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8 AMERICAN GREETINGS CORPORATION
9 AND CARLTON CARDS RETAIL, INC.

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24 RUSSELL BRIMER

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA
26 ALAMEDA COUNTY OF ALAMEDA – HAYWARD BRANCH
27 UNLIMITED CIVIL JURISDICTION

28 RUSSELL BRIMER,) No. HG04183355
)
29 Plaintiff)
) **CONSENT JUDGMENT**
30 v.)
)
31 DRUG EMPORIUM, INC.; BIG A DRUG)
32 STORES, INC.; and DOES 1 through 150,)
)
33 Defendants.)
)
34 _____)

1 This Consent Judgment ("Agreement") is entered into by and between Russell Brimer
2 (hereinafter "Brimer"), and Carlton Cards Retail, Inc. (hereinafter "Carlton") and American
3 Greetings Corporation (hereinafter "American Greetings") (all collectively referred to as "the
4 parties") as of July 25, 2005 (the "Effective Date"). The parties agree to the following terms and
5 conditions:

6 **WHEREAS:**

7 1.0 Introduction.

8 1.1 Noticing Party. Russell Brimer is a citizen of the state of California, who seeks to
9 promote awareness of exposures to toxic chemicals and improve human health by reducing or
10 eliminating hazardous substances contained in consumer and industrial products.

11 1.2 Noticed Party. Carlton and American Greetings (sometimes collectively referred to
12 herein as the "Noticed Parties"), are engaged in the distribution and retail sale of greeting cards,
13 social expression items and various novelty items.

14 1.3 Notices. Beginning on or about July 30, 2004, Brimer served the Noticed Parties
15 and various public enforcement agencies with documents, entitled "60-Day Notice of Violation,"
16 which are collectively referred to herein as the "Notices." The Notices allege that American
17 Greetings and Carlton and certain retailers of their products were in violation of California Health
18 & Safety Code §25249.6 by virtue of their having distributed or otherwise offered for sale certain
19 tea light votive holders with colored artwork and/or designs on the exterior that contain lead,
20 candle holders with colored artwork and/or designs on the exterior that contain lead, home
21 decorative glass products that contain lead, and mugs with colored artwork and/or designs on the
22 exterior that contain lead and/or cadmium. Lead and cadmium are substances known to the State
23 of California to cause cancer and birth defects or other reproductive harm and are hereinafter
24 referred to as the "Listed Chemicals." On or before July 30, 2005, Brimer will be serving a
25 supplemental notice on Carlton and the Noticed Parties and all required public enforcers expanding
26 plaintiff's prior allegations concerning the products to include exposures to lead from glass and
27 metal home decorative products ("Supplemental Notice").

1 1.4 Covered Products. This agreement covers such externally decorated mugs, tea light
2 votives, candle holders and home decorative glass products alleged to contain one or more of the
3 Listed Chemicals, which are sold or offered for sale in California, (all such Noticed Parties'
4 products to be collectively referred to hereinafter as the "Products");

5 1.5 Complaint. On November 2, 2004, Brimer filed a complaint entitled *Brimer v.*
6 *Drug Emporium, Inc., et. al*, Case No. HG04183355, in the Alameda County Superior Court,
7 naming the defendants Drug Emporium, Inc. and Big A Drugs, Inc. as having violated Health &
8 Safety Code §25249.6 on behalf of individuals in California who allegedly have been exposed to
9 one or more of the Listed Chemicals contained in certain Products that defendants offer for sale.
10 On or about January 7, 2005, Big A Drug Stores, Inc. filed a Cross-Complaint against American
11 Greetings Corporation in *Brimer v. Drug Emporium, Inc., et. al*. On May 13, 2005, Brimer filed a
12 compliant entitled *Brimer v. Carlton Cards Retail, Inc., et. al*, Case No. HG05212732, in the
13 Alameda County Superior Court, naming Carlton and American Greetings as having violated
14 Health & Safety Code §25249.6 on behalf of individuals in California who allegedly have been
15 exposed to one or more of the Listed Chemicals contained in certain Products that defendants offer
16 for sale. These enforcement actions are collectively referred to herein as the "Actions". Upon the
17 running of the 60-day period associated with the issuance of the Supplemental Notice, and
18 provided that no authorized public enforcer of Proposition 65 initiates an action against the Noticed
19 Parties based on the additional allegations therein contained in the interim, the above captioned
20 Complaints and this Consent Judgment shall be deemed such that the definition of "Products" as
21 used herein shall be likewise expanded to include glass and metal (containing lead) home
22 decorative products.

23 2.0 Purpose of Agreement. The parties enter into this Agreement as a full and final
24 resolution of all claims and allegations that were or that could have been alleged by Plaintiff in the
25 Notices, the Actions, or any future complaints and actions against Carlton and/or American
26 Greetings based on the above-referenced Notices or Actions, and in order that the Parties may
27 avoid protracted litigation on such claims and, to the maximum extent permitted by law, provide
28 the Noticed Parties protection against future claims pertaining to the Products at issue based on the

1 same or substantially similar allegations for past acts (and future acts) so long as they are consistent
2 with the terms contained herein. This Consent Judgment is not and shall not be construed as an
3 admission by the Noticed Parties of any allegation or issue of fact or law asserted in the Notices
4 and/or Actions. The Noticed Parties expressly deny any alleged violation of Proposition 65.
5 However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and
6 duties of Noticed Parties under this Consent Judgment.

7 3.0 Warnings. After the Effective Date of this Consent Judgment, the Noticed Parties
8 shall not distribute or offer for sale any Products in California unless those Products are
9 reformulated pursuant to the conditions of Paragraph 4.0, or are accompanied by a warning
10 statement in accordance with the terms specified in subsections 3.0(a)-(b):

11 (a) Product Labeling. A warning is affixed to the packaging, labeling or directly
12 to or on a Product by Carlton and/or American Greetings, its agent, the manufacturer or the
13 importer of the Products that states:

14 **WARNING: The materials used as colored decorations on the**
15 **exterior of this product contain lead and/or**
16 **cadmium, chemicals known to the State of**
California to cause cancer and birth defects or
other reproductive harm.¹

17 or

18 **WARNING: This product contains lead and/or cadmium,**
19 **chemicals known to the state of California to cause**
20 **cancer and birth defects or other reproductive**
harm.

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

28 ¹ This warning can only be used in conjunction with the sale of Products with colored artwork and/or designs on the exterior that contain lead and/or cadmium.

1 (b) Point of Sale. Point of Sale warnings may be provided through one or more
2 signs posted at or near the point of sale or display of the Products that state:

3 **WARNING: The following products will expose consumers to**
4 **lead and/or cadmium, chemicals known to the state**
5 **of California to cause cancer and birth defects or**
6 **other reproductive harm:**

7 *[List each Product by brand name and description.]*

8 or

9 **WARNING: These products contain lead and/or cadmium,**
10 **chemicals known to the state of California to cause**
11 **cancer and birth defects or other reproductive harm.**

12 *[List each Product by brand name and description.]*

13 A point of sale warning provided pursuant to subsection 3.0(b) shall be prominently
14 placed with such conspicuousness as compared with other words, statements, designs, or devices as
15 to render it likely to be read and understood by an ordinary individual under customary conditions
16 of use or purchase and shall be placed or written in a manner such that the consumer understands to
17 which *specific* Products the warnings apply so as to minimize if not eliminate the chances that an
18 over-warning situation will arise. Any material changes to the language or format of the warning
19 required for Products by section 3.0 shall only be made following: (1) approval from the California
20 Attorney General's Office, provided that written notice of at least fifteen (15) days is given to
21 Plaintiff for the opportunity to comment; or (2) Court approval.

22 4.0 Reformulation Standards. Notwithstanding any other provision of this Consent
23 Judgment, no warning pursuant to section 3.0 above for exposure to lead and/or cadmium shall or
24 need be provided by the Noticed Parties for "Reformulated Products." Products satisfying the
25 conditions set forth below qualify as Reformulated Products.

26 4.1 Reformulation Standards for Products Intended for Consumption of Food or
27 Beverages. The following standards apply to any Products designed and marketed to be used for
28 the storage or consumption of foods or beverages.

(a) If the colored artwork, designs or markings on the exterior surface of
the Products (i) do not extend into the top 20 millimeters on the exterior of the ware (*i.e.* appears

1 below the lip and rim area) (hereinafter "Lip and Rim Area"), then the materials for all colored
2 artwork, designs or markings on the exterior must contain by weight no more than six one-
3 hundredths of one percent (0.06%) lead and twenty-four one-hundredths of one percent (0.24%)
4 cadmium as measured at Carlton and American Greetings' option, either before or after the
5 material is fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050b or an
6 equivalent test method of sufficient sensitivity to establish a limit of quantitation (as distinguished
7 from detection) of less than 600 ppm.²; or

8 (b) If the colored artwork, designs or markings on the exterior surface of
9 the Products do not extend into the Lip and Rim Area, the Product must produce a test result no
10 higher than 1.0 micrograms ("ug") of lead and 4.0 ug of cadmium using a Ghost Wipe™ test
11 applied on the decorated portions of the surface of the Product performed as outlined in NIOSH
12 Method No. 9100; and

13 (c) If the Product has artwork, designs or markings on the exterior
14 surface within Lip and Rim Area, it must utilize materials containing "no detectable lead or
15 cadmium" for all colored artwork, designs or markings within Lip and Rim Area. For purposes of
16 this subsection, "no detectable lead or cadmium" shall mean that neither lead nor cadmium is
17 detected at a level above two one-hundredths of one percent (0.02%) for lead or eight one-
18 hundredths of one percent (0.08%) for cadmium by weight, respectively, as measured at Carlton
19 and American Greetings' option, either before or after the material is fired onto (or otherwise
20 affixed to) the Product, using EPA Test Method 3050b or an equivalent test method of sufficient
21 sensitivity to establish a limit of quantitation (as distinguished from detection) of less than
22 600 ppm.³

23 4.2 Reformulation Standards for Products Not Intended for Consumption of
24 Food or Beverages. The following standards apply to any Products that are not designed and
25 marketed to be used for the storage or consumption of foods or beverages.

26 ² If the Noticed Parties test the decoration after it is affixed to the Product, the percentage of lead by weight must relate
27 only to the other portions of the decorating material and not include any calculation of non-decorating material.

28 ³ Footnote 2, supra, is referred to and incorporated herein by reference.

1 (a) If the Products have colored artwork, designs or markings on the
2 exterior, then:

3 (i) The Product must produce a test result no higher than
4 4.0 micrograms (“ug”) of lead using a Ghost Wipe™ test applied on the colored decorated portions
5 of the exterior surface of the Products performed as outlined in NIOSH Method No. 9100; or

6 (ii) The materials for all colored artwork, designs or markings on
7 the exterior must contain by weight no more than six one-hundredths of one percent (0.06%) lead
8 as measured at the noticed parties’ option, either before or after the material is fired onto (or
9 otherwise affixed to) the Product, using EPA Test Method 3050B or an equivalent test method of
10 sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less
11 than 600 ppm.⁴

12 (b) If the Product is a glass and metal home decorative product, then:

13 (i) The Product must produce a test result no higher than
14 5.0 micrograms (“ug”) of lead using a Ghost Wipe™ test applied to all metal portions of the
15 Product performed as outlined in NIOSH Method No. 9100; or

16 (ii) The Product must contain by weight no more than one-tenth
17 of one percent (0.1%) of lead in each material used in the Products (such as solder and came); and

18 (iii) If such Product has colored artwork, designs or markings on
19 the exterior, then the Product must produce a test result no higher than 5.0 micrograms (“ug”) of
20 lead using a Ghost Wipe™ test applied to all colored decorated portions of the exterior surface and
21 metal portions of the of the Product performed as outlined in NIOSH Method No. 9100.

22 4.3 Reformulation Commitment. By entering into this Consent Judgment,
23 Carlton and American Greetings hereby commit to undertake the good faith efforts to distribute the
24 Products, in the future as Reformulated Products⁵ with the commitment:

25 (a) to reach eighty percent (80%) or more Reformulated Products for

26 ⁴ Footnote 2, supra, is referred to and incorporated herein by reference.

27 ⁵ This provision is in no way intended to place Carlton or American Greetings at a competitive disadvantage but rather
28 to follow the industry trend towards eliminating lead and cadmium from materials used to design or manufacture
consumer products.

1 Products intended for consumption of food or beverages of those distributed, licensed, or offered
2 for sale by Carlton and American Greetings on or after December 31, 2005, and the commitment to
3 make commercially reasonable efforts thereafter to reach one-hundred percent (100%)

4 Reformulated Products for Products intended for consumption of food or beverages; and

5 (b) to reach fifty percent (50%) or more Reformulated Products for
6 Products not intended for consumption of food or beverages of those distributed, licensed, or
7 offered for sale by Carlton and American Greetings on or after December 31, 2005.

8 5.0 Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health &
9 Safety Code §25249.7(b), the Noticed Parties shall deliver a check for a civil penalty of \$10,000
10 made payable to "Chanler Law Group In Trust For Russell Brimer" on August 15, 2005. All
11 penalty monies shall be apportioned by Brimer in accordance with Health & Safety Code §25192,
12 with 75% of these funds remitted to the Office of Environmental Health Hazard Assessment and
13 the remaining 25% of these penalty monies retained by Plaintiff as provided by Health and Safety
14 Code §25249.12(d).

15 5.1 In the event Carlton and American pays any penalty and the Consent
16 Judgment is not thereafter approved and entered by the Court, Brimer shall return any penalty funds
17 paid under this Agreement within fifteen (15) days of receipt of a written request from Carlton and
18 American or its counsel following notice of the issuance of the Court's decision.

19 6.0 Reimbursement of Fees and Costs. The parties acknowledge that Brimer and his
20 counsel offered to resolve this dispute which resolution includes an agreement on the amount of
21 fees and costs to be reimbursed to them, under the private attorney general doctrine codified at
22 C.C.P. §1021.5 for all work performed through the Effective Date of the Consent Judgment. Under
23 the private attorney general doctrine codified at C.C.P. §1021.5, the Noticed Parties shall reimburse
24 Brimer and his counsel for his fees and costs, incurred as a result of investigating, bringing this
25 matter to the Noticed Parties' attention and negotiating a settlement in the public interest. Carlton
26 and American Greetings shall pay Brimer and his counsel the total amount of \$60,000 for all
27 attorneys' fees, expert and investigation fees on August 15, 2005. Except as specifically provided
28 in this Consent Judgment, the Noticed Parties shall not have any further obligation with regard to

1 reimbursement of plaintiff's attorney's fees and costs, and each party shall bear its own costs and
2 attorney's fees. The full payment shall be made payable to the "Chanler Law Group" and shall be
3 delivered to Plaintiff's counsel at the following address:

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

8 6.1 **Return of Funds.** In the event that the Consent Judgment is not thereafter
9 approved and entered by the Court, Brimer shall return the full amount of the fees and costs paid
10 under this Consent Judgment, by check payable to Carlton and American, within fifteen (15) days
11 of receipt of a written request from Carlton and American or counsel for Carlton and American
12 following notice of the issuance of the Court's decision.

13 7.0 Brimer's Release of Carlton and American Greetings. Brimer, by this Consent
14 Judgment, on behalf of himself, his agents, representatives, attorneys, assigns, and in the interest of
15 the general public ("Releasing Parties"), waives all rights to institute or participate in, directly or
16 indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs,
17 expenses, fines, penalties, fees, and all rights to damages, restitution, injunctive relief, and any
18 other form of relief, whether legal or equitable (collectively the "Claims"), against Carlton and
19 American Greetings and their directors, officers, employees, parents, subsidiaries, affiliates,
20 customers, successors and assigns, whether under Proposition 65 or other statutory law Claims
21 based solely on their alleged failure to warn about exposure to the Listed Chemical contained in
22 any of the Products. This Consent Judgment is a full, final and binding resolution between Brimer,
23 on behalf of himself and in the interest of the general public, and Carlton and American Greetings
24 of any violation of Proposition 65 or any other claim that was or could have been asserted based on
25 alleged failure to warn for exposure to the Listed Chemical(s) in the Products (collectively the
26 "Released Claims"), or other facts alleged in the 60-Day Notices. The parties intend compliance
27 with this Consent Judgment to resolve any issue now, in the past, or in the future concerning the
28 Products' past and present, and future (up to the date of compliance established in Paragraph 3.0,
above, and in the future so long as Carlton and American Greetings comply with this Consent

1 Judgment) compliance with Proposition 65 as such compliance pertains to the Products at issue. In
2 addition, Brimer, on behalf of himself, his attorneys, and his agents, waives all rights to institute
3 any form of legal action against Carlton and American Greetings, their attorneys or representatives,
4 directors, officers, employees, parents, subsidiaries, affiliates, customers, successors and assigns
5 for all actions or statements made by Carlton and American Greetings or their attorneys or
6 representatives, in the course of responding to violations of Proposition 65 by Carlton and
7 American Greetings alleged in the 60-Day Notices.

8 8.0 Carlton and American Greetings' Release of Brimer. Carlton and American
9 Greetings, by this Consent Judgment, waive all rights to institute any form of legal action against
10 Brimer and his attorneys or representatives, for all actions or statements made by Brimer or his
11 attorneys or representatives, in the course of seeking enforcement of Proposition 65 against Carlton
12 and American Greetings in this litigation. Provided, however, that Carlton and American
13 Greetings shall remain free to institute any form of legal action to enforce the provisions of this
14 Consent Judgment.

15 9.0 Carlton and American Greetings' Sales Data. Carlton and American Greetings
16 understand that the sales data provided to counsel for Brimer by Carlton and American Greetings
17 was a material factor upon which Brimer has relied to determine the amount of payments made
18 pursuant to Health & Safety Code §25249.7(b) in this Consent Judgment. To the best of Carlton
19 and American Greetings' knowledge, the sales data provided is true and accurate.

20 10.0 Severability. In the event that any of the provisions of this Consent Judgment is
21 held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
22 affected.

23 11.0 Attorney's Fees. In the event that a dispute arises with respect to any provision(s) of
24 this Consent Judgment (including, but not limited to, disputes arising from payments to be made
25 under this Consent Judgment), reasonable attorney's fees shall be awarded to the prevailing party.

26 12.0 Governing Law. The terms of this Consent Judgment shall be governed by the laws
27 of the State of California.

28 13.0 Notices. All correspondence to Brimer shall be mailed to:

1 Clifford A. Chanler
2 CHANLER LAW GROUP
3 71 Elm Street, Suite 8
4 New Canaan, CT 06840
5 Tel: (203) 966-9911
6 Fax: (203) 801-5222

7 With a copy to:

8 Laralei S. Paras, Esq.
9 PARAS LAW GROUP
10 655 Redwood Highway, Suite 216
11 Mill Valley, California 94941
12 Tel: (415) 380-9222
13 Fax: (415) 380-9233

14 All correspondence to Carlton and American Greetings shall be mailed to:

15 Rinda E. Vas, Esq.
16 Office of the General Counsel
17 AMERICAN GREETINGS CORPORATION
18 One American Road
19 Cleveland, Ohio 44414-2398

20 With a copy to:

21 John M. Riccione, Esq.
22 ARONBERG GOLDGEHN DAVIS & GARMISA
23 One IBM Plaza, Suite 3000
24 Chicago, Illinois 60611
25 Tel: (312) 828-9600
26 Fax: (312) 828-9635

27 14.0 Compliance With Reporting Requirements (Health & Safety Code §25249.7(f)).

28 The parties acknowledge that the reporting provisions of Health & Safety Code § 25249.7(f) apply to this Consent Judgment. Counsel for Brimer shall comply with that Paragraph by submitting the required reporting form to, and serving a copy of this Consent Judgment on, the California Attorney General's Office.

15.0 Additional Post Execution Activities

The Parties 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, Plaintiff agrees to file a Motion to Approve the Agreement ("Motion"), within a reasonable period of time after the execution of this Agreement. Carlton and American Greetings agrees to file a joinder in

1 support of said Motion, provided Carlton and American Greetings has been granted an opportunity
2 to review said Motion prior to filing. In the event that any third party, including the Attorney
3 General or any other public enforcer, objects or otherwise comments to one or more provisions of
4 this Agreement, the Parties agree to undertake their best efforts to satisfy such concerns or
5 objections and support the terms of this Agreement, with the Party to whom an objection is
6 addressed taking the lead in resolution of that matter.

7 16.0 Duties Limited to California. This Consent Judgment shall have no effect on
8 Products sold by Carlton and American Greetings for use outside the State of California.

9 17.0 Entire Agreement. This Consent Judgment contains the sole and entire agreement
10 and understanding of the parties with respect to the entire subject matter hereof, and any and all
11 prior discussions, negotiations, commitment and understandings related hereto. No
12 representations, oral or otherwise, express or implied, other than those contained herein have been
13 made by any party hereto. No other agreements not specifically referred to herein, oral or
14 otherwise, shall be deemed to exist or to bind any of the parties.

15 18.0 Counterparts and Facsimile. This Consent Judgment may be executed in
16 counterparts and facsimile, each of which shall be deemed an original, and all of which, when
17 taken together, shall constitute one and the same document.

18 19.0 Authorization. The undersigned are authorized to execute this Consent Judgment
19 on behalf of their respective parties and have read, understood and agree to all of the terms and
20 conditions of this Consent Judgment.

21 20.0 Binding Effect. This Consent Judgment shall inure to the benefit of, and shall be
22 binding upon, the parties and their respective agents, alter egos, attorneys, directors, divisions,
23 employees, heirs, legal predecessors, licensees, officers, parent companies, partners,
24 representatives, shareholder, subsidiaries, successors, and any trustee or other officer appointed in
25 the event of bankruptcy.

26 21.0 Representation. The parties acknowledge and warrant that they have been
27 represented by counsel of their own choosing through all negotiations which preceded the
28 execution of this Consent Judgment.

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AGREED TO:

Date: 7-19-05

By: 
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: 7-20-05

PARAS LAW GROUP

By: 
Laralei S. Paras
Attorney for Plaintiff
RUSSELL BRIMER

AGREED TO:

Date:

By:
CARLTON CARDS RETAIL, INC. and
AMERICAN GREETINGS
CORPORATION

APPROVED AS TO FORM:

Date:

ARONBERG GOLDGEHN DAVIS &
GARMISA

By:
John M. Riccione
Attorney for Cross-Defendant CARLTON
CARDS RETAIL, INC. and AMERICAN
GREETINGS CORPORATION

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AGREED TO:

Date:

By:
RUSSELL BRIMER

APPROVED AS TO FORM:

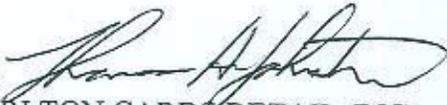
Date:

PARAS LAW GROUP

By:
Laralei S. Paras
Attorney for Plaintiff
RUSSELL BRIMER

AGREED TO:

Date: July 21, 2005

By: 
CARLTON CARDS RETAIL, INC. and
AMERICAN GREETINGS
CORPORATION

APPROVED AS TO FORM:

Date: July 28, 2005

ARONBERG GOLDGEHN DAVIS &
GARMISA

By: 
John M. Riccione
Attorney for Cross-Defendant CARLTON
CARDS RETAIL, INC. and AMERICAN
GREETINGS CORPORATION