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LAW OFFICES OF LUCAS T. NOVAK
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Attorney for Plaintiff, APS&EE, LLC

FILED
Superior Court of California
County of Los Angeles
05/07/2021
Sherri R. Carter, Executive Officer / Clerk of Court
By: A. Velasco-Posadas Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

APS&EE, LLC, a limited liability company,

Plaintiff,

v.

LIFETIME BRANDS, INC., a corporation, MACY'S WEST STORES, LLC, a limited liability company, MACYS.COM, LLC, a limited liability company, and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 20STCV46233

~~[PROPOSED]~~ CONSENT JUDGMENT

Judge: Hon. David Sotelo
Dept.: 40
Compl. Filed: December 3, 2020

Unlimited Jurisdiction

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RECITALS

1.1 The Parties

1.1.1 This Consent Judgment is entered into by and between APS&EE, LLC ("Plaintiff") and Lifetime Brands, Inc. ("Defendant"). Plaintiff and Defendant shall hereinafter collectively be referred to as the "Parties".

1.1.2 Plaintiff is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 Plaintiff alleges that Defendant is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. ("Proposition 65").

1.2 Allegations

1.2.1 Plaintiff alleges that Defendant sold the Pfaltzgraff "Be Fierce" 18oz Mug, #5246133, 0-25398-20533-2 in the State of California causing users in California to be exposed to Lead without providing "clear and reasonable warnings", in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is listed by the State of California as known to cause cancer and birth defects or other reproductive harm.

On September 23, 2020, Plaintiff provided a Sixty-Day Notice of Violation to Defendant and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Pfaltzgraff "Be Fierce" 18oz Mug, #5246133, 0-25398-20533-2 and all products within the product type (hereinafter the "Products"). On December 3, 2020, Plaintiff filed the instant action ("Complaint") in the Superior Court for the County of Los Angeles, alleging violations of Proposition 65.

1.3 No Admissions

Defendant denies all allegations in Plaintiff's Notice and Complaint and maintains that the Products have been, and are, in compliance with all laws, and that Defendant has not violated Proposition 65. This Consent Judgment shall not be construed as an admission of liability by

Defendant but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Consent Judgment.

1.4 Compromise

The Parties enter into this Consent Judgment in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.5 Jurisdiction and Venue

For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to California Code of Civil Procedure ("CCP") § 664.6 and Proposition 65.

1.6 Effective Date

The "Effective Date" shall be the date this Consent Judgment is approved and entered by the Court.

2. INJUNCTIVE RELIEF

Defendant claims that it was an opt-in signatory to the Consent Judgment entered on or about August 18, 2005, in the matter *Brimer v. The Boelter Companies, et al.*, San Francisco Superior Court, Case No. CGC-05-440811 ("Boelter Consent Judgment") which specifies clear and reasonable warnings as well as reformulation standards pertaining to the exterior decorations of ceramic mugs. Attached hereto as **Exhibit "A"** is a true and correct copy of the Boelter Consent Judgment. With respect to the Products, Plaintiff alleges that Defendant failed to comply with Proposition 65 and the injunctive relief of the Boelter Consent Judgment. However, the Parties agree that as of the Effective Date, Defendant's compliance with the injunctive relief described in the Boelter Consent Judgment shall constitute compliance with Proposition 65 with respect to lead exposure from the Products.

3. PAYMENTS

3.1 Civil Penalty Pursuant to Proposition 65

In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a total civil penalty of four thousand dollars ($4,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% ($3,000.00) for State of California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% ($1,000.00) for Plaintiff.

Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to "OEHHA" in the amount of $3,000.00; and (2) a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of $1,000.00. Defendant shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

3.2 Reimbursement of Plaintiff's Fees and Costs

Defendant shall reimburse Plaintiff's experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through entry of this Consent Judgment. Accordingly, Defendant shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of twenty-four thousand five hundred dollars ($24,500.00). Defendant shall remit the payment within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

4. RELEASES

4.1 Plaintiff's Release of Defendant

Plaintiff, acting in its individual capacity and in the public interest, in consideration of the promises and monetary payments contained herein, hereby releases Defendant, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and

assignees, as well as its downstream distributors, retailers, and customers, including but not limited to Macy's West Stores, LLC and Macys.com, LLC (collectively "Releasees"), from any Proposition 65 violation claims asserted in Plaintiff's Notice and/or Complaint regarding failure to warn about exposure to lead from the Products sold or distributed by Defendant before and up to the Effective Date.

4.2 Defendant's Release of Plaintiff

Defendant, by this Consent Judgment, waives all rights to institute any form of legal action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Defendant in this matter. If any Releasee should institute any such action, then Plaintiff's release of said Releasee in this Consent Judgment shall be rendered void and unenforceable.

4.3 Waiver of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Consent Judgment and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. <u>COURT APPROVAL</u>

Upon execution of this Consent Judgment by the Parties, Plaintiff shall file a noticed

Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent Judgment is not effective until it is approved and entered by the Court. It is the intention of the Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such approval, the Parties and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement in a timely manner, including cooperating on drafting and filing any papers in support of the required motion for judicial approval.

6. SEVERABILITY

Should any part or provision of this Consent Judgment for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California.

8. NOTICE

All correspondence and notice required to be provided under this Consent Judgment shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO DEFENDANT:	TO PLAINTIFF:
William Tarantino, Esq. Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105	Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069

9. INTEGRATION

This Consent Judgment constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be amended or modified except in writing.

10. COUNTERPARTS

This Consent Judgment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall

constitute legal and binding execution and delivery. Any photocopy or PDF of the executed Consent Judgment shall have the same force and effect as the originals.

11. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Consent Judgment. Each Party warrants to the other that it is free to enter into this Consent Judgment and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Consent Judgment by said Party.

AGREED TO:

Date: _____

By: _____

Authorized Representative of APS&EE, LLC

AGREED TO:

Date: February 25, 2021

By: _____

Authorized Representative of Lifetime Brands, Inc.

IT IS SO ORDERED.

Dated: _____

_____

JUDGE OF THE SUPERIOR COURT

constitute legal and binding execution and delivery. Any photocopy or PDF of the executed Consent Judgment shall have the same force and effect as the originals.

11. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Consent Judgment. Each Party warrants to the other that it is free to enter into this Consent Judgment and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Consent Judgment by said Party.

AGREED TO:

Date: 2/26/21

By: _____

Authorized Representative of APS&EE, LLC

AGREED TO:

Date: February 25, 2021

By: _____

Authorized Representative of Lifetime Brands, Inc.

IT IS SO ORDERED.

Dated: 05/07/2021

_____

JUDGE OF THE SUPERIOR COURT
David Sotelo / Judge

EXHIBIT A

Stephen S. Sayad (State Bar No. 104866)
Daniel Bornstein (State Bar No. 181711)
Laralei S. Paras (State Bar No. 203319)
PARAS LAW GROUP
655 Redwood Highway, Suite 216
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Attorneys for Plaintiff
RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER, Plaintiff, v. THE BOELTER COMPANIES, et al., 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**

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

PROOF OF SERVICE

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

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

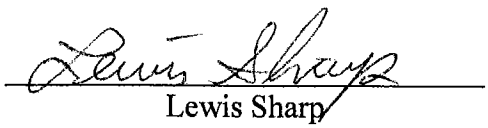
NOTICE OF ENTRY OF ORDER PURSUANT TO TERMS OF CONSENT JUDGMENT AND OF JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT

on each interested party as follows:

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

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

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



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

ENDORSED
FILED
San Francisco County Superior Court
AUG 18 2005
GORDON PARK-LI, Clerk
BY: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

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

~~[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

Plaintiff RUSSELL BRIMER and Defendant THE BOELTER COMPANIES ("Defendant"), having agreed through their respective counsel that judgment be entered pursuant to the terms of the Consent Judgment entered into by the above-referenced parties and attached hereto as Exhibit 1; and after consideration of the papers submitted and the arguments presented, the Court finds that the settlement agreement set out in the attached Consent Judgment meets the criteria established by Health & Safety Code section 25249.7, in that:

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

Accordingly, IT IS HEREBY ORDERED that Judgment be entered in the case referenced above, in accordance with the terms of the Amended Stipulation and [Proposed] Consent Judgment ~~attached hereto as Exhibit 1.~~

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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New Canaan, CT 06840
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Telephone: (415) 268-7000
Facsimile: (415) 268-7522

Attorneys for Defendant
The Boelter Companies

ENDORSED
FILED
San Francisco County Superior Court

AUG 18 2005

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

THE BOELTER COMPANIES, et al.

Defendants.

Case No. CGC-05-440811

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

1. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Warning Obligations for Products

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

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

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

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

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

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

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

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

(i) Product Labeling. A warning may be given by affixing the following language to the packaging, labeling or directly to a specific Covered Product by a Settling Defendant, its agent, the manufacturer, the decorator, the importer, the distributor or the 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.

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

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

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

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

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.

Where more than one Covered Product is 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:[1]

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

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

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

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

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

(d) The Settling Defendant shall provide notice to each entity to whom the Settling Defendant ships Covered Products for distribution or sale in California at least once in each calendar year in which the Settling Defendant transacts business with that entity unless such transactions do not concern Covered Products or exclusively concern Reformulated Products as defined in section 2.3 below. If the Settling Defendant has obtained 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.

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

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

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

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

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

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

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

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

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

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

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

> "Children's Product" is defined as any Covered Product intended or marketed primarily for use by children such as: Covered Products with designs on their exterior surface which are affiliated with children's toys or entertainment (*e.g,.* Sesame Street, Looney Tunes, Barbie, and Winnie the Pooh); Covered Products of a reduced size so as to be marketed primarily for children (*e.g.*, reduced-size juice glasses intended for use by children); or Covered Products of a type or category (*e.g.*, "piggy banks") which typically would be used by children, and all similar items.
>
> "Exterior Decorations" is defined as all colored artwork, designs and/or markings on the exterior surface of the Covered Product.

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

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

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

2.3.1 Glassware Reformulation Standards:

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

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

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

[2] If the decoration is tested after it is affixed to the Covered Product, the percentage of the 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).

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

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

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

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

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

2.3.2 Ceramicware Reformulation Standards:

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

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

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[3] If the decoration is tested after it is affixed to the Covered Product, the percentage of the 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).

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

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

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

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

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

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

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[4] If the decoration is tested after it is affixed to the Covered Product, the percentage of the 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).

[5] Because this method requires correction for internal volume, this method and subsections 2.3.2(c) and 2.3.2(d)(ii) are only appropriate for ceramic hollowware.

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

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

(e) **Alternative Non Food/Beverage Use Product Standard:** A Ceramicware Non Food/Beverage Use Product qualifies as a Reformulated Product if it achieves 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 decorated portions of all surfaces of the Product performed as outlined in NIOSH method no. 9100. A Children's Product that is also a Ceramicware Non-Food/Beverage Use Product must nevertheless meet the standards outlined in subsection 2.3.2(b) to be considered a Reformulated Product.

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

3. MONETARY PAYMENTS

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

[6] This subsection 2.3.2(d)(ii) is only appropriate for ceramic hollowware.

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

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

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

4. REIMBURSEMENT OF FEES AND COSTS

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

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

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

5. RELEASE OF ALL CLAIMS

5.1 Plaintiff's Release of Settling Defendants. In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to sections 3 and 4, Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, 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 release all claims, including, without limitation, all actions, 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 known or unknown, fixed or contingent (collectively "Claims"), against each Settling Defendant and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively, "Settling Defendants' Releasees") arising under or derived from Proposition 65, related to Settling Defendants or Settling Defendants' Releasees' alleged failure to warn about exposures to or identification of one or more of the Listed Chemicals contained in the exterior decorations on the Covered Products manufactured, decorated, imported, distributed or offered for use or sale by any Settling Defendant.

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

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

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

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

6. COURT APPROVAL

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

7. SEVERABILITY

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

8. ATTORNEYS' FEES

In the event that a dispute arises with respect to any provision of this Consent Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable costs and attorneys' fees incurred in connection with such dispute.

9. GOVERNING LAW

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

10. NOTICES

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

11. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

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

13. ADDITIONAL POST EXECUTION ACTIVITIES

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

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

14. OPT-IN PROCEDURE

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

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

[7] "Relevant Period" is defined in this agreement as the one year period prior to the execution of the Opt-In Stipulation described in section 14.2.

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

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

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

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[8]; (2) $45,000 Plaintiff's Attorneys' Fees[9]; 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[8]; (2) $25,000 Plaintiff's Attorneys' Fees[9]; 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[8]; (2) $22,500 Plaintiff's Attorneys' Fees[9]; 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[8]; (2) $20,000 Plaintiff's Attorneys' Fees[9]; and (3) $ 5,000 Settlement Related Costs.
C. Retailers / Amusement & Recreation establishments:	**A total of $35,000,** consisting of: (1) $11,000 Civil Penalties[8]; (2) $19,000 Plaintiff's Attorneys' Fees[9]; and (3) $ 5,000 Settlement Related Costs.

[8] 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.

[9] 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).

D. Bars & Restaurants, Hotels, Other Food Service Establishments:	**A total of $25,000,** consisting of: (1) $ 7,500 Civil Penalties[8]; (2) $12,500 Plaintiff's Attorneys' Fees[9]; and (3) $ 5,000 Settlement Related Costs.

(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.

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

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

15. MODIFICATION

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

16. AUTHORIZATION

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

AGREED TO:

Date: _____

By: _____

Plaintiff Russell Brimer

AGREED TO:

Date: August 10, 2005

By: _____

Defendant The Boelter Companies, Inc.

APPROVED AS TO FORM:

Date: _____

CHANLER LAW GROUP

By: _____

Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: August 10, 2005

MORRISON & FOERSTER LLP

By: _____

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

IT IS SO ORDERED.

Date: AUG 17 2005

JAMES L. WARREN

JUDGE OF THE SUPERIOR COURT

JAMES L. WARREN

16. **AUTHORIZATION**

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

AGREED TO:

Date: 8-10-05

By: _____

Plaintiff Russell Brimer

AGREED TO:

Date: _____

By: _____

Defendant The Boelter Companies, Inc.

APPROVED AS TO FORM:

Date: 8/10/2005

CHANLER LAW GROUP

By: _____

Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: _____

MORRISON & FOERSTER LLP

By: _____

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

IT IS SO ORDERED.

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[1]

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 (ε) 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:* [2]

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

3. Terminology

3.1 *Definitions:*

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 Boling burner head and digital concentration readout attachment (DCR) if available. This instrument should have a sensitivity of about 0.5 μg/mL of

[1] 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 Enameled Decorated Glass Tumblers, and an Interagency 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).

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

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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.[3] 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 ($Pb(NO_3)_2$) 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 the lehr, 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_2H_2) 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.

[3] *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.

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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:

$$A = C \times V_1 \quad (1)$$

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

$$A = \frac{C \times V_1}{V_2} \quad (2)$$

where:

C = concentration of lead or cadmium in leaching solution, µg/mL;
V_1 = volume of leaching solution, mL; and
V_2 = 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

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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

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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.

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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

Clifford A. Chanler, State Bar No. 135534
CHANLER LAW GROUP
71 Elm Street, Suite 8
New Canaan, CT 06840
Telephone: (203) 966-9911
Facsimile: (203) 801-5222

Daniel Bornstein, State Bar No. 181711
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MARTIN LAW GROUP
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Hinsdale, IL 60521
Telephone: (630) 789-6998
Facsimile: (630) 214-0979

Attorneys for Plaintiff
Russell Brimer

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

RUSSELL BRIMER, Plaintiff, v. THE BOELTER COMPANIES, et al., Defendants.	Case No. CGC-05-440811 **STIPULATION FOR ENTRY OF JUDGMENT**

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

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

- ☐ **Glassware Food/Beverage Products** ("Category A Products")
- ☐ **Glassware Non-Food/Beverage Products** ("Category C Products")
- ☐ **Ceramicware Food/Beverage Products** ("Category B Products")
- ☐ **Ceramicware Non-Food/Beverage Products** ("Category D Products")

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

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

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

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

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

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

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

---

[1] Any entity which has conducted activities which comprise more than one of the categories of business listed in (a)-(d) below 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; 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.

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

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

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

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

_____
Name (printed/typed)

_____
Title (printed/typed)

On Behalf of:

_____
(Insert Company Name)

Opt-In Defendant

Dated: _____

By: _____

On Behalf of Plaintiff Russell Brimer

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	**Manufacturer.** 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	**Distributor.** A business, other than a Manufacturer or Importer, which supplies Covered Products to other distributors, retailers or other non-consumer entities. **Importer.** 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	**Retailer / Amusement & Recreation establishment.** 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
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 (2) $45,000 Plaintiff's Attorneys' Fees* and (3) $ 5,000 Settlement Related Costs.
A.1 Low Volume Manufacturers: (less than 10,000 units sold in California in 2004)	**A total of $45,000,** consisting of: (1) $15,000 Civil Penalties; (2) $25,000 Plaintiff's Attorneys' Fees*; 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; (2) $22,500 Plaintiff's Attorneys' Fees;* and (3) $ 5,000 Settlement Related Costs.
B.1 Low Volume Distributors and Importers: (less than 10,000 units sold in California in 2004)	**A total of $35,000,** consisting of: (1) $10,000 Civil Penalties; (2) $20,000 Plaintiff's Attorneys' Fees*; and (3) $ 5,000 Settlement Related Costs.

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

*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.[1] 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

[1] 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."[2] 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@mofo.com, 415-268-6523) or Bill Tarantino (wtarantino@mofo.com, 415-268-6358) at Morrison & Foerster LLP.

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[2] 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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Attorneys for Defendant
THE BOELTER COMPANIES

ENDORSED
FILED
San Francisco County Superior Court
AUG 18 2005
GORDON PARK-LI, Clerk
BY: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

THE BOELTER COMPANIES, et al.,

Defendants.

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

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

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

IT IS SO ORDERED.

Dated: August 17, 2005

JAMES L. WARREN

Hon. James L. Warren
JUDGE OF THE SUPERIOR COURT

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Attorneys for Plaintiff
Russell Brimer

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

THE BOELTER COMPANIES, et al.,

Defendants.

Case No. CGC –05-440811

STIPULATION FOR ENTRY OF JUDGMENT

1. The following constitutes the knowing and voluntary election and stipulation of the

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

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

- ☑ Glassware Food/Beverage Products ("Category A Products")
- ☑ Glassware Non-Food/Beverage Products ("Category C Products")
- ☑ Ceramicware Food/Beverage Products ("Category B Products")
- ☑ Ceramicware Non-Food/Beverage Products ("Category D Products")

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

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

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

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

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* Nothing in this stipulation to the Consent Judgment shall be interpreted to undermine the "no admission" clause contained in the consent judgment at paragraph 1.8.

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

- ☐ (a) Manufacturer with combined sales in California of less than 350,000 consumer units in calendar year 2004
- ☐ (a.1) Low Volume Manufacturer with combined sales in California of less than 10,000 consumer units in calendar year 2004
- ☑ (b) Distributor and/or Importer with combined sales in California of less than 350,000 consumer units in calendar year 2004
- ☐ (b.1) Low Volume Distributor and/or Importer with combined sales California of less than 10,000 consumer units in calendar year 2004
- ☐ (c) Retailer and/or Amusement & Recreation Establishment
- ☐ (d) Bar, Restaurant, Hotel, or Other Food/Beverage Service Defendant
- ☐ (e) Opt-In Defendant with De Minimus Sales, i.e., combined sales in California of less than 500 consumer units in calendar year 2004 (attach to this Stipulation a list of the names of all product lines (by narrative description and, where available, UPC code comprising these consumer units of Covered Products).

8. At least 65 days prior to the submissions of this Stipulation to the Court for entry, provided that it has been mailed to the address shown in Exhibit C attached hereto, the Company agrees to be deemed to have accepted service of a 60-day notice letter from Russell Brimer ("Brimer") alleging certain violations of Proposition 65 with respect to sales of the Covered Products identified herein.

[1] Any entity which has conducted activities which comprise more than one of the categories of business listed in (a)-(d) below 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; 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.

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

10. Future notices concerning this Stipulation and the Consent Judgment shall be provided to the Company at the address shown in Exhibit C to the Consent Judgment.

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

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)

Ronald Shiftan
Name (printed/typed)

Vice Chairman
Title (printed/typed)

On Behalf of:

Lifetime Brands, Inc.
(Insert Company Name)

Opt-In Defendant

Dated: 11/28/05

By: _____
LARALEI S. PARAS
On Behalf of Plaintiff Russell Brimer

Dated: December 19, 2005

EXHIBIT C (Supplement)
Contact Information for Purposes of Future Notice

Opt-In Party Name:	Lifetime Brands, Inc., formerly known as Lifetime Hoan, Inc.
Contact Person:	Elliot Belilos
Mailing address:	Keller and Heckman LLP 1001 G Street, N.W., Suite 500W Washington, D.C. 20001
Telephone:	202-434-4235
Fax number:	202-434-4646
Email address:	belilos@khlaw.com

constitute legal and binding execution and delivery. Any photocopy or PDF of the executed Consent Judgment shall have the same force and effect as the originals.

11. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Consent Judgment. Each Party warrants to the other that it is free to enter into this Consent Judgment and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Consent Judgment by said Party.

AGREED TO:

Date: 2/26/21

By: _____

Authorized Representative of APS&EE, LLC

AGREED TO:

Date: February 25, 2021

By: _____

Authorized Representative of Lifetime Brands, Inc.

IT IS SO ORDERED.

Dated: _____

_____

JUDGE OF THE SUPERIOR COURT