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RUSSELL BRIMER

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Gottschalks, Inc.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 COUNTY OF ALAMEDA – HAYWARD BRANCH  
19 UNLIMITED JURISDICTION  
20

21 RUSSELL BRIMER,

22 Plaintiff,

23 v.

24 GOTTSCHALKS, INC.; and DOES 1 through  
25 50,

26 Defendants.

Case No. HG04188878

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

1     **1. INTRODUCTION**

2           **1.1 Plaintiff and Settling Defendant.** This Stipulation and [Proposed] Order Re:  
3     Consent Judgment (“Consent Judgment” or “Agreement”) is entered into by and between plaintiff  
4     Russell Brimer (hereafter “Brimer” or “Plaintiff”) and Gottschalks, Inc. (hereafter “Gottschalks”),  
5     with Plaintiff and Gottschalks collectively referred to as the “Parties” and Brimer and Gottschalks  
6     each being a “Party.”

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

10          **1.3 General Allegations.** Plaintiff alleges that Gottschalks has manufactured,  
11     distributed and/or sold in the State of California certain suncatchers which contain lead and/or  
12     lead compounds, substances which are listed pursuant to the Safe Drinking Water and Toxic  
13     Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.*, also known as  
14     Proposition 65, to cause cancer and birth defects and other reproductive harm. Lead and lead  
15     compounds shall be referred to herein as “Listed Chemicals.”

16          **1.4 Product Descriptions.** The products that are covered by this Consent Judgment  
17     are defined as follows: the glass and metal suncatchers listed at Exhibit A. Such products  
18     collectively are referred to herein as the “Product(s).”

19          **1.5 Notices of Violation.** Beginning on July 30, 2004, Brimer served Gottschalks and  
20     various public enforcement agencies with documents, entitled “60-Day Notice of Violation”  
21     (“Notice”) that provided Gottschalks and such public enforcers with notice that alleged that  
22     Gottschalks was in violation of Health & Safety Code §25249.6 for failing to warn purchasers  
23     that certain products that it sold expose users in California to lead and lead compounds.

24          **1.6 Complaint.** On December 30, 2004, Brimer, in the interest of the general public  
25     in California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the  
26     Superior Court for the City and County of San Francisco against Gottschalks alleging violations  
27     of Health & Safety Code §25249.6 based on the alleged exposures to one or more of the Listed  
28     Chemicals contained in certain products sold by Gottschalks.

1           1.7    **No Admission.** Gottschalks denies the material factual and legal allegations  
2 contained in Plaintiff's Notice and Complaint and maintains that all products that it has sold and  
3 distributed in California including the Products have been and are in compliance with all laws.  
4 Nothing in this Consent Judgment shall be construed as an admission by Gottschalks of any fact,  
5 finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or  
6 be construed as an admission by Gottshalks of any fact, finding, conclusion, issue of law or  
7 violation of law. However, this section shall not diminish or otherwise affect the obligations,  
8 responsibilities and duties of Gottschalks under this Consent Judgment.

9           1.8    **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties  
10 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
11 Complaint and personal jurisdiction over Gottschalks as to the acts alleged in the Complaint, that  
12 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this  
13 Consent Judgment and to enforce the provisions thereof.

14           1.9    **Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall  
15 mean August 15, 2005.

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

17           2.1    **Warning Obligations for Products**

18           (a)    **Required Warnings and Non-exempt Products.** After the Effective  
19 Date, Gottschalks shall not transmit to any retailer to sell or otherwise offer for sale in California  
20 any Products containing the Listed Chemicals, unless warnings are given in accordance with one  
21 or more provisions in subsection 2.2 below.

22           (b)    **Exceptions.** The warning requirements set forth in subsections 2.1(a) and  
23 2.2 below shall not apply to Reformulated Products.

24           2.2    **Clear and Reasonable Warnings**

25           (a)    **Product Labeling.** A warning is affixed to the packaging, labeling or  
26 directly to or on a Product by Gottschalks, its agent, or the manufacturer, importer, or distributor  
27 of the Product that states:  
28

1                   **WARNING: The materials used in this product contain lead,**  
2   **a chemical known to the State of California to**  
3   **cause birth defects or other reproductive harm.**

4                   **or**

5                   **WARNING: The materials used in these products contain**  
6   **lead, a chemical known to the State of California**  
7   **to cause birth defects or other reproductive**  
8   **harm.**

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

16                   (b)     **Point-of-Sale Warnings.** Gottschalks may execute its warning  
17                   obligations, where applicable, through arranging for the posting of signs at retail outlets in the  
18                   State of California at which Products are sold, in accordance with the terms specified in  
19                   subsections 2.2(b)(i)-(iii).

20                   (i)     Point of Sale warnings may be provided through one or more signs  
21                   posted at or near the point of sale or display of the Products that state:

22   **WARNING: The materials used in this product contain lead,**  
23   **a chemical known to the State of California to**  
24   **cause birth defects or other reproductive harm.**

25                   **or**

26                   **WARNING: The materials used in the following suncatchers**  
27   **sold in this store contain lead, a chemical known**  
28   **to the State of California to cause birth defects**  
   **or other reproductive harm:**

*[List Each Product by Brand Name/Manufacturer and Description]*

  (ii)    A point of sale warning provided pursuant to subsection 2.2(b)(i)  
shall be prominently placed with such conspicuousness as compared with other words,

1 statements, designs, or devices as to render it likely to be read and understood by an ordinary  
2 individual under customary conditions of use or purchase and shall be placed or written in a  
3 manner such that the consumer understands to which *specific* Products the warnings apply so as  
4 to minimize if not eliminate the chances that an over-warning situation will arise. Any changes to  
5 the language or format of the warning required for Products by this subsection shall only be made  
6 following: (1) approval of Plaintiff; (2) approval from the California Attorney General's Office,  
7 provided that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to  
8 comment; or (3) Court approval.

9       **2.3 Mail Order and Internet Sales.** Subject to Section 2.4, after September 15,  
10 2005, Gottschalks shall not sell or distribute the Products by mail order catalog or the Internet to  
11 California residents, unless warnings are provided as set forth below.

12       For the Products that require a warning pursuant to this Agreement that are sold by  
13 Gottschalks by mail order or from the Internet to California residents, a warning containing the  
14 language in subsection 2.2 shall be included, at Gottschalks' sole option, either: (1) in the mail  
15 order catalog (if any) or on the website (if any) pursuant to subsection 2.3(a) or 2.3(b); or (2) with  
16 the Products when any of them are shipped to an address in California pursuant to subsection  
17 2.3(b). Any warnings given in the mail order catalogs or on the website shall identify the *specific*  
18 Products so as to minimize, if not eliminate, the chances that an over-warning situation will arise.  
19 If Gottschalks elects to provide warnings in the mail order catalog, then such warnings (at a  
20 location designated in subsection 2.3(a)) shall be included in any new galley prints of such  
21 catalogs sent to the printer at least ten (10) business days after September 15, 2005.

22       (a) **Mail Order Catalog.** The warning message in subsection 2.2(b) shall be  
23 stated within the catalog, either (a) on the inside front cover of any catalog, (b) on the same page  
24 as any order form, or (c) on the same page as the price, in the same type size as the surrounding,  
25 non-heading text, with the same language as that appearing in subsection 2.2(b).

26       (b) **Internet Web Sites.** The warning text, or a link to a page containing the  
27 warning text, shall be displayed either (a) on the same page on which the Products are displayed,  
28 (b) on the same page as any order form for the Products, (c) on the same page as the price for the

1 Products, (d) on one or more pages displayed to a purchaser over the Internet or via electronic  
2 mail during the checkout and order confirmation process for sale of the Products, or (e) in any  
3 manner such that is likely to be read and understood by an ordinary individual under customary  
4 conditions of purchase of the Products, including the same language as that appearing in  
5 subsection 2.2(b). If a link is used, it shall state "Warning Information for California Residents,"  
6 and shall be of a size equal to the size of other links on the page.

7 (c) **Package Insert or Label.** Alternatively, a warning may be provided with  
8 the Products when any of them are shipped directly to a consumer in California, by (a) Product  
9 labeling pursuant to subsection 2.2(a), above, (b) inserting a card or slip of paper measuring at  
10 least 4" x 6" in the shipping carton, or (c) including the warning on the packing slip or customer  
11 invoice identifying the Products in lettering of the same size as the description of the Products.  
12 The warning shall include the language appearing in subsection 2.2(a) and shall inform the  
13 consumer that he or she may return the Product(s) for a full refund within thirty (30) days of  
14 receipt.

15 2.4 **Reformulation Standards.** The warnings required pursuant to sections 2.1(a) and  
16 2.2 above shall not be required for Reformulated Products, defined as follows: Any Product that  
17 contains one-tenth of one percent (0.1%) lead by weight or less.

18 2.5 **Reformulation Commitment.** By entering into this Consent Judgment,  
19 Defendant hereby commits that as a continuing matter of corporate policy, Defendant intends to  
20 undertake good faith efforts, taking into consideration Defendant's operational and product  
21 licensing restrictions, to ensure that as many Products as reasonably possible shall qualify as  
22 Reformulated Products, with the commitment to make commercially reasonable efforts to sell  
23 only Reformulated Products.

### 24 3. **MONETARY PAYMENTS.**

25 3.1 **Payment in lieu of Penalties.** In settlement of all of the claims referred to in this  
26 Consent Judgment, Gottschalks shall pay \$9,000 in civil fines to be apportioned by Plaintiff in  
27 accordance with Health & Safety Code § 25192, with 75% of these funds remitted to the State of  
28 California's Office of Environmental Health Hazard Assessment and the remaining 25% of these

1 penalty monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d).  
2 Plaintiff shall bear all responsibility for apportioning and paying to the State of California the  
3 appropriate civil penalties paid in accordance with this section; and

4       3.2     **Payment Schedule.** The payment to Brimer shall be made on or before  
5 September 9, 2005, and be delivered to Plaintiff's counsel at the following address:

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

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

10       4.1     The Parties acknowledge that Plaintiff and his counsel offered to resolve this  
11 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
12 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
13 Gottschalks then expressed a desire to resolve the fee and cost issue shortly after the other  
14 settlement terms had been finalized. The Parties then attempted to (and did not) reach an accord  
15 on the compensation due to Plaintiff and his counsel under the private attorney general doctrine  
16 codified at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date  
17 of the Agreement and reasonably to be performed in connection with the terms set forth in this  
18 Agreement after the Effective Date. The parties do agree, however, that Russell Brimer and his  
19 counsel are entitled to their reasonable attorneys fees and costs under the prerequisites set forth by  
20 CCP §1021.5; however, they disagree as to the amount of such fees. Accordingly, following the  
21 execution of this Agreement, plaintiff shall make an application to the Court for an award of his  
22 expert, investigation and attorneys fees and costs under the private attorney general doctrine  
23 codified at Code of Civil Procedure §1021.5.

24     5.     **RELEASE OF ALL CLAIMS**

25       5.1     **Plaintiff's Release of Gottschalks.** In further consideration of the promises and  
26 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,  
27 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors  
28 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or

1 participate in, directly or indirectly, any form of legal action and release all claims, including,  
2 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,  
3 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,  
4 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or  
5 unknown, fixed or contingent (collectively "Claims"), against Gottschalks and each of its  
6 manufacturers, distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers,  
7 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries and  
8 their respective officers, directors, attorneys, representatives, shareholders, agents, and employees  
9 (collectively, "Gottschalks' Releasees") arising under Proposition 65 related to Gottschalks or  
10 Gottschalks' Releasees' alleged failure to warn about exposures to or identification of Listed  
11 Chemicals contained in the Products sold by Gottschalks.

12 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and  
13 binding resolution of any violation of Proposition 65 that have been or could have been asserted  
14 in the Complaints against Gottschalks for its alleged failure to provide clear and reasonable  
15 warnings of exposure to or identification of Listed Chemicals in the Products sold by Gottschalks.

16 It is specifically understood and agreed that the Parties intend that Gottschalks's  
17 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in  
18 the future (so long as Gottschalks complies with the terms of the Consent Judgment) concerning  
19 Gottschalks and the Gottschalks Releasees' compliance with the requirements of Proposition 65  
20 as to the Listed Chemicals in the Products sold by Gottschalks.

21 **5.2 Gottschalks's Release of Plaintiff.** Gottschalks waives all rights to institute any  
22 form of legal action against Plaintiff, or his attorneys or representatives, for all actions taken or  
23 statements made by Plaintiff and his attorneys or representatives, in the course of seeking  
24 enforcement of Proposition 65 in this Action.

## 25 **6. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court and  
27 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
28 year after it has been fully executed by all Parties, in which event any monies that have been

1 provided to Plaintiff or his counsel pursuant to section 3 and/or section 4 above, shall be refunded  
2 within fifteen (15) days.

3 **7. SALES DATA**

4 Gottschalks understands that the sales data that it respectively provided to counsel for  
5 Russell Brimer was a material factor upon which Russell Brimer has relied to determine the  
6 amount of civil penalties made pursuant to Health & Safety Code Section 25249.7(b) in this  
7 Agreement. To the best of Gottschalks's knowledge, the sales data provided by Gottschalks to  
8 counsel for Russell Brimer is a true and accurate reflection of any and all sales of the Products in  
9 California during the relevant period.

10 **8. SEVERABILITY**

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

14 **9. ATTORNEY'S FEES**

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

19 **10. GOVERNING LAW**

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

25 **11. NOTICES**

26 All correspondence and notices required to be provided pursuant to this Consent Judgment  
27 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,  
28 return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed

1 below. Either Party, from time to time, may specify a change of address to which all notices and  
2 other communications shall be sent.

3 To Gottschalks:

4 J. Gregory Ambro  
5 Senior Vice President  
6 GOTTSCHALKS  
7 7 River Park Place East  
8 Fresno, CA 93720

9 To Plaintiff:

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

14 Laralei S. Paras, Esq.  
15 PARAS LAW GROUP  
16 655 Redwood Highway, Suite 216  
17 Mill Valley, CA 94941

18 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

22 **13. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

23 Plaintiff agrees to comply with the reporting form requirements referenced in Health &  
24 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall  
25 present this Consent Judgment to the California Attorney General's Office within five (5) days  
26 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment  
27 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date  
28 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.

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1     **14.     ADDITIONAL POST EXECUTION ACTIVITIES**

2     The Parties shall mutually employ their best efforts to support the entry of this Agreement as a  
3     Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.  
4     The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is  
5     required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties agree that  
6     Plaintiff is to file a Motion to Approve the Agreement (“Motion”) within a reasonable period of  
7     time after the Execution Date. After Defendant is served with the Motion, Defendant’s Counsel  
8     will file a joinder. Plaintiff shall make an application to the Court for an award of his expert,  
9     investigation and attorneys fees and costs under the private attorney general doctrine codified at  
10    Code of Civil Procedure §1021.5.

11    **15.     MODIFICATION**

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

17    **16.     AUTHORIZATION**

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

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AGREED TO:

Date: 8.26.05

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

Russell Brimer

By:  
Plaintiff Russell Brimer

By:  
Defendant Gottschalks, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 9-2-05

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

CHANLER LAW GROUP  
Cliff Chanler

WEAKLEY, RATLIFF, ARENDT &  
McGUIRE, LLP

By:  
Clifford A. Chanler  
Attorneys for Plaintiff  
RUSSELL BRIMER

By:  
Rosemary T. McGuire  
Attorneys for Defendant  
GOTTSCHALKS, INC.

IT IS SO ORDERED.

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

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

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

Date: 8/26/05

By:  
Plaintiff Russell Brimer

By: *[Signature]*  
Defendant Gottschalks, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: \_\_\_\_\_  
CHANLER LAW GROUP

Date: August 23, 2005  
WEAKLEY, RATLIFF, ARENDT &  
McGUIRE, LLP

By:  
Clifford A. Chanler  
Attorneys for Plaintiff  
RUSSELL BRIMER

By: *[Signature]*  
Rosemary T. McGuire  
Attorneys for Defendant  
GOTTSCHALKS, INC.

IT IS SO ORDERED.

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

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

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**Exhibit A**

The following suncatchers sold by Gottshalks:

Garden Access (Suncatcher)  
(#4 02404 62683 9)

Glass Hummingbird/Frog Wall Plaque

Stained Glass Magnolia Wall Plaque