





1           1.6 Purpose of Agreement. The Parties enter into this Agreement as a full and final  
2 resolution of all claims and allegations that were or that could have been alleged by Plaintiff in the  
3 Notices, the Action, or any future complaints and actions against Memory based on the above-  
4 referenced Notices or Action, and in order that the Parties may avoid protracted litigation on such  
5 claims and, to the maximum extent permitted by law, provide the Noticed Party protection against  
6 future claims pertaining to the Products based on the same or substantially similar allegations for  
7 past acts (and future acts) so long as they are consistent with the terms contained herein. This  
8 Consent Judgment is not and shall not be construed as an admission by the Noticed Party of any  
9 allegation or issue of fact or law asserted in the Notices and/or Action. The Noticed Party expressly  
10 denies any alleged violation of Proposition 65. However, this paragraph shall not diminish or  
11 otherwise affect the obligations, responsibilities, and duties of Noticed Party under this Consent  
12 Judgment

13 **2.0 INJUNCTIVE RELIEF- PROPOSITION 65**

14           2.1 Warnings and Reformulation Obligations. After the Effective Date of this Consent  
15 Judgment, the Noticed Party shall not distribute or offer for sale any Products in California unless  
16 those Products are reformulated pursuant to the conditions of Paragraph 2.3, or are accompanied by  
17 a warning statement in accordance with the terms specified in subsections 2.2(a)-(d) below.

18           2.2 Clear and Reasonable Warnings

19           (a) Product Labeling. A warning is affixed to the packaging, labeling or directly  
20 to or on a Product by Memory, its agent, the manufacturer or the importer of the Products that  
21 states:

22                           **WARNING: The metal portions of this product contain lead, a**  
23                           **chemical known to the state of California to cause**  
24                           **birth defects or other reproductive harm.**

25 Warnings issued for Products pursuant to this subsection shall be prominently placed with such  
26 conspicuousness as compared with other words, statements, designs, or devices as to render it likely  
27 to be read and understood by an ordinary individual under customary conditions of use or purchase.  
28 Any material changes to the language or format of the warning required by this subsection shall

1 only be made following: (1) approval from the California Attorney General's Office, provided that  
2 written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or  
3 (2) Court approval.

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

6  
7 **WARNING: The following products will expose consumers to  
8 lead, a chemical known to the state of California to  
9 cause birth defects or other reproductive harm:**

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

11 or

12 **WARNING: The metal portions of these products contain lead, a  
13 chemical known to the state of California to cause  
14 birth defects or other reproductive harm.**

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

16 (c) Conspicuousness of Warning. A point of sale warning provided pursuant to  
17 subsection 2.0(a)(ii) shall be prominently placed with such conspicuousness as compared with other  
18 words, statements, designs, or devices as to render it likely to be read and understood by an  
19 ordinary individual under customary conditions of purchase and shall be placed or written in a  
20 manner such that the consumer understands to which *specific* Products the warnings apply so as to  
21 minimize if not eliminate the chances that an over-warning situation will arise. Any material  
22 changes to the language or format of the warning required for Products by this section 2.0 shall only  
23 be made following: (1) approval from the California Attorney General's Office, provided that  
24 written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or (2)  
25 Court approval upon a properly noticed motion.

26 (d) Internet Sales. Memory shall satisfy its warning obligations for Products that  
27 are sold from the internet to California residents, by arranging for the provision of a warning  
28 containing the language in subsection 2.2(u) to be included: (a) on the website; or (b) with the  
Product when it is shipped to an address in California. Any warnings given on the website shall  
identify the specific Product to which the warning applies as well as comply with subsections (i) and

1 (ii) as applicable:

2 (i) Internet Web Sites and Pages. The warning shall be provided either (a)  
3 on the same web page on which a Product is displayed; (b) on the same web page as the order form  
4 for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages  
5 displayed to a purchaser during the checkout and order confirmation process for sale of a Product.  
6 The warning shall be displayed in one or more of these locations in a manner such that is calculated  
7 to ensure that it will be read and understood by an ordinary individual under customary conditions  
8 of purchase of a Product prior to purchase, including through the use of the same language and  
9 adherence to the specificity requirements that appear in subsection 2.2(a); and

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

19 2.3 Reformulation Standards. Notwithstanding any other provision of this Consent  
20 Judgment, no warning pursuant to section 2.2 above for exposure to lead shall or need be provided  
21 by the Noticed Party for "Reformulated Products." Products satisfying the conditions of section  
22 2.3(a) and (b) set forth below, qualify as Reformulated Products.

23 (i) The Product must produce a test result no higher than  
24 5.0 micrograms ("ug") of lead using a Ghost Wipe™ test applied to all metal portions of the  
25 Product performed as outlined in NIOSH Method No. 9100; or

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

28 2.4 Reformulation Commitment. By entering into this Consent Judgment, Memory  
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1 hereby agrees to undertake all commercially reasonable efforts to ensure that as many Products as  
2 possible that it intends to sell in California on or after July 1, 2006, shall qualify as Reformulated  
3 Products. Commercially reasonable efforts shall require Memory to implement all available  
4 reformulation measures (without violating existing copyright, trademark or other applicable laws)  
5 including: (1) contacting the suppliers of the tiffany-style lamps, in writing, to request that the  
6 Products be manufactured with lead-free solder or came by a date certain; and, if the attempts noted  
7 in number 1 above are unsuccessful, (2) researching other suppliers of tiffany-style lamps and  
8 contacting them to supply Products manufactured with lead-free solder or came.

9 Memory shall certify, in a report to Brimer on August 1, 2006, that it has undertaken such  
10 commercially reasonable efforts. Said certification shall describe the reformulation measures taken  
11 by Memory and shall identify those products which Memory is unable to reformulate.

12 3.0 MONETARY RELIEF

13 3.1 Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health &  
14 Safety Code §25249.7(b), the Noticed Party shall deliver a check for all civil penalties of \$10,000  
15 made payable to "Hirst & Chanler In Trust For Russell Brimer" and shall be delivered to Plaintiff's  
16 counsel on or before February 20, 2006 at the following address:

17 Hirst & Chanler LLP  
18 Attn: Laralei S. Paras  
19 2560 Ninth Street  
20 Parker Plaza, Suite 214  
Berkeley, CA 94710

21 (a) Apportionment of Penalties Received. All penalty monies shall be  
22 apportioned by Mr. Brimer in accordance with Health & Safety Code §25192, with 75% of these  
23 funds remitted to the Office of Environmental Health Hazard Assessment and the remaining 25% of  
24 these penalty monies retained by Plaintiff as provided by Health and Safety Code §25249.12(d).

25 4.0 REIMBURSEMENT OF FEES AND COSTS

26 4.1 The Parties acknowledge that Russell Brimer offered to resolve the dispute without  
27 reaching an agreement on the amount of attorney's fees and costs to be reimbursed to Russell

28 Brimer, thereby leaving open this issue to be resolved after the material terms of the settlement had  
STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT

1 been reached, and the agreement signed. The Parties then attempted to (but did not) reach an  
2 accord on the compensation due to Russell Brimer and his counsel under the private attorney  
3 general doctrine codified at Code of Civil Procedure § 1021.5 for all work performed through the  
4 Effective Date of the Agreement and reasonably to be performed in connection with the terms set  
5 forth in this Agreement after the Effective Date. The parties do agree, however, that Russell Brimer  
6 and his counsel are entitled to their reasonable attorneys fees and costs under the prerequisites set  
7 forth by CCP §1021.5; however, they disagree as to the amount of such fees. Accordingly,  
8 following the execution of this Agreement, plaintiff shall make an application to the Court for an  
9 award of his expert, investigation and attorneys fees and costs under the private attorney general  
10 doctrine codified at Code of Civil Procedure §1021.5.

11 Notwithstanding the agreement that plaintiff and his counsel shall seek their fees and  
12 costs pursuant to this subsection, Memory and its counsel agree (1) to fulfill their obligation to pay  
13 sanctions to counsel for plaintiff in the amount of \$690.00 on or before February 17, 2006, as  
14 ordered by the Alameda Superior Court; and (2) that plaintiff and his counsel reserve the right to  
15 seek reimbursement for their un-recouped fees and costs incurred in the discovery motion heard on  
16 January 26, 2006.

17 In an effort to save resources, Memory may elect to have the outstanding fee and  
18 cost issue adjudicated by binding arbitration through the American Arbitration Association or JAMS  
19 Resolution Services in the third party's San Francisco offices so long as Memory: (1) provides  
20 written notice to Brimer of its intent to invoke this procedural option no later than the close of  
21 business on February 17, 2006; (2) agrees to pay the costs of the arbitration; (3) stipulates that the  
22 parties will inform the arbitration service that it is the objective of the parties that the process be  
23 completed on or before March 17, 2006; and (4) the award shall be paid within ten days of the  
24 issuance of the decision.

## 25 5.0 RELEASE OF ALL CLAIMS

26 5.1 Mr. Brimer's Release of Memory. Mr. Brimer, by this Consent Judgment, on behalf  
27 of himself, his agents, representatives, attorneys, assigns, and in the interest of the general public  
28 ("Releasing Parties"), waives all rights to institute or participate in, directly or indirectly, any form

1 of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines, penalties,  
2 fees, and all rights to damages, restitution, injunctive relief, and any other form of relief, whether  
3 legal or equitable (collectively the "Claims"), against Memory and its directors, officers, employees,  
4 parents, subsidiaries, affiliates, customers, successors and assigns, whether under Proposition 65 or  
5 other statutory law for Claims based on their alleged failure to warn about exposure to the Listed  
6 Chemicals contained in any of the Products. This paragraph specifically excludes plaintiff and his  
7 counsel's fees and costs covered by Paragraph 4.1 above.

8       5.2 Final Resolution. This Consent Judgment is a full, final and binding resolution  
9 between Mr. Brimer, on behalf of himself and in the interest of the general public, and Memory, of  
10 any violation of Proposition 65 or any other claim that was or could have been asserted based on  
11 alleged failure to warn for exposure to the Listed Chemical(s) in the Products (collectively the  
12 "Released Claims"), or other facts alleged in the 60-Day Notices. The parties intend compliance  
13 with this Consent Judgment to resolve any past issue concerning the Products and any future issue  
14 concerning the Products so long as Memory complies with this Consent Judgment) compliance with  
15 Proposition 65 as such compliance pertains to the Products at issue. In addition, Mr. Brimer, on  
16 behalf of himself, his attorneys, and his agents, waives all rights to institute any form of legal action  
17 against Memory, its attorneys or representatives, directors, officers, employees, parents,  
18 subsidiaries, affiliates, customers, successors and assigns for all actions or statements made by  
19 Memory or its attorneys or representatives, in the course of responding to violations of Proposition  
20 65 by Memory alleged in the 60-Day Notices with the exception of seeking his fees and costs  
21 pursuant to CCP §1021.5 and sanctions award as set forth in Paragraph 4.1.

22       5.3 Memory's Release of Mr. Brimer. Memory, by this Consent Judgment, waives all  
23 rights to institute any form of legal action against Mr. Brimer and his attorneys or representatives,  
24 for all actions or statements made by Mr. Brimer or his attorneys or representatives, in the course of  
25 seeking enforcement of Proposition 65 against Memory in this litigation. Provided, however, that  
26 Memory shall remain free to institute any form of legal action to enforce the provisions of this  
27 Consent Judgment.

28       6.0 Memory's Sales Data. Memory understands that the sales data provided to counsel for Mr.



1 Brimer through the Declaration of Charles D. Sizemore by Memory executed on December 28,  
2 2005 are a material factor upon which Mr. Brimer has relied to determine the amount of payments  
3 made pursuant to Health & Safety Code §25249.7(b) in this Consent Judgment. To the best of  
4 Memory's knowledge, the sales data provided are true and accurate.

5 7.0 Severability. In the event that any of the provisions of this Consent Judgment is held by a  
6 court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

7 8.0 Attorneys' Fees. In the event that a dispute arises with respect to any provision(s) of this  
8 Consent Judgment (including, but not limited to, disputes arising from payments to be made under  
9 this Consent Judgment), reasonable attorney's fees shall be awarded to the prevailing party. This  
10 provision shall not apply to the CCP §1021.5 fee procedure set forth in Paragraph 4.1.

11 9.0 Governing Law. The terms of this Consent Judgment shall be governed by the laws of the  
12 State of California.

13 10. Notices. All correspondence to Mr. Brimer shall be mailed to:

14 Laralei S. Paras, Esq.  
15 HIRST & CHANLER LLP  
2560 Ninth Street  
16 Parker Plaza, Suite 214  
Berkeley, CA 94710  
17 Tel: (510) 848-8880  
Fax: (510) 848-8118

18 All correspondence to Memory shall be mailed to:

19 J.T. Wells Blaxter (State Bar No. 190222)  
20 Michael J. Hassen (State Bar No. 124823)  
JEFFER, MANGELS, BUTLER & MARMARO LLP  
21 Two Embarcadero Center, Fifth Floor  
22 San Francisco, CA 94111-3824

23 11.0 Compliance With Reporting Requirements (Health & Safety Code §25249.7(f)). The parties  
24 acknowledge that the reporting provisions of Health & Safety Code § 25249.7(f) apply to this  
25 Consent Judgment. Counsel for Mr. Brimer shall comply with that Paragraph by submitting the  
26 required reporting form to, and serving a copy of this Consent Judgment on, the California Attorney  
27 General's Office.

28 12.0 Additional Post Execution Activities. The Parties shall mutually employ their best efforts to

1 support the entry of this Agreement as a Consent Judgment and obtain approval of the Consent  
2 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to Health &  
3 Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent  
4 Judgment. Accordingly, Plaintiff shall file a Motion to Approve the Agreement ("Motion"),  
5 preferably as a joint motion if the parties can so agree. In an effort to achieve this objective, counsel  
6 for Memory agrees to transmit a draft of the moving papers to counsel for Plaintiff within fourteen  
7 (14) days after the Effective Date and the parties will endeavor to file a joint application to the  
8 Court; if the moving papers are not provided to Plaintiff in a timely manner, or the parties cannot  
9 ultimately agree on the final papers to file, Plaintiff shall file the Motion to Approve on his own. In  
10 the event that any third party, including the Attorney General or any other public enforcer, objects  
11 or otherwise comments to one or more provisions of this Agreement, Memory agrees to undertake  
12 its best efforts to satisfy such concerns or objections and support the terms of this Agreement.

13 **13.0 Duties Limited to California.** This Consent Judgment shall have no effect on Products sold  
14 by Memory for use outside the State of California.

15 **14.0 Entire Agreement.** This Consent Judgment contains the sole and entire agreement and  
16 understanding of the parties with respect to the entire subject matter hereof, and any and all prior  
17 discussions, negotiations, commitment and understandings related hereto. No representations, oral  
18 or otherwise, express or implied, other than those contained herein have been made by any party  
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
20 to exist or to bind any of the parties.

21 **15.0 Counterparts and Facsimile.** This Consent Judgment may be executed in counterparts and  
22 facsimile, each of which shall be deemed an original, and all of which, when taken together, shall  
23 constitute one and the same document.

24 **16.0 Authorization.** The undersigned are authorized to execute this Consent Judgment on behalf  
25 of their respective parties and have read, understood and agree to all of the terms and conditions of  
26 this Consent Judgment.

27 **17.0 Binding Effect.** This Consent Judgment shall inure to the benefit of, and shall be binding  
28 upon, the parties and their respective agents, alter egos, attorneys, directors, divisions, employees,

1 heirs, legal predecessors, licensees, officers, parent companies, partners, representatives,  
2 shareholder, subsidiaries, successors, and any trustee or other officer appointed in the event of  
3 bankruptcy.

4 18.0 Representation. The parties acknowledge and warrant that they have been represented by  
5 counsel of their own choosing through all negotiations which preceded the execution of this  
6 Consent Judgment.


7  
8 **AGREED TO:**

9 Date: 2/10/06

10 By:   
11 RUSSELL BRIMER

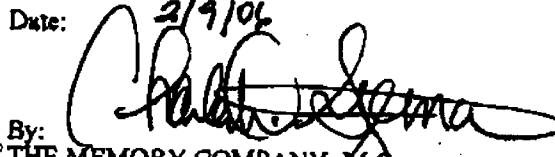
12 **APPROVED AS TO FORM:**

13 Date: 2/10/2006  
14 HIRST & CHANLER LLP

15  
16  
17 By:   
18 Laralei S. Paras  
19 Attorney for Plaintiff  
RUSSELL BRIMER

8 **AGREED TO:**

9 Date: 2/9/06

10 By:   
11 THE MEMORY COMPANY, LLC

12 **APPROVED AS TO FORM:**

13 Date: 2/9/06  
14 JEFFER, MANGELS, BUTLER &  
15 MARMARO, LLP

16  
17 By:   
18 J.T. Wells Blaxter  
19 Attorney for Defendant  
THE MEMORY COMPANY, LLC 2/15/06

20  
21  
22 **EXHIBIT A**

23 Stained glass lamps (containing lead) including, but not limited to:

24 *Raulers Small Tiff Lamp.*

25  
26  
27  
28 **STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT**