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 3 THE CHANLER GROUP
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 4 Mill Valley, CA 94941
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FILED
 ALAMEDA COUNTY

SEP 20 2011

CLERK OF THE SUPERIOR COURT
[Signature]

5 Attorneys for Plaintiff
 6 RUSSELL BRIMER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF ALAMEDA
 10 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER.,
 13 Plaintiff,

14 v.

15 COLART/AMERICAS INC.; and
 16 DOES 1-150, inclusive,
 17 Defendants.

Case No. RG11563414

[Signature]
**[PROPOSED] JUDGMENT
 PURSUANT TO TERMS OF
 PROPOSITION 65 SETTLEMENT
 AND CONSENT JUDGMENT**

Date: September 20, 2011
 Time: 3:45 P.M.
 Dept. 24
 Judge: Hon. Yvonne Gonzalez Rogers

Reservation No. R-1198762

Rec'd JUL 19 2011 - J. [Signature]

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In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant COLART/AMERICAS, INC., having agreed through their respective counsel that Judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a Consent Judgment, and following issuance of an Order approving this Proposition 65 settlement agreement and entering the Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit 1**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: 22 Sept 2011

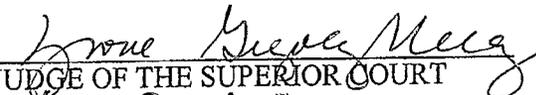

JUDGE OF THE SUPERIOR COURT
Yvonne Gonzalez Rogers

EXHIBIT 1

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Attorneys for Plaintiff
RUSSELL BRIMER

Ann G. Grimaldi, State Bar No. 160893
McKenna Long & Aldridge LLP
101 California Street, 41st Floor
San Francisco, California 94111
Telephone: (415) 267-4104 |
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Attorneys for Plaintiff
COLART AMERICAS INC

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

vs.

COLART AMERICAS INC.; and
DOES 1-150, inclusive,

Defendants.

Case No. RG11563414
**STIPULATION AND [PROPOSED]
CONSENT JUDGMENT**

CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and ColArt/Americas, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”
4 or “Plaintiff”) and defendant ColArt Americas, Inc. (“ColArt” or “Defendant”), with Plaintiff and
5 Defendant collectively referred to hereinafter as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 ColArt employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Defendant has manufactured, distributed and/or sold certain cases for art
16 supplies containing lead in the State of California without providing the health hazard warnings
17 required under Proposition 65. Lead is identified under Proposition 65 as a chemical known to
18 cause birth defects or other reproductive harm. Lead as listed by the State of California under
19 Proposition 65 shall be referred to hereinafter as the “Listed Chemical.”

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are cases for art supplies
22 containing lead, including but not limited to, *Liquitex Basics Acrylic Color Set Painter’s Box No*
23 *101088 (# 0 94376 97649 6)*, which ColArt manufactured, distributed, and/or sold in the State of
24 California. These cases for art supplies containing lead are referred to hereinafter as the
25 “Products.”

26 **1.6 Notice of Violation**

27 On October 15, 2010, Brimer served Defendant and the Office of the California Attorney
28 General, all California counties’ District Attorneys and all City Attorneys of California cities with

1 populations exceeding 750,000 (collectively, "Public Enforcers") with a 60-Day Notice of
2 Violation ("Notice") that alleged violations of Proposition 65 in connection with the sale of the
3 Products containing the Listed Chemical. To the best of the Parties' knowledge, no Public
4 Enforcer has prosecuted any of the allegations set forth in the Notice.

5 **1.7 Complaint**

6 On or about March 1, 2011, Brimer filed the instant action ("Complaint") against Defendant
7 alleging violations of Proposition 65 based on Defendant's failure to give clear and reasonable
8 warnings before allegedly causing exposures to the Listed Chemical contained in the Products.

9 **1.8 No Admission**

10 Defendant denies the material, factual, and legal allegations contained in the Notice and
11 Complaint, and maintains that all of the products that it has sold and distributed in California,
12 including the Products, have been, and are, in compliance with all laws, including, without
13 limitation, Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by
14 Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance
15 with this Consent Judgment constitute or be construed as an admission by Defendant of any fact,
16 finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant.
17 However, this Section shall not diminish or otherwise affect Defendant's obligations,
18 responsibilities, and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in
22 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
23 this Consent Judgment as a full and binding resolution of all claims against Defendant which were
24 raised, or could have been raised, in the Complaint and in the Notice.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
27 Consent Judgment is executed by all Parties.

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1 **2.0 INJUNCTIVE RELIEF**

2 **2.1 Product Warnings**

3 Commencing on the Effective Date, ColArt shall not sell, ship, or offer to ship for sale in
4 California any Products containing levels of the Listed Chemical unless such Products are: (1) sold
5 or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b); or
6 (2) exempt pursuant to Section 2.2 as compliant with the reformulation standards set forth in
7 Sections 2.3.

8 Each warning shall be prominently placed with such conspicuousness as compared with
9 other words, statements, designs, or devices as to render it likely to be read and understood by an
10 ordinary individual under customary conditions before purchase or use. Each warning shall be
11 provided in a manner such that the consumer or user understands to which specific Product the
12 warning applies, so as to minimize the risk of consumer confusion.

13 (a) **Retail Store Sales.**

14 (i) **Product Labeling.** ColArt may affix a warning to the packaging,
15 labeling; or directly on any Products that are not Reformulated Products sold in retail outlets in
16 California by ColArt that states:

17 **WARNING:** This product case contains Lead, a
18 chemical known to the State of California
19 to cause birth defects or other
20 reproductive harm.

21 (ii) **Point-of-Sale Warnings.** Alternatively, ColArt may provide
22 warning signs in the form below to its retail outlets in California with instructions to post the signs
23 in close proximity to the point of display of any such Products for the benefit of its customers.

24 **WARNING:** This product case contains Lead, a
25 chemical known to the State of California
26 to cause birth defects or other
27 reproductive harm.

28 Where any such Products are sold in proximity to other like items or to those that do not
require a warning (e.g., Reformulated Products as defined in Section 2.3), the following statement
must be used:

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WARNING: The cases for the following product(s) contain Lead, a chemical known to the State of California to cause birth defects or other reproductive harm:
[list product(s) for which warning is required]

(b) **Mail Order Catalog and Internet Sales.** In the event that ColArt sells any Products that are not Reformulated Products via mail order catalog or the Internet to customers located in California after the Effective Date, ColArt shall provide a warning for such Products sold via mail order catalog or the Internet to California residents: (1) in the mail order catalog; or (2) on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: These product cases contain Lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, ColArt may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front or back cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Cases of certain products identified with this symbol ▼ and offered for sale in this catalog contain Lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, ColArt must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

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1 If ColArt elects to provide warnings in the mail order catalog, then the warnings must be
2 included in all catalogs offering to sell one or more Products printed after the Effective Date.

3 (ii) **Internet Website Warning.** A warning may be given in conjunction
4 with the sale of the Products via the Internet, provided it appears either: (a) on the same web page
5 on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on
6 the same page as the price for any Product; or (d) on one or more web pages displayed to a
7 purchaser during the checkout process. The following warning statement shall be used and shall
8 appear in any of the above instances adjacent to or immediately following the display, description,
9 or price of the Product for which it is given in the same type size or larger than the Product
10 description text:

11 **WARNING:** This product case contains Lead, a
12 chemical known to the State of California
to cause birth defects or other
reproductive harm.

13 Alternatively, the designated symbol may appear adjacent to or
14 immediately following the display, description, or price of the Product for which a warning is being
15 given, provided that the following warning statement also appears elsewhere on the same web page,
16 as follows:

17 **WARNING:** Cases of products identified on this
18 page with the following symbol ▼
contain Lead, a chemical known to the
19 State of California to cause birth
defects or other reproductive harm.

20 **2.2 Exceptions to Warning Requirements**

21 The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products
22 (as defined in Section 2.3 below).

23 **2.3 Reformulation Standards**

24 As of the Effective Date, ColArt shall use its best efforts to distribute, ship, sell or offer to
25 ship for sale in California only Reformulated Products. For purposes of this Section, "best efforts"
26 includes, without limitation, complying with the vendor notification requirements contained in
27 Section 2.4. Reformulated Products shall mean Products that contain no more than 100 parts per
28 million lead content when analyzed pursuant to Environmental Protection Agency testing

1 methodologies 3050B and 6010B for lead, or equivalent methods as may be allowed under
2 Proposition 65, and that yield a result of no more than 1.0 micrograms of lead when analyzed
3 pursuant to the NIOSH Test Method No. 9100. By entering into this Consent Judgment, the Parties
4 do not intend to expand or restrict any obligations or responsibilities that may be imposed upon
5 ColArt by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to affect
6 any defenses available to ColArt under laws other than Proposition 65.

7 **2.4 Vendor Notification Requirement**

8 To the extent is has not already done so, no more than thirty (30) days after the Effective
9 Date, ColArt shall provide the reformulation standards specified in section 2.3 for Reformulated
10 Products to each of its vendors of Products that will be sold or offered for sale to California
11 consumers, and shall instruct each vendor to use its best efforts to provide only Reformulated
12 Products, as such Products are defined in Section 2.3.

13 **3. MONETARY PAYMENTS**

14 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

15 Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all of the claims alleged
16 in the Notice and Complaint and referred to in this Consent Judgment, ColArt shall pay a total of
17 \$18,000 in civil penalties. ColArt shall pay an initial civil penalty of \$8,500, to be apportioned in
18 accordance with Health & Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount
19 remitted to the State of California's Office of Environmental Health Hazard Assessment and the
20 remaining 25% remitted to Brimer,

21 ColArt shall issue two checks for the penalty payment: (a) one check made payable to "The
22 Chanler Group in Trust for California's Office of Environmental Health Hazard Assessment" in the
23 amount of \$6,375, representing 75% of the total penalty; and (b) one check made payable to "The
24 Chanler Group in Trust for Russell Brimer" in the amount of \$2,125, representing 25% of the total
25 penalty. Two 1099 forms shall be issued for the above payments to: (a) Office of Environmental
26 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b)
27 Russell Brimer, whose address and tax identification number shall be furnished, upon execution of
28 this Agreement. The payment shall be delivered to Brimer's counsel within ten days of the Effective

1 Date at the following address:

2 The Chanler Group
3 Attn: Proposition 65 Controller
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

7 The second civil penalty payment of \$10,000 is due on June 30, 2011; however, this
8 amount shall be waived in its entirety if ColArt certifies (in writing to Brimer's counsel by June 15,
9 2011) that all Products that it has distributed, shipped, sold or offered for sale in California as of
10 June 1, 2011 constitute Reformulated Products pursuant to Section 2.3 above. If the certification is
11 not received, then the second civil penalty amount shall be apportioned in the same manner
12 outlined above and delivered to Brimer's counsel at the above address on or before June 30, 2011.

13 **3.2 Reimbursement of Attorney's Fees and Costs**

14 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
16 issue to be resolved after the material terms of the agreement had been settled. ColArt then
17 expressed its preference to resolve the fee and cost issue shortly after the other settlement terms had
18 been finalized. As such, the Parties attempted to (and did) reach an accord on the compensation
19 due to Brimer and his counsel under general contract principles and the private attorney general
20 doctrine codified at California Code of Civil Procedure ("CCP") § 1021.5, for all work performed
21 in this matter. Under these legal principles, ColArt shall pay \$35,250 for fees and costs incurred as
22 a result of investigating, bringing this matter to ColArt's attention, litigating, and negotiating a
23 settlement in the public interest. ColArt shall issue a separate 1099 for fees and costs (EIN: 94-
24 3171522), shall make its check payable to "The Chanler Group," and shall deliver payment to
25 Brimer's counsel within ten days of the Effective Date at the following address:

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street, Suite 214
Berkeley, CA 94710

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4. RELEASE OF ALL CLAIMS

4.1 Brimer's Release of ColArt

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 above, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, including, without limitation, The Chanler Group, successors, and/or assignees (collectively, "Releasor"), and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of any nature whatsoever, whether fixed or contingent (collectively "Claims"), that were brought or could have been brought against ColArt, its subsidiaries or affiliates, and each of its past and current downstream customers, distributors, wholesalers, suppliers, licensors, licensees, auctioneers, retailers, or any other person in the course of doing business, and the successors and assigns of any of them who may use, maintain, manufacture, distribute, advertise, market or sell the Products in California, and the officers, directors, managers, employees, members, shareholders, agents, insurers and representatives of each of them (collectively "Releasees"), based on the facts alleged in the Notice and Complaint. The Parties further understand and agree that this release shall not extend upstream to any third parties that manufactured the Products or any component parts thereof, or to any distributors or suppliers who sold the Products or any component parts thereof to Defendant.

This Consent Judgment is a full, final, and binding resolution between the Releasor, acting on behalf of himself and on behalf of the general public in the public interest pursuant to Health & Safety Code § 25249.7(d), and Releasees, as to all Claims arising from Releasees' alleged failure to provide clear, reasonable, and lawful warnings of exposures to the Listed Chemical contained in the Products sold in California. Compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by ColArt and its Releasees with the

1 requirements of Proposition 65 with respect to alleged exposure to the Listed Chemical from the
2 Products distributed or sold by ColArt within California.

3 **4.2 ColArt's Release of Brimer**

4 ColArt waives any and all claims against Brimer, his attorneys and other representatives, for
5 any and all actions taken or statements made (or those that could have been taken or made) by
6 Brimer and his attorneys and other representatives, whether in the course of investigating Claims or
7 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
8 Products.

9 **5. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved and entered by the Court and
11 shall be null and void if, for any reason, it is not approved and entered by the Court within one (1)
12 year after it has been fully executed by all Parties, in which event any monies that have been
13 provided to Brimer or his counsel pursuant to Section 3 above shall be refunded within fifteen (15)
14 days after receiving written notice from ColArt that the one-year period has expired.

15 **6. SEVERABILITY**

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

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
22 rendered inapplicable by reason of law generally, or as to the Products, then ColArt may provide
23 written notice to Brimer of any asserted change in the law, and shall have no further obligations
24 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
25 affected. Nothing in this Consent Judgment shall be interpreted to relieve ColArt from any
26 obligation to comply with any pertinent state or federal toxics control laws.

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3 **8. NOTICES**

4 Unless specified herein, all correspondence and notices required to be provided pursuant to
5 this Consent Judgment shall be sent by: (i) personal delivery; (ii) first-class, registered or certified
6 mail, return receipt requested; or (iii) overnight courier on any party by the other party at the
7 following addresses:

8	For ColArt:	For Brimer:
9	Doug Johnston, President.	Proposition 65 Coordinator
10	ColArt/Americas, Inc.	The Chanler Group
	11 Constitution Avenue	2560 Ninth Street, Suite 214
	Piscataway, NJ 08854	Berkeley, CA 94710-2565

11 With a copy to:
12 Ann Grimaldi, Esq.
13 McKenna Long & Aldridge
101 California Street, Floor 41
San Francisco, CA 94111

14 Any Party, from time to time, may specify in writing to the other party a change of address to
15 which all notices and other communications shall be sent.

16 **9. ATTORNEY'S FEES**

17 Should Brimer prevail in any proceeding to enforce a violation of this Agreement, he shall
18 be entitled to his reasonable attorneys' fees and costs incurred as a result of such proceeding.
19 Should ColArt prevail in any proceeding, it may be awarded its reasonable attorneys' fees and costs
20 as a result of such proceeding upon a finding by a court that Brimer's proceeding to enforce this
21 Agreement lacked substantial justification. For purposes of this Agreement, the term substantial
22 justification shall carry the same meaning as used in the Civil Discovery Act, California Code of
23 Civil Procedure § 2016 *et seq.*

24 Except as specifically provided in the above paragraph and in Section 3.2, each Party shall
25 bear its own costs and attorneys' fees.

26 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

27 This Consent Judgment may be executed in counterparts and by facsimile or portable
28 document format (pdf) signature, each of which shall be deemed an original, and all of which,

1 when taken together, shall constitute one and the same document.

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3 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

4 Brimer agrees to comply with the reporting form requirements referenced in
5 California Health & Safety Code § 25249.7(f). The Parties acknowledge that, pursuant to Health &
6 Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent
7 Judgment. In furtherance of obtaining such approval, Brimer, ColArt and their respective counsel
8 agree to mutually employ their best efforts to support the entry of this agreement as a Consent
9 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For
10 purposes of this section, best efforts shall include, at a minimum, cooperating on the drafting and
11 filing of any papers in support of the required motion for judicial approval.

12 **12. MODIFICATION**

13 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
14 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
15 of any party and entry of a modified consent judgment by the Court. The Attorney General shall be
16 served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days
17 in advance of its consideration by the Court. Brimer shall be entitled to his reasonable fees and
18 costs incurred in the modification process under CCP § 1021.5 if ColArt seeks to modify the terms
19 of this Consent Judgment.

20 **13. AUTHORIZATION**

21 The undersigned are authorized to execute this Consent Judgment on behalf of themselves
22 or their respective parties and have read, understood, and agree to all of the terms and conditions of
23 this Consent Judgment.

24 **AGREED TO:**

AGREED TO:

25
26 By: _____

RUSSELL BRIMER

By: _____

DOUG JOHNSTON, PRESIDENT
ColArt Americas, Inc.

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CONSENT JUDGMENT

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Date: _____

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24 **AGREED TO:**

25 By: _____
26 RUSSELL BRIMER

AGREED TO:

25 By: 
26 DOUG JOHNSTON, PRESIDENT
27 ColArt Americas, Inc.

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Date: _____

Date: _____

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG11563414
Case name: Brimer vs Colart Americas Inc

JUDGMENT

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document **JUDGMENT** was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 22, 2011


Executive Officer/Clerk of the Superior Court
By *Param Bir*, Deputy Clerk

Laurence D. Haveson Esq
The Chandler Group
81 Throckmorton Ave
Suite 203
Mill Valley CA 94941

Ann G. Grimaldi Esq
McKenna Long & Aldridge LLP
101 California Street
41st Floor
San Francisco CA 94111