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12 Hunter Manufacturing Group, Inc.

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE CITY AND COUNTY OF SAN FRANCISCO
17 UNLIMITED CIVIL JURISDICTION
18

19 RUSSELL BRIMER,

Case No. CGC-05-439569

20 Plaintiff,

21 v.

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

22 HUNTER MANUFACTURING GROUP, INC.;
WEST COAST NOVELTY CORP.;
23 ALBERTSON'S INC.; and DOES 1 through 150,

24 Defendants.

25 **1. INTRODUCTION**

26 1.1 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and
27 between plaintiff Russell Brimer (hereafter "Mr. Brimer" or "Brimer" or "Plaintiff") and
28

1 defendant Hunter Manufacturing Group, Inc. (hereafter "Hunter" or "Defendant"), with Plaintiff
2 and Defendant collectively referred to as the "Parties" and Brimer and Hunter each being a
3 "Party."

4 1.2 **Plaintiff.** Mr. Brimer is an individual residing in Alameda County, California,
5 who seeks to promote awareness of exposures to toxic chemicals and improve human health by
6 reducing or eliminating hazardous substances contained in consumer and industrial products.

7 1.3 **General Allegations.** Plaintiff alleges that Defendant has manufactured,
8 distributed and/or sold in the State of California certain Collector Glass Sets, Shot Glasses, Mugs
9 and other glassware and ceramicware with colored artwork, designs or markings on the exterior
10 surface with materials that contain lead and/or cadmium, chemicals that are listed pursuant to the
11 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
12 §§ 25249.5 et seq., also known as "Proposition 65", to cause birth defects and other reproductive
13 harm.

14 1.4 **Product Descriptions.** The products that are covered by this Agreement are
15 glassware and ceramicware with colored artwork and/or designs (containing lead and/or
16 cadmium) including but not limited to the products listed on Exhibit A. Such products
17 collectively are referred to herein as the "Products."

18 1.5 **Notices of Violation.** On December 17, 2004, Brimer served Defendant and
19 various public enforcement agencies with a document entitled "60-Day Notice of Violation"
20 ("Notice") that provided Defendant and such public enforcers with notice alleging that Defendant
21 was in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain
22 glassware products with colored artwork and designs on the exterior that it sold expose users in
23 California to lead. On or before September 9, 2005, Brimer will be serving a supplemental notice
24 on Hunter and all required public enforcers expanding plaintiff's prior allegations concerning the
25 products to include exposures to lead and cadmium from glassware and ceramicware with colored
26 artwork and designs on the exterior ("Supplemental Notice").

27 1.6 **Complaint.** On March 16, 2005, Brimer, in the interest of the general public in
28 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the

1 Superior Court for the County of San Francisco against Hunter Manufacturing Group, Inc., West
2 Coast Novelty Corp., Albertson's Inc., and Does 1 through 150, alleging violations of Health &
3 Safety Code §25249.6 based on the alleged exposures to one or more of the listed chemicals
4 contained in the Products. Upon the running of the 60-day period associated with the issuance of
5 the Supplemental Notice, and provided that no authorized public enforcer of Proposition 65
6 initiates an action against the Noticed Parties based on the additional allegations therein contained
7 in the interim, both the Complaint and this Consent Judgment shall be deemed such that the
8 definition of "Products" as used herein shall be likewise expanded to include ceramicware with
9 colored artwork and designs (containing lead and/or cadmium) on the exterior and glassware with
10 colored artwork and designs (containing lead and/or cadmium) on the exterior. Lead and
11 cadmium shall be referred to herein as the "Listed Chemicals."

12 1.7 **No Admission.** Hunter denies the material factual and legal allegations contained
13 in Plaintiff's Notices and Complaint (as deemed amended) and maintains that all of the products
14 that it has manufactured, distributed, and sold in California, including the Products, have been
15 and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
16 admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall
17 compliance with this Agreement constitute or be construed as an admission by Defendant of any
18 fact, finding, conclusion, issue of law, or violation of law. However, nothing in this Section shall
19 diminish or otherwise affect the obligations, responsibilities, and duties of Hunter under this
20 Consent Judgment.

21 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
22 stipulate that this Court has jurisdiction over the allegations of violations contained in the
23 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
25 Consent Judgment and to enforce the provisions thereof.

26 1.9 **Effective Date.** For purposes of this Consent Judgment, the "Effective Date" shall
27 be September 2, 2005.
28

1 (b) **Point-of-Sale Warnings.** Defendant may execute its warning obligations,
2 where applicable, through arranging for the posting of signs at retail outlets in the State of
3 California at which the Products are sold, in accordance with the terms specified in
4 subsections 2.2(b)(i) and 2.2(b)(ii).

5 (i) If point of sale warnings are to be provided through one or more
6 signs posted at the point of sale or display of the Products, the warning must state :

7
8 **WARNING: The materials used as colored decorations on the**
9 **exterior of this product contain lead and/or**
10 **cadmium, chemicals known to the State of**
11 **California to cause birth defects and other**
12 **reproductive harm.**

13 **or**

14 **WARNING: The materials used as colored decorations on the**
15 **exterior of the following beverageware products**
16 **sold in this store contain lead and/or cadmium,**
17 **chemicals known to the State of California to**
18 **cause birth defects and other reproductive**
19 **harm. [List specific products to which warning**
20 **applies.]**

21 (ii) Warnings provided for Products pursuant to this subsection shall
22 be prominently placed with such conspicuousness as compared with other words, statements,
23 designs, or devices as to render them likely to be read and understood by an ordinary individual
24 under customary conditions prior to purchase and shall be placed or written in a manner such that
25 the consumer understands to which *specific* Products the warnings apply so as to minimize if not
26 eliminate the chances that an over-warning situation will arise. Any changes to the language or
27 format of the warning required for Products by this subsection shall only be made following:
28 (1) approval of Plaintiff; (2) 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 (3) Court approval.

1 (iii) If Hunter intends to utilize point-of-sale warnings for sales made
2 to retail outlets to comply with this Consent Judgment, it must provide notice as required by this
3 Consent Judgment to *each* retailer to whom the Products are shipped for sale in California *and*
4 obtain the written consent of such retailer to post the required warnings before shipping the
5 Products. Such notice shall include a copy of this Consent Judgment and any required warning
6 materials (including, as appropriate, signs and/or stickers). If Hunter has obtained the written
7 consent of a retailer and transmitted the requisite warnings as provided herein, Hunter shall not be
8 found to have violated this Consent Judgment if it has complied with the terms of this Consent
9 Judgment.

10 2.3 **REFORMULATION STANDARDS:** Products satisfying the conditions set
11 forth in sections 2.3.1 and 2.3.2 below qualify as “Reformulated Products.”

12 2.3.1 Glassware Reformulation Standards

13 The Product must produce a test result no higher than 1.0 micrograms (ug) of lead and 8.0
14 ug of cadmium using a Ghost Wipe™ test applied to the colored decorations on the exterior
15 surface of the Product, performed as outlined in NIOSH method no. 9100, or

16 The colored artwork, designs or markings on the exterior surface of the Product must only
17 utilize decorating materials containing six one-hundredths of one percent (0.06%) of lead by
18 weight (or less) and twenty-four one-hundredths of one percent (0.24%) of cadmium by weight
19 (or less) as measured at Defendant's option, either before or after the material is fired onto (or
20 otherwise affixed to) the Product, using EPA Test Method 3050b,¹ and

21 If the colored artwork, designs or markings on the exterior surface of the Product extends
22 into the top 20 millimeters of the ware (*i.e.*, the exterior portion of the lip and rim area as defined
23 by American Society of Testing and Materials Standard Test Method C927-99, hereinafter the
24 “Lip and Rim Area”), the Product must produce test results acceptable under section 2.3.1(a) or
25

26 ¹ If Defendant tests any decoration in the Products, using EPA Test Method 3050b, after it
27 is affixed to the Product, the percentage of lead by weight and the percentage of cadmium by
28 weight must relate only to the other portions of the decorating material and not include any
calculation of non-decorating material.

1 2.3.1(b) above, and the decorative materials used in the Lip and Rim Area of the Products must
2 contain no detectable lead or cadmium with the following exception: a Product that has less than
3 a total of sixty (60) millimeters of decorating area below the external rim and is not “intended or
4 marketed primarily for use by children” (e.g., shot glasses) is only required to meet the standard
5 outlined in section 2.3.1(b) to be considered a reformulated product.²

6 2.3.2 Ceramic Reformulation Standards

7 The Product must produce a test result no higher than 1.0 micrograms (ug) of lead and 8.0
8 ug of cadmium using a Ghost Wipe™ test applied to the colored decorations on the exterior
9 surface of the Product, performed as outlined in NIOSH method no. 9100, or

10 The colored artwork, designs or markings on the exterior surface of the Product must only
11 utilize decorating materials containing six one-hundredths of one percent (0.06%) of lead by
12 weight (or less) and twenty-four one-hundredths of one percent (0.24%) of cadmium by weight
13 (or less) as measured at Defendant's option, either before or after the material is fired onto (or
14 otherwise affixed to) the Product, using EPA Test Method 3050b,³ or

15 The Product must achieve a result of 0.99 ppm or less for lead and 7.92 ppm or less for
16 cadmium after correction for internal volume when tested under the protocol attached hereto as
17 Exhibit C (the ASTM C927-99 test method, modified for total immersion with results corrected
18 for internal volume); and

19 If the colored artwork, designs or markings on the exterior surface of the Product extends
20 into the Lip and Rim Area, the Product must produce test results acceptable under section
21

22
23 ² For purposes of this subsection, “no detectable lead or cadmium” shall mean that lead is
24 not detected at a level above two one-hundredths of one percent (0.02%) by weight and cadmium
25 is not detected at a level above eight one-hundredths of one percent (0.08%), 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.

26 ³ If Defendant tests any decoration in the Products, using EPA Test Method 3050b, after it
27 is affixed to the Product, the percentage of lead by weight and the percentage of cadmium by
28 weight must relate only to the other portions of the decorating material and not include any
calculation of non-decorating material.

1 2.3.2(a), (b) or (c) above, and the decorative materials used in the Lip and Rim Area of the
2 Products must contain no detectable lead or cadmium.⁴

3 **3. MONETARY PAYMENTS.**

4 3.1 **Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to
5 Health & Safety Codes 25249.7(b), Defendant shall pay a civil penalty of \$58,000. The penalty
6 payment shall be made payable to the "Chanler Law Group in Trust for Russell Brimer," and
7 shall be delivered to Plaintiff's counsel on or before September 2, 2005, at the following address:

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

13 (a) In the event that Defendant pays any penalty and the Consent Judgment is
14 not thereafter approved and entered by the Court, Brimer shall return any penalty funds paid
15 under this agreement within fifteen (15) days of receipt of a written request from Defendant
16 following notice of the issuance of the Court's decision.

17 (b) **Apportionment of Penalties Received.** After Court approval of this
18 Consent Judgment pursuant to Section 6, all penalty monies received shall be apportioned by
19 Plaintiff in accordance with Health & Safety Code §25192, with 75% of these funds remitted to
20 the State of California's Office of Environmental Health Hazard Assessment and the remaining
21 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code
22 §25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of
23 California the appropriate civil penalties paid in accordance with this section.

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

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26 ⁴ For purposes of this subsection, "no detectable lead or cadmium" shall mean that lead is
27 not detected at a level above two one-hundredths of one percent (0.02%) by weight and cadmium
28 is not detected at a level above eight one-hundredths of one percent (0.08%), 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.

1 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
2 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
3 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
4 unknown, fixed or contingent (collectively "Claims"), against Defendant and each of its
5 respective officers, directors, agents, employees, consultants, representatives, partners,
6 shareholders, affiliates, associations, owners, interest holders, entity owners (and the officers,
7 directors, owners, shareholders, agents and employees of any of its owners, shareholders, interest
8 holders or entity owners), and its retailers, customers (including but not limited to West Coast
9 Novelty Corp. and Albertson's Inc.), purchasers, users, licensees, subsidiaries and their respective
10 officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively,
11 "Defendant's Releasees") arising under Proposition 65, and including but not limited to
12 Defendant's or Defendant's Releasees' alleged failure to warn about exposures to or
13 identification of Listed Chemicals contained in the Products. It is specifically understood and
14 agreed to by Plaintiff and Defendant that the release provided herein for Defendant's Releasees
15 (including West Coast Novelty Corp. and Albertson's Inc) is limited solely to the Products sold
16 by Hunter.

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 has been or could have been asserted in
19 the Complaint against Defendant for its alleged failure to provide clear and reasonable warnings
20 of exposure to or identification of Listed Chemicals in the Products.

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

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

6 5.2 **Defendant's Release of Plaintiff.** Defendant and Defendant's Releasees waive all
7 rights to institute any form of legal action against Plaintiff, or his attorneys or representatives, for
8 all actions taken or statements made by Plaintiff and his attorneys or representatives, in the course
9 of seeking enforcement of Proposition 65 against Defendant prior to and in this Action.

10 **6. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and
12 shall be null and void if, for any reason, it is not approved and entered by the Court within 180
13 days after it has been fully executed by all Parties, in which event any monies that have been
14 provided to Plaintiff or his counsel pursuant to Section 3 and/or Section 4 above, shall be
15 refunded within fifteen (15) days.

16 **7. SEVERABILITY**

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

20 **8. ATTORNEYS' FEES**

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

25 **9. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California and apply within the State of California. In the event that Proposition 65 is repealed or
28 is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically,

1 then Defendant shall have no further obligations pursuant to this Consent Judgment with respect
2 to, and to the extent that, those Products are so affected.

3 **10. NOTICES**

4 All correspondence and notices required to be provided pursuant to this Consent Judgment
5 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
6 return receipt requested, or (ii) overnight courier on either Party by the other at the following
7 addresses: (Either Party, from time to time, may, pursuant to the methods prescribed above,
8 specify a change of address to which all future notices and other communications shall be sent.)

9 To Hunter Manufacturing Group, Inc.:

10 Jack C. Smith, President
11 Hunter Manufacturing Group, Inc.
201 West Loudon Avenue
Lexington, KY 40508

J. Clarke Keller, Esq.
Stites & Harbison, PLLC
250 W. Main St., Suite 2300
Lexington, KY 40507

12 To Plaintiff:

13 Clifford A. Chanler
14 Chanler Law Group
71 Elm Street, Suite 8
15 New Canaan, CT 06840

16 **11. NO ADMISSIONS**

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

24 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

1 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
2 Safety Code §25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
3 present this Consent Judgment to the California Attorney General's Office within two (2) days
4 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment
5 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date
6 a hearing is scheduled on such motion in the Superior Court for the County of San Francisco
7 unless the Court allows a shorter period of time.

8 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

9 The Parties shall mutually employ their best efforts to support the entry of this Agreement
10 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
11 manner. The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
12 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
13 agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which
14 Defendant's counsel shall prepare, within a reasonable period of time after the Effective Date
15 (*i.e.*, not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on
16 unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the
17 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed
18 pursuant to Section 4. Defendant shall have no additional responsibility to Plaintiff's counsel
19 pursuant to Code of Civil Procedure, §1021.5 or otherwise with regard to reimbursement of any
20 fees and costs incurred with respect to the preparation and filing of the Joint Motion and its
21 supporting declaration or with regard to Plaintiff's counsel appearing for a hearing or related
22 proceedings thereon.

23 **15. MODIFICATION**

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

1 **AUTHORIZATION**

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

5
6 **AGREED TO:**

AGREED TO:

7
8 **Date:**

Date: *SEPTEMBER 16, 2005*

9
10 **By:**
11 **Plaintiff RUSSELL BRIMER**

By: *[Signature]*
**Defendant HUNTER MANUFACTURING
GROUP, INC.**

12
13 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

14
15 **Date:**

Date: *9/16/05*

16 **PARAS LAW GROUP**

STITES & HARBISON PLLC

17
18 **By:**
19 **Stephen S. Sayad**
20 **Attorney for Plaintiff**
21 **RUSSELL BRIMER**

By: *[Signature]*
Stephanie R. Gilford
Attorney for Defendant
HUNTER MANUFACTURING GROUP, INC.

22
23 **IT IS SO ORDERED.**

24
25 **Date:** _____

JUDGE OF THE SUPERIOR COURT

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

4
5
6 AGREED TO:

AGREED TO:

7 Date: 9-14-05

Date:

8
9 By: *Russell Brimer*
10 Plaintiff RUSSELL BRIMER

By:
Defendant HUNTER MANUFACTURING
GROUP, INC.

11
12 APPROVED AS TO FORM:

APPROVED AS TO FORM:

13
14 Date: 7/22/05

Date:

15
16 PARAS LAW GROUP

STITES & HARBISON PLLC

17 By: *Stephen S. Sayad*
18 *for*
19 Stephen S. Sayad
Attorney for Plaintiff
RUSSELL BRIMER

By:
Stephanie R. Gilford
Attorney for Defendant
HUNTER MANUFACTURING GROUP, INC.

20
21
22 **IT IS SO ORDERED.**

23
24 Date: _____

JUDGE OF THE SUPERIOR COURT

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Exhibit A

All glasses, mugs, bowls, teapots, and other glassware and ceramicware with colored designs and/or artwork on the exterior, including but not limited to:

Collector Glass Set, Four 2 oz. Collector Glasses (#7 37224 29552 9)