, representatives, shareholders, agents, and employees (collectively,
24 "Defendants' Releasees") arising under Proposition 65, Business & Professions Code § 17200 *et*
25 *seq.* and Business & Professions Code § 17500 *et seq.*, related to Defendants or Defendants'
26 Releasees' alleged failure to warn about exposures to or identification of Listed Chemicals
27 contained in the Products sold by Defendants.

28

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

7 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waive all rights
8 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims
9 against the Defendants' Releasees arising under Proposition 65, Business & Professions Code
10 §§ 17200 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, related to each of the
11 Defendants' Releasees' alleged failures to warn about exposures to or identification of Listed
12 Chemicals contained in the Products and for all actions or statements made by Defendants or their
13 attorneys or representatives, in the course of responding to alleged violations of Proposition 65,
14 Business & Professions Code §§ 17200 *et seq.* or Business & Professions Code §§ 17500 *et seq.*
15 by Defendants. Provided however, Plaintiff shall remain free to institute any form of legal action
16 to enforce the provisions of this Consent Judgment.

17 It is specifically understood and agreed that the Parties intend that Defendants'
18 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in
19 the future (so long as Defendants comply with the terms of the Consent Judgment) concerning
20 Defendants and the Defendants' Releasees' compliance with the requirements of Proposition 65,
21 Business and Professions Code §§ 17200 *et seq.* and Business & Professions Code §§ 17500 *et*
22 *seq.*, as to the Listed Chemicals in the Products sold by Defendants.

23 Additionally, the Parties expressly agree that nothing in this Section, 5.1, shall be
24 construed to provide a release of liability: (a) to suppliers of Products to Albertsons, Inc. other
25 than Jarden; or (b) to Albertsons, Inc. for the sale of Products other than those supplied to
26 Albertsons, Inc. by Jarden.

27 **5.2 Defendants' Release of Plaintiff.** Defendants waive all rights to institute any
28 form of legal action against Plaintiff, or his attorneys or representatives, for all actions taken or

1 statements made by Plaintiff and his attorneys or representatives, in the course of seeking
2 enforcement of Proposition 65, Business & Professions Code §§ 17200 *et seq.* or Business &
3 Professions Code §§ 17500 *et seq.* in this Action.

4 **6. COURT APPROVAL**

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

10 **7. SEVERABILITY**

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

14 **8. ATTORNEYS' FEES**

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

19 **9. GOVERNING LAW**

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

25 **10. NOTICES**

26 All correspondence and notices required to be provided pursuant to this Consent Judgment
27 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
28 return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed

1 below. Either Party, from time to time, may specify a change of address to which all notices and
2 other communications shall be sent.

3
4 Clifford A. Chanler
Chanler Law Group
71 Elm Street, Suite 8
5 New Canaan, CT 06840

Robert L. Falk
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

6 **11. NO ADMISSIONS**

7 Nothing in this Consent Judgment shall constitute or be construed as an admission by
8 Defendants of any fact, finding, conclusion, issue of law, or violation of law, nor shall
9 compliance with this Consent Judgment constitute or be construed as an admission by Defendants
10 of any fact, finding, conclusion, issue of issue of law, or violation of law, such being specifically
11 denied by Defendants. Defendants reserve all of its rights and defenses with regard to any claim
12 by any party under Proposition 65 or otherwise. However, this section shall not diminish or
13 otherwise affect Defendants' obligations, responsibilities and duties under this Consent Judgment.

14 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

26 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

27 The Parties shall mutually employ their best efforts to support the entry of this Agreement
28 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely

1 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
2 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
3 agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which
4 Defendants' counsel shall prepare, within a reasonable period of time after the Execution Date
5 (i.e., not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on
6 unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the
7 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed
8 pursuant to Section 4. Defendants shall have no additional responsibility to Plaintiff's counsel
9 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs
10 incurred with respect to the preparation and filing of the Joint Motion and its supporting
11 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings
12 thereon.

13 Following the Court's approval of this Consent Judgment by all Parties, Plaintiff shall,
14 upon receipt of information from Albertson's, Inc. verified by an officer of Albertson's, Inc.
15 identifying: 1) the names and addresses of all other suppliers of the Products to Albertsons, Inc.
16 in California for the one year period preceding the issuance of the 60-Day Notice to Albertsons,
17 Inc. to the present, and 2) the name/description of each pattern or type of such Products sold to
18 Albertson's, Inc. by such other suppliers, file a dismissal without prejudice of Albertsons, Inc.
19 from this Action.

20 **15. MODIFICATION**

21 This Consent Judgment may be modified, including pursuant to section 2.3(e) above, only
22 by: (1) written agreement of the Parties and upon entry of a modified Consent Judgment by the
23 Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified
24 Consent Judgment by the Court. The Attorney General shall be served with notice of any
25 proposed modification to this Consent Judgment at least fifteen (15) days in advance of its
26 consideration by the Court.

27
28

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

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: _____

By: _____
Plaintiff Russell Brimer

By: _____
Defendant Hearthmark, Inc.

AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____
Defendant Alltrista Consumer Products, Inc.

By: _____
Defendant Jarden Corporation

APPROVED AS TO FORM:

APPROVED AS TO FORM:


CHANLER LAW GROUP

MORRISON & FOERSTER LLP

Date: _____

Date: 5/10/05

By: _____
Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

By: 
Robert L. Falk
Attorneys for Defendants
HEARTHMARK, INC., ALLTRISTA
CONSUMER PRODUCTS, INC., AND
JARDEN CORPORATION

1 **16. AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

6 Date: _____

Date: 5/10/05

7
8 By: _____
Plaintiff Russell Brimer

By: [Signature]
Defendant Hearthmark, Inc.

9 **AGREED TO:**

AGREED TO:

10 Date: 5/10/05

Date: 5/10/05

11
12 By: [Signature]
13 Defendant Alltrista Consumer Products,
Inc.

By: [Signature]
Defendant Jarden Corporation

14 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

15 **CHANLER LAW GROUP**

MORRISON & FOERSTER LLP

16
17 Date: _____

Date: _____

18
19
20 By: _____
21 Clifford A. Chanler
22 Attorneys for Plaintiff
23 RUSSELL BRIMER

By: _____
Robert L. Falk
Attorneys for Defendants
HEARTHMARK, INC., ALLTRISTA
CONSUMER PRODUCTS, INC., AND
JARDEN CORPORATION

24
25
26
27
28

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

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:
Date: _____

AGREED TO:
Date: _____

By: _____
Plaintiff Russell Brimer

By: _____
Defendant Hearthmark, Inc.

AGREED TO:
Date: _____

AGREED TO:
Date: 5/17/05

By: _____
Defendant Alltrista Consumer Products, Inc.

By: John E. Capps, VP - Legal
Defendant Jarden Corporation
John E. Capps

APPROVED AS TO FORM:
CHANLER LAW GROUP

APPROVED AS TO FORM:
MORRISON & FOERSTER LLP

Date: _____

Date: _____

By: _____
Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

By: _____
Robert L. Falk
Attorneys for Defendants
HEARTHMARK, INC., ALLTRISTA
CONSUMER PRODUCTS, INC., AND
JARDEN CORPORATION

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:

Date: 5.10.05

By: [Signature]
Plaintiff Russell Brimer

AGREED TO:

Date: _____

By: _____
Defendants Hearthmark, Inc., Alltrista Consumer Products, Inc., and Jarden Corporation

APPROVED AS TO FORM:
CHANLER LAW GROUP

Date: 5/10/05

By: [Signature]
Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:
MORRISON & FOERSTER LLP

Date: _____

By: _____
Robert L. Falk
Attorneys for Defendants
HEARTHMARK, INC., ALLTRISTA
CONSUMER PRODUCTS, INC., AND
JARDEN CORPORATION

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

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

All glass tea jars, glass sets, glasses, mugs, bowls, and tableware made of glass with colored designs and/or artwork on the exterior, including but not limited to:

46141	18z. Tumbler Butterfl
46142	Dec Tumbler Sunflowe
46143	Dec Tumbler Watermel
46144	18z Tumbler Bumble B
46145	18z Tumbler Berries
46146	18z Tumbler Nautical
49303	Bulk Tapper Pallet
49305	Asst. Tapper Pallet
71128	Glas Tapper Sunflower
71132	Glas Tapper Watermel
71221	120z Berries
71222	120z Butterflies
71224	120z bumble Bees
71260	120z Tapper Nautical
49305	Asst. Tapper pallet
71128	Glas Tapper Sunflowe
71132	Glas Tapper Watermel
71221	120z Berries
71222	120z Butterflies
75997	Pls Tapper Sailing I
46142	Dec Tumbler Sunflower
46143	Dec Tumbler Watermel
71128	Glas Tapper Sunflower
71132	Glas Tapper Watermel
4928171341	120z Wicker Tapper
4928171342	120 oz Fish Tapper
4928171343	Gallon Beverage Tapp
49303	Bulk Tapper Pallet
71128	Glas Tapper Sunflowe
71132	Glass Tapper Watermel
71221	120z Berries
71222	120z Butterflies
4928171370	Tapper Jars 6 pack
71184	Blank Tappers - Smar
71132	Glas Tapper Watermel
71222	120z Butterflies
71224	120z Bumble Bees
71260	120z Tapper Nautical
75997	Pls Tapper Sailing I

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

4928171278	120 oz Watermelon Ta
4928171279	120 oz Stripes Tappe
4928171280	120 oz Floral Tapper
4928171281	120 oz Fish Tapper
4928196043	Bulk Tapper Pallet
46141	18z Tumbler butterfly
46142	Dec Tumbler Sunflowe
46143	Dec Tumbler Watermel
71128	Glass Tapper Funflowe
71132	Glass Tapper Watermel
71221	120z Berries
71122	120z Butterflies
71132	Glass Tapper Watermel
75997	Pls Tapper Saling I
71128	Glas Tapper Sunflowe
71132	Glas Tapper Watermel
71221	120z Berries
71222	120z Butterflies
71224	120z Bumble Bees
75997	Pls Tapper Saling i
49305	Asst. Tapper Pallet
49306	Asst 16z Tumbler Pal
49306	Asst 18Z Tumbler Pal
49305	Asst. Tapper Pallet
49306	Asst 18Z Tumbler Pal
49305	Asst. Tapper Pallet
49306	Asst 18z Tumbler Pal
49305	Asst. Tapper Pallet
49306	Asst 18z Tumbler Pal
49305	Asst. Tapper Pallet
49306	Asst 18z Tumbler Pal
49305	Asst. Tapper Pallet
49306	Asst 18z Tumbler Pal
49305	Asst. Tapper Pallet
49306	Asst 18z Tumbler Pal
49305	Asst. Tapper Pallet
49306	Asst 18z Tumbler Pal
49308	Asst 18z Tumbler Pal
49305	Asst. Tapper Pallet
49306	Asst 18z Tumbler Pal
46142	Dec Tumbler Sunflowe
46143	Dec Tumbler Watermel
71128	Glas Tapper Sunflowe
71132	Glas Tapper Watermel
71132	Glas Tapper Watermel
46142	Dec Tumbler Sunflowe

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

71128	Glas Tapper Sunflowe
71132	Glas Tapper Watermel
4928171345	120 oz Cool Fish Tap
4928171346	Plastic Warm Mosaic
4928171347	120 oz Fiesta Tapper
4928171348	120 oz Tropical Tapp
4928171349	120 oz Americana Tap