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14 Attorneys for Plaintiffs
15 RUSSELL BRIMER

FILED
San Francisco County Superior Court

AUG 23 2005

GOFFIN PARK, Clerk

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 IN AND FOR THE COUNTY OF SAN FRANCISCO
18 UNLIMITED CIVIL JURISDICTION

19 RUSSELL BRIMER,

20 Plaintiff,

21 v.

22 GANZ INC.; and DOES 1 through 150,

23 Defendants.

Case No. CGC-05-439990

(JCR)

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

Date: July 6, 2005

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Ronald Evans-Quidachay

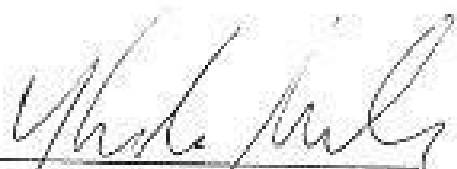
KEVIN M. McCARTHY

1 In the above-entitled action, Plaintiff Russell Brimer and Defendant GANZ INC., having
2 agreed through their respective counsel that judgment be entered pursuant to the terms of the
3 Consent Judgment entered into by the parties, and after issuing an Order Approving Proposition
4 65 Settlement Agreement and Consent Judgment on July 6, 2005.

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

8 IT IS SO ORDERED.

9
10 Dated: AUG 05 2005

11 
12 (JCR) Hon. Ronald Evans Quidachay
13 JUDGE OF THE SUPERIOR COURT

14 KEVIN M. MCCARTHY

15 # 439990
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14 Attorneys for Plaintiffs
15 RUSSELL BRIMER

FILED
San Francisco County Superior Court

AUG 23 2005

GORDON MARK-LH Clerk
BY: *[Signature]*

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 IN AND FOR THE COUNTY OF SAN FRANCISCO
18 UNLIMITED CIVIL JURISDICTION

19 RUSSELL BRIMER,

20 Plaintiff,

21 v.

22 GANZ INC.; and DOES 1 through 150,

23 Defendants.

Case No. CGC-05-439990

(JCR)

**{PROPOSED} ORDER PURSUANT
TO STIPULATION AND ORDER
RE: CONSENT JUDGMENT**

Date: July 6, 2005

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Ronald Evans Quindachy

24 **KEVIN M. MCCARTHY** *Kevin M. McCarthy*


1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant GANZ INC.,
2 ("Defendant"), having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the Consent Judgment entered into by the above-referenced parties and
4 attached hereto as Exhibit A; and after consideration of the papers submitted ~~and the arguments~~ ^(JCR)
5 ~~presented~~; ^{Appearance: Stephen Szeged for plaintiff} the Court finds that the settlement agreement set out in the attached Consent
6 Judgment meets the criteria established by Senate Bill 471, in that:

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

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

15 IT IS SO ORDERED.

16 Dated: AUG 05 2005

17 
~~Hon. Ronald Evans Quidley~~
18 JUDGE OF THE SUPERIOR COURT

19 KEVIN M. MCCARTHY

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21 #439990
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15 Russell Brimer

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23 Attorneys for Defendant
24 Ganz Inc.

EXHIBIT "A"

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA
26 IN AND FOR THE COUNTY OF SAN FRANCISCO
27 UNLIMITED CIVIL JURISDICTION

28 RUSSELL BRIMER,
29 Plaintiff,
30 v.
31 GANZ INC.; and DOES 1 through 150,
32 Defendants.

Case No. CGC-05-439990

STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT

1 **1. INTRODUCTION**

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

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

9 **1.3 General Allegations.** Plaintiff alleges that Ganz has manufactured, distributed
10 and/or sold in the State of California martini glasses and other glassware products with colored
11 artwork, designs or markings on the exterior surface that contain lead and/or cadmium (the
12 "Listed Chemicals"), which are substances listed pursuant to the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.*, also known as
14 Proposition 65, to cause birth defects (or other reproductive harm).

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

20 **1.5 Notices of Violation.** Beginning on December 17, 2004, Brimer served Ganz and
21 various public enforcement agencies with a document, entitled "60-Day Notice of Violation"
22 ("Notice") that provided Ganz and such public enforcers with notice alleging that Ganz was in
23 violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products
24 that it sold expose users in California to the Listed Chemicals.

25 **1.6 Complaint.** On April 1, 2005, 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 in and for the County of San Francisco against Ganz 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 Ganz in California.

3 **1.7 No Admission.** Ganz denies the material factual and legal allegations contained in
4 Plaintiff's Notices and Complaint and maintains that all products that it has sold and distributed in
5 California including the Products have been and are in compliance with all laws. Nothing in this
6 Consent Judgment shall be construed as an admission by Ganz of any fact, finding, issue of law,
7 or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
8 an admission by Ganz of any fact, finding, conclusion, issue of law or violation of law. However,
9 this section shall not diminish or otherwise affect the obligations, responsibilities and duties of
10 Ganz 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 has personal jurisdiction over Ganz as to the acts alleged in the Complaint, that
14 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
15 Consent Judgment and to enforce the provisions thereof.

16 **1.9 Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall be
17 April 7, 2005.

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

19 **2.1 WARNINGS AND REFORMULATION OBLIGATIONS**

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

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

25 **(i)** Products compliant with Interim Reformulated Standards as set
26 forth in subsection 2.3 below; and

27 **(ii)** Reformulated Products as defined in subsection 2.4 below.

28

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 Ganz, 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 and/or
7 cadmium, chemicals known to the State of
8 California to cause cancer and birth defects or
9 other reproductive harm.

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 cancer
14 and birth defects or other reproductive harm.

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

22 (b) **Point-of-Sale Warnings.** Ganz may also satisfy the warning
23 requirements of Proposition 65 and subsection 2.1 (a), above, where applicable, through
24 arranging for the posting of signs at retail outlets in the State of California at which Products are
25 sold, in accordance with the terms specified in subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii).

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

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

or

1
2 **WARNING:** The materials used as colored decorations on the
3 exterior of the following glassware products sold
4 in this store contain lead and/or cadmium,
5 chemicals known to the State of California to
6 cause cancer and birth defects or other
7 reproductive harm:

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

9 (ii) A point of sale warning provided pursuant to subsection 2.2(b)(i)
10 shall be prominently placed with such conspicuousness as compared with other words,
11 statements, designs, or devices as to render it likely to be read and understood by an ordinary
12 individual under customary conditions of use or purchase and shall be placed or written in a
13 manner such that the consumer understands to which *specific* Products the warnings apply so as
14 to minimize if not eliminate the chances that an over-warning situation will arise. Any changes to
15 the language or format of the warning required for Products by this subsection shall only be made
16 following: (1) approval of Plaintiff; or (2) approval from the California Attorney General's
17 Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for the
18 opportunity to comment; or (3) Court approval.

19 (iii) If Ganz intends to utilize point of sale warnings to comply with this
20 Consent Judgment, it must provide notice as required by this Consent Judgment to each retailer to
21 whom Ganz ships the Products for sale in California and obtain the written consent of such
22 retailer before shipping the Products. Such notice shall include a copy of this Consent Judgment
23 and any required warning materials (including, as appropriate, signs and/or stickers). If Ganz has
24 obtained the consent of a retailer, Ganz shall not be found to have violated this Consent Judgment
25 if it has complied with the terms of this Consent Judgment and has proof that it transmitted the
26 requisite warnings in the manner provided herein.

27 **2.3 INTERIM REFORMULATION STANDARDS.** If the colored artwork, designs
28 or markings on the exterior surface of the Products do not extend into the top 20 millimeters of
the glassware (*i.e.*, only appear below the exterior portion of the lip and rim area as defined by
American Society of Testing and Materials Standard Test Method C 927-99, hereinafter the "Lip

1 and Rim Area") and the Product is manufactured, shipped or sold between the Effective Date and
2 December 31, 2006, the product shall achieve a result of 1.5 ppm or less for lead and 4.0 ppm or
3 less for cadmium when tested under the protocol attached hereto as Exhibit B. This section (2.3)
4 excludes those Products covered by subsections 2.3.A (children's products); 2.3.B (new designs);
5 and 2.3.C (shot glasses).

6 **2.3.A. Final Reformulation Requirements for Products Intended For Use By**
7 **And Marketed And Sold To Children** All Products manufactured, shipped or sold after the
8 Effective Date, that are reasonably likely to be sold in California and that are intended or
9 marketed primarily for use by children, shall only use decorating materials containing less than
10 six one-hundredths of one percent (0.06%) lead by weight as measured, at the Ganz's option,
11 either before or after the material is fired onto (or otherwise affixed to) the glassware, using a
12 sample size of the materials in question measuring approximately 50-100 mg and a test method of
13 sufficient sensitivity to establish a limit of quantitation of less than 600 ppm. As used in this
14 Consent Judgment, "intended or marketed primarily for use by children" shall be deemed to mean
15 the Products identified on **Exhibit C** hereto and products analogous thereto (including, but not
16 limited to, certain sizes of juice glasses, as well as Products decorated with animated characters
17 and which are typically used by children.)

18 **2.3.B. Final Reformulation Requirements For Newly-Designed Glassware**
19 **Products** All glassware Products manufactured, shipped and sold after the Effective Date, that
20 are reasonably likely to be sold in California and that contain *new* designs, shall use only
21 decorating materials containing less than six one-hundredths of one percent (0.06%) lead by
22 weight and twenty-four one-hundredths of one percent (0.24%) cadmium by weight as measured,
23 at the Settling Non-Retailer's option, either before or after the material is fired onto (or otherwise
24 affixed to) the glassware, using a sample size of the materials in question measuring
25 approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of
26 quantitation of less than 600 ppm. As used in this subsection, "new designs" shall be deemed to
27 mean Products involving any new patterns, colors or designs for which 25% or more of the
28 decoration of an existing pattern, color or design, as measured by decorated surface area, has been

1 modified. (However, if the new color, which is added to an existing design contains a lower lead
2 content than the color it is replacing by at least 50%, then the Product shall not be considered a
3 "new design" on the basis of that change in color.)

4 **2.3.C. Additional Interim and Final Reformulation Requirements**
5 **Concerning Decoration Within the Lip and Rim Area, Including With Respect to Cadmium**

6 All Products manufactured after the Effective Date that are reasonably likely to be sold in
7 California shall not contain *any* designs or decorations within the Lip and Rim Area, except:

- 8 i. metallic-based designs or decorations containing no detectable lead
9 or cadmium. For purposes of this subsection, "no detectable lead or
10 cadmium" shall mean that neither lead nor cadmium is detected at a
11 level above .02% (for lead) or .08% (for cadmium) by weight,
12 respectively, using a sample size of the 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; and
- 13 ii. drinkware that has less than a total of sixty (60) millimeters of
14 decorating area below the external rim and which is not "intended
15 or marketed primarily for use by children" (e.g., shot glasses);
16 provided, however, that to be so excluded, such drinkware shall, as
17 of the Effective Date, only be manufactured with decorating
18 materials containing less than six one-hundredths of one percent
19 (0.06%) lead by weight and less than twenty-four one-hundredths
20 of one percent (0.24%) cadmium by weight as measured, at the
Ganz's option, either before or after the material is fired onto (or
otherwise affixed to) the glassware, using a sample size of the
materials in question measuring approximately 50-100 mg and a
test method of sufficient sensitivity to establish a limit of
quantitation of less than 600 ppm.

21 **2.4 FINAL REFORMULATION STANDARDS.** Products satisfying the conditions
22 of section 2.4(a), (b) and/or (c) are to be considered "Reformulated Products" and are also defined
23 as follows:

- 24 (a) If the colored artwork, designs or markings on the exterior surface of the
25 Product do not extend into the Lip and Rim Area and produce a test result no higher than
26 1.0 micrograms (ug) of lead and 4.0 micrograms (ug) of cadmium using a Ghost Wipe™ test
27 applied on all decorated portions of the surface of the Product performed as outlined in NIOSH
28 Method No. 9100;

1 (b) If the colored artwork, designs or markings on the exterior surface of the
2 Product do not extend into the Lip and Rim Area, and the Product utilizes paints for all colored
3 artwork, designs or markings containing six one-hundredths of one percent (0.06%) lead or less
4 and twenty-four one-hundredths of one percent (.24%) cadmium by weight or less as measured at
5 Ganz's option, either before or after the material is fired onto (or otherwise affixed to) the
6 Product, using a sample size of the materials in question measuring approximately 50-100 mg and
7 a test method of sufficient sensitivity to establish a limit of quantitation (as distinguished from
8 detection) of less than 600 parts per million ("ppm"), such as EPA Test Method 3050B;¹ and/or

9 (c) If the colored artwork, designs or markings on the exterior surface of the
10 Product extends into the exterior Lip and Rim Area of the Product, it must utilize paints
11 containing "no detectable lead or cadmium" for all colored artwork, designs or markings within
12 the Lip and Rim Area. For purposes of this subsection, "no detectable lead or cadmium" shall
13 mean that neither lead nor cadmium is detected at a level above two one-hundredths of one
14 percent (0.02%) for lead or eight one-hundredths of one percent (0.08%) for cadmium by weight,
15 respectively, using a sample size of the materials in question measuring approximately 50-100 mg
16 and a test method of sufficient sensitivity to establish a limit of quantitation of less than 200
17 ppm.²

18 **2.5 REFORMULATION COMMITMENT.** By entering into this Stipulation and
19 Consent Judgment, Ganz hereby commits that as a continuing matter of corporate policy, Ganz
20 intends to undertake good faith efforts to ensure that all of its Products shall qualify as
21 Reformulated Products with a commitment to sell only Reformulated Products after July 1, 2007.

22 **3. MONETARY PAYMENTS**

23 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to
24 Health & Safety Code Section 25249.7(b), Defendant shall pay the sum of \$24,000 in civil
25 penalties payable in two equal installments with the first payment of \$12,000 to be made not later

26 _____
27 ¹ If the decoration is tested after it is affixed to the Product, the Percentage of the Listed Chemical
by weight must related only to the other portions of the decorating material and not include any calculation
of non-decorating material, e.g. glass.

28 ² See footnote 1, *supra*.

1 than April 20, 2005. The second penalty payment of \$12,000 shall be paid on July 15, 2007. The
2 second payment shall be waived in the event that Defendant certifies on or before July 10, 2007,
3 that 100% of the Products it sold in California in from January 1, 2007 through June 30, 2007
4 were Reformulated Products. Defendant further agrees that it will pay \$12,000 to the the Public
5 Health Trust in lieu of a civil penalty pursuant to 11 CCR §3203(b) to test consumer products for
6 the presence of one or more reproductive toxicants and carcinogens listed by the State of
7 California pursuant to 22 CCR §12000. These payments made payable to "Chanler Law Group in
8 Trust For Russell Brimer," and shall be delivered to Plaintiff's counsel on or before the above-
9 designated dates, at the following address:

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

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

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

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

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

2 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
3 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
4 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
5 Ganz then expressed a desire to resolve the fee and cost issue shortly after the other settlement
6 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
7 compensation due to Plaintiff and his counsel under the private attorney general doctrine codified
8 at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date of the
9 Agreement. Under the private attorney general doctrine codified at Code of Civil Procedure
10 § 1021.5, Ganz shall reimburse Plaintiff and his counsel for fees and costs, incurred as a result of
11 investigating, bringing this matter to Ganz's attention, litigating and negotiating a settlement in
12 the public interest. Ganz shall pay Plaintiff and his counsel \$37,500 for all attorneys' fees, expert
13 and investigation fees, and litigation costs. The payment shall be made payable to the "Chanler
14 Law Group" and shall be delivered to Plaintiff's counsel on or before April 20, 2005, at the
15 following address:

16 CHANLER LAW GROUP
17 Attn: Clifford A. Chanler
18 71 Elm Street, Suite 8
 New Canaan, CT 06840

19 4.2 Except as specifically provided in this Consent Judgment, Ganz 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 Release of Ganz.** In further consideration of the promises and
24 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
25 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
26 and/or 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 releases all claims, including,
28 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,

1 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
2 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
3 unknown, fixed or contingent (collectively "Claims"), against Ganz and each of its
4 manufacturers, distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers,
5 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries and
6 their respective officers, directors, attorneys, representatives, shareholders, agents, and employees
7 (collectively, "Ganz Releasees") arising under Proposition 65 related to Ganz's or Ganz
8 Releasees' alleged failure to warn about exposures to or identification of Listed Chemicals
9 contained in the Products.

10 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
11 binding resolution of any violation of Proposition 65 that have been or could have been asserted
12 in the Complaint against Ganz for its alleged failure to provide clear and reasonable warnings of
13 exposure to or identification of Listed Chemicals in the Products.

14 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waives all rights
15 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims
16 against the Ganz Releasees arising under Proposition 65 related to each of the Ganz Releasees'
17 alleged failures to warn about exposures to or identification of Listed Chemicals contained in the
18 Products and for all actions or statements made by Ganz or its attorneys or representatives, in the
19 course of responding to alleged violations of Proposition 65 by Ganz. Provided, however,
20 Plaintiff shall remain free to institute any form of legal action to enforce the provisions of this
21 Consent Judgment.

22 It is specifically understood and agreed that the Parties intend that Ganz' compliance with
23 the terms of this Consent Judgment resolves all issues and liability, now and in the future (so long
24 as Ganz complies with the terms of the Consent Judgment) concerning Ganz and the Ganz
25 Releasees' compliance with the requirements of Proposition 65 as to the Listed Chemicals in the
26 Products.

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

1 made by Plaintiff and his attorneys or representatives, in the course of seeking enforcement of
2 Proposition 65 in this Action.

3 **6. COURT APPROVAL**

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

9 **7. SALES DATA**

10 Ganz understands that the sales data that it respectively provided to counsel for Russell
11 Brimer was a material factor upon which Russell Brimer has relied to determine the amount of
12 civil penalties made pursuant to Health & Safety Code Section 25249.7(b) in this Agreement. To
13 the best of Ganz's knowledge, the sales data provided by Ganz to counsel for Russell Brimer is a
14 true and accurate reflection of any and all sales of the Products in California during the relevant
15 period.

16 **8. 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 of competent jurisdiction to be unenforceable, the validity
19 of the enforceable provisions remaining shall not be adversely affected.

20 **9. ATTORNEY'S FEES**

21 In the event that a dispute arises with respect to any provision(s) of this Consent
22 Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover
23 reasonable and necessary costs and reasonable attorney's fees incurred by the prevailing party to
24 fully and finally resolve such dispute.

25 **10. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California and shall apply within the State of California. In the event that Proposition 65 is
28 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products

1 specifically, then Ganz 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 **11. 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: (i) first-class, registered, certified mail,
6 return receipt requested or (ii) overnight courier on either Party by the other at the following
7 addresses. (Either Party, from time to time, may, pursuant to the methods prescribed above,
8 specify a change of address to which all future notices and other communications shall be sent.)

9 To Ganz: Howard Ganz, President
10 GANZ, INC.
60 Industrial Parkway
11 Cheektowaga, NY 14227-9903

12 With a copy to: Angela Agrusa
John C. Mueller
13 Baker & Hostetler LLP
333 South Grand Avenue, Suite 1800
14 Los Angeles, CA 90071-1523

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

18 With a copy to: Laralei S. Paras (State Bar No. 203319)
19 PARAS LAW GROUP
655 Redwood Highway, Suite 216
Mill Valley, CA 94941

20 **12. NO ADMISSIONS**

21 Nothing in this Consent Judgment shall constitute or be construed as an admission by
22 Ganz of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with
23 this Consent Judgment constitute or be construed as an admission by Ganz of any fact, finding,
24 conclusion, issue of law, or violation of law, such being specifically denied by Ganz. Ganz
25 reserves all of its rights and defenses with regard to any claim by any party under Proposition 65
26 or otherwise. However, this section shall not diminish or otherwise affect Ganz's obligations,
27 responsibilities and duties under this Consent Judgment.

1 **13. 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 **14. 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 five (5) 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 **15. 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") within a reasonable period of time
19 after the execution date. Plaintiff's counsel shall prepare a declaration in support of the Motion
20 which shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to
21 Section 4. Ganz shall have no additional responsibility to Plaintiff's counsel pursuant to C.C.P.
22 § 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to
23 the preparation and filing of the Motion or with regard to Plaintiff's counsel appearing for a
24 hearing or related proceedings thereon.

25 **16. MODIFICATION**

26 This Consent Judgment may be modified only by: (1) written agreement of the Parties
27 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party
28 as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney

1 General shall be served with notice of any proposed modification to this Consent Judgment at
2 least fifteen (15) days in advance of its consideration by the Court.

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 **AGREED TO:**

8 **Date:**

9
10 **By:**
11 Plaintiff Russell Brimer

12 **APPROVED AS TO FORM:**

13 **Date:**

14 **CHANLER LAW GROUP**

15 **By:**
16 Clifford A. Chanler
17 Attorneys for Plaintiff
18 RUSSELL BRIMER

AGREED TO:

8 **Date:**

9
10 **By:** Owen S. Rogers, V.P.
11 Defendant GANZ INC.

12 **APPROVED AS TO FORM:**

13 **Date:**

14 **BAKER & HOSTETTLER LLP**

15 **By:**
16 John C. Mueller
17 Attorney for Defendant
18 GANZ INC.

19
20 **IT IS SO ORDERED.**

21 **Date:** _____

22 _____
23 **JUDGE OF THE SUPERIOR COURT**

1 General shall be served with notice of any proposed modification to this Consent Judgment at
2 least fifteen (15) days in advance of its consideration by the Court.

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 **AGREED TO:**

AGREED TO:

8 Date:

Date:

9
10 By:
11 Plaintiff Russell Brimer

By:
Defendant GANZ INC.

12 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

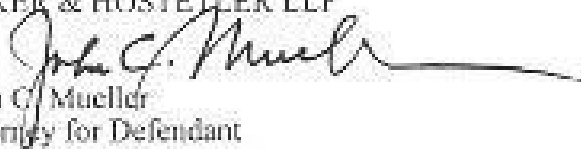
13 Date:

Date: *April 6, 2005*

14 **CHANLER LAW GROUP**

BAKER & HOSTETLER LLP

15 By:
16 Clifford A. Chanler
17 Attorneys for Plaintiff
18 **RUSSELL BRIMER**

By: 
19 John C. Mueller
20 Attorney for Defendant
21 **GANZ INC.**

22 **IT IS SO ORDERED:**

23 Date: _____

24 **JUDGE OF THE SUPERIOR COURT**

1 General shall be served with notice of any proposed modification to this Consent Judgment at
2 least fifteen (15) days in advance of its consideration by the Court.

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 **AGREED TO:**

AGREED TO:

8 Date: 4-7-05

Date:

9
10 By: 
11 Plaintiff Russell Brimer

By:
Defendant GANZ INC.

12 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

13 Date:

Date:

14 **CHANLER LAW GROUP**

BAKER & HOSTETLER LLP

15
16 By:
17 Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

By:
John C. Mueller
Attorney for Defendant
GANZ INC.

18
19
20 **IT IS SO ORDERED.**

21 Date: _____

22 JUDGE OF THE SUPERIOR COURT

1 General shall be served with notice of any proposed modification to this Consent Judgment at
2 least fifteen (15) days in advance of its consideration by the Court.

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 **AGREED TO:**

AGREED TO:

8 Date:

Date:

9
10 By:
11 Plaintiff Russell Brimer

By:
Defendant GANZ INC.

12 **APPROVED AS TO FORM:**


APPROVED AS TO FORM:

13 Date: 4/7/05

Date:

14 CHANLER LAW GROUP

BAKER & HOSTETLER LLP

15 By: 
16 Clifford A. Chanler
17 Attorneys for Plaintiff
RUSSELL BRIMER

By:
John C. Mueller
Attorney for Defendant
GANZ INC.

18
19
20 **IT IS SO ORDERED.**

21 Date: _____

22 JUDGE OF THE SUPERIOR COURT

1 Exhibit A

2 All martini glasses and other glassware products with colored artwork, designs or markings
3 on the exterior surface including, but not limited to:

4 Last Stop –Wine Goblet; 4 piece set [BC 1646]
5 Santa's Last Stop – Martini Glass [BC 1744]
6 Martini Glass with Olive Pattern [BC 2405]
7 Pitcher with Olive Pattern [BC 2406]
8 Teeny Weeny Martini Glass with Olive Pattern [BC 2408]
9 Margarita Glass [BC 7607]
10 Pink Poodle – Martini Glass [EG 6725]
11 Golf – Highball Glasses; 4 piece set [EJ 0384]
12 Humor Wine Glasses; 6 piece set [EJ 0510]
13 Fab Flamingo – Glass Pitcher [BC0401]
14 Fab Flamingo – Highball Glasses [BC0402]
15 Tropics – Cocktail Glasses [BC0755]
16 Tropics – Pitcher, Glass [BC0756]
17 Last Stop – Martini Pitcher [BC1644]
18 Martini Glass with Red Stem [BC2059]
19 Martini Pitcher [BC2060]
20 Humor – Wine Glass [BC2369]
21 Bent Stem Martini Glass with Olives [BC2370]
22 Tipping Pitcher with Olive Pattern [BC2380]
23 Martini Humor Glass [BC2403]
24 Tuscany Glass Pitcher [BC2820]
25 Tuscany Wine Glasses [BC2840]
26 Margarita Glass [BC7599]
27 Bloody Mary – Highball Glass [BC7602]
28 Margarita Pitcher [BC7606]
Margarita Tipping Pitcher [BC7617]
Black/White Glass Pitcher [BC8216]
Bon Appetite [BC9727]
Fine Wine – Humor Wine Glasses [EJ1540]
Sweetheart Wine Glasses [EJ7733]