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RUSSELL BRIMER

15  
16  
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
19 UNLIMITED CIVIL JURISDICTION

20  
21 RUSSELL BRIMER,

22 Plaintiff,

23 v.

24 THE BOELTER COMPANIES, et al.,

25 Defendants.

Case No. CGC-05-440811

**NOTICE OF ENTRY OF ORDER  
PURSUANT TO TERMS OF  
CONSENT JUDGMENT AND OF  
JUDGMENT PURSUANT TO TERMS  
OF CONSENT JUDGMENT**

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

NOTICE IS HEREBY GIVEN THAT an Order Pursuant to Terms of Consent Judgment as to was entered on August 18, 2005, by the Honorable James L. Warren, Judge of the San Francisco Superior Court.

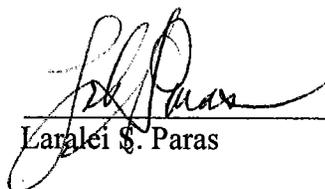
A true and correct copy of this Order is attached hereto as Exhibit 1.

FURTHER NOTICE IS HEREBY GIVEN THAT Judgment Pursuant to Terms of Consent Judgment was entered on August 18, 2005, by the Honorable James L. Warren, Judge of the San Francisco Superior Court.

A true and correct copy of this Judgment is attached hereto as Exhibit 2.

DATED: August 19, 2005

Respectfully submitted,  
PARAS LAW GROUP

  
\_\_\_\_\_  
Laralei S. Paras

1 **PROOF OF SERVICE**

2 I am employed in the County of Marin, State of California. I am a citizen of the United  
3 States, over the age of 18 years, and not a party to the within action. My business address is  
4 655 Redwood Highway, Suite 216, Mill Valley, CA 94941.

5 On August 19, 2005, I served the following document(s), described as,

6 **NOTICE OF ENTRY OF ORDER PURSUANT TO TERMS OF CONSENT**  
7 **JUDGMENT AND OF JUDGMENT PURSUANT TO TERMS OF CONSENT**  
8 **JUDGMENT**

9 on each interested party as follows:

10 Robert L. Falk, Esq.  
11 William Tarantino, Esq.  
12 MORRISON & FOERSTER LLP  
13 425 Market Street  
14 San Francisco, CA 94105-2482

15 XX\_\_ (BY U.S. MAIL) I placed a true and correct copy of the foregoing  
16 document(s) in a sealed envelope addressed to each interested party as set forth above. I placed  
17 each such envelope, with postage thereon fully prepaid, for collection and mailing at the Paras  
18 Law Group, located in Mill Valley, California. I am readily familiar with the Paras Law  
19 Group's practice for collection and processing of documents for mailing with the United States  
20 Postal Service. Under that practice, the documents are deposited with the United States Postal  
21 Service on the same day in the ordinary course of business.

22 Executed this 19<sup>th</sup> day of August 2005, at Mill Valley, California. I declare under the  
23 penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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25 \_\_\_\_\_  
26 Lewis Sharp

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ENDORSED  
FILED  
San Francisco County Superior Court

AUG 18 2005

GORDON PARK-LI, Clerk  
BY: MARJORIE SCHWARTZ-SCOTT  
Deputy Clerk

GORDON PARK-LI, Clerk  
BY: MARJORIE SCHWARTZ-SCOTT  
Deputy Clerk

AUG 18 2005  
ENDORSED  
FILED  
San Francisco County Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION

RUSSELL BRIMER,  
Plaintiff,  
v.  
THE BOELTER COMPANIES, and DOES  
1 through 150 inclusive,  
Defendants.

Case No. CGC 05-440811

*R*  
[PROPOSED] ORDER APPROVING  
PROPOSITION 65 SETTLEMENT AND  
CONSENT JUDGMENT

Hearing: August 17, 2005  
Time: 9:30 am  
Department: 301  
Judge: Hon. James L. Warren

Date Action Filed: April 16, 2005

1 Plaintiff RUSSELL BRIMER and Defendant THE BOELTER COMPANIES (“Defendant”),  
2 having 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 1; and  
4 after consideration of the papers submitted and the arguments presented, the Court finds that the  
5 settlement agreement set out in the attached Consent Judgment meets the criteria established by  
6 Health & Safety Code section 25249.7, in that:

- 7 1. The health hazard warning that is required by the Consent Judgment complies with  
8 Health & Safety Code section 25249.7;
- 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 Accordingly, IT IS HEREBY ORDERED that Judgment be entered in the case referenced  
14 above, in accordance with the terms of the Amended Stipulation and [Proposed] Consent Judgment,  
15 ~~attached hereto as Exhibit 1.~~

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18 Dated:     **AUG 17 2005**    , 2005

**JAMES L. WARREN**  
\_\_\_\_\_  
Hon. James L. Warren  
Judge of the San Francisco Superior Court

# EXHIBIT A

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ENDORSED  
FILED  
San Francisco County Superior Court

AUG 18 2005

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20 The Boelter Companies

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
22 COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION

23 RUSSELL BRIMER,  
24  
25 Plaintiff,  
26 v.  
27 THE BOELTER COMPANIES, et al.  
28 Defendants.

Case No. CGC-05-440811

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

1     **1. INTRODUCTION**

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

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

9             **1.3 Settling Defendants.** Settling Defendants are: (1) Boelter and (2) other  
10 companies that have manufactured, decorated, imported, distributed, or offered for use or sale  
11 Covered Products and that have become “Opt-In Defendants” as defined in and pursuant to  
12 section 14 below.

13             **1.4 Covered Products.** The products that are covered by this Consent Judgment are  
14 defined as follows:

15                     (A) Glass beverageware and tableware products with colored artwork, designs  
16 and/or markings on the exterior surface that are manufactured, decorated, imported, distributed or  
17 offered for use or sale by Settling Defendants and that are purchased and/or used by individuals in  
18 California for the storage, serving or consumption of food or beverages including, but not limited  
19 to: glasses, pilsners, mugs, carafes, tumblers, bottles, condiment dispensers, bowls, cups, saucers,  
20 plates, trays, pitchers, punch bowls, serving utensils, serving platters and other like items (herein  
21 after collectively referred to as “Glassware Food/Beverage Products” or “Category A Products”);

22                     (B) Ceramicware products with colored artwork, designs and/or markings on the  
23 exterior surface that are manufactured, decorated, imported, distributed or offered for use or sale  
24 by Settling Defendants and that are purchased and/or used by individuals in California for the  
25 storage, serving or consumption of food or beverages, including but not limited to: mugs, steins,  
26 carafes, bowls, drinking vessels, bottles, condiment dispensers, cups, saucers, plates, trays,  
27 pitchers, punch bowls, serving utensils, serving platters and other like items (herein after  
28 collectively referred to as “Ceramicware Food/Beverage Products” or “Category B Products”);

1 (C) Glassware household products with colored artwork, designs and/or markings  
2 on the exterior surface that are manufactured, decorated, imported, distributed or offered for use  
3 or sale by Settling Defendants and that are purchased and/or used by individuals in California  
4 that: (i) appear to be suitable for food or beverage use but are labeled in accordance with  
5 requirements described in 21 Code of Federal Regulations (“C.F.R.”) 109.16 for products not  
6 intended for use with food or beverages; (ii) physically could not be used to store, serve or  
7 consume foods or beverages; or (iii) are not reasonably used for the storage, serving or  
8 consumption of food or beverages. Such products include, but are not limited to: vases, votive  
9 holders, candleholders/candelabras, ashtrays, coasters, mirrors, napkin rings, centerpieces, trivets,  
10 decorative tiles, holiday ornaments, keepsake/music boxes, pencil holders, desk sets, picture  
11 frames, figurines, soap dispensers, toothbrush holders, soap dishes, tissue caddies, garden  
12 ornaments, flower pots, plant holders, wall hangings, lamps, pet dishes, suncatchers, and other  
13 like items (herein after collectively referred to as “Glassware Non-Food/Beverage Products” or  
14 “Category C Products”);

15 (D) Ceramicware household products with colored artwork, designs and/or  
16 markings on the exterior surface that are manufactured, decorated, imported, distributed, or  
17 offered for use or sale by Settling Defendants, and that are purchased and/or used by individuals  
18 in California that: (i) appear to be suitable for food or beverage use but are labeled in accordance  
19 with requirements described in 21 C.F.R. 109.16 for products not intended for use with food or  
20 beverages; (ii) physically could not be used to store, serve or consume foods or beverages; or (iii)  
21 are not reasonably used for the storage, serving or consumption of foods or beverages. Such  
22 products include, but are not limited to: vases, votive holders, ashtrays, coasters, napkin rings,  
23 centerpieces, trivets, holiday ornaments, keepsake/music boxes, decorative tiles, pencil holders,  
24 desk sets, picture frames, figurines, soap dispensers, toothbrush holders, soap dishes, tissue  
25 caddies, garden ornaments, flower pots, plant holders, wall hangings, lamps, pet dishes,  
26 suncatchers, and other like items (herein after collectively referred to as “Ceramicware Non-  
27 Food/Beverage Products” or “Category D Products”).  
28

1 Unless referred to separately by category, all of the products described in section 1.4  
2 above shall be collectively referred to herein as "Covered Products." The categories of products  
3 described above are Covered Products as to each Settling Defendant only to the extent each  
4 category of Products has been specifically included in the 60-Day Notice of Violation to that  
5 Settling Defendant.

6 **1.5 General Allegations.** Plaintiff alleges that the Settling Defendants have  
7 manufactured, decorated, imported, distributed or offered for use or sale in the State of California  
8 Covered Products with colored artwork, designs and/or markings on the exterior surface that  
9 contain (and cause exposure to) cadmium and/or lead. Lead and cadmium are listed pursuant to  
10 the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code  
11 §§ 25249.5 *et seq.*, also known as Proposition 65, as carcinogens and reproductive toxicants.  
12 Lead, lead compounds and cadmium shall be referred to herein as the "Listed Chemicals."

13 **1.6 Notices of Violation.** Beginning on February 14, 2005, Brimer served Boelter and  
14 various public enforcement agencies with documents, entitled "60-Day Notice of Violation"  
15 ("Notice") that provided Boelter and the public enforcers with notice that Boelter was allegedly in  
16 violation of Health & Safety Code § 25249.6 for failing to warn individuals that Category A  
17 Products that it sold in California expose consumers to one or more of the Listed Chemicals  
18 contained in the exterior decorations on the Covered Products. Prior to the hearing on the motion  
19 for approval of this Consent Judgment, Brimer will also have served Boelter and the required  
20 public enforcement agencies with documents, entitled "Supplemental Notice of Violation"  
21 ("Supplemental Notice") that provided Boelter and the public enforcers with notice that Boelter  
22 was alleged to be in violation of Health & Safety Code § 25249.6 for failing to warn individuals  
23 that Category B Products that it sold expose individuals in California to one or more of the Listed  
24 Chemicals contained in the exterior decorations on the Covered Products; the definition of  
25 Covered Products as to Boelter shall not be deemed to include Category B Products until the  
26 sixty-sixth (66th) day following the date of issuance of the Supplemental Notice and shall not, as  
27 of that date include the Category B Products if an authorized public prosecutor has, prior to that  
28 date, filed a Proposition 65 enforcement action as to Boelter's Category B Products.

1           **1.7 Complaint.** On April 16, 2005, Brimer, in the interest of the general public in  
2 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the  
3 Superior Court for the City and County of San Francisco against Boelter and Does 1 through 150,  
4 alleging violations of Health & Safety Code § 25249.6 based on alleged exposures to one or more  
5 of the Listed Chemicals contained in Covered Products sold by Boelter.

6           **1.8 No Admission.** Settling Defendants deny the material factual and legal allegations  
7 contained in Plaintiff's Notices, Supplemental Notices, and Complaint and maintain that all  
8 products that they have manufactured, decorated, imported, distributed or offered for use or sale  
9 in California have been and are in compliance with all laws. Nothing in this Consent Judgment  
10 shall be construed as an admission by Settling Defendants of any fact, finding, issue of law, or  
11 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as  
12 an admission by Settling Defendants of any fact, finding, conclusion, issue of law or violation of  
13 law. However, this section shall not diminish or otherwise affect the obligations, responsibilities  
14 and duties of Settling Defendants under this Consent Judgment.

15           **1.9 Consent to Jurisdiction.** For purposes of this Consent Judgment only, Plaintiff  
16 and Settling Defendants stipulate that this Court has jurisdiction over the allegations of violations  
17 contained in the Notices, Supplemental Notices, and Complaint and personal jurisdiction over  
18 Settling Defendants as to the acts alleged in the Complaint, that venue is proper in the County of  
19 San Francisco, and that this Court has jurisdiction to enter this Consent Judgment and to enforce  
20 the provisions thereof.

21           **1.10 Effective Date.** For purposes of this Consent Judgment, the "Effective Date" shall  
22 be June 10, 2005.

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

24           **2.1 Warning Obligations for Products**

25           **(a) Required Warnings.** After the Effective Date, Settling Defendants shall  
26 not manufacture, decorate, import, distribute or offer for use or sale any Covered Products  
27 containing one or more of the Listed Chemicals (or supply any Covered Product containing one  
28 or more of the Listed Chemicals to any entity) for distribution, sale or use in California, unless

1 clear and reasonable warnings are given in accordance with one or more provisions in  
2 subsection 2.2 below.

3 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and  
4 2.2 below shall not apply to:

5 (i) any Covered Products manufactured before September 1, 2005 as to  
6 Boelter or, as to any other Settling Defendant, thirty (30) days  
7 following entry of its Opt-In Stipulation pursuant to subsection 14.5  
8 below;

9 (ii) Reformulated Products (as defined below in subsection 2.3 below); or

10 (iii) any Covered Products supplied to Settling Defendants by any other  
11 person in the course of doing business who is subject to a final  
12 judgment in an action brought by Brimer, Dr. Whitney Leeman or  
13 Michael DiPirro or a public enforcer whose action was brought on  
14 behalf of the People of the State of California addressing Proposition  
15 65 warning obligations arising from alleged exposures to lead or  
16 cadmium from glassware and/or ceramic products with colored  
17 artwork, designs or markings on the exterior surface.

18 **2.2 Clear and Reasonable Warnings.** The methods and language outlined in the  
19 following subsections describe the Settling Defendants' options for satisfying the warning  
20 obligations described in section 2.1(a) depending, in part, on the manner of sale of the Covered  
21 Product.

22 (a) **Retail Sales.** If the Covered Product is sold at a retail outlet in California,  
23 the Settling Defendant must comply with its warning requirement in one of the two following  
24 ways:

25 (i) **Product Labeling.** A warning may be given by affixing the  
26 following language to the packaging, labeling or directly to a specific Covered Product by a  
27 Settling Defendant, its agent, the manufacturer, the decorator, the importer, the distributor or the  
28 retailer of the Covered Product that states:

**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 birth defects or other  
reproductive harm.**

1 Warnings issued for Covered Products pursuant to this subsection shall be prominently  
2 placed with such conspicuousness as compared with other words, statements, designs, or devices  
3 as to render it likely to be read and understood by an ordinary individual under customary  
4 conditions prior to use or purchase. For purposes of this subsection, a warning statement or  
5 sticker placed on the bottom of the product packaging is not an adequate warning. Similarly, for  
6 purposes of this Consent Judgment, a warning insert that is placed inside the product packaging  
7 that is not intended to be opened prior to leaving the retail establishment is deemed not  
8 reasonably calculated to transmit the health hazard warning to the individual prior to purchase.

9 Any changes to the manner, delivery, language or format of the warning required by this  
10 subsection shall only be made following: (1) written approval from the California Attorney  
11 General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for  
12 the opportunity to comment; or (2) Court approval.

13 (ii) **Point-of-Sale Warnings.** A Settling Defendant may satisfy its  
14 warning obligations by arranging for signs to be posted at the retail outlets or other locations in  
15 the State of California at which Covered Products are sold directly to individuals, in accordance  
16 with the terms specified in subsections 2.2(a)(ii)(a), 2.2(a)(ii)(b) and 2.2(a)(ii)(c).

17 (a) Point-of-sale warnings may be provided through a sign  
18 posted at each point of sale or product display for each Covered Product that state:

19  
20 **WARNING: The materials used as colored decorations on the**  
21 **exterior of this product contain lead and/or**  
22 **cadmium, chemicals known to the State of**  
**California to cause birth defects or other**  
**reproductive harm.**

23 Where more than one Covered Product is sold in proximity to other like items or to  
24 those that do not require a warning (e.g., Reformulated Products as defined in section 2.3), the  
25 following statement must be used:<sup>1</sup>

26 <sup>1</sup> For purposes of this Consent Judgment, "sold in proximity" shall mean that the Covered  
27 Product and another product are offered for sale close enough to each other so that the consumer,  
28 under customary conditions, could not reasonably determine which of the two products is subject  
to the warning sign.

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

7                   *[DISPLAY LIST OF EACH SPECIFIC PRODUCT FOR WHICH*  
8                   *WARNING IS REQUIRED]*

9                   (b)     A point-of-sale warning provided pursuant to  
10                  subsection 2.2(a)(ii) shall be prominently placed with such conspicuousness as compared with  
11                  other words, statements, designs or devices as to render it likely to be read and understood by an  
12                  ordinary individual under customary conditions of purchase and shall be placed among other  
13                  products (especially when near any Reformulated Products as defined in section 2.3 below) in a  
14                  manner such that the consumer understands to which *specific* Covered Products the warnings  
15                  apply so as to minimize if not eliminate the chances that an overwarning situation will arise.

16                  (c)     If a Settling Defendant intends to utilize warnings described  
17                  in section 2.2(a)(ii) to comply with this Consent Judgment, it must provide notice as required by  
18                  this Consent Judgment to each entity to whom a Settling Defendant ships the Covered Products  
19                  for distribution or sale in California and obtain the written consent of such entity that it will  
20                  transmit the warning sign to its customers as required in section 2.2 herein before shipping the  
21                  Covered Products. Such notice shall include any required warning materials (including, as  
22                  appropriate, camera-ready signs and posting instructions).

23                  (d)     The Settling Defendant shall provide notice to each entity to  
24                  whom the Settling Defendant ships Covered Products for distribution or sale in California at  
25                  least once in each calendar year in which the Settling Defendant transacts business with that  
26                  entity unless such transactions do not concern Covered Products or exclusively concern  
27                  Reformulated Products as defined in section 2.3 below. If the Settling Defendant has obtained  
28                  the written consent of the entity to whom it ships the products that such entity will provide  
                    warnings in the manner required by section 2.2 herein, Settling Defendant shall not be found to  
                    have violated this Consent Judgment if it has complied with the terms of this Consent Judgment  
                    and has proof that it transmitted the requisite warnings in the manner provided herein.

1 (e) Any changes to the language or format of the warning required  
2 for Covered Products by this subsection shall only be made following: (1) written approval from  
3 the California Attorney General's Office, provided that written notice of at least fifteen (15) days  
4 is given to Plaintiff for the opportunity to comment; or (2) Court approval.

5 (b) **Mail Order and Internet Sales.** A Settling Defendant shall satisfy its  
6 warning obligations for Covered Products that are sold by mail order catalog or from the internet  
7 to California residents, by arranging for the provision of a warning containing the language in  
8 subsection 2.2(a) to be included: (a) in the mail order catalog (if any) and on the website (if any);  
9 or (b) with the Covered Product when it is shipped to an address in California. Any warnings  
10 given in the mail order catalog or on the website shall identify the *specific* Covered Product to  
11 which the warning applies as well as comply with subsections (i), (ii) and/or (iii) as applicable:

12 (i) **Mail Order Catalog.** The warning shall be provided within the  
13 catalog, either (a) on the inside front cover of any catalog, provided that it is also referenced on  
14 the page on which the Covered Product is displayed; (b) on the same page as any order form,  
15 provided that the Covered Product to which the warning applies is also specifically referenced on  
16 that page; or (c) on the same page and in the same location as the price for the Covered Product,  
17 in the same type size as the product description text, with the same language and specificity  
18 requirements found in subsection 2.2(a). If the seller elects to provide warnings in the mail order  
19 catalog, then the warnings must be included in all catalogs sent to the printer after August 31,  
20 2005 (or, in the case of a Settling Defendant other than Boelter, thirty (30) days or more  
21 following entry of its Opt-In Stipulation pursuant to subsection 14.5 below), for all first,  
22 subsequent or additional printings;

23 (ii) **Internet Web Sites and Pages.** The warning shall be provided  
24 either (a) on the same web page on which a Covered Product is displayed; (b) on the same web  
25 page as the order form for a Covered Product; (c) on the same page as the price for any Covered  
26 Product; or (d) on one or more web pages displayed to a purchaser during the checkout and order  
27 confirmation process for sale of a Covered Product. The warning shall be displayed in one or  
28 more of these locations in a manner such that is calculated to ensure that it will be read and

1 understood by an ordinary individual under customary conditions of purchase of a Covered  
2 Product prior to purchase, including through the use of the same language and adherence to the  
3 specificity requirements that appear in subsection 2.2(a); and

4                   **(iii) Package Insert or Label.** For all Covered Products sold by  
5 catalog or via the internet, a warning may be provided with the Covered Product when it is  
6 shipped directly to an individual in California, by either: (a) ensuring that the product is properly  
7 labeled pursuant to subsection 2.2(a) above; (b) inserting a warning card or slip of paper  
8 measuring at least 4" x 6" in the shipping carton which contains warning language identical to  
9 subsection 2.2(a) above; or (c) including the required language set forth in subsection 2.2(a) on  
10 the packing slip or customer invoice specifically identifying the Covered Product in lettering of  
11 the same size as the description of the Covered Product. The seller shall also inform the  
12 consumer that he or she may return the Covered Product for a full refund (including shipping  
13 costs for both the receipt and the return of the Covered Product) within 30 days of his or her  
14 receipt of the Covered Product.

15                   **(c) Restaurants, Bars or other Food/Beverage Service Entities.**

16                   **(i) Settling Defendants that are Restaurants, Bars, Amusement or Recreation**  
17 **establishments, or other entities who distribute, serve or sell food or beverages in Covered**  
18 **Products (herein after collectively referred to as "Food/Beverage Service Defendants") may**  
19 **satisfy their warning obligations by posting copies of the warning sign contained in Exhibit A**  
20 **hereto in a conspicuous location compared with other words, statements, designs or devices as to**  
21 **render it likely to be read and understood by an ordinary individual under customary conditions of**  
22 **use. The warning sign shall be placed in a manner such that the consumer understands to which**  
23 ***specific* Products the warnings apply so as to minimize if not eliminate the chances that an**  
24 **overwarning situation will arise.**

25                   **(ii) For Settling Defendants that sell Covered Products to Food/Beverage**  
26 **Service Defendants, a Settling Defendant may satisfy its warning obligations by sending via**  
27 **certified mail to the central purchasing office (or its equivalent) for all restaurant/bar/food service**  
28 **entity suppliers or to Food/Beverage Service Defendant with whom it transacts business for the**

1 commercial use of Covered Products in California: (1) at least two copies of the warning sign  
2 contained in Exhibit A; and (2) a letter identifying the specific Covered Product(s) requiring  
3 warnings and explaining the warning program and providing posting instructions. The Settling  
4 Defendant shall send these warning materials to the appropriate recipients at least once in any  
5 calendar year in which the Settling Defendant transacts business with the establishment unless  
6 such transactions do not concern Covered Products or exclusively concern Reformulated Products  
7 as defined in section 2.3 below. A Settling Defendant that has obtained the written consent of a  
8 restaurant/bar/food service supplier or entity to post warnings for Covered Products pursuant to  
9 section 2.2(c)(i) shall not be found to have violated this Consent Judgment if it has complied with  
10 the terms of this Consent Judgment and has proof that it transmitted the requisite warning  
11 materials in the manner provided herein.

12 **2.3 Reformulation Standards.** The following section sets forth the specifications  
13 which the Covered Products must meet in order to be sold without a Proposition 65 warning. For  
14 purposes of this section, the following definitions apply:

15 “Children’s Product” is defined as any Covered Product  
16 intended or marketed primarily for use by children such as:  
17 Covered Products with designs on their exterior surface which are  
18 affiliated with children’s toys or entertainment (*e.g.*, Sesame  
19 Street, Looney Tunes, Barbie, and Winnie the Pooh); Covered  
20 Products of a reduced size so as to be marketed primarily for  
21 children (*e.g.*, reduced-size juice glasses intended for use by  
22 children); or Covered Products of a type or category (*e.g.*, “piggy  
23 banks”) which typically would be used by children, and all similar  
24 items.

25 “Exterior Decorations” is defined as all colored artwork,  
26 designs and/or markings on the exterior surface of the Covered  
27 Product.  
28

1 "Lip and Rim Area" is defined as the exterior top  
2 20 millimeters of a hollowware Glassware or Ceramicware  
3 Food/Beverage Product, as defined by American Society of  
4 Testing and Materials Standard Test Method C927-99.

5 "No Detectable lead or cadmium" shall mean that neither  
6 lead nor cadmium is detected at a level above two one-hundredths  
7 of one percent (0.02%) of lead or eight one-hundredths of one  
8 percent (0.08%) of cadmium by weight, respectively, using a  
9 sample size of the materials in question measuring approximately  
10 50-100 mg and a test method of sufficient sensitivity to establish a  
11 limit of quantitation of less than 200 ppm.<sup>2</sup>

12 "Reformulated Product" refers to any Covered Product that  
13 meets the reformulation standards described in section 2.3 as set  
14 forth below.

15 **2.3.1 Glassware Reformulation Standards:**

16 A Glassware Food/Beverage Product is a Reformulated Product if it satisfies either the  
17 standard outlined in subsection 2.3.1 (a) *or* (b), subject to the following qualifications:

18 All Children's Products must meet the Decorative Material Content-Based  
19 standard outlined in subsection 2.3.1(b) to be considered a Reformulated Product.

20  
21 If a Glassware Food/Beverage Product has Exterior Decorations in the Lip and  
22 Rim Area, it must also satisfy subsection 2.3.1(c) to be considered a Reformulated  
23 Product.

24  
25  
26  
27 <sup>2</sup> If the decoration is tested after it is affixed to the Covered Product, the percentage of the  
28 Listed Chemical by weight must relate only to the decorating material and must not include any  
quantity attributable to non-decorating material (*e.g.*, the glass substrate).

1 A Glassware Non-Food/Beverage Use Product may qualify as a Reformulated Product by  
2 meeting the Glassware Food/Beverage standards outlined in 2.3.1(a) *or* (b) *or* the alternate  
3 Glassware Non-Food/Beverage standard outlined in subsection (d) if applicable.

4 (a) **Wipe Test-Based Standard.** The Glassware Food/Beverage Product must  
5 produce a test result no higher than 1.0 micrograms (ug) of lead or 8.0 ug of cadmium as  
6 applied to the Exterior Decorations and performed as outlined in NIOSH method no. 9100.

7 (b) **Decorating Material Content-Based Standard.** The Exterior  
8 Decorations, exclusive of the Lip and Rim Area, must only utilize decorating materials that  
9 contain six one-hundredths of one percent (0.06%) of lead and forty-eight one-hundredths of one  
10 percent (0.48%) of cadmium by weight or less as measured either before or after the material is  
11 fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050B.<sup>3</sup>

12 (c) **Lip and Rim Area Decoration.** All Exterior Decorations that extend into  
13 the Lip and Rim Area must only utilize decorating materials that contain No Detectable lead or  
14 cadmium.

15 (d) **Alternative Non Food/Beverage Use Product Standard.** A Glassware  
16 Non Food/Beverage Use Product qualifies as a Reformulated Product if it achieves a test result of  
17 4.0 ug of lead and 32.0 ug of cadmium or less as applied to all of the decorated portions of all  
18 surfaces of the Product performed as outlined in NIOSH method no. 9100. A Children's Product  
19 that is also a Glassware Non-Food/Beverage Use Product must nevertheless meet the standards  
20 outlined in subsection 2.3.1(b) to be considered a Reformulated Product.

21 **2.3.2 Ceramicware Reformulation Standards:**

22 A Ceramicware Food/Beverage Product is a Reformulated Product if it satisfies the  
23 standards outlined in subsections 2.3.2(a) *or* (b) *or* (c), subject to the following qualifications:

24 All Children's Products must meet the Decorating Materials Content-Based  
25 Standard outlined in subsection 2.3.2(b) to be considered a Reformulated Product.

26  
27 <sup>3</sup> If the decoration is tested after it is affixed to the Covered Product, the percentage of the  
28 Listed Chemical by weight must relate only to the decorating material and must not include any  
quantity attributable to non-decorating material (e.g., the glass substrate).

1  
2 If the Product is decorated in the Lip and Rim Area, it must also satisfy subsection  
3 2.3.2(d) to be considered a Reformulated Product.

4 A Ceramicware Non-Food/Beverage Use Product may qualify as a Reformulated Product  
5 by meeting the standards outlined in subsection 2.3.2(a), (b) *or* (c) or the alternate standard  
6 outlined in subsection (e) below.

7 (a) **Wipe Test-Based Standard.** The Ceramicware Food/Beverage Product  
8 must produce a test result no higher than 1.0 micrograms (ug) of lead or 8.0 ug of cadmium  
9 applied on decorated portions of the surface of the Product performed as outlined in NIOSH  
10 method no. 9100.

11 (b) **Decorating Material Content-Based Standard.** The Exterior  
12 Decorations, exclusive of the Lip and Rim Area, must only utilize decorating materials that  
13 contain six one-hundredths of one percent (0.06%) of lead by weight or less *and* forty-eight one-  
14 hundredths of one percent (0.48%) of cadmium by weight or less, as measured either before or  
15 after the material is fired onto (or otherwise affixed to) the Product, using EPA Test Method  
16 3050B.<sup>4</sup>

17 (c) **Total Acetic-Acid Immersion Test Based Standard.** The Ceramicware  
18 Food/Beverage Product must achieve a result of 0.99 ppm or less for lead and 7.92 ppm or less  
19 for cadmium after correction for internal volume when tested under the protocol attached hereto  
20 as Exhibit B (the ASTM C927-99 test method, modified for total immersion with results  
21 corrected for internal volume).<sup>5</sup>

22 (d) **Lip and Rim Area Exterior Decoration.** If the Ceramicware  
23 Food/Beverage Product contains Exterior Decorations in the Lip and Rim Area:

24  
25 <sup>4</sup> If the decoration is tested after it is affixed to the Covered Product, the percentage of the  
26 Listed Chemical by weight must relate only to the decorating material and must not include any  
quantity attributable to non-decorating material (*e.g.*, the ceramicware substrate).

27 <sup>5</sup> Because this method requires correction for internal volume, this method and  
28 subsections 2.3.2(c) and 2.3.2(d)(ii) are only appropriate for ceramic hollowware.

1 (i) Any Exterior Decorations that extend into the Lip and Rim Area  
2 must only utilize decorating materials that contain No Detectable lead or cadmium *or*

3 (ii) The Ceramicware Food/Beverage Product must yield a test result  
4 showing a concentration level of 0.5 ug/ml or less of lead and a result of 4.0 ug/ml or less of  
5 cadmium using ASTM method C 927-99.<sup>6</sup>

6 (e) **Alternative Non Food/Beverage Use Product Standard:** A  
7 Ceramicware Non Food/Beverage Use Product qualifies as a Reformulated Product if it achieves  
8 a test result of 4.0 ug or less of lead and 32.0 ug or less of cadmium as applied to all of the  
9 decorated portions of all surfaces of the Product performed as outlined in NIOSH method  
10 no. 9100. A Children's Product that is also a Ceramicware Non-Food/Beverage Use Product  
11 must nevertheless meet the standards outlined in subsection 2.3.2(b) to be considered a  
12 Reformulated Product.

13 **2.4 Reformulation Goal.** Each Settling Defendant hereby commits to undertake good  
14 faith efforts to ensure that as many Covered Products as reasonably possible that it offers for sale  
15 in California after January 1, 2006, shall either qualify as Reformulated Products or will  
16 otherwise be exempt from the warning requirements of section 2.2, with the commitment that at  
17 least eighty percent (80%) of the Covered Products manufactured on or after December 31, 2006  
18 *and* reasonably likely to be sold in California will not require warnings pursuant to section 2.2,  
19 with the further commitment to undertake all commercially reasonable efforts to sell one-hundred  
20 percent (100%) Reformulated Products in California, after January 1, 2007.

### 21 3. MONETARY PAYMENTS

22 3.1 In settlement of all of the claims referred to in this Consent Judgment against  
23 Boelter, Boelter shall pay \$21,000 in civil penalties to be apportioned by Plaintiff in accordance  
24 with Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's  
25 Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty  
26 monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d).

27  
28 <sup>6</sup> This subsection 2.3.2(d)(ii) is only appropriate for ceramic hollowware.

1 Plaintiff shall bear all responsibility for apportioning and paying to the State of California the  
2 appropriate civil penalties paid in accordance with this section.

3 **3.2 Payment Schedule.** The payment set forth in this paragraph shall be made  
4 payable to "Chanler Law Group In Trust for Russell Brimer" on or before July 1, 2005, and be  
5 delivered to Plaintiff's counsel at the following address:

6  
7 CHANLER LAW GROUP  
8 Attn: Clifford A. Chanler  
9 71 Elm Street, Suite 8  
10 New Canaan, CT 06840

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

12 **4.1** The Parties acknowledge that Plaintiff and his counsel offered to resolve this  
13 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
14 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
15 Boelter then expressed a desire to resolve the fee and cost issue shortly after the other settlement  
16 terms had been finalized. The Parties then attempted to (and did) reach an accord on the  
17 compensation due to Plaintiff and his counsel under the private attorney general doctrine codified  
18 at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date. Under  
19 the private attorney general doctrine, Boelter shall reimburse Plaintiff and his counsel for fees and  
20 costs, incurred as a result of investigating, bringing this matter to Boelter's attention, litigating  
21 and negotiating a settlement in the public interest. Boelter shall pay Plaintiff and his counsel  
22 \$58,000 for all attorneys' fees, expert and investigation fees, and litigation costs. The payment  
23 shall be made payable to the "Chanler Law Group" and shall be delivered to Plaintiff's counsel  
24 on or before July 1, 2005, at the following address:

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

1 Except as specifically provided in this Consent Judgment, Boelter shall have no further  
2 obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the  
3 Covered Products or this Action.

4 **5. RELEASE OF ALL CLAIMS**

5 **5.1 Plaintiff's Release of Settling Defendants.** In further consideration of the  
6 promises and agreements herein contained, and for the payments to be made pursuant to  
7 sections 3 and 4, Plaintiff, on behalf of himself, his past and current agents, representatives,  
8 attorneys, successors and/or assignees, and in the interest of the general public, hereby waives all  
9 rights to institute or participate in, directly or indirectly, any form of legal action and release all  
10 claims, including, without limitation, all actions, causes of action, in law or in equity, suits,  
11 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including,  
12 but not limited to, investigation fees, expert fees and attorney's fees) of any nature whatsoever,  
13 whether known or unknown, fixed or contingent (collectively "Claims"), against each Settling  
14 Defendant and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers,  
15 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries  
16 and their respective officers, directors, attorneys, representatives, shareholders, agents, and  
17 employees (collectively, "Settling Defendants' Releasees") arising under or derived from  
18 Proposition 65, related to Settling Defendants or Settling Defendants' Releasees' alleged failure  
19 to warn about exposures to or identification of one or more of the Listed Chemicals contained in  
20 the exterior decorations on the Covered Products manufactured, decorated, imported, distributed  
21 or offered for use or sale by any Settling Defendant.

22 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and  
23 binding resolution of any direct or derivative violation of Proposition 65, that has been or could  
24 have been asserted in the Complaints against Settling Defendants for the Settling Defendants'  
25 Releasees alleged failure to provide clear and reasonable warnings of exposure to or identification  
26 of one or more of the Listed Chemicals in the exterior decorations on the Covered Products  
27 manufactured, decorated, imported, distributed or offered for use or sale by any Settling  
28 Defendant.

1 It is specifically understood and agreed that a Settling Defendant's compliance with the  
2 terms of this Consent Judgment resolves all issues and liability, now and in the future (so long as  
3 that Settling Defendant complies with the terms of the Consent Judgment) concerning that  
4 Settling Defendant's and the Settling Defendant's Releasees' compliance with the requirements  
5 of Proposition 65, as to the Listed Chemicals in the exterior decorations of the Covered Products  
6 manufactured, decorated, imported, distributed or offered for use or sale by that Settling  
7 Defendant.

8 The releases provided by Plaintiff in this subsection shall not extend upstream to the  
9 Covered Product manufacturer or decorator or to any Product importer, distributor or supplier  
10 from whom a Settling Defendant purchased any Covered Products, except insofar as such entity  
11 itself is a Settling Defendant. This Agreement expressly does not release Settling Defendants for  
12 exposures to the Listed Chemicals from sources other than the paints, pigments, decals, dyes and  
13 other materials used as exterior decoration on the Covered Products. This release also expressly  
14 excludes the potential liability of (1) Settling Defendants' Releasees for the use or sale of any  
15 Covered Product not supplied to them by a Settling Defendant; (2) any units of Glassware  
16 Food/Beverage Products that have been sold by a Settling Defendant directly or indirectly to J.C.  
17 Penney Company, Inc. and which have, in turn, been sold or offered for sale by J.C. Penney  
18 Company, Inc. to consumers in California, including any products that are the subject of the  
19 *DiPirro v. J.C. Penney* (No. 407150) case which is presently pending in the San Francisco  
20 Superior Court; and (3) the list of companies and/or cases listed on Exhibit F to this Consent  
21 Judgment.

22 **5.2 Settling Defendants' Release of Plaintiff.** Each Settling Defendant waive all  
23 rights to institute any form of legal action against Plaintiff, or his attorneys or representatives, for  
24 all actions taken or statements made by Plaintiff and his attorneys or representatives, in the course  
25 of investigating and/or seeking enforcement of Proposition 65, against them in this matter and/or  
26 with respect to the Covered Products.

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  
6 refunded 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 of this Consent Judgment,  
13 the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable  
14 costs and attorneys' fees incurred in connection with such dispute.

15    **9.     GOVERNING LAW**

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

22    **10.    NOTICES**

23             All correspondence and notices required to be provided pursuant to this Consent Judgment  
24 shall be in writing and personally delivered or sent by first-class, registered, certified mail, return  
25 receipt requested or overnight courier to Plaintiff and the affected Settling Defendant(s) at the  
26 addresses listed in Exhibit C (including as Exhibit C may be supplemented pursuant to section 14  
27 below). Any Settling Defendant may specify a change of address to which all notices and other  
28 communications shall be sent by providing such notice to Plaintiff and Boelter.

1     **11.    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     **12.    COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6             Plaintiff shall comply with the regulations promulgated under Health & Safety Code  
7 § 25249.7(f) regarding the reporting of the Consent Judgment to the California Attorney  
8 General's Office following its execution by all Parties. A noticed motion to enter the Consent  
9 Judgment will then be served on the California Attorney General's Office at least forty-five (45)  
10 days prior to the date a hearing is scheduled on such motion in the Superior Court for the City and  
11 County of San Francisco unless the Court allows a shorter period of time.

12     **13.    ADDITIONAL POST EXECUTION ACTIVITIES**

13             Plaintiff and each Settling Defendant shall mutually employ their best efforts to support  
14 the entry of this Agreement as a Consent Judgment and obtain approval of the Consent Judgment  
15 by the Court in a timely manner. The Parties acknowledge that, pursuant to Health & Safety  
16 Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent  
17 Judgment. Accordingly, the Parties agree to file a Joint Motion to Approve the Agreement  
18 ("Joint Motion"), the first draft of which Boelter's counsel shall prepare, within a reasonable  
19 period of time after the Execution Date (*i.e.*, not to exceed fifteen (15) days unless otherwise  
20 agreed to by the Parties' counsel based on unanticipated circumstances). Plaintiff's counsel shall  
21 prepare a declaration in support of the Joint Motion which shall, *inter alia*, set forth support for  
22 the fees and costs to be reimbursed pursuant to section 4 and section 14. Defendant's counsel  
23 shall likewise prepare a declaration in support of the Joint Motion which shall, *inter alia*, set forth  
24 support for any processing charges to be paid to Defendant's Counsel pursuant to section 14  
25 below. Boelter shall have no additional responsibility to Plaintiff's counsel pursuant to Code of  
26 Civil Procedure § 1021.5 or otherwise with regard to reimbursement of any fees and costs  
27 incurred pursuant to section 14 below or with respect to the preparation and filing of the Joint  
28

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

3 **14. OPT-IN PROCEDURE**

4 **14.1** This Consent Judgment is executed with the understanding that additional persons  
5 and entities not Parties to this Consent Judgment may wish to be bound by the terms of this  
6 Consent Judgment ("Opt-In Defendants"). These Opt-In Defendants must be able to represent  
7 under penalty of perjury that they have: (1) employed ten or more persons at any time within the  
8 Relevant Period<sup>7</sup>; (2) manufactured, imported, distributed, or offered for use or sale one or more  
9 Covered Products that, during the Relevant Period, have not met or currently do not meet the  
10 Reformulated Product standards set forth in subsection 2.3; and (3) sold and/or offered for use  
11 such Covered Products in the State of California during the Relevant Period without "clear and  
12 reasonable" Proposition 65 warnings as that term is defined under 22 California Code of  
13 Regulations ("CCR") § 12601. At any time, either prior to the date of entry of this Consent  
14 Judgment or within ninety (90) days thereafter, counsel for Boelter may provide Brimer with  
15 names of additional Opt-In Defendants who are willing to confirm these representations by means  
16 of executing the Stipulation for Entry of Judgment as provided in section 14.2 below. Counsel  
17 for Boelter shall provide Brimer with the names and mailing addresses of all entities wishing to  
18 "Opt-In" and all relevant information as required under this Consent Judgment ("Opt-in List")  
19 following its receipt of such information and the payments required under Table 14.4 below.

20 **14.2** Each Opt-In Defendant shall execute a "Stipulation for Entry of Judgment" in the  
21 general form appearing in Exhibit D hereto ("Opt-In Stipulation") identifying whether the Opt-In  
22 Defendant has manufactured, imported, distributed or offered for use or sale in California  
23 Category A Products, Category B Products, Category C Products, and/or Category D Products  
24 and attesting under penalty of perjury to the following facts: (1) the Opt-In Defendant has  
25 employed ten or more persons at any time within the Relevant Period; (2) the Opt-In Defendant

26  
27 <sup>7</sup> "Relevant Period" is defined in this agreement as the one year period prior to the  
28 execution of the Opt-In Stipulation described in section 14.2.

1 manufactured, imported, distributed or offered for use or sale in California one or more items in  
2 each of the identified categories of Covered Products without a “clear and reasonable”  
3 Proposition 65 warning during the Relevant Period, (3) one or more items within one or more of  
4 the product categories of such Covered Products identified by the Opt-In Defendant did not,  
5 during the Relevant Period, comply with the Reformulation Standards in subsection 2.3 of this  
6 Consent Judgment; (4) the Opt-In Defendant has not performed a risk or exposure assessment  
7 establishing that all of the Covered Products in the categories in question did not require  
8 Proposition 65 warnings; and (5) the Opt-In Defendant is otherwise unaware of evidence which  
9 would establish a legally sustainable affirmative defense to an enforcement action under  
10 Proposition 65 with respect to all items in the categories of the Covered Products identified by the  
11 Opt-In Defendant. Opt-In Defendants shall reasonably cooperate with Brimer in providing  
12 additional information or representations necessary to enable Brimer to issue a 60-day notice  
13 (“Notice”) to the Opt-In Defendant with a certificate of merit in support thereof with respect to  
14 the categories of Covered Products which shall be made subject to this Consent Judgment.  
15 Brimer shall be excused from a failure to provide such Notice within thirty (30) days with respect  
16 to an Opt-In Defendant if that Opt-In Defendant fails to timely cooperate with Brimer in  
17 providing such additional information or representations.

18 **14.3** Not later than thirty (30) days after Brimer receives an Opt-in List, Brimer shall  
19 send Notices pursuant to California Health & Safety Code § 25249.7(d) to each Opt-In Defendant  
20 on the Opt-In List at the addresses provided, to the California Attorney General’s Office, to every  
21 California district attorney, and to every city attorney required to receive such a notice pursuant to  
22 Health & Safety Code § 25249.7.

23 **14.4** The Opt-In Defendant must also complete and append to its Opt-In Stipulation a  
24 copy of Exhibit C and provide payments as set forth in Table 14.4 in the manner further described  
25 in detail in Exhibit E. Said payments shall include civil penalties, reimbursement of Plaintiff’s  
26 past and estimated attorneys’ fees and costs and certain settlement and/or Opt-In related  
27 processing costs incurred by Boelter’s counsel (“Settlement Related Costs”).  
28

**TABLE 14.4**

TYPE OF ENTITY	MONETARY CONTRIBUTION
A. Manufacturers: (10,000 to 350,000 units sold in California in 2004)	A total of \$95,000, consisting of: (1) \$45,000 Civil Penalties <sup>8</sup> ; (2) \$45,000 Plaintiff's Attorneys' Fees <sup>9</sup> ; and (3) \$ 5,000 Settlement Related Costs.
A.1 Low Volume Manufacturers: (less than 10,000 combined units sold in California in 2004)	A total of \$45,000, consisting of: (1) \$15,000 Civil Penalties <sup>8</sup> ; (2) \$25,000 Plaintiff's Attorneys' Fees <sup>9</sup> ; and (3) \$ 5,000 Settlement Related Costs.
B. Distributors / Importers: (10,000 to 350,000 units sold in California in 2004)	A total of \$50,000, consisting of: (1) \$22,500 Civil Penalties <sup>8</sup> ; (2) \$22,500 Plaintiff's Attorneys' Fees <sup>9</sup> ; and (3) \$ 5,000 Settlement Related Costs.
B.1 Low Volume Distributors and Importers: (less than 10,000 combined units sold in California in 2004)	A total of \$35,000, consisting of: (1) \$10,000 Civil Penalties <sup>8</sup> ; (2) \$20,000 Plaintiff's Attorneys' Fees <sup>9</sup> ; and (3) \$ 5,000 Settlement Related Costs.
C. Retailers / Amusement & Recreation establishments:	A total of \$35,000, consisting of: (1) \$11,000 Civil Penalties <sup>8</sup> ; (2) \$19,000 Plaintiff's Attorneys' Fees <sup>9</sup> ; and (3) \$ 5,000 Settlement Related Costs.

<sup>8</sup> Plaintiffs Russell Brimer, Whitney R. Leeman, Ph.D. and Michael DiPirro have each sought to protect individuals in California from exposure to one or more of the Listed Chemicals from the Covered Products in this Consent Judgment. The twenty-five percent (25%) of civil penalties recovered from Opt-In Defendants which may be retained by Plaintiffs pursuant to the provisions of Proposition 65 shall be apportioned among these plaintiffs with 59% (of the 25%) going to Russell Brimer, 26% (of the 25%) going to Whitney R. Leeman, Ph.D. and 15% (of the 25%) going to Michael DiPirro.

<sup>9</sup> If Plaintiff has issued a 60 Day Notice to an Opt-In Defendant in advance of being presented with that company's Opt-In Stipulation as specified in section 14.2, the Opt-In Defendant shall be responsible for reimbursing Plaintiff's attorneys' fees and costs an additional \$4,000 above that described in Table 14.4. If Plaintiff has not only served a Notice but also filed a Complaint against an Opt-In Defendant in advance of being presented with that entity's executed Opt-In Stipulation, Plaintiff's attorneys' fees and costs will be increased by an additional \$8,000 above the supplemental reimbursement of \$4,000 (i.e., for a total of \$12,000 in addition to the amount shown in Table 14.4 above).

<p>D. Bars &amp; Restaurants, Hotels, Other Food Service Establishments:</p>	<p>A total of \$25,000, consisting of:</p> <p>(1) \$ 7,500 Civil Penalties<sup>8</sup>;</p> <p>(2) \$12,500 Plaintiff's Attorneys' Fees<sup>9</sup>; and</p> <p>(3) \$ 5,000 Settlement Related Costs.</p>
------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

(a) For purposes of this section and Table 14.4, the following definitions apply:

A "Manufacturer" is a business entity that produces, packages, creates, or otherwise makes a Covered Product or contracts with an entity to produce, package, create or otherwise make a Covered Product. A "Low Volume Manufacturer" is a Manufacturer that attests under penalty of perjury that it has sold less than a combined total of 10,000 consumer units of Covered Products in California in calendar year 2004.

An "Importer" is the first business entity with employees within the Customs Territory of the United States which receives Covered Products produced in other countries for the purpose of supplying them to distributors or purchasers within the United States. A "Low Volume Importerr" is an Importer that attests under penalty of perjury that it has sold less than a combined total of 10,000 consumer units of Covered Products in California in calendar year 2004.

A "Distributor" is a business, other than a Manufacturer or Importer, which supplies Covered Products to other distributors, retailers or other non-consumer entities. A "Low Volume Distributor" is a Distributor that attests under penalty of perjury that it has sold less than a combined total of 10,000 consumer units of Covered Products in California in calendar year 2004.

(b) Any entity which has conducted activities that comprise more than one of the categories of business listed in A through D above shall be deemed to be a Manufacturer if 15% or more of its sales of Covered Products in California were the result of its Manufacturing of Covered Products. If the entity is not a Manufacturer under the preceding criteria, that entity shall be deemed to be a Distributor/Importer if 15% or more of its sales of Covered Products in California were the result of its Distributing/Importing of Covered Products. Any retailer that acquires, designs and/or markets Covered Products under their own brand name shall be deemed to be an "Apparent Manufacturer" pursuant to the terms of this Consent Judgment and shall be treated as a Manufacturer for all such Covered Products for purposes of the 15% calculation herein above.

1 (c) To be eligible to complete an Opt-In Stipulation, Manufacturers, Importers or  
2 Distributors wishing to participate as Opt-In Defendants must attest to the fact, under penalty of  
3 perjury, that their sales of Covered Products destined for California in the calendar year 2004  
4 amounted to less than 350,000 consumer units. This restriction does not apply to retailers,  
5 amusement and recreation establishments, bars, restaurants, hotels, or other Food/Beverage  
6 Service Defendants. Manufacturers, Decorators, Importers or Distributors with sales of Covered  
7 Products destined for California in the calendar year 2004 amounting to 350,000 or more  
8 consumer units may agree to comply with the injunctive relief terms provided in section 2 of this  
9 Consent Judgment in a separately negotiated settlement with Plaintiff which may be entered as a  
10 consent judgment with the subsequent approval of the Court following opportunity for review by  
11 the Attorney General as required in Health and Safety Code § 25249.7(f).

12 14.5 Once more than sixty-five (65) days has run from the date specified in a Notice  
13 sent to an Opt-In Defendant and provided that no public prosecutor of Proposition 65 has filed a  
14 lawsuit against that Opt-In Defendant with respect to the Covered Products, Plaintiff shall, within  
15 fourteen (14) days, file in this Court any executed Opt-In Stipulation it has received pursuant to  
16 the above and serve notice thereof on the Opt-In Defendant and Boelter's counsel. At the time  
17 any executed Opt-In Stipulation is filed, the Complaint shall be deemed to have been amended to  
18 specifically name the Opt-in Defendant that executed the Opt-In Stipulation as a named defendant  
19 in this Action and each such Opt-In Defendant shall be deemed to have become a full Settling  
20 Defendant under this Consent Judgment and will likewise assume all obligations set forth under  
21 Section 2.

22 **15. MODIFICATION**

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

1 **16. AUTHORIZATION**

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

5  
6 **AGREED TO:**

**AGREED TO:**

7  
8 Date: \_\_\_\_\_

Date: August 10, 2005

9 By: \_\_\_\_\_

By: Rich Boelter

10 Plaintiff Russell Brimer

Defendant The Boelter Companies, Inc.

11  
12 **APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

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

Date: August 10, 2005

14 **CHANLER LAW GROUP**

**MORRISON & FOERSTER LLP**

15 By: \_\_\_\_\_

By: Robert L. Falk

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

Robert L. Falk  
Attorneys for Defendant  
**THE BOELTER COMPANIES, INC.**

19 **IT IS SO ORDERED.**

20 **AUG 17 2005**

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

**JAMES L. WARREN**

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

**JAMES L. WARREN**

1 16. AUTHORIZATION

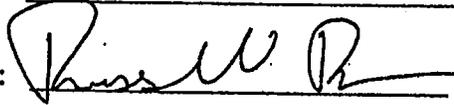
2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood and agree to all of the terms and conditions of this  
4 Consent Judgment.

6 AGREED TO:

AGREED TO:

7 Date: 8-10-05

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

8 By: 

By: \_\_\_\_\_

10 Plaintiff Russell Brimer

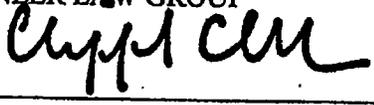
Defendant The Boelter Companies, Inc.

11 APPROVED AS TO FORM:

APPROVED AS TO FORM:

13 Date: 8/10/2005

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

14 CHANLER LAW GROUP  
15 By: 

MORRISON & FOERSTER LLP  
By: \_\_\_\_\_

17 Clifford A. Chanler  
Attorneys for Plaintiff  
RUSSELL BRIMER

Robert L. Falk  
Attorneys for Defendant  
THE BOELTER COMPANIES, INC.

19 IT IS SO ORDERED.

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

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

# **EXHIBIT A**

**PROP 65**

# **WARNING**

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

# **EXHIBIT B**

## **EXHIBIT B**

### **TESTING PROTOCOL**

For purposes of the Reformulation Standards in this Consent Judgment, the method on the attached pages, ASTM C 927-80 (reapproved in 1999 and 2004), shall be modified for total immersion of the Covered Products.

As modified, carefully add 4% acetic acid leaching solution from a graduated cylinder to each container containing a sample until the sample is fully immersed in solution. Record the volume of solution used. The container must comply with the diameter requirements specified in the protocol, while being large enough to fully immerse the product.

The remainder of the protocol should be followed as set forth in the attached document.



Designation: C 927 – 80 (Reapproved 2004)

## Standard Test Method for Lead and Cadmium Extracted from the Lip and Rim Area of Glass Tumblers Externally Decorated with Ceramic Glass Enamels<sup>1</sup>

This standard is issued under the fixed designation C 927; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon ( $\epsilon$ ) indicates an editorial change since the last revision or reapproval.

### 1. Scope

1.1 This test method covers the determination of lead and cadmium extracted by acetic acid from the lip and rim area of glassware used for drinking and which is exteriorly decorated with ceramic glass enamels. The procedure of extraction may be expected to accelerate the release of lead and cadmium from the decorated area and to serve, therefore, as a severe test that is unlikely to be matched under the actual conditions of usage of such glassware. This test method is specific for lead and cadmium.

NOTE 1—For additional information see Test Method C 738.

1.2 The values stated in acceptable metric units are to be regarded as the standard. The values given in parentheses are for information only.

1.3 *This standard may involve hazardous materials, operations, and equipment. This standard does not purport to address all of the safety concerns associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

### 2. Referenced Documents

#### 2.1 ASTM Standards:<sup>2</sup>

C 738 Test Method for Lead and Cadmium Extracted from Glazed Ceramic Surfaces

### 3. Terminology

#### 3.1 Definitions:

<sup>1</sup> This test method is under the jurisdiction of ASTM Committee C14 on Glass and Glass Products and is the direct responsibility of Subcommittee C14.10 on Glass Decoration. It was developed jointly by ASTM Committee C-14 and C-21 on Ceramic Whitewares and Related Products, the Society of Glass Decorators A-20 Subcommittee on Ceramic Enamelled Decorated Glass Tumblers, and an Inter-agency Task Force consisting of FDA, EPA, and CPSC of the U.S. Government.

Current edition approved Oct. 1, 2004. Published October 2004. Originally approved in 1980. Last previous edition C 927 – 80 (1999).

<sup>2</sup> For referenced ASTM standards, visit the ASTM website, [www.astm.org](http://www.astm.org), or contact ASTM Customer Service at [service@astm.org](mailto:service@astm.org). For *Annual Book of ASTM Standards* volume information, refer to the standard's Document Summary page on the ASTM website.

3.1.1 *ceramic glass decorations*—ceramic glass enamels fused to glassware at temperatures above 425°C (800°F) to produce a decoration.

3.1.2 *ceramic glass enamels (also ceramic enamels or glass enamels)*—predominately colored, silicate glass fluxes used to decorate glassware.

3.1.3 *lip and rim area*—that part of a drinking vessel which extends 20 mm below the rim on the outside of the specimen.

### 4. Summary of Test Method

4.1 Lead and cadmium are extracted from the lip and rim area of the article under test by leaching with a 4 % acetic acid solution at 20 to 24°C (68 to 75°F) for 24 h and are measured by atomic absorption spectrophotometry using specific hollow cathode or electrodeless discharge lamps for lead and cadmium respectively. Results are reported as micrograms per millilitre (ppm) extracted relative to the internal volume of the glass article.

### 5. Significance and Use

5.1 The heavy metals, lead and cadmium, are known to cause serious health effects in man if consumed in excess. It is, therefore, important to measure the amount that may be extracted from an area of the glass drinking vessel in contact with the lip. Even though the amount of lead and cadmium extracted by this test method is in no way representative of the amount of the metals extracted by actual lip contact, the relative magnitude of metals extracted from one test specimen in relation to another test specimen provides an effective tool for discrimination.

### 6. Interferences

6.1 Since specific hollow cathode lamps or electrodeless discharge lamps for lead and cadmium are used, there are no interferences.

### 7. Apparatus

7.1 *Atomic Absorption Spectrophotometer (AAS)*, equipped with a 102-mm (4-in.) single slot or Belling burner head and digital concentration readout attachment (DCR) if available. This instrument should have a sensitivity of about 0.5 µg/mL of

lead for 1 % absorption and a sensitivity of about 0.025 µg/mL of cadmium for 1 % absorption. Use the operating conditions as specified in the instrument manufacturer's analytical methods manual.

7.2 *Hollow Cathode or Electrodeless Discharge Lead Lamp*, set at 283.3 nm.

7.3 *Hollow Cathode or Electrodeless Discharge Cadmium Lamp*, set at 228.8 nm.

7.4 *Glassware* of chemically resistant borosilicate glass for use in preparing and storing reagents and solutions, and for use as test specimen containers.

7.5 Detection limits of lead and cadmium shall be determined and reported for individual instruments. In this test method, the detection limit shall be defined as twice the mean noise level at 0 µg/mL. Representative detection limits would be approximately 0.01 to 0.03 µg/mL for lead and 0.0005 to 0.0010 µg/mL for cadmium.

## 8. Reagents

8.1 *Purity of Reagents*—Reagent grade chemicals shall be used in all tests. Unless otherwise indicated, it is intended that all reagents shall conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available.<sup>3</sup> Other grades may be used provided it is first ascertained that the reagent is of sufficiently high purity to permit its use without lessening the accuracy of the determination. Analyze each new batch of reagents for lead and cadmium.

8.2 *Purity of Water*—Unless otherwise indicated, references to water shall be understood to mean distilled or deionized water.

8.3 *Acetic Acid (4 volume %)*—Mix 1 volume of glacial acetic acid with 24 volumes of water.

8.4 *Cadmium Standard Stock Solution (1000 µg/mL of cadmium)*—Dissolve 0.9273 g of anhydrous cadmium sulfate in 250 mL of 1 % HCl (8.6) and dilute to 500 mL with 1 % HCl. Commercially available standard cadmium solutions may also be used.

8.5 *Detergent Rinse*—Add 2 mL of hand dishwashing detergent to 1 L of lukewarm tap water.

8.6 *Hydrochloric Acid (1 weight %)*—Mix 1 volume of concentrated hydrochloric acid (HCl, sp gr 1.19) with 37 volumes of water.

8.7 *Lead Standard Stock Solution (1000 µg/mL)*—Dissolve 1.598 g of lead nitrate (Pb(NO<sub>3</sub>)<sub>2</sub>) in 4 % acetic acid and dilute to 1 L with 4 % acetic acid. Commercially available standard lead solutions may also be used.

## 9. Sampling

9.1 *Continuous Process*—Since the amount of metal released from a decoration can be affected by the firing conditions, which may not be uniform across the width of thelehr,

a minimum of six samples should be taken representing both sides and the center of the lehr.

9.2 *Load or Pile*—A minimum of six samples should be randomly selected from throughout the load.

## 10. Preparation of Standards

10.1 *Lead Standard Working Solutions*—Dilute lead nitrate solution (8.7) with acetic acid (8.3) to obtain working standards having final lead concentrations of 0, 5, 10, 15, and 20 µg/mL.

10.2 *Cadmium Standard Working Solutions*—Dilute cadmium stock solution (8.4) with acetic acid (8.3) to obtain working standards having final cadmium concentrations of 0.0, 0.3, 0.5, 1, 1.5, and 2.0 µg/mL.

10.3 Fresh working solutions should be prepared daily.

## 11. Procedure

11.1 *Preparation of Sample*—Take six identical units and cleanse each with a detergent rinse. Then rinse with tap water followed by distilled water followed by air drying. Mark each unit 7 mm below the rim. Record the internal volume of each article in millilitres by filling from a graduated cylinder to approximately 6 to 7 mm (¼ in.) of overflowing. Mark each article, in a nondecorated area (if possible), 20 mm below the rim on the outside. Invert the article in an appropriate laboratory glassware container whose diameter is a minimum of 1.25 times and a maximum of 2.0 times the diameter of the test specimen at the rim. Carefully add 4 % acetic acid leaching solution from a graduated cylinder to the 20-mm mark. Record the volume of solution used. Cover the glassware containers, if possible, to prevent evaporation and to protect them from contamination. Let stand for 24 h at room temperature (20 to 24°C) in the dark. Remove the article after the 24-h leaching period and determine the lead and cadmium by atomic absorption. Record the lead and cadmium found in micrograms per millilitre.

NOTE 2—The possibility of a significant amount of evaporation exists. The analyst should determine whether the acetic acid leaching is noticeably below the 20-mm mark before removing the article. If it is, sufficient acetic acid solution should be added to restore the leaching solution to the 20-mm mark.

11.2 *Determination of Lead*—Set the instrument (7.1) for maximum signal at 283.3 nm using the lead hollow cathode lamp (7.2) (Note 3) and air/acetylene (C<sub>2</sub>H<sub>2</sub>) flow rates recommended by the manufacturer. Stir the sample (leaching) solution and pour off a portion into a clean flask or aspirate from the extraction container if suitable. Flush the burner with water and check zero point between readings. Determine lead from a standard curve of absorbance against µg/mL of lead or calibrate the direct concentration reading (DCR) unit in the concentration mode with lead working solutions (11.1) and read and record the sample concentration directly. Bracket the sample solution with the next higher and lower working solutions. Dilute samples containing more than 20 µg/mL of lead with 4 % acetic acid and reanalyze.

NOTE 3—Electrodeless discharge lamps may be substituted for hollow cathode lamps.

<sup>3</sup> *Reagent Chemicals, American Chemical Society Specifications*, American Chemical Society, Washington, DC. For suggestions on the testing of reagents not listed by the American Chemical Society, see *Analar Standards for Laboratory Chemicals*, BDH Ltd., Poole, Dorset, U.K.; and the *United States Pharmacopeia and National Formulary*, U.S. Pharmacopeial Convention, Inc. (USPC), Rockville, MD.

11.3 *Determination of Cadmium*—Proceed as in 11.2 using the cadmium hollow cathode lamp (7.3) and cadmium standards (10.2). If the sample (leaching) solution contains more than 2 µg/mL of cadmium, dilute with 4 % acetic acid and reanalyze.

12. Calculation

12.1 Use the following equations to calculate the total amount of lead or cadmium metal released from the lip and rim area of the article expressed (1) in total micrograms and (2) parts per million of lead or cadmium metal leached relative to the internal volume of the article.

12.1.1 Determine lead or cadmium, *A*, in micrograms as follows:

$$A = C \times V_1 \tag{1}$$

12.1.2 Determine lead or cadmium, *A*, in parts per million as follows:

$$A = \frac{C \times V_1}{V_2} \tag{2}$$

where:

- C* = concentration of lead or cadmium in leaching solution, µg/mL;
- V*<sub>1</sub> = volume of leaching solution, mL; and
- V*<sub>2</sub> = internal volume of article, mL (Note 4).

Note 4—The internal volume of the article expressed in millilitres of water closely approximates its weight in grams. Therefore, in this instance microgram per millilitre equals microgram per gram which equals parts per million.

13. Report

13.1 A suggested report form is given in Fig. 1.

14. Precision and Bias

14.1 Precision for the analytical method for single or multiple operator within a single laboratory is within the sensitivity of the AAS used and as specified is about 0.5 µg/mL for lead and 0.25 µg/mL for cadmium.

14.2 The accuracy and between-laboratory precision are dependent upon the ability to obtain representative samples for the statistical universe being sampled.

15. Keywords

15.1 atomic absorption; cadmium; ceramic glass enamels; glaze; heavy metals; lead

LABORATORY TEST DATA

Lead and Cadmium Released from Lip and Rim Area of Drinking Glassware Decorated Externally with Ceramic Glass Enamels

Date \_\_\_\_\_

Manufacturer \_\_\_\_\_

Pattern \_\_\_\_\_

Detection Limit Lead \_\_\_\_\_

Cadmium \_\_\_\_\_

Internal Volume, mL \_\_\_\_\_

Laboratory \_\_\_\_\_

Reagent Blank Lead \_\_\_\_\_

Cadmium \_\_\_\_\_

Sample	Volume of Leaching Solution, mL	Concentration, µg/mL Lead,	Total µg	ppm Relative to Internal Volume
1				
2				
3				
4				
5				
6				
Avg				
		Cadmium		
1				
2				
3				
4				
5				
6				
Avg				

FIG. 1 Report Form

*ASTM International takes no position respecting the validity of any patent rights asserted in connection with any item mentioned in this standard. Users of this standard are expressly advised that determination of the validity of any such patent rights, and the risk of infringement of such rights, are entirely their own responsibility.*

*This standard is subject to revision at any time by the responsible technical committee and must be reviewed every five years and if not revised, either reapproved or withdrawn. Your comments are invited either for revision of this standard or for additional standards and should be addressed to ASTM International Headquarters. Your comments will receive careful consideration at a meeting of the responsible technical committee, which you may attend. If you feel that your comments have not received a fair hearing you should make your views known to the ASTM Committee on Standards, at the address shown below.*

*This standard is copyrighted by ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959, United States. Individual reprints (single or multiple copies) of this standard may be obtained by contacting ASTM at the above address or at 610-832-9585 (phone), 610-832-9555 (fax), or service@astm.org (e-mail); or through the ASTM website (www.astm.org).*

# **EXHIBIT C**

**EXHIBIT C**

**PARTIES TO WHOM NOTICE IS TO BE GIVEN\***

**FOR PLAINTIFF**

**CHANLER LAW GROUP**  
Attn: Clifford A. Chanler/Josh Voorhees  
71 Elm Street, Suite 8  
New Canaan, CT 06840

**PARAS LAW GROUP**  
Attn: Laralei Paras  
655 Redwood Highway, Suite 216  
Mill Valley, CA 94941

**MARTIN LAW GROUP**  
Attn: Christopher Martin  
23 N. Lincoln, Suite 204  
Hinsdale, IL 60521

**FOR THE BOELTER COMPANIES**

**MORRISON & FOERSTER LLP**  
Attn: Robert L. Falk  
425 Market Street  
San Francisco, CA 94105-2482

with copies to

Rick Boelter  
The Boelter Companies, Inc.  
N22W23685 Ridgeview Parkway West  
Waukeshaw, WI 53188

\*This document may be supplemented pursuant to section 14 of the Consent Judgment to include the proper name and address of any Opt-In Defendant.

# **EXHIBIT D**

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 Daniel Bornstein, State Bar No. 181711  
8 Laralie S. Paras, State Bar No. 203319  
9 PARAS LAW GROUP  
10 655 Redwood Highway, Suite 216  
11 Mill Valley, CA 94941  
12 Telephone: (415) 380-9222  
13 Facsimile: (415) 380-9223

14 Christopher Martin, State Bar No. 186021  
15 MARTIN LAW GROUP  
16 23 N. Lincoln, Suite 204  
17 Hinsdale, IL 60521  
18 Telephone: (630) 789-6998  
19 Facsimile: (630) 214-0979

20 Attorneys for Plaintiff  
21 Russell Brimer

22  
23 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
24 COUNTY OF SAN FRANCISCO  
25 UNLIMITED JURISDICTION

26 RUSSELL BRIMER,  
27  
28 Plaintiff,  
29  
30 v.  
31  
32 THE BOELTER COMPANIES, et al.,  
33  
34 Defendants.

35 Case No. CGC-05-440811  
36  
37 **STIPULATION FOR ENTRY OF  
38 JUDGMENT**

1           1. The following constitutes the knowing and voluntary election and stipulation of the  
2 entity named below ("Company" or "Opt-In Defendant") to join as a Settling Defendant under  
3 the Consent Judgment previously entered by the Court in *Brimer v. The Boelter Companies,*  
4 *Inc.*, San Francisco Superior Court Case No. CGC 05 -440811 ("Action") and to be bound by  
5 the terms of that Consent Judgment.

6           2. At any time during the one-year period prior to the filing of this Stipulation  
7 ("Relevant Period"), the Company has employed ten (10) or more part-time or full-time  
8 persons and has manufactured, distributed, offered for use or sold one or more items in each of  
9 the following categories of Covered Products, as defined in the Consent Judgment (section 1.4)  
10 (check all that apply):

- 11            **Glassware Food/Beverage Products** ("Category A Products")
- 12            **Glassware Non-Food/Beverage Products** ("Category C Products")
- 13            **Ceramicware Food/Beverage Products** ("Category B Products")
- 14            **Ceramicware Non-Food/Beverage Products** ("Category D Products")

15           3. The categories of products identified above are hereafter designated "Covered  
16 Products" in the Action with respect to the Company.

17           4. At least one of the items in each of the categories checked above did not during the  
18 Relevant Period or does not currently meet the Reformulation Standards set forth for that  
19 category of Covered Products in section 2.3 of the Consent Judgment. The Company has not  
20 provided compliant Proposition 65 warnings in conjunction with the sale or use of all such  
21 Covered Products in California at all times during the Relevant Period.

22           5. The Company has not conducted a risk or exposure assessment for all Covered  
23 Products within each separate category checked above firmly establishing that the use of such  
24 Covered Products will result in an exposure in an amount less than that deemed permissible in  
25 22 Cal. Code Regs. §12805(b) (i.e., less than 0.5 micrograms of lead per day and/or less than  
26 4.1 micrograms of cadmium per day).

1           6. To the extent the Consent Judgment applies to the categories of Covered Products  
2 checked above, the Company agrees to be bound by the injunctive relief provisions of the  
3 Consent Judgment as it relates to each such category of Covered Products.

4           7. In conjunction with the execution of this Stipulation, the Company has provided the  
5 payments applicable to it as set forth in Table 14.4 of the Consent Judgment in the manner  
6 described in Exhibit E to the Consent Judgment. In this regard, the Company hereby  
7 represents and warrants that under the criteria set forth in subsections 14.4(a), (b), and (c) of  
8 the Consent Judgment, with respect to the Covered Products applicable to it pursuant to the  
9 categories checked in Paragraph 2 of this Stipulation, it is a (check only one)<sup>1</sup>:

- 10            (a) **Manufacturer** with combined sales in California of less than 350,000  
11           consumer units in calendar year 2004
- 12            (a.1) **Low Volume Manufacturer** with combined sales in California of less  
13           than 10,000 consumer units in calendar year 2004
- 14            (b) **Distributor and/or Importer** with combined sales in California of less than  
15           350,000 consumer units in calendar year 2004
- 16            (b.1) **Low Volume Distributor and/or Importer** with combined sales in  
17           California of less than 10,000 consumer units in calendar year 2004
- 18            (c) **Retailer and/or Amusement & Recreation Establishment**
- 19            (d) **Bar, Restaurant, Hotel, or Other Food/Beverage Service Defendant**

20           8. At least 65 days prior to the submissions of this Stipulation to the Court for entry,  
21 provided that it has been mailed to the address shown in Exhibit C attached hereto, the  
22 Company agrees to be deemed to have accepted service of a 60-day notice letter from Russell  
23

24 \_\_\_\_\_

25           <sup>1</sup> Any entity which has conducted activities which comprise more than one of the  
26 categories of business listed in (a)-(d) below shall be deemed to be a Manufacturer if 15% or  
27 more of its sales of Covered Products in California were the result of its Manufacturing of  
28 Covered Products; any entity otherwise in categories (c) or (d) shall be deemed to be a  
Distributor/Importer if 15% or more of its sales of Covered Products in California were the result  
of its Distributing/Importing of Covered Products.

1 Brimer ("Brimer") alleging certain violations of Proposition 65 with respect to sales of the  
2 Covered Products identified herein.

3 9. The Company hereby stipulates to be deemed to have voluntarily accepted service  
4 of the summons and complaint in this Action upon the filing of this Stipulation and agrees to  
5 be subject to the jurisdiction of the Court for purposes of the Consent Judgment.

6 10. Future notices concerning this Stipulation and the Consent Judgment shall be  
7 provided to the Company at the address shown in Exhibit C as attached hereto. If the  
8 Company desires to change the individual and/or address designated to receive notice on its  
9 behalf, the Company shall provide notice to Brimer and Boelter's counsel at the addresses for  
10 them listed in Exhibit C to the Consent Judgment.

11 11. The undersigned have read, and the person and/or entity named below  
12 knowingly and voluntarily agree to be bound by, all terms and conditions of this Stipulation  
13 and the Consent Judgment as previously approved and entered by the San Francisco County  
14 Superior Court in this Action.

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12. The undersigned have full authority to make the written representations above and to enter into this Stipulation for the person/entity on behalf of which he/she is signing.

IT IS HEREBY STIPULATED AND AGREED TO:

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_

On Behalf of Plaintiff Russell Brimer

\_\_\_\_\_  
Name (printed/typed)

\_\_\_\_\_  
Title (printed/typed)

On Behalf of:

\_\_\_\_\_  
(Insert Company Name)

Opt-In Defendant

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

# **EXHIBIT E**

## EXHIBIT E

### OPT-IN PAYMENT INSTRUCTIONS

The instructions below outline the steps a company needs to take to participate in the Opt-In program and how to submit proper settlement payments as an Opt-In Defendant.

As a preliminary matter, in order to participate in the Opt-In program, if you are a Manufacturer, Distributor or Importer (as defined below), your company's sales of Covered Products destined for California in the calendar year 2004 must equal less than 350,000 consumer units. (This limitation does not apply to the entities covered in Class C or Class D below unless that entity is operating as a Manufacturer, Distributor, or Importer as defined below.) The meaning of "consumer unit" may be new to your company. A consumer unit reflects the individual product as marketed to the ultimate purchaser. For example, a boxed set of 4 glasses packaged to be sold as one unit or an individual mug may each be considered one "consumer unit."

**STEP ONE:** Determine the company's appropriate settlement classification. In order to determine the proper payment amount, you must determine which of the following categories describes your company's business in accordance with the definitions in the Consent Judgment.

A	<b>Manufacturer.</b> A business entity that produces, packages, creates, or otherwise makes a Covered Product or contracts with an entity to produce, package, create or otherwise make a Covered Product. (Further information regarding Distributors, Importers, Retailers and other companies that are "Apparent Manufacturers" and may be included within this category on this basis is provided below.)
B	<b>Distributor.</b> A business, other than a Manufacturer or Importer, which supplies Covered Products to other distributors, retailers or other non-consumer entities.  <b>Importer.</b> The first business entity with employees within the Customs Territory of the United States which receives Covered Products produced in other countries for the purpose of supplying them to distributors or purchasers within the United States.
C	<b>Retailer / Amusement &amp; Recreation establishment.</b> These businesses are not specifically defined in the Consent Judgment, but include all retail sellers of Covered Products that do not qualify as Class A or Class B opt-in Defendants, as well as entities such as amusement/aquatic parks, professional/amateur sports organizations, theatrical and musical performance organizations and other similar establishments. Further information regarding retailers that may be deemed "Apparent Manufacturers" is provided below.

**D Bar & Restaurant, Hotel, Other Food/Beverage Service Defendant.** These businesses also are not specifically defined in the Consent Judgment, but include all businesses and establishments that sell and/or serve food or drinks, as well as all lodging establishments that do not qualify as A, B or C opt-in Defendants.

Multiple Activities: If your company engages in more than one class of activity, such as the manufacture (Class A) and importation (Class B) of Covered Products, your company is properly qualified as a “Class A” Settling Defendant if 15% or more of your company’s gross sales of Covered Products in California were the result of the manufacture of Covered Products.

If your company is not a Manufacturer or an Apparent Manufacturer, defined below, under the preceding criteria, your company shall be deemed to be a Class B Settling Defendant if 15% or more of its sales of Covered Products in California were the result of distribution or importation of Covered Products. Otherwise, your company will qualify as a “Class C” or “Class D” Settling Defendant, depending on the nature of the organization.

Apparent Manufacturers: Any Distributor, Importer, Retailer or other company that acquires, designs and/or markets Covered Products under its own brand name shall be deemed to be an “Apparent Manufacturer” pursuant to the terms of this Consent Judgment and shall be treated as a Manufacturer for all such Covered Products for purposes of the applicable 15% calculation above.

Low Volume Manufacturers Importers and Distributors: A “Low Volume Manufacturer” is a Manufacturer as defined above which can demonstrate that it sold less than a combined total of 10,000 consumer units of Covered Products in California in calendar year 2004. A “Low Volume Distributor” or “Low Volume Importer” is either a Distributor or Importer as defined above which can demonstrate that has sold less than a combined total of 10,000 consumer units of Covered Products in California in calendar year 2004.

**STEP TWO: Determine the appropriate payment amount.** Once your company has determined its appropriate settlement classification, it must then determine the appropriate settlement payment amount. Generally, the payments are set forth in Table 14.4 of the Consent Judgment and reproduced below. However, there are two exceptions that may increase the amount of your company’s settlement payments:

(1) If Plaintiff has already issued a 60-Day Notice to your company related to Covered Products, your company is responsible for reimbursing a portion of Plaintiff's attorneys' fees and costs related to the 60-Day Notice. In this event, you would need to increase the amount shown for "Plaintiff's Attorneys' Fees" on Table 14.4 by an additional \$4,000. For example, a Manufacturer in this situation would pay \$49,000 (rather than \$45,000) in Plaintiff's Attorneys' Fees; however, its Civil Penalties and Settlement Related Cost payments would remain the same as shown on Table 14.4.

(2) If a Plaintiff has already filed a Complaint against your Company related to Covered Products (after the expiration of the sixty-day notice period), your company is responsible for reimbursing the Plaintiff's attorneys' fees and costs by an additional \$12,000 above the amount in Table 14.4. This supplemental amount includes the 60-Day Notice charge discussed in STEP TWO (1) above.

**TABLE 14.4**

TYPE OF ENTITY	MONETARY CONTRIBUTION
<b>A. Manufacturers:</b> (10,000 to 350,000 units sold in California in 2004)	<b>A total of \$95,000, consisting of:</b> (1) \$45,000 Civil Penalties (2) \$45,000 Plaintiff's Attorneys' Fees* and (3) \$ 5,000 Settlement Related Costs.
<b>A.1 Low Volume Manufacturers:</b> (less than 10,000 units sold in California in 2004)	<b>A total of \$45,000, consisting of:</b> (1) \$15,000 Civil Penalties; (2) \$25,000 Plaintiff's Attorneys' Fees*; and (3) \$ 5,000 Settlement Related Costs.
<b>B. Distributors / Importers:</b> (10,000 to 350,000 units sold in California in 2004)	<b>A total of \$50,000, consisting of:</b> (1) \$22,500 Civil Penalties; (2) \$22,500 Plaintiff's Attorneys' Fees;* and (3) \$ 5,000 Settlement Related Costs.
<b>B.1 Low Volume Distributors and Importers:</b> (less than 10,000 units sold in California in 2004)	<b>A total of \$35,000, consisting of:</b> (1) \$10,000 Civil Penalties; (2) \$20,000 Plaintiff's Attorneys' Fees*; and (3) \$ 5,000 Settlement Related Costs.

C. Retailers / Amusement & Recreation establishments:	<p>A total of \$35,000, consisting of:</p> <p>(1) \$11,000 Civil Penalties  (2) \$19,000 Plaintiff's Attorneys' Fees;* and  (3) \$ 5,000 Settlement Related Costs.</p>
D. Bars & Restaurants, Hotels, Other Food/Beverage Service Defendants:	<p>A total of \$25,000, consisting of:</p> <p>(1) \$ 7,500 Civil Penalties;  (2) \$12,500 Plaintiff's Attorneys' Fees;* and  (3) \$ 5,000 Settlement Related Costs.</p>

\*Add \$4,000 if a 60-Day Notice has already been issued. Add \$12,000 if a Notice was issued *and* a Complaint has already been filed.

**STEP THREE: Prepare and transmit the Opt-In Stipulation and the Settlement Payments.**

Once you have determined the proper amount, the final step is to transmit the necessary documents and the checks constituting the settlement payments. The settlement payments must be made by three (3) *separate* checks (described below) and must be accompanied by the Settling Defendant's *originally* executed Opt-In Stipulation.<sup>1</sup> All documents must be sent via Express Mail, Certified Mail / Return Receipt Requested or other trackable delivery service to:

GLASS/CERAMIC OPT-IN PROGRAM  
c/o Morrison & Foerster LLP  
425 Market Street, 35th Floor  
San Francisco, California 94105

Each Opt-In Defendant will receive written confirmation of receipt of its executed Opt-In Stipulation and checks either via electronic mail or by U.S. Mail.

Settlement Checks: Three *separate* checks will be required as described below. All drafts/checks must be issued in U.S. Dollars. For the "Civil Penalty" amount, the draft for the entire civil penalty amount should be made out to "THE CHANLER LAW GROUP IN TRUST FOR

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<sup>1</sup> Note: The Stipulation will be presented to and entered by the San Francisco Superior Court, which could impose sanctions if untruthful statements are made.

RUSSELL BRIMER.”<sup>2</sup> For the “Plaintiff’s Attorneys’ Fees” amount, the draft for the entire attorneys’ fees amount (including any relevant supplement if a 60-Day Notice was already issued or a Complaint already filed) should be made out to “THE CHANLER LAW GROUP.” For the “Settlement Related Costs” amount, the five thousand dollar draft should be made out to “MORRISON & FOERSTER LLP.” Please reference “Matter 59117/2” on this draft.

Tax identification information that can be used for purposes of drawing these checks will be provided upon request. (Completed W-9s will also be provided if you provide a self-addressed envelope, postage pre-paid, with your settlement checks and Opt-In Stipulation.)

*For further assistance with regard to these payment instructions, contact Miles Imwalle ([mimwalle@mofocom.com](mailto:mimwalle@mofocom.com), 415-268-6523) or Bill Tarantino ([wtarantino@mofocom.com](mailto:wtarantino@mofocom.com), 415-268-6358) at Morrison & Foerster LLP.*

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<sup>2</sup> Upon court approval of the settlement, seventy-five percent (75%) of this payment will be forwarded by Plaintiff’s counsel to the California Office of Environmental Health Hazard Assessment in accordance with Proposition 65. Plaintiffs Russell Brimer, Whitney R. Leeman, Ph.D. and Michael DiPirro have each sought to protect individuals in California from exposure to the Listed Chemicals from the Covered Products in this Consent Judgment. The twenty-five percent (25%) of civil penalties recovered from Opt-In Defendants which may be retained by Plaintiffs pursuant to the provisions of Proposition 65 shall be apportioned among these plaintiffs with 59% (of the 25%) going to Russell Brimer, 26% (of the 25%) going to Whitney R. Leeman, Ph.D. and 15% (of the 25%) going to Michael DiPirro.

# **EXHIBIT F**

## EXHIBIT F

### EXCLUDED CASES

Brimer v. Carlton Cards Retail, Inc.; *et al.* (Case No. HG-05-212732).  
Brimer v. Dave & Buster's, Inc. (Case No. 105-CV-034242).  
Brimer v. Drug Emporium, Inc.; *et al.* (Case No. HG-04-183355).  
Brimer v. Enesco Group, Inc. (Case No. CGC-05-440239).  
Brimer v. Home Depot USA, Inc.; *et al.* (Case No. CGC-04-436839).  
Brimer v. Island Heritage; *et al.* (Case No. CGC-05-439568).  
Brimer v. McCaulou's Department Store (Case No. RG-05-203616).  
Brimer v. Paramount Parks Inc.; *et al.* (Case No. 104-CV-032112).  
Brimer v. The May Department Stores Company, *et al.* (Case No. CGC-05-439669).  
Brimer v. Wells Mfg USA Inc.; *et al.* (Case No. CGC-04-435221).  
Brimer v. House of Blues; *et al.* (Case No. CGC-05-438712).  
DiPirro v. J.C. Penney Company, Inc.; *et al.* (Case No. 407150).  
Leeman v. Signature Housewares, Inc. (Case No. CGC-04-436929).  
Leeman v. TJX Companies, Inc.; *et al.* (Case No. CGC-04-436838).

### EXCLUDED COMPANIES

Sakura, Inc.  
Evergreen Enterprises, Inc.  
Evergreen/Cypress Enterprises, Inc.

2

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16

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

21 RUSSELL BRIMER,  
22 Plaintiff,  
23 v.  
24 THE BOELTER COMPANIES, et al.,  
25 Defendants.  
26

Case No. CGC-05-440811

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

Date: August 17, 2005  
Time: 9:30 A.M.  
Dept.: 301  
Judge: Hon. James L. Warren

ENDORSED  
FILED  
San Francisco County Superior Court

AUG 18 2005

GORDON PARK-LI, Clerk  
BY: MARJORIE SCHWARTZ-SCOTT  
Deputy Clerk

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant THE  
2 BOELTER COMPANIES, having agreed through their respective counsel that judgment be  
3 entered pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment  
4 (“Consent Judgment”) entered into by the parties, and after issuing an Order Approving  
5 Proposition 65 Settlement Agreement and Consent Judgment on August 17, 2005.

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

9 **IT IS SO ORDERED.**

10 Dated: August 17, 2005

**JAMES L. WARREN**  
\_\_\_\_\_  
Hon. James L. Warren  
JUDGE OF THE SUPERIOR COURT