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 9 Russell Brimer

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 15 McIlhenny Company

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 17 COUNTY OF SAN FRANCISCO  
 18 UNLIMITED JURISDICTION  
 19

20 RUSSELL BRIMER,

21 Plaintiff,

22 v.

23 MCILHENNY COMPANY; and DOES 1  
 24 through 50,

25 Defendants.

Case No. CGC-05-438956

**CONSENT JUDGMENT**

1 **INTRODUCTION**

2 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and between  
3 plaintiff Russell Brimer (hereafter "Brimer" or "Plaintiff") and McIlhenny Company (hereafter  
4 "Defendant" or "McIlhenny"), with Plaintiff and McIlhenny collectively referred to as the  
5 "Parties" and Brimer and McIlhenny each being a "Party."

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

9 **General Allegations.** Plaintiff alleges that McIlhenny has manufactured, distributed  
10 and/or sold in the State of California certain mugs and other tableware with colored artwork,  
11 designs or markings on the exterior surface which colored artwork, designs or markings contain  
12 cadmium and/or lead, 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.*<sup>1</sup>, also known as  
14 Proposition 65, to cause birth defects and other reproductive harm. Lead and cadmium shall be  
15 referred to herein as "Listed Chemicals."

16 **Product Descriptions.** The products that are covered by this Consent Judgment are  
17 defined as follows: mugs and other glass and ceramic tableware manufactured, distributed and/or  
18 sold by McIlhenny with colored artwork, designs or markings on the exterior surface listed at  
19 Exhibit A. Such products collectively are referred to herein as the "Products."

20 **Notices of Violation.** Beginning on November 24, 2004, Brimer served McIlhenny and  
21 various public enforcement agencies with documents, entitled "60-Day Notice of Violation"  
22 ("Notice") that provided McIlhenny and such public enforcers with notice that alleged that  
23 McIlhenny was in violation of Health & Safety Code §25249.6 for failing to warn purchasers that  
24 certain products that it sold expose users in California to cadmium and lead.

25 **Complaint.** On February 16, 2005, Brimer, in the interest of the general public in  
26 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the  
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28 <sup>1</sup> All statutory and regulatory references in this agreement are to California law.

1 Superior Court for the City and County of San Francisco against McIlhenny alleging violations of  
2 Health & Safety Code §25249.6 based on the alleged exposures to one or more of the Listed  
3 Chemicals contained in certain products sold by McIlhenny.

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

13 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties  
14 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
15 Complaint and personal jurisdiction over McIlhenny as to the acts alleged in the Complaint, that  
16 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this  
17 Consent Judgment and to enforce the provisions thereof.

18 **Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall mean  
19 October 7, 2005.

## 20 **INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

### 21 **Warning Obligations for Products**

22 **Required Warnings and Non-exempt Products.** After the Effective Date,  
23 McIlhenny shall not transmit to any retailer to sell or otherwise offer for sale in California any  
24 Products containing the Listed Chemicals, unless warnings are given in accordance with one or  
25 more provisions in subsection 2.2 below. For purposes of this Consent Judgment, a Product is  
26 "manufactured" at the time that the exterior decoration is fired onto (or otherwise affixed to) the  
27 Product.

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

3                               Reformulated Products, as defined in Paragraph 2.4;

4                               Products manufactured before the Effective Date;

5                               Products manufactured by any other person in the course of doing business  
6 who is subject to a final judgment addressing Proposition 65 warning obligations arising from  
7 alleged exposures to the Listed Chemicals from glassware and/or ceramic products with colored  
8 artwork, designs or markings on the exterior surface including, but not limited to, Dansk  
9 International Designs, Inc., Mikasa, Inc., Pfaltzgraff, Inc. and Salton, Inc.

10                   **Clear and Reasonable Warnings.** When required under this Consent Judgment,  
11 warnings shall be provided by one or more of the following methods:

12                               **Product Labeling.** A warning affixed to the packaging, labeling or directly to or  
13 on a Product that states:

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

17                                       or

18                                       **WARNING: The materials used as colored decorations on the**  
19                                               **exterior of these products contain chemicals**  
                                              **known to the State of California to cause birth**  
                                              **defects or other reproductive harm.<sup>2</sup>**

20                   Warnings issued for Products pursuant to this subsection shall be prominently placed with  
21 such conspicuousness as compared with other words, statements, designs, or devices on the  
22 packaging, labeling or Product, as applicable, so as to render it likely to be read and understood  
23 by an ordinary individual under customary conditions of use or purchase. Any changes to the  
24 language or format of the warning required by this subsection shall only be made following:  
25 (1) approval of Plaintiff; (2) approval from the California Attorney General's Office, provided  
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27 \_\_\_\_\_  
28 <sup>2</sup> This warning is to be used only where the Products are sold as a set.

1 that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment;  
2 or (3) Court approval.

3 **Point-of-Sale Warnings.** McIlhenny may execute its warning obligations, where  
4 applicable, through arranging for retailers that sell open stock Products (i) the posting of signs at  
5 retail outlets in the State of California at which Products are sold, in accordance with the terms  
6 specified in subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii), or (iv) the placement of warning  
7 stickers directly on Products offered for sale on an open stock basis.

8 Point of sale warnings may be provided through one or more signs posted  
9 at or near the point of sale or display of the Products that state:

10 **WARNING: The materials used as colored decorations on the**  
11 **exterior of this product contain chemicals**  
12 **known to the State of California to cause birth**  
13 **defects or other reproductive harm.**

13 or

14 **WARNING: The materials used as colored decorations on the**  
15 **exterior of the following products contain**  
16 **chemicals known to the State of California to**  
17 **cause birth defects or other reproductive harm:**

17 *[List Each Product by Brand Name and Description]*

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1 A point of sale warning shall be prominently placed with such  
2 conspicuousness as compared with other words, statements, designs, or devices as to render it  
3 likely to be read and understood by an ordinary individual under customary conditions of  
4 purchase, and shall be placed in a manner such that the consumer understands to which *specific*  
5 Products the warning applies. Any changes to the language or format of the warning required for  
6 Products by this subsection shall only be made following: (1) approval of Plaintiff; (2) approval  
7 from the California Attorney General's Office, provided that written notice of at least fifteen (15)  
8 days is given to Plaintiff for the opportunity to comment; or (3) Court approval.

9 Any warning stickers applied to Products sold on an open stock basis  
10 pursuant to Section 2.2(b) must meet the criteria of Section 2.2(a) for product labeling.

11 If McIlhenny intends to utilize point of sale signs or stickers to comply  
12 with this Consent Judgment, it must provide notice to each retailer to whom McIlhenny ships the  
13 Products for sale in California and obtain the written consent of such retailer that it will comply  
14 with the warning requirements contained in this agreement before shipping the Products. Such  
15 notice shall include any required warning materials (including, as appropriate, signs and/or  
16 stickers). If McIlhenny has obtained the written consent of a retailer to comply with this Consent  
17 Judgment's warning requirements, and has provided the requisite warning signs and/or stickers to  
18 the retailer, McIlhenny shall not be found to have violated this Consent Judgment if the retailer  
19 fails to comply with the warning requirements.

20 **Mail Order and Internet Sales.** McIlhenny shall not sell or distribute the Products by  
21 mail order catalog or the Internet to California residents, unless warnings are provided as set forth  
22 below.

23 For the Products that require a warning pursuant to this Agreement that are sold by  
24 McIlhenny by mail order or from the Internet to California residents, a warning containing the  
25 language in subsection 2.2 shall be included, at McIlhenny sole option, either: (a) in the mail  
26 order catalog (if any) or on the website (if any) pursuant to subsection 2.3(a) or 2.3(b); or (b) with  
27 the Products when any of them are shipped to an address in California pursuant to subsection  
28 2.3(c) Any warnings given in the mail order catalogs or on the website shall identify the *specific*

1 Products to which the warning applies. If McIlhenny elects to provide warnings in the mail order  
2 catalog, then such warnings (at a location designated in subsection 2.3(a)) shall be included in any  
3 new galley prints of such catalogs that are sent to the printer at least ten (10) business days after  
4 the Effective Date. Nothing in this subsection 2.3 shall require McIlhenny to provide warnings  
5 for the Products ordered from a mail order catalog printed prior to ten (10) days after the  
6 Effective Date.

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

5           **Internet Web Sites.** The warning text, or a link to a page containing the warning  
6 text, shall be displayed either (a) on the same page on which the Products are displayed, (b) on  
7 the same page as any order form for the Products, (c) on the same page as the price for the  
8 Products, (d) on one or more pages displayed to a purchaser over the Internet or via electronic  
9 mail during the checkout and order confirmation process for sale of the Products, or (e) in any  
10 manner such that is likely to be read and understood by an ordinary individual under customary  
11 conditions of purchase of the Products, including the same language as that appearing in  
12 subsection 2.2(b). If a link is used, it shall state "Warning Information for California Residents,"  
13 and shall be of a size equal to the size of other links on the page.

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

22           **Reformulation Standards.** Products satisfying the conditions of section 2.4(a) and  
23 2.4(b) are referred to as "Reformulated Products." The warnings required pursuant to sections  
24 2.1(a) and 2.2 above shall not be required for Reformulated Products, defined as follows:

25           Products that use decorating materials containing less than 0.06% lead by weight  
26 as measured, at a McIlhenny option, either before or after the material is fired onto (or otherwise  
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1 affixed to) the Product<sup>3</sup>, using a sample size of the materials in question measuring approximately  
2 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation of less  
3 than 600 ppm.

4 Products that are used to consume beverages and have 60 or more millimeters of  
5 decorating area below the external Lip and Rim Area<sup>4</sup> must use decorated materials containing  
6 "no detectable lead or cadmium" within the exterior Lip and Rim Area of the Product. For  
7 purposes of this subsection, "no detectable lead or cadmium" shall mean that neither lead nor  
8 cadmium is detected at a level above two one-hundredths of one percent (0.02%) for lead or eight  
9 one-hundredths of one percent (0.08%) for cadmium by weight, respectively, using a sample size  
10 of the materials in question measuring approximately 50-100 mg and a test method of sufficient  
11 sensitivity to establish a limit of quantitation of less than 200 ppm.

12 **Reformulation Commitment.** By entering into this Stipulation and Consent Judgment,  
13 McIlhenny hereby commits to undertake good faith efforts to ensure that as many of its Products  
14 sold California after the Effective Date as reasonably possible shall qualify as Reformulated  
15 Products.

16 **MONETARY PAYMENTS.**

17 3.1 **Penalties.** Pursuant to Health & Safety Code §25249.7(b), Defendant shall pay  
18 the sum of \$25,000 in civil penalties. The first payment of \$10,000 shall be due on or before  
19 October 12, 2005. The second penalty payment of \$15,000 shall be paid on January 30, 2007.  
20 The second penalty payment shall be waived in the event that Defendant certifies on or before  
21 January 15, 2007, that ninety percent (90%) of the Products it intends to sell in California from  
22 February 1, 2007 through December 31, 2007 will be Reformulated Products or otherwise exempt  
23 from the warning requirements of this agreement. Said payment(s) shall be made payable to  
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25 <sup>3</sup> If the decoration is tested after it is affixed to the Product, the Percentage of the Listed Chemical by weight  
26 must related only to the other portions of the decorating material and not include any calculation of non-decorating  
material, e.g. the ceramic substrate.

27 <sup>4</sup> "Lip and Rim Area" is defined as the exterior top 20 millimeters of a hollowware glassware or  
28 ceramicware product, as defined by the American Society of Testing and Materials Standard Test Method C927-99.

1 "Chanler Law Group in Trust For Russell Brimer" and delivered to Plaintiff's counsel at the  
2 following address:

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

7 3.2. In the event that Defendant pays any penalty and the Consent Judgment is not  
8 thereafter approved and entered by the Court within one year of the Effective Date of this  
9 agreement, Mr. Brimer shall return any penalty funds paid under this agreement within fifteen  
10 (15) days of receipt of a written request from Defendant following notice of the issuance of the  
11 Court's decision.

12 3.3 After Court approval of this Consent Judgment pursuant to section 6, all penalty  
13 monies received shall be apportioned by Plaintiff in accordance with Health & Safety Code  
14 §25192, with 75% of these funds remitted to the State of California's Office of Environmental  
15 Health Hazard Assessment and the remaining 25% of these penalty monies retained by Plaintiff  
16 as provided by Health & Safety Code §25249.12(d). Plaintiff shall bear all responsibility for  
17 apportioning and paying to the State of California the appropriate civil penalties paid in  
18 accordance with this section.

### 19 REIMBURSEMENT OF FEES AND COSTS

20 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute  
21 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
22 this fee issue to be resolved after the material terms of the agreement had been settled.  
23 McIlhenny then expressed a desire to resolve the fee and cost issue shortly after the other  
24 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on  
25 the compensation due to Plaintiff and his counsel under the private attorney general doctrine  
26 codified at Code of Civil Procedure §1021.5 for all work performed through the Effective Date of  
27 the Agreement. Under the private attorney general doctrine codified at Code of Civil Procedure  
28 §1021.5, McIlhenny shall reimburse Plaintiff and his counsel for fees and costs, incurred as a

1 result of investigating, bringing this matter to McIlhenny's attention, litigating and negotiating a  
 2 settlement in the public interest. McIlhenny shall pay Plaintiff and his counsel \$27,750 for all  
 3 attorneys' fees, expert and investigation fees, and litigation costs. The payment shall be made  
 4 payable to the "Chanler Law Group" and shall be delivered to Plaintiff's counsel on or before  
 5 October 12, 2005, at the following address:

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

10 Except as specifically provided in this Consent Judgment, McIlhenny shall have no further  
 11 obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the  
 12 Products covered in this Action.

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1 **RELEASE OF ALL CLAIMS**

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

17 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and  
18 binding resolution of any violation of Proposition 65 that have been or could have been asserted  
19 in the Complaint against McIlhenny for its alleged failure to provide clear and reasonable  
20 warnings of exposure to, or identification of, Listed Chemicals in the Products sold by  
21 McIlhenny.

22 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waives all rights  
23 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims  
24 against the McIlhenny Releasees arising under Proposition 65 related to each of the McIlhenny  
25 Releasees' alleged failures to warn about exposures to or identification of Listed Chemicals  
26 contained in the Products and for all actions or statements made by McIlhenny or its attorneys or  
27 representatives, in the course of responding to alleged violations of Proposition 65 by McIlhenny.  
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1 Provided however, Plaintiff shall remain free to institute any form of legal action to enforce the  
2 provisions of this Consent Judgment.

3 It is specifically understood and agreed that the Parties intend that McIlhenny's  
4 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in  
5 the future (so long as McIlhenny complies with the terms of the Consent Judgment) concerning  
6 McIlhenny and the McIlhenny Releasees' compliance with the requirements of Proposition 65 as  
7 to the Listed Chemicals in the Products sold by McIlhenny.

8 **McIlhenny's Release of Plaintiff.** McIlhenny and the McIlhenny Releasees waive all  
9 rights to institute any form of legal action against Plaintiff, or his attorneys or representatives, for  
10 all actions taken or statements made by Plaintiff and his attorneys or representatives, in the course  
11 of seeking enforcement of Proposition 65 in this Action.

## 12 COURT APPROVAL

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

## 18 SALES DATA

19 McIlhenny understands that the sales data that it provided to counsel for Russell Brimer  
20 was a material factor upon which Russell Brimer has relied to determine the amount of civil  
21 penalties made pursuant to Health & Safety Code §25249.7(b) in this Agreement. To the best of  
22 McIlhenny's knowledge, the sales data provided by McIlhenny to counsel for Russell Brimer is a  
23 full, complete, true and accurate reflection of any and all sales of the Products in California  
24 during the relevant period.

## 25 SEVERABILITY

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

**1 ATTORNEYS' FEES**

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

**6 GOVERNING LAW**

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

**12 NOTICES**

13 All correspondence and notices required to be provided pursuant to this Consent Judgment  
14 shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail,  
15 return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed  
16 below. Either Party, from time to time, may specify a change of address to which all notices and  
17 other communications shall be sent.

18 To McIlhenny:

19 McIlhenny Company  
20 Avery Island, Louisiana, 70513  
Attention: Vice President, Administration

21 With a Copy to:

22 Jeffrey Margulies, Esq.  
23 FULBRIGHT & JAWORSKI L.L.P.  
24 555 S. Flower Street, 41st Floor  
Los Angeles, California 90071

25 To Plaintiff:

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

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

**NO ADMISSIONS**

Nothing in this Consent Judgment shall constitute or be construed as an admission by McIlhenny of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by McIlhenny of any fact, finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by McIlhenny. McIlhenny reserves all of its rights and defenses with regard to any claim by any party under Proposition 65 or otherwise. However, this section shall not diminish or otherwise affect McIlhenny's obligations, responsibilities and duties under this Consent Judgment.

**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.

**COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

**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, the Parties

1 agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which  
 2 McIlhenny's counsel shall prepare, within a reasonable period of time after the Execution Date  
 3 (i.e., not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on  
 4 unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the  
 5 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed  
 6 pursuant to Section 4, and shall file the motion with the court and serve the parties and Attorney  
 7 General within a reasonable period of time after receipt of the draft from McIlhenny counsel (i.e.,  
 8 not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on  
 9 unanticipated circumstances). McIlhenny shall have no additional responsibility to Plaintiff's  
 10 counsel pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and  
 11 costs incurred with respect to the preparation and filing of the Joint Motion and its supporting  
 12 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings  
 13 thereon.

14 **MODIFICATION**

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

20 **AUTHORIZATION**

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

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AGREED TO:

AGREED TO:

Date: 8-31-05

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

By: [Signature]  
Plaintiff Russell Brimer

By:  
Defendant McIlhenny Company

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 9-2-05

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

PARAS LAW GROUP

FULBRIGHT & JAWORSKI LLP

By: [Signature]  
Laralei S. Paras  
Attorneys for Plaintiff  
RUSSELL BRIMER

By:  
Jeffrey B. Margulies  
Attorneys for Defendant  
MCILHENNY COMPANY

IT IS SO ORDERED.

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

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

Oct-10-05 04:14pm From-

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AGREED TO:

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

Date: 10/16/05

By:  
Plaintiff Russell Brimer

By: [Signature]  
Defendant McIlhenny Company

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: \_\_\_\_\_  
PARAS LAW GROUP

Date: 10/16/05  
[Signature]  
FULBRIGHT & JAWORSKI LLP

By:  
Laralei S. Paras  
Attorneys for Plaintiff  
RUSSELL BRIMER

By:  
Jeffrey B. Margulies  
Attorneys for Defendant  
MCILHENNY COMPANY

IT IS SO ORDERED.

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

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

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**Exhibit A**

Mugs and other glass and ceramic tableware with colored artwork or designs on the exterior including, but not limited to, Coffee Mug Gift Set, #9104 (#0 11210 08061 4)