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ENDORSED
FILED
San Francisco County Superior Court

JUL 13 2005

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7 CHANLER LAW GROUP
8 71 Elm Street, Suite 8
9 New Canaan, CT 06840
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GORDON PARK-LI, Clerk
BY: S. PENG
Deputy Clerk

10 Attorneys for Plaintiff
11 Russell Brimer

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION

16 RUSSELL BRIMER,
17 Plaintiff,

18 v.

19 NORCAL POTTERY PRODUCTS, INC.;
20 CENTRAL GARDEN & PET COMPANY;
21 WAL-MART STORES, INC.; and DOES 1
22 through 150,

23 Defendants.

Case No. CGC-04-436927

~~PROPOSED~~ ORDER PURSUANT
TO TERMS CONSENT JUDGMENT

Date: July 13, 2005
Time: 9:30 a.m.
Dept: 301
Judge: Hon. James L. Warren

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendants NORCAL
2 POTTERY PRODUCTS, INC., CENTRAL GARDEN & PET COMPANY, and WAL-MART
3 STORES, INC., (“Settling 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 A**; and after consideration of the papers
6 submitted and the arguments presented, the Court finds that the settlement agreement set out in
7 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.

JAMES L. WARREN

17 Dated: July 13, 2005

18 _____
19 Hon. James L. Warren
20 JUDGE OF THE SUPERIOR COURT
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EXHIBIT /A

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2 CHANLER LAW GROUP
3 71 Elm Street, Suite 8
4 New Canaan, CT 06840
5 Telephone: (203) 966-9911
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7 Attorneys for Plaintiff
8 Russell Brimer

9 Sandra A. Kearney (State Bar No. 154578)
10 FARELLA BRAUN & MARTEL LLP
11 Russ Building, 30th Floor
12 235 Montgomery Street
13 San Francisco, CA 94104
14 Telephone: (415) 954-4428
15 Facsimile: (415) 954-4480

16 Attorneys for Defendants
17 Norcal Pottery Products, Inc., Central Garden & Pet Company
18 and Wal-Mart Stores, Inc.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 IN AND FOR THE COUNTY OF SAN FRANCISCO
21 UNLIMITED CIVIL JURISDICTION

22 RUSSELL BRIMER,

23 Plaintiff,

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25 NORCAL POTTERY PRODUCTS, INC.;
26 CENTRAL GARDEN & PET COMPANY;
27 WAL-MART STORES, INC.; and DOES 1
28 through 150,

Defendants.

Case No. CGC-04-436927

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

1. INTRODUCTION

1.1 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”) and defendants Norcal Pottery Products, Inc. (hereafter “Norcal”), Central Garden & Pet Company, and Wal-Mart Stores, Inc.

1 (collectively "Defendants"). Plaintiff and Defendants are collectively referred to as the "Parties"
2 and each party being a "Party."

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

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

14 1.4 **Product Descriptions.** The products that are covered by this Consent Judgment
15 are defined as follows: all letter pots and other planters containing lead manufactured, sold and/or
16 distributed by Norcal with colored artwork, designs or markings on the exterior surface including,
17 by way of example and without limitation, the product 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 Norcal was in violation of Health & Safety Code § 25249.6 for failing to warn purchasers
23 that certain products that it sold expose users in California to lead and/or lead compound.

24 1.6 **Defendants.** Each Defendant represents that, prior to receiving the Notice, it had
25 no knowledge, and was unaware of any delegation, that the Products contained lead or lead
26 compounds. Each Defendant represents, nonetheless, that it responded to the Notice by
27 discontinuing sales of the Product identified in the Notice.
28

1 1.7 **Complaint.** On December 8, 2004, Brimer, representing that he was acting in the
2 interest of the general public in California, filed a complaint (hereafter referred to as the
3 “Complaint” or the “Action”) in the Superior Court in and for the County of San Francisco
4 against Norcal, Central Garden & Pet Company, Wal-Mart Stores, Inc. and Does 1 through 150,
5 alleging violations of Health & Safety Code § 25249.6 for failure to warn of alleged exposures to
6 one or more of the Listed Chemicals contained in certain products sold by Norcal.

7 1.8 **No Admission.** This is a settlement of disputed claims, allegations and defenses
8 intended by the Parties to avoid the time, expense and uncertainty of litigation, with no admission
9 of liability, or the validity of any claim, allegation or defense, by any Party. However, this
10 section shall not diminish or otherwise affect the obligations, responsibilities and duties of Norcal
11 under this Consent Judgment.

12 1.9 **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 1.10 **Effective Date.** For purposes of this Consent Judgment, “Effective Date” shall be
18 March 31, 2005.

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

20 2.1 **WARNINGS AND REFORMULATION OBLIGATIONS**

21 (a) **Required Warnings.** After April 30, 2005, Norcal shall not transmit to
22 any retailer to sell or otherwise offer for sale in California any Products containing the Listed
23 Chemicals, unless warnings are given in accordance with one or more provisions in
24 subsection 2.2 below.

25 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and
26 2.2 below shall not apply to any Reformulated Products as defined in subsection 2.3 below.

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1 2.2 **CLEAR AND REASONABLE WARNINGS**

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

5 **WARNING: The materials used as colored decorations on the**
6 **exterior of this product contain lead, a chemical**
7 **known to the State of California to cause birth**
8 **defects or other reproductive harm. Wash**
9 **hands after handling.**

10 **or**

11 **WARNING: The materials used as colored decorations on the**
12 **exterior of these products contain chemicals**
13 **known to the State of California to cause birth**
14 **defects or other reproductive harm. Wash**
15 **hands after handling.**

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

23 (b) **Point-of-Sale Warnings.** Norcal may execute its warning obligations,
24 where applicable, through arranging for the posting of signs at retail outlets in the State of
25 California at which Products are sold, in accordance with the terms specified in
26 subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii).

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

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

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or

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

(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 Norcal intends to utilize point of sale warnings to comply with this Consent Judgment, it must provide notice as required by this Consent Judgment to each retailer to whom Norcal ships 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 Norcal has obtained the consent of a retailer, Norcal shall not be found to have violated this

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

3 **2.3 Reformulation Standards:** Products satisfying the conditions of section 2.3(a)
4 and/or 2.3(b) are referred to as "Reformulated Products" and are defined as follows:

5 (a) If the colored artwork, designs or markings on the exterior surface of the
6 final Product produce a test result no higher than 1.0 micrograms (ug) of lead using a Ghost
7 Wipe™ test applied on the decorated portions of the surface of the Product performed as
8 outlined in NIOSH method no. 9100, such Product is a Reformulated Product; or

9 (b) If the Product utilizes paints for all colored artwork, designs or markings
10 containing six one-hundredths of one percent (0.06%) lead by weight or less as measured by EPA
11 Test Method 3050 at Norcal's option, either before or after the material is fired onto (or otherwise
12 affixed to) the Product, using a sample size of the materials in question measuring approximately
13 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation (as
14 distinguished from detection) of less than 600 parts per million ("ppm"), such Product is a
15 Reformulated Product.

16 **2.4 Reformulation Commitment.** By entering into this Stipulation and Consent
17 Judgment, Norcal hereby commits that as a continuing matter of corporate policy, Norcal intends
18 to undertake all commercially reasonable efforts to ensure that its Products qualify as
19 Reformulated Products.

20 **3. MONETARY PAYMENTS**

21 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to
22 Health & Safety Code Section 25249.7(b), Norcal on behalf of all Defendants, shall pay \$40,000
23 in civil penalties in two installments. The first penalty shall be \$10,000 made payable to
24 "Chanler Law Group in Trust For Russell Brimer," and shall be delivered to Plaintiff's counsel on
25 or before April 15, 2005, at the following address:

26 CHANLER LAW GROUP
27 Attn: Clifford A. Chanler
28 71 Elm Street, Suite 8
New Canaan, CT 06840
6

1 The second payment of \$30,000 shall be paid on or before April 1, 2006. This second
2 payment, however, shall be waived if Norcal certifies in writing to Brimer on or before March 15,
3 2006, that all of its Products sold in California after September 30, 2005 (and into the future
4 thereafter), are Reformulated Products.

5 (a) In the event Norcal pays any penalty and the Consent Judgment is not
6 thereafter approved and entered by the Court, Brimer shall return any penalty funds paid under
7 this Agreement within fifteen (15) days of receipt of a written request from Norcal following
8 notice of the issuance of the Court's decision.

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

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

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

22 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
23 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
24 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
25 The Parties then attempted to (and did) reach an accord on the compensation due to Plaintiff and
26 his counsel under the private attorney general doctrine codified at Code of Civil Procedure
27 § 1021.5 for all work performed through the Effective Date of the Agreement. Under the private
28 attorney general doctrine codified at Code of Civil Procedure § 1021.5, Norcal shall reimburse

1 Plaintiff and his counsel for fees and costs, incurred as a result of investigating, bringing this
2 matter to Norcal's attention, litigating and negotiating a settlement in the public interest. Norcal
3 shall pay Plaintiff and his counsel \$30,000 (thirty-thousand dollars) for all attorneys' fees, expert
4 and investigation fees, and litigation costs, including but not limited to all attorneys' fees and
5 costs (including those incurred and to be incurred to obtain Court approval and the entry of this
6 Consent Judgment), and other litigation expenses relating to this Action. The payment shall be
7 made by Norcal on behalf of all Defendants, payable to the "Chanler Law Group" and shall be
8 delivered to Plaintiff's counsel on or before April 15, 2005, at the following address:

9
10 CHANLER LAW GROUP
11 Attn: Clifford A. Chanler
12 71 Elm Street, Suite 8
13 New Canaan, CT 06840

14 4.2 **Return of Funds.** In the event that the Consent Judgment is not thereafter
15 approved and entered by the Court, the Chanler Law Group shall return the full amount of the
16 fees and costs paid under this Consent Judgment, by check payable to Norcal, within fifteen (15)
17 days of receipt of a written request from counsel for Norcal following notice of the issuance of
18 the Court's decision.

19 4.3 Except as specifically provided in this Consent Judgment, Norcal shall have no
20 further obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with
21 regard to the Products covered in this Action.

22 **5. RELEASE OF ALL CLAIMS**

23 5.1 **Plaintiff's Releases.** In further consideration of the promises and agreements
24 herein contained, and for the payments to be made pursuant to sections 3 and 4, Plaintiff, on
25 behalf of himself, his past and current agents, representatives, attorneys, successors and/or
26 assignees, and in the interest of the general public, hereby waives all rights to institute or
27 participate in, directly or indirectly, any form of legal action and release all claims, including,
28 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,

1 investigation fees and costs, expert fees and costs and attorneys' fees and costs) of any nature
2 whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against
3 Norcal and each of its manufacturers, distributors, wholesalers, licensors, licensees, auctioneers,
4 retailers (including but not limited to defendants Central Garden & Pet Company and Wal-Mart
5 Stores, Inc.), dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,
6 subsidiaries and their respective officers, directors, attorneys, representatives, shareholders,
7 agents, and employees (collectively, "Norcal Releasees") arising under Proposition 65,
8 Business & Professions Code § 17200 *et seq.* and Business & Professions Code § 17500 *et seq.*,
9 related to Norcal's or Norcal Releasees' alleged failure to warn about exposures to or
10 identification of Listed Chemicals contained in the Products.

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

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

27 It is specifically understood and agreed that the Parties intend that Norcal's compliance
28 with the terms of this Consent Judgment resolves all issues and liability, now and in the future (so

1 long as Norcal complies with the terms of the Consent Judgment) concerning Norcal and the
2 Norcal Releasees' compliance with the requirements of Proposition 65, Business and Professions
3 Code §§ 17200 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, as to the Listed
4 Chemicals in the Products.

5 **5.2 Norcal's Release of Plaintiff.** Norcal waives all rights to institute any form of
6 legal action against Plaintiff, or his attorneys or representatives, for all actions taken or statements
7 made by Plaintiff and his attorneys or representatives, in the course of seeking enforcement of
8 Proposition 65, Business & Professions Code §§ 17200 *et seq.* or Business & Professions Code
9 §§ 17500 *et seq.* in this Action.

10 **6. COURT APPROVAL**

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

16 **7. SEVERABILITY**

17 If, subsequent to Court approval of this Consent Judgment, any of the provisions of this
18 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
19 provisions remaining shall not be adversely affected.

20 **8. ATTORNEYS' FEES**

21 In the event of an action to enforce the terms of this Consent Judgment, the prevailing
22 Party shall, except as otherwise provided herein, be entitled to recover reasonable and necessary
23 costs and reasonable attorneys' fees incurred in that enforcement action.

24 **9. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California without regard to its choice of law provisions. In the event that Proposition 65 is
27 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products
28

1 specifically, then Norcal shall have no further obligations pursuant to this Consent Judgment with
2 respect to, and to the extent that, those Products are so affected.

3 **10. NOTICES**

4 All correspondence and notices required to be provided pursuant to this Consent Judgment
5 shall be in writing and personally delivered or sent by: (1) registered, certified mail, return
6 receipt requested, or (ii) overnight delivery to the representatives of each Party as listed below:

7 To Norcal:

8 Art Simon, President
9 Norcal Pottery Products, Inc.
10 2091 Williams Street
11 San Leandro, CA 94577

12 With a copy to:

13 Sandra A. Kearney, Esq.
14 Farella Braun & Martel LLP
15 Russ Building, 30th Floor
16 235 Montgomery Street
17 San Francisco, CA 94104

18 To Plaintiff:

19 Clifford A. Chanler, Esq.
20 Chanler Law Group
21 71 Elm Street, Suite 8
22 New Canaan, CT 06840

23 **11. NO ADMISSIONS**

24 Nothing in this Consent Judgment shall constitute or be construed as an admission by
25 Norcal of any fact, allegation, claim, conclusion, issue of law, or violation of law, nor shall
26 compliance with this Consent Judgment constitute or be construed as an admission by Norcal of
27 any fact, finding, conclusion, issue of issue of law, or violation of law, all of Plaintiff's claims and
28 allegations being specifically denied by Norcal. Norcal reserves all of its rights and defenses with
regard to any claim or allegation, including but not limited to those contained in Plaintiff's Notice
and Complaint. However, this section shall not diminish or otherwise affect Norcal's obligations,
responsibilities and duties under this Consent Judgment.

1 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

13 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

14 The Parties shall mutually employ their best efforts to support the entry of this Agreement
15 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
16 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
17 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, Plaintiff
18 agrees to file a Motion to Approve the Agreement (“Motion”), preferably as a joint motion if the
19 parties can so agree. In an effort to achieve this objective, counsel for Norcal agrees to transmit a
20 draft of the moving papers to counsel for Plaintiff within fourteen (14) days after the Effective
21 Date and the parties will endeavor to file a joint application to the Court. If the moving papers
22 are not provided to Plaintiff in a timely manner, or the parties cannot ultimately agree on the final
23 papers to file, Plaintiff may file the Motion to Approve on his own. In the event that any third
24 party, including the Attorney General or any other public enforcer, objects or otherwise
25 comments to one or more provisions of this Agreement, Norcal agrees to undertake its best efforts
26 to satisfy such concerns or objections and support the terms of this Agreement. Norcal shall have
27 no additional responsibility to Plaintiff’s counsel pursuant to C.C.P. § 1021.5 or otherwise with
28 regard to reimbursement of any fees and costs incurred with respect to the preparation and filing

1 of the Joint Motion and its supporting declaration or with regard to Plaintiff's counsel appearing
2 for a hearing or related proceedings thereon.

3 **15. MODIFICATION**

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

9 **16. AUTHORIZATION**

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

13 **17. DISMISSAL OF CO-DEFENDANTS WITHOUT PREJUDICE**

14 Within five (5) days after notice of entry of the Consent Judgment, the Plaintiff shall
15 dismiss without prejudice Wal-Mart Stores, Inc. and Central Garden & Pet Company.

16 AGREED TO:

AGREED TO:

17
18 Date: _____

Date: _____

19
20 By: _____
Plaintiff Russell Brimer

By: _____
Defendant
Norcal Pottery Products, Inc.

21
22 Date: _____

Date: _____

23
24 By: _____
Defendant
Wal-Mart Stores, Inc.

By: _____
Defendant
Central Garden & Pet Company

1 of the Joint Motion and its supporting declaration or with regard to Plaintiff's counsel appearing
2 for a hearing or related proceedings thereon.

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11 respective Parties and have read, understood and agree to all of the terms and conditions of this
12 Consent Judgment.

13 **17. DISMISSAL OF CO-DEFENDANTS WITHOUT PREJUDICE**


14 Within five (5) days after notice of entry of the Consent Judgment, the Plaintiff shall
15 dismiss without prejudice Wal-Mart Stores, Inc. and Central Garden & Pet Company.

16 AGREED TO:

AGREED TO:

17
18 Date: 3-29-05

Date: _____

19
20 By: 
21 Plaintiff Russell Brimer

By: _____
Defendant
Norcal Pottery Products, Inc.

22 Date: _____

Date: _____

23
24 By: _____
25 Defendant
26 Wal-Mart Stores, Inc.

By: _____
Defendant
Central Garden & Pet Company

1 of the Joint Motion and its supporting declaration or with regard to Plaintiff's counsel appearing
2 for a hearing or related proceedings thereon.

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15 dismiss without prejudice Wal-Mart Stores, Inc. and Central Garden & Pet Company.

16 AGREED TO: AGREED TO:
17
18 Date: _____ Date: _____

19
20 By: _____ By: _____
21 Plaintiff Russell Brimer Defendant
Norcal Pottery Products, Inc.

22 Date: March 29, 2005 Date: _____

23
24 By: Robt R. Jomach By: _____
25 Defendant Defendant
Wal-Mart Stores, Inc. Central Garden & Pet Company

1 of the Joint Motion and its supporting declaration or with regard to Plaintiff's counsel appearing
2 for a hearing or related proceedings thereon.

3 **15. MODIFICATION**

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

9 **16. AUTHORIZATION**

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

13 **17. DISMISSAL OF CO-DEFENDANTS WITHOUT PREJUDICE**

14 Within five (5) days after notice of entry of the Consent Judgment, the Plaintiff shall
15 dismiss without prejudice Wal-Mart Stores, Inc. and Central Garden & Pet Company.

16 **AGREED TO:**

AGREED TO:

17
18 Date: _____

Date: March 29, 2005

19
20 By: _____
Plaintiff Russell Brimer

By: *Art Simon*
Defendant
Norcal Pottery Products, Inc.

21
22 Date: _____

Date: _____

23
24 By: _____
Defendant
Wal-Mart Stores, Inc.

By: _____
Defendant
Central Garden & Pet Company

0001219

1 of the Joint Motion and its supporting declaration or with regard to Plaintiff's counsel appearing
2 for a hearing or related proceedings thereon.

3 **15. MODIFICATION**

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5 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party
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14 Within five (5) days after notice of entry of the Consent Judgment, the Plaintiff shall
15 dismiss without prejudice Wal-Mart Stores, Inc. and Central Garden & Pet Company.

16 **AGREED TO:**

AGREED TO:

17
18 Date: _____

Date: _____

19
20 By: _____
21 Plaintiff Russell Brimer

By: _____
22 Defendant
23 Norcal Pottery Products, Inc.

24 Date: _____

Date: 3/28/05

25 By: _____
26 Defendant
27 Wal-Mart Stores, Inc.

By: _____
28 Defendant
Central Garden & Pet Company

1 APPROVED AS TO FORM:

APPROVED AS TO FORM:

2
3 Date: 3/30/05

Date: _____

4 CHANLER LAW GROUP

FARELLA BRAUN & MARTEL LLP

5
6 By: *Cliff Chanler*

By: _____

7 Clifford A. Chanler
8 Attorneys for Plaintiff
RUSSELL BRIMER

Sandra A. Kearney
Attorney for Defendants
NORCAL POTTERY PRODUCTS, INC.,
WAL-MART STORES, INC. and
CENTRAL GARDEN & PET COMPANY

9
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11 **IT IS SO ORDERED.**

12
13 Date: _____

JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: March 30, 2008

CHANLER LAW GROUP

FARELLA BRAUN & MARTEL LLP

By: _____

By: 

Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

Sandra A. Kearney
Attorney for Defendants
NORCAL POTTERY PRODUCTS, INC.,
WAL-MART STORES, INC. and
CENTRAL GARDEN & PET COMPANY

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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Exhibit A

All planters with colored designs and/or artwork on the exterior, including but not limited to:

6” Letter Pot-Gazebo Green (#0 47625 10504 8)

1 Stephen S. Sayad (State Bar # 104866)
2 Daniel Bornstein (State Bar # 181711)
3 Laralei S. Paras (State Bar # 203319)
4 PARAS LAW GROUP
5 655 Redwood Highway, Suite 216
6 Mill Valley, California 94941
7 Tel: (415) 380-9222
8 Fax: (415) 380-9233

ENDORSED
FILED
San Francisco County Superior Court

JUL 13 2005

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

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

10 Attorneys for Plaintiff
11 Russell Brimer

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION

16 RUSSELL BRIMER,
17 Plaintiff,

18 v.

19 NORCAL POTTERY PRODUCTS, INC.;
20 CENTRAL GARDEN & PET COMPANY;
21 WAL-MART STORES, INC.; and DOES 1
22 through 150,
23 Defendants.

Case No. CGC-04-436927



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

Date: July 13, 2005
Time: 9:30 a.m.
Dept: 301
Judge: Hon. James L. Warren

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1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendants NORCAL
2 POTTERY PRODUCTS, INC., CENTRAL GARDEN & PET COMPANY, and WAL-MART
3 STORES, INC., ("Settling Defendants"), having agreed through their respective counsel that
4 judgment be entered pursuant to the terms of the Consent Judgment entered into by the parties,
5 and after issuing an Order Approving Proposition 65 Settlement Agreement and Consent
6 Judgment on July 13, 2005.

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

10 IT IS SO ORDERED.

11 Dated: July 13, 2005

JAMES L. WARREN

Hon. James L. Warren
JUDGE OF THE SUPERIOR COURT