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Attorneys for Plaintiff  
RUSSELL BRIMER

ROBERT C. LONGSTRETH (BAR No. 141714)  
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Telephone: (619) 699-2700  
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Attorneys for Defendant  
NEW CREATIVE ENTERPRISES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA - HAYWARD BRANCH  
UNLIMITED CIVIL JURSDICTION

RUSSELL BRIMER,  
Plaintiff,  
v.  
NEW CREATIVE ENTERPRISES, INC.,  
PASTIME HARDWARE; PASTIME ACE  
HARDWARE; and DOES 1 through 150,  
Defendants.

ENDORSED  
FILED  
ALAMEDA COUNTY  
MAY 06 2005  
CLERK OF THE SUPERIOR COURT  
By LINDNELL WILLIAMS  
Deputy

No. HG 04 188881  
~~IT IS ORDERED~~ JUDGMENT  
PURSUANT TO TERMS OF  
CONSENT JUDGMENT  
Date: May 6, 2005  
Time: 9:30 a.m.  
Dept: 520  
Judge: Hon. David Hunter

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

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

**IT IS SO ORDERED.**

Dated: **MAY 06 2005**

**DAVID E. HUNTER**  
\_\_\_\_\_  
Hon. David Hunter  
JUDGE OF THE SUPERIOR COURT

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Attorneys for Plaintiff  
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Attorneys for Defendant  
NEW CREATIVE ENTERPRISES, INC.

EMBOSSER  
FILED  
ALAMEDA COUNTY

MAY 6 2005

CLERK OF THE SUPERIOR COURT  
By LINDNELL WILLIAMS  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA – HAYWARD BRANCH  
UNLIMITED CIVIL JURSDICTION

RUSSELL BRIMER, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
NEW CREATIVE ENTERPRISES, INC.' )  
PASTIME HARDWARE; PASTIME ACE )  
HARDWARE; and DOES 1 through 150, )  
 )  
Defendants. )  
\_\_\_\_\_ )

No. HG 04 188881

~~BY~~ ORDER PURSUANT TO  
TERMS OF CONSENT JUDGMENT

Date: May 6, 2005  
Time: 9:30 a.m.  
Dept: 520  
Judge: Hon. David Hunter

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

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

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

IT IS SO ORDERED.

Dated <sup>2005</sup> MAY 06 2005

**DAVID E. HUNTER**

Hon. David Hunter  
JUDGE OF THE SUPERIOR COURT

# **EXHIBIT A**

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 C. Longstreth (State Bar No. 141714)  
10 DLA PIPER RUDNICK GRAY CARY US LLP  
11 401 B Street, Suite 2000  
12 San Diego, CA 92101  
13 Telephone: (619) 699-4718  
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15 Attorneys for Defendant  
16 New Creative Enterprises, Inc.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 IN AND FOR THE COUNTY OF ALAMEDA – HAYWARD BRANCH  
19 UNLIMITED CIVIL JURISDICTION

20 RUSSELL BRIMER,  
21 Plaintiff,

22 v.

23 NEW CREATIVE ENTERPRISES, INC.;  
24 PASTIME HARDWARE; PASTIME ACE  
25 HARDWARE; and DOES 1 through 150.,  
26 Defendants.

Case No. HG04188881

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

27 **1. INTRODUCTION**

28 1.1 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and  
between plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”) and New Creative

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1 Enterprises, Inc. (hereafter "New Creative"), with Plaintiff and New Creative collectively referred  
2 to as the "Parties" and Brimer and New Creative each being a "Party."

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

6 1.3 **General Allegations.** Plaintiff alleges that New Creative has manufactured,  
7 distributed and/or sold in the State of California suncatchers that contain lead (and/or lead  
8 compounds), a chemical that is listed pursuant to the Safe Drinking Water and Toxic Enforcement  
9 Act of 1986, California Health & Safety Code §§ 25249.5 et seq., also known as Proposition 65,  
10 to cause cancer and birth defects (or other reproductive harm). Lead (and/or lead compounds)  
11 shall be referred to herein as "Listed Chemicals."

12 1.4 **Product Descriptions.** The products that are covered by this Consent Judgment  
13 are defined as follows: all suncatchers containing lead manufactured, sold and/or distributed by  
14 New Creative including, by way of example and without limitation, the product contained in the  
15 items listed at Exhibit A. Such products collectively are referred to herein as the "Products."

16 1.5 **Notices of Violation.** Beginning on September 2, 2004, Brimer served New  
17 Creative and various public enforcement agencies with documents, entitled "60-Day Notice of  
18 Violation" ("Notice") that provided New Creative and such public enforcers with notice that  
19 alleged that New Creative was in violation of Health & Safety Code § 25249.6 for failing to warn  
20 purchasers that certain products that it sold expose users in California to lead (and/or lead  
21 compounds).

22 1.6 **Complaint.** On December 10, 2004, Brimer, in the interest of the general public  
23 in California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the  
24 Superior Court in and for the County of Alameda against New Creative, Pastime Hardware,  
25 Pastime Ace Hardware, and Does 1 through 150, alleging violations of Health & Safety Code  
26 § 25249.6 based on the alleged exposures to one or more of the Listed Chemicals contained in  
27 certain products sold by New Creative.

28 ///

1 1.7 **No Admission.** New Creative denies the material factual and legal allegations  
2 contained in Plaintiff's Notices and Complaint and maintains that all products that it has sold and  
3 distributed in California including the Products have been and are in compliance with all laws.

4 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties  
5 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
6 Complaint and personal jurisdiction over New Creative as to the acts alleged in the Complaint,  
7 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this  
8 Consent Judgment and to enforce the provisions thereof.

9 1.9 **Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall be  
10 February 8, 2005.

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

12 **2.1 WARNINGS AND REFORMULATION OBLIGATIONS**

13 (a) **Required Warnings.** Beginning on February 18, 2005, or the date thirty  
14 (30) days from the entry of this Consent Judgment if later, New Creative shall not transmit to any  
15 retailer to sell or offer for sale in California any Products containing the Listed Chemicals, unless  
16 warnings are given in accordance with one or more provisions in subsection 2.2 below.

17 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and  
18 2.2 below shall not apply to any Reformulated Products as defined in subsection 2.3 below.

19 **2.2 CLEAR AND REASONABLE WARNINGS**

20 (a) **Product Labeling.** A warning is affixed to the packaging, labeling or  
21 directly to or on a Product, or appears on a "hang-tag" accompanying the Product at the point of  
22 sale, by New Creative, its agent, or the manufacturer, importer, or distributor of the Product that  
23 states:

24 **WARNING: This product contains lead, a chemical known to**  
25 **the State of California to cause birth defects or**  
26 **other reproductive harm. Please wash hands**  
27 **thoroughly after handling this product.**

27 **or**

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**WARNING: The following products contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Please wash hands thoroughly after handling these products.**

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.** New Creative may execute its 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 on the exterior of this product 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,

1 provided that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to  
2 comment; or (3) Court approval.

3 (iii) If New Creative intends to utilize point of sale warnings to comply  
4 with this Consent Judgment, it must provide notice as required by this Consent Judgment to each  
5 retailer to whom New Creative ships the Products for sale in California and obtain the written  
6 consent of such retailer before shipping the Products. Such notice shall include a copy of this  
7 Consent Judgment and any required warning materials (including, as appropriate, signs and/or  
8 stickers). If New Creative has obtained the consent of a retailer, New Creative shall not be found  
9 to have violated this Consent Judgment if it has complied with the terms of this Consent  
10 Judgment and has proof that it transmitted the requisite warnings in the manner provided herein.

11 **2.3 REFORMULATION STANDARDS:** Products satisfying the conditions of  
12 section 2.3(a) are referred to as "Reformulated Products" and are defined as follows:

13 (a) any Product containing 0.4 percent (.4%) lead or less (by weight) in each  
14 material used in the Products (such as solder and came);

15 **2.4 REFORMULATION COMMITMENT.** By entering into this Stipulation and  
16 Consent Judgment, New Creative hereby commits that as a continuing matter of corporate policy,  
17 New Creative intends to undertake all commercially reasonable efforts, consistent with the  
18 company's merchandising practices and plans, to distribute Products that qualify as Reformulated  
19 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), New Creative shall pay \$1,000.00 in civil penalties.  
23 The penalty payment shall be made payable to "Chanler Law Group in Trust For Russell Brimer,"  
24 and shall be delivered to Plaintiff's counsel within fifteen (15) days of the Effective Date, at the  
25 following address:

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

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

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

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

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

18 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this  
19 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
20 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
21 New Creative then expressed a desire to resolve the fee and cost issue shortly after the other  
22 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on  
23 the compensation due to Plaintiff and his counsel under the private attorney general doctrine  
24 codified at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date  
25 of the Agreement. Under the private attorney general doctrine codified at Code of Civil  
26 Procedure § 1021.5, New Creative shall reimburse Plaintiff and his counsel for fees and costs,  
27 incurred as a result of investigating, bringing this matter to New Creative's attention, litigating  
28 and negotiating a settlement in the public interest in the amount of \$23,999.99 for all attorneys'

1 fees, expert and investigation fees, and litigation costs. The payment shall be made payable to the  
2 "Chanler Law Group" and shall be delivered to Plaintiff's counsel within fifteen (15) days of the  
3 Effective Date, at the following address:

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

8 4.2 Except as specifically provided in this Consent Judgment, New Creative shall have  
9 no 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 New Creative. 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 New Creative and each of its  
21 distributors, wholesalers, licensors, licensees, auctioneers, retailers (including but not limited to  
22 Pastime Hardware and Pastime Ace Hardware), dealers, customers, owners, purchasers, users,  
23 parent companies, corporate affiliates, subsidiaries and their respective officers, directors,  
24 attorneys, representatives, shareholders, agents, and employees (collectively, "New Creative  
25 Releasees") arising out of or relating to the allegations asserted in the Notice, the Complaint and  
26 the Action, including, without limitation, the allegations under Proposition 65, Business &  
27 Professions Code § 17200 et seq. and Business & Professions Code § 17500 et seq., or otherwise  
28 related to New Creative's or New Creative Releasees' alleged failure to warn about exposures to  
or identification of Listed Chemicals contained in the Products.

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.*, or any other statutory or common law  
4 claim, that have been or could have been asserted in the Complaints against New Creative or any  
5 New Creative Releasee for its alleged failure to provide clear and reasonable warnings of  
6 exposure to or identification of Listed Chemicals in the Products.

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 New Creative Releasees arising under Proposition 65, Business & Professions Code  
10 §§ 17200 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, or any other statutory or  
11 common law provision, related to each of the New Creative Releasees' alleged failures to warn  
12 about exposures to or identification of Listed Chemicals contained in the Products and for all  
13 actions or statements made by New Creative or its attorneys or representatives, in the course of  
14 responding to alleged violations of Proposition 65, Business & Professions Code §§ 17200 or  
15 Business & Professions Code §§ 17500 by New Creative. Provided however, Plaintiff shall  
16 remain free to institute any form of legal action to enforce the provisions of this Consent  
17 Judgment.

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

24           **5.2 New Creative's Release of Plaintiff.** New Creative waives all rights to institute  
25 any form of legal action against Plaintiff, or his attorneys or representatives, for all actions taken  
26 or statements made by Plaintiff and his attorneys or representatives, in the course of seeking  
27 enforcement of Proposition 65, Business & Professions Code §§ 17200 *et seq.* or Business &  
28 Professions Code §§ 17500 *et seq.* in this Action.

1     **6.     COURT APPROVAL**

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

7     **7.     SEVERABILITY**

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

11    **8.     ATTORNEYS' FEES**

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

16    **9.     GOVERNING LAW**

17             The terms of this Consent Judgment shall be governed by the laws of the State of  
18 California and apply only within the State of California. In the event that Proposition 65 is  
19 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products  
20 specifically, then New Creative shall have no further obligations pursuant to this Consent  
21 Judgment with respect to, and to the extent that, those Products are so affected. This Consent  
22 Judgment shall have no effect on Products sold outside the State of California.

23    **10.    NOTICES**

24             All correspondence and notices required to be provided pursuant to this Consent Judgment  
25 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,  
26 return receipt requested or (ii) overnight courier on either Party by the other at the following  
27 addresses. (Either Party, from time to time, may, pursuant to the methods prescribed above,  
28 specify a change of address to which all future notices and other communications shall be sent.)

1 To New Creative:

2 Tom Bowles, Chief Executive Officer  
3 New Creative Enterprises, Inc.  
4 401 Milford Parkway  
Milford, OH 45150

5 With a copy to:

6 Robert C. Longstreth  
7 DLA Piper Rudnick Gray Cary US LLP  
8 401 B Street, Suite 2000  
San Diego, CA 92101

9 To Plaintiff:

10 Clifford A. Chanler, Esq.  
11 Chanler Law Group  
12 71 Elm Street, Suite 8  
New Canaan, CT 06840

13 **11. NO ADMISSIONS**

14 Nothing in this Consent Judgment shall constitute or be construed as an admission by  
15 New Creative of any fact, finding, conclusion, issue of law, or violation of law, nor shall  
16 compliance with this Consent Judgment constitute or be construed as an admission by New  
17 Creative of any fact, finding, conclusion, issue of issue of law, or violation of law, such being  
18 specifically denied by New Creative. New Creative reserves all of its rights and defenses with  
19 regard to any claim by any party under Proposition 65 or otherwise. However, this section shall  
20 not diminish or otherwise affect New Creative's obligations, responsibilities and duties under this  
21 Consent Judgment.

22 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

27 Plaintiff agrees to comply with the reporting form requirements referenced in Health &  
28 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall

1 present this Consent Judgment to the California Attorney General's Office within two (2) days  
2 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment  
3 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date  
4 a hearing is scheduled on such motion in the Superior Court for the City and County of Alameda  
5 unless the Court allows a shorter period of time.

6 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

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

21 **15. MODIFICATION**

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

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1 16. RETENTION OF JURISDICTION

2 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

3 17. AUTHORIZATION

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

7  
8  
9 AGREED TO:

AGREED TO:

10 Date: 2/7/05

Date: 2/7/05

11  
12 By: Russell Brimer  
13 Plaintiff Russell Brimer

By: [Signature]  
Defendant  
NEW CREATIVE ENTERPRISES, INC.

14  
15 APPROVED AS TO FORM:

APPROVED AS TO FORM:

16  
17 Date: \_\_\_\_\_

Date: 2/7/05

18 CHANLER LAW GROUP

DLA PIPER RUDNICK GRAY CARY US LLP

19 By: [Signature]

By: [Signature]

20 Clifford A. Chanler  
21 Attorneys for Plaintiff  
22 RUSSELL BRIMER

Robert C. Longstreth, Esq.  
Attorney for Defendant  
NEW CREATIVE ENTERPRISES, INC.

23  
24 IT IS SO ORDERED.

25  
26 Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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Exhibit A

All suncatchers containing lead sold by New Creative including, but not limited to:

Pewter and Glass Diamond 3-D Suncatcher, cobalt (#0 33171 24992 3)