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10 Attorneys for Defendant  
HUNTER MANUFACTURING GROUP, INC.

11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO

14

15 RUSSELL BRIMER,  
16 Plaintiff,

17 v.

18 HUNTER MANUFACTURING GROUP, INC.;  
WEST COAST NOVELTY CORP;  
19 ALBERTSON'S INC.; and DOES 1 through 150,  
20 Defendants.

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ENDORSED  
FILED  
San Francisco County Superior Court

DEC 16 2005

GORDON PARK-LI, Clerk  
BY: ERICKA LARNAUTI  
Deputy Clerk

Case No. CGC-05-439569

~~PROPOSED~~ <sup>ELI</sup> ORDER APPROVING  
PROPOSITION 65 SETTLEMENT  
AND CONSENT JUDGMENT

Date: December 16, 2005  
Time: 9:30 A.M.  
Dept. 301  
Judge: Hon. ~~James L. Warren~~

A. JAMES ROBERTSON, II

CGC-05-439569

~~PROPOSED~~ ORDER APPROVING PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT

1 Plaintiff Russell Brimer and Defendant Hunter Manufacturing Group, 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 above-referenced parties and attached hereto as Exhibit A;  
4 and after consideration of the papers submitted and the arguments presented, the Court finds that  
5 the settlement agreement set out in the attached Consent Judgment meets the criteria established  
6 by Health & Safety Code section 25249.7, in that:

7 1. The health hazard warning that is required by the Consent Judgment  
8 complies with Health & Safety Code section 25249.7;

9 2. The reimbursement of fees and costs to be paid pursuant to the parties'  
10 Consent Judgment is reasonable under California law; and

11 3. The civil penalty amount to be paid pursuant to the parties' Consent  
12 Judgment is reasonable.

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

16  
17 DATED: DEC 16 2005

A. JAMES ROBERTSON, II  
\_\_\_\_\_  
HON. JAMES L. WARREN  
Judge of the Superior Court

A. JAMES ROBERTSON, II

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**EXHIBIT A**

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6 Attorneys for Plaintiff  
Russell Brimer

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11 Attorneys for Defendant  
Hunter Manufacturing Group, Inc.  
12

13  
14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
17 UNLIMITED CIVIL JURISDICTION

18  
19 RUSSELL BRIMER,  
20 Plaintiff,  
21 v.  
22 HUNTER MANUFACTURING GROUP, INC.;  
WEST COAST NOVELTY CORP.;  
23 ALBERTSON'S INC.; and DOES 1 through 150,  
24 Defendants.

Case No. CGC-05-439569

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

25 **1. INTRODUCTION**

26 1.1 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and  
27 between plaintiff Russell Brimer (hereafter "Mr. Brimer" or "Brimer" or "Plaintiff") and  
28

1 defendant Hunter Manufacturing Group, Inc. (hereafter "Hunter" or "Defendant"), with Plaintiff  
2 and Defendant collectively referred to as the "Parties" and Brimer and Hunter each being a  
3 "Party."

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

7       **1.3 General Allegations.** Plaintiff alleges that Defendant has manufactured,  
8 distributed and/or sold in the State of California certain Collector Glass Sets, Shot Glasses, Mugs  
9 and other glassware and ceramicware with colored artwork, designs or markings on the exterior  
10 surface with materials that contain lead and/or cadmium, chemicals that are listed pursuant to the  
11 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code  
12 §§ 25249.5 et seq., also known as "Proposition 65", to cause birth defects and other reproductive  
13 harm.

14       **1.4 Product Descriptions.** The products that are covered by this Agreement are  
15 glassware and ceramicware with colored artwork and/or designs (containing lead and/or  
16 cadmium) including but not limited to the products listed on Exhibit A. Such products  
17 collectively are referred to herein as the "Products."

18       **1.5 Notices of Violation.** On December 17, 2004, Brimer served Defendant and  
19 various public enforcement agencies with a document entitled "60-Day Notice of Violation"  
20 ("Notice") that provided Defendant and such public enforcers with notice alleging that Defendant  
21 was in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain  
22 glassware products with colored artwork and designs on the exterior that it sold expose users in  
23 California to lead. On or before September 16, 2005, Brimer will be serving a supplemental  
24 notice on Hunter and all required public enforcers expanding plaintiff's prior allegations  
25 concerning the products to include exposures to lead and cadmium from glassware and  
26 ceramicware with colored artwork and designs on the exterior ("Supplemental Notice").

27       **1.6 Complaint.** On March 16, 2005, Brimer, in the interest of the general public in  
28 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the

1 Superior Court for the County of San Francisco against Hunter Manufacturing Group, Inc., West  
2 Coast Novelty Corp., Albertson's Inc., and Does 1 through 150, alleging violations of Health &  
3 Safety Code §25249.6 based on the alleged exposures to one or more of the listed chemicals  
4 contained in the Products. Upon the running of the 60-day period associated with the issuance of  
5 the Supplemental Notice, and provided that no authorized public enforcer of Proposition 65  
6 initiates an action against the Noticed Parties based on the additional allegations therein contained  
7 in the interim, both the Complaint and this Consent Judgment shall be deemed such that the  
8 definition of "Products" as used herein shall be likewise expanded to include ceramicware with  
9 colored artwork and designs (containing lead and/or cadmium) on the exterior and glassware with  
10 colored artwork and designs (containing lead and/or cadmium) on the exterior. Lead and  
11 cadmium shall be referred to herein as the "Listed Chemicals."

12       **1.7 No Admission.** Hunter denies the material factual and legal allegations contained  
13 in Plaintiff's Notices and Complaint (as deemed amended) and maintains that all of the products  
14 that it has manufactured, distributed, and sold in California, including the Products, have been  
15 and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an  
16 admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall  
17 compliance with this Agreement constitute or be construed as an admission by Defendant of any  
18 fact, finding, conclusion, issue of law, or violation of law. However, nothing in this Section shall  
19 diminish or otherwise affect the obligations, responsibilities, and duties of Hunter under this  
20 Consent Judgment.

21       **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties  
22 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
23 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that  
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this  
25 Consent Judgment and to enforce the provisions thereof.

26       **1.9 Effective Date.** For purposes of this Consent Judgment, the "Effective Date" shall  
27 be September 12, 2005.

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

2 **2.1 WARNINGS AND REFORMULATION OBLIGATIONS**

3 (a) **Required Warnings.** After September 12, 2005, Defendant shall not  
4 manufacture, distribute, supply, offer for sale or sell in California any Products containing the  
5 Listed Chemicals, unless warnings are given in accordance with one or more provisions in  
6 subsection 2.2 below. This warning requirement, and the warning requirement set forth in  
7 subsection 2.2 below, shall not apply to Reformulated Products as defined in subsection 2.3  
8 below.

9 **2.2 CLEAR AND REASONABLE WARNINGS**

10 (a) **Product Labeling.** A warning is affixed to the packaging, labeling or  
11 directly to or on a Product by Defendant, its agents, or the importer, distributor or retailer of the  
12 Product that states:

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

17 **or**

18 **WARNING: The materials used as colored decorations on the**  
19 **exterior of this product contain chemicals**  
20 **known to the State of California to cause birth**  
**defects and other reproductive harm.**

21 Warnings issued for Products pursuant to this subsection shall be prominently placed with  
22 such conspicuousness as compared with other words, statements, designs, or devices as to render  
23 them likely to be read and understood by an ordinary individual under customary conditions of  
24 use and/or purchase. Any changes to the language or format of the warning required by this  
25 subsection shall only be made following: (1) approval of Plaintiff; (2) approval from the  
26 California Attorney General's Office, provided that written notice of at least fifteen (15) days is  
27 given to Plaintiff for the opportunity to comment; or (3) Court approval.  
28

1 (b) **Point-of-Sale Warnings.** Defendant may execute its warning obligations,  
2 where applicable, through arranging for the posting of signs at retail outlets in the State of  
3 California at which the Products are sold, in accordance with the terms specified in  
4 subsections 2.2(b)(i) and 2.2(b)(ii).

5 (i) If point of sale warnings are to be provided through one or more  
6 signs posted at the point of sale or display of the Products, the warning must state :

7  
8 **WARNING: The materials used as colored decorations on the**  
9 **exterior of this product contain lead and/or**  
10 **cadmium, chemicals known to the State of**  
11 **California to cause birth defects and other**  
12 **reproductive harm.**

13 or

14 **WARNING: The materials used as colored decorations on the**  
15 **exterior of the following beverageware products**  
16 **sold in this store contain lead and/or cadmium,**  
17 **chemicals known to the State of California to**  
18 **cause birth defects and other reproductive**  
19 **harm. [*List specific products to which warning***  
20 ***applies.*]**

21 (ii) Warnings provided for Products pursuant to this subsection shall be  
22 prominently placed with such conspicuousness as compared with other words, statements,  
23 designs, or devices as to render them likely to be read and understood by an ordinary individual  
24 under customary conditions prior to purchase and shall be placed or written in a manner such that  
25 the consumer understands to which *specific* Products the warnings apply so as to minimize if not  
26 eliminate the chances that an over-warning situation will arise. Any changes to the language or  
27 format of the warning required for Products by this subsection shall only be made following:  
28 (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.



1 (iii) If Hunter intends to utilize point-of-sale warnings for sales made  
2 to retail outlets to comply with this Consent Judgment, it must provide notice as required by this  
3 Consent Judgment to *each* retailer to whom the Products are shipped for sale in California *and*  
4 obtain the written consent of such retailer to post the required warnings before shipping the  
5 Products. Such notice shall include a copy of this Consent Judgment and any required warning  
6 materials (including, as appropriate, signs and/or stickers). If Hunter has obtained the written  
7 consent of a retailer and transmitted the requisite warnings as provided herein, Hunter shall not be  
8 found to have violated this Consent Judgment if it has complied with the terms of this Consent  
9 Judgment.

10 2.3 REFORMULATION STANDARDS: Products satisfying the conditions set  
11 forth in sections 2.3.1 and 2.3.2 below qualify as "Reformulated Products."

12 2.3.1 Glassware Reformulation Standards

13 The Product must produce a test result no higher than 1.0 micrograms ("ug") of lead and  
14 8.0 ug of cadmium using a Ghost Wipe™ test applied to the colored decorations on the exterior  
15 surface of the Product, performed as outlined in NIOSH Method No. 9100, or

16 The colored artwork, designs or markings on the exterior surface of the Product must only  
17 utilize decorating materials containing six one-hundredths of one percent (0.06%) of lead by  
18 weight (or less) and twenty-four one-hundredths of one percent (0.24%) of cadmium by weight  
19 (or less) as measured at Defendant's option, either before or after the material is fired onto (or  
20 otherwise affixed to) the Product, using EPA Test Method 3050b,<sup>1</sup> and

21 If the colored artwork, designs or markings on the exterior surface of the Product extends  
22 into the top 20 millimeters of the ware (*i.e.*, the exterior portion of the lip and rim area as defined  
23 by American Society of Testing and Materials Standard Test Method C927-99, hereinafter the  
24 "Lip and Rim Area"), the Product must produce test results acceptable under subsection 2.3.1  
25

26 <sup>1</sup> If Defendant tests any decoration in the Products, using EPA Test Method 3050b, after it  
27 is affixed to the Product, the percentage of lead by weight and the percentage of cadmium by  
28 weight must relate only to the other portions of the decorating material and not include any  
calculation of non-decorating material.

1 above, and the decorative materials used in the Lip and Rim Area of the Products must contain no  
2 detectable lead or cadmium.<sup>2</sup>

### 3 2.3.2 Ceramic Reformulation Standards

4 The Product must produce a test result no higher than 1.0 micrograms (ug) of lead and 8.0  
5 ug of cadmium using a Ghost Wipe™ test applied to the colored decorations on the exterior  
6 surface of the Product, performed as outlined in NIOSH Method No. 9100, or

7 The colored artwork, designs or markings on the exterior surface of the Product must only  
8 utilize decorating materials containing six one-hundredths of one percent (0.06%) of lead by  
9 weight (or less) and twenty-four one-hundredths of one percent (0.24%) of cadmium by weight  
10 (or less) as measured at Defendant's option, either before or after the material is fired onto (or  
11 otherwise affixed to) the Product, using EPA Test Method 3050b,<sup>3</sup> or

12 The Product must achieve a result of 0.99 ppm or less for lead and 7.92 ppm or less for  
13 cadmium after correction for internal volume when tested under the protocol attached hereto as  
14 Exhibit B (the ASTM C927-99 test method, modified for total immersion with results corrected  
15 for internal volume); and

16 If the colored artwork, designs or markings on the exterior surface of the Product extends  
17 into the Lip and Rim Area, the Product must produce test results acceptable under subsection  
18 2.3.2 above, and the decorative materials used in the Lip and Rim Area of the Products must  
19 contain no detectable lead or cadmium.<sup>4</sup>

20 <sup>2</sup> For purposes of this subsection, "no detectable lead or cadmium" shall mean that lead is  
21 not detected at a level above two one-hundredths of one percent (0.02%) by weight and cadmium  
22 is not detected at a level above eight one-hundredths of one percent (0.08%), respectively, using a  
23 sample size of the materials in question measuring approximately 50-100 mg and a test method of  
24 sufficient sensitivity to establish a limit of quantitation of less than 200 ppm.

25 <sup>3</sup> If Defendant tests any decoration in the Products, using EPA Test Method 3050b, after it  
26 is affixed to the Product, the percentage of lead by weight and the percentage of cadmium by  
27 weight must relate only to the other portions of the decorating material and not include any  
28 calculation of non-decorating material.

<sup>4</sup> For purposes of this subsection, "no detectable lead or cadmium" shall mean that lead is  
not detected at a level above two one-hundredths of one percent (0.02%) by weight and cadmium  
is not detected at a level above eight one-hundredths of one percent (0.08%), 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.

1 **3. MONETARY PAYMENTS.**

2 3.1 **Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to  
3 Health & Safety Code §25249.7(b), Defendant shall pay a civil penalty of \$58,000. The penalty  
4 payment shall be made payable to the "Chanler Law Group in Trust For Russell Brimer," and  
5 shall be delivered to Plaintiff's counsel on or before September 12, 2005, at the following  
6 address:

7  
8 CHANLER LAW GROUP  
9 Attn: Clifford A. Chanler  
10 71 Elm Street, Suite 8  
11 New Canaan, CT 06840

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

16 (b) **Apportionment of Penalties Received.** After Court approval of this  
17 Consent Judgment pursuant to Section 6, all penalty monies received shall be apportioned by  
18 Plaintiff in accordance with Health & Safety Code §25192, with 75% of these funds remitted to  
19 the State of California's Office of Environmental Health Hazard Assessment and the remaining  
20 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code  
21 §25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of  
22 California the appropriate civil penalties paid in accordance with this section.

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

24 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this  
25 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
26 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
27 Defendant then expressed a desire to resolve the fee and cost issue shortly after the other  
28 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on  
the compensation due to Plaintiff and his counsel under the private attorney general doctrine

1 codified at *California Code of Civil Procedure § 1021.5* for all work performed through the  
2 Effective Date of the Agreement. Under the private attorney general doctrine, Defendant shall  
3 reimburse Plaintiff and his counsel for fees and costs incurred as a result of investigating,  
4 bringing this matter to Defendant's attention, and *inter alia*, litigating and negotiating a settlement  
5 in the public interest. Defendant shall pay Plaintiff and his counsel \$78,000 for all attorneys'  
6 fees, expert and investigation fees, and litigation costs. The payment shall be made payable to the  
7 "Chanler Law Group" and shall be delivered to Plaintiff's counsel on or before September 12,  
8 2005, at the following address:

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

13 4.2 Except as specifically provided in this Consent Judgment, Defendant shall have no  
14 further obligation with regard to reimbursement of Plaintiff's attorneys' fees and costs with  
15 regard to the Products covered in this Consent Judgment.

16 **5. RELEASE OF ALL CLAIMS**

17 5.1 **Plaintiff's Release of Defendant.** In further consideration of the promises and  
18 agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4,  
19 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors  
20 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or  
21 participate in, directly or indirectly, any form of legal action and releases all claims, including,  
22 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,  
23 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,  
24 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or  
25 unknown, fixed or contingent (collectively "Claims"), against Defendant and each of its  
26 respective officers, directors, agents, employees, consultants, representatives, partners,  
27 shareholders, affiliates, associations, owners, interest holders, entity owners (and the officers,  
28

1 directors, owners, shareholders, agents and employees of any of its owners, shareholders, interest  
2 holders or entity owners), and its retailers, customers (including but not limited to West Coast  
3 Novelty Corp. and Albertson's Inc.), purchasers, users, licensees, subsidiaries and their respective  
4 officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively,  
5 "Defendant's Releasees") arising under Proposition 65, and including but not limited to  
6 Defendant's or Defendant's Releasees' alleged failure to warn about exposures to or  
7 identification of Listed Chemicals contained in the Products. It is specifically understood and  
8 agreed to by Plaintiff and Defendant that the release provided herein for Defendant's Releasees  
9 (including West Coast Novelty Corp. and Albertson's Inc.) is limited solely to the Products sold  
10 by Hunter.

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 that has been or could have been asserted in  
13 the Complaint against Defendant for its alleged failure to provide clear and reasonable warnings  
14 of exposure to or identification of the Listed Chemicals in the Products.

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

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

1           5.2    **Defendant's Release of Plaintiff.** Defendant and Defendant's Releasees waive all  
2 rights to institute any form of legal action against Plaintiff, or his attorneys or representatives, for  
3 all actions taken or statements made by Plaintiff and his attorneys or representatives, in the course  
4 of seeking enforcement of Proposition 65 against Defendant and Defendant's Releasees prior to  
5 and in this Action.

6           **6.       COURT APPROVAL**

7           This Consent Judgment is not effective until it is approved and entered by the Court and  
8 shall be null and void if, for any reason, it is not approved and entered by the Court within 180  
9 days after it has been fully executed by all Parties, in which event any monies that have been  
10 provided to Plaintiff or his counsel pursuant to Section 3 and/or Section 4 above, shall be  
11 refunded within fifteen (15) days.

12          **7.       SEVERABILITY**

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

16          **8.       ATTORNEYS' FEES**

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

21          **9.       GOVERNING LAW**

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

27          **10.     NOTICES**

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

6 To Hunter Manufacturing Group, Inc.:

7 Jack C. Smith, President  
8 Hunter Manufacturing Group, Inc.  
9 201 West Loudon Avenue  
10 Lexington, KY 40508

J. Clarke Keller, Esq.  
Stites & Harbison, PLLC  
250 W. Main St., Suite 2300  
Lexington, KY 40507

11 To Plaintiff:

12 Clifford A. Chanler  
13 Chanler Law Group  
14 71 Elm Street, Suite 8  
15 New Canaan, CT 06840

#### 16 11. NO ADMISSIONS

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

#### 24 12. COUNTERPARTS; FACSIMILE SIGNATURES

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

#### 28 13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Plaintiff agrees to comply with the reporting form requirements referenced in Health &  
Safety Code §25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall  
present this Consent Judgment to the California Attorney General's Office within two (2) days

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

5 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

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

20 **15. MODIFICATION**

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



1 **AUTHORIZATION**

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

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7 **AGREED TO:**

**AGREED TO:**

8

Date:

Date: *September 16, 2005*

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By:  
Plaintiff RUSSELL BRIMER

By: *[Signature]*  
Defendant HUNTER MANUFACTURING  
GROUP, INC.

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**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

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Date:

Date: *9/16/05*

16

PARAS LAW GROUP

STITES & HARBISON PLLC

17

18

By:  
Stephen S. Sayad  
Attorney for Plaintiff  
RUSSELL BRIMER

By: *[Signature]*  
Stephanie R. Gilford  
Attorney for Defendant  
HUNTER MANUFACTURING GROUP, INC.

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**IT IS SO ORDERED.**

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Date: \_\_\_\_\_

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

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

AGREED TO:

AGREED TO:

Date: 9-14-05

Date:

By:   
Plaintiff RUSSELL BRIMER

By:  
Defendant HUNTER MANUFACTURING GROUP, INC.

APPROVED AS TO FORM:

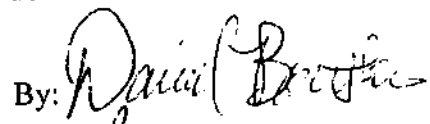
APPROVED AS TO FORM:

Date: 9/22/05

Date:

PARAS LAW GROUP

STITES & HARBISON PLLC

By:   
for  
Stephen S. Sayad  
Attorney for Plaintiff  
RUSSELL BRIMER

By:  
Stephanie R. Gilford  
Attorney for Defendant  
HUNTER MANUFACTURING GROUP, INC.

IT IS SO ORDERED.

Date: \_\_\_\_\_

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

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Exhibit A

All glasses, mugs, bowls, teapots, and other glassware and ceramicware with colored designs and/or artwork on the exterior, including but not limited to:

Collector Glass Set, Four 2 oz. Collector Glasses (#7 37224 29552 9)

1 Daniel Bornstein (State Bar No. 181711)  
Laralei S. Paras (State Bar No. 203319)  
2 PARAS LAW GROUP  
2560 Ninth Street, Suite 214  
3 Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
4 Facsimile: (510) 848-8118

5 Attorneys for Plaintiff  
RUSSELL BRIMER

6 Stephanie R. Gilford (State Bar No. 217241)  
7 STITES & HARBISON PLLC  
250 West Main Street, Suite 2300  
8 Lexington, KY 40507  
Telephone: (859) 226-2250  
9 Facsimile: (859) 253-9144

10 Attorneys for Defendant  
HUNTER MANUFACTURING GROUP, INC.

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE CITY AND COUNTY OF SAN FRANCISCO

14

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 HUNTER MANUFACTURING GROUP, INC.;  
WEST COAST NOVELTY CORP;  
19 ALBERTSON'S INC.; and DOES 1 through 150,

20 Defendants.

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ENDORSED  
FILED  
San Francisco County Superior Court

DEC 16 2005

GORDON PARK-LI, Clerk  
By: ERICKA LARNAUTI  
Deputy Clerk

Case No. CGC-05-439569

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

Date: December 16, 2005

Time: 9:30 A.M.

Dept. 301

Judge: Hon. ~~James L. Warren~~

**A. JAMES ROBERTSON, II**

CGC-05-439569

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

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In the above-entitled action, Plaintiff Russell Brimer and Defendant Hunter Manufacturing Group, 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;

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: DEC 16 2005

A. JAMES ROBERTSON, II

HON. ~~JAMES L. WARREN~~  
Judge of the Superior Court

**A. JAMES ROBERTSON, II**