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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 IN THE COUNTY OF ALAMEDA
20 UNLIMITED CIVIL JURISDICTION

22 RUSSELL BRIMER,

23 Plaintiff,

24 v.

25 McCAULOU'S DEPARTMENT STORE;
26 GANZ, INC.; and DOES 1 through 150,

27 Defendants.

Case No. RG-05-203616

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

1 **1. INTRODUCTION**

2 1.1 **Plaintiff and Settling Defendants.** This Consent Judgment (“Agreement”) is
3 entered into by and between plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”),
4 McCaulou’s, Inc. (sued herein as McCaulou’s Department Store (hereafter “McCaulou’s”)) and
5 Ganz, Inc. (hereafter “Ganz”) (McCaulou’s and Ganz are referred to herein collectively as
6 “Defendants”), with Brimer, McCaulou’s and Ganz collectively referred to as the “Parties” and
7 individually referred to as a “Party.”

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

11 1.3 **General Allegations.** Plaintiff alleges that Defendants McCaulou’s and Ganz
12 manufactured, distributed and/or sold in the State of California glassware with colored artwork,
13 designs or markings on the exterior surface that contain lead, and that in addition McCaulou’s
14 distributed and/or sold mugs and other tableware intended for the consumption of food and/or
15 beverages with colored artwork, designs or markings on the exterior surface that contain the lead
16 and/or cadmium. Lead and cadmium are substances listed pursuant to the Safe Drinking Water
17 and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.*, also
18 known as Proposition 65, to cause birth defects (or other reproductive harm) and are herein after
19 referred to as the “Listed Chemicals”.

20 1.4 **Product Descriptions.** A list of products manufactured, distributed and/or sold or
21 to be sold to California residents by Ganz which are covered by this Agreement is provided in
22 Exhibit A (“Ganz Products”). A list of products distributed and/or sold or to be sold to California
23 residents by McCaulou’s which are also covered under this Agreement is provided in Exhibit B
24 (“McCaulou’s Products”) (all Ganz Products and McCaulou’s Products are collectively referred
25 to hereinafter as the “Products”).

26 1.5 **Notices of Violation.** Beginning on December 17, 2004, Brimer served
27 defendants Ganz and McCaulou’s and various public enforcement agencies with documents,
28 entitled “60-Day Notice of Violation” (“Notices”) that provided Ganz, McCaulou’s and such

1 public enforcers with notice alleging that Defendants were in violation of Health & Safety Code
2 §25249.6 for failing to warn purchasers that certain products that they manufactured, distributed
3 and/or sold expose users in California to the Listed Chemicals.

4 1.6 **Complaint.** On March 18, 2005, Brimer, in the interest of the general public in
5 California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the
6 Superior Court in the County of Alameda against McCaulou’s and Does 1 through 150, alleging,
7 violations of Health & Safety Code §25249.6 based on the alleged exposures to one or more of
8 the Listed Chemicals contained in certain products sold by defendants in California. On
9 November 3, 2005, Brimer filed an amendment to the Complaint, adding defendant Ganz, Inc. as
10 Doe 1.

11 1.7 **No Admission.** Defendants deny the material factual and legal allegations
12 contained in Plaintiff’s Notices and Complaint and maintain that all products that they have
13 manufactured, distributed and/or sold in California including the Products have been and are in
14 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
15 by Defendants of any fact, finding, issue of law, or violation of law, nor shall compliance with
16 this Consent Judgment constitute or be construed as an admission by Defendants of any fact,
17 finding, conclusion, issue of law or violation of law. However, this section shall not diminish or
18 otherwise affect the obligations, responsibilities and duties of Defendants under this Consent
19 Judgment.

20 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
21 stipulate that this Court has jurisdiction over the allegations of violations contained in the
22 Complaint, and has personal jurisdiction over Defendants as to the acts alleged in the Complaint,
23 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
24 Consent Judgment and to enforce the provisions thereof.

25 1.9 **Effective Date.** For purposes of this Consent Judgment, “Effective Date” shall be
26 April 15, 2006.

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1 2. **INJUNCTIVE RELIEF: PROPOSITION 65**

2 2.1 **WARNINGS AND REFORMULATION OBLIGATIONS**

3 (a) **Required Warnings.** After the Effective Date, Defendants shall not ship
4 or offer for sale in California any Products containing the Listed Chemicals, unless warnings are
5 given in accordance with one or more provisions in subsection 2.2 below.

6 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and
7 2.2 below shall not apply to:

8 (i) Products compliant with Interim Glassware Reformulation
9 Standards as set forth in subsection 2.3.1 below; and

10 (ii) Reformulated Products as defined in subsections 2.3.2 and 2.3.3
11 below.

12 2.2 **CLEAR AND REASONABLE WARNINGS**

13 (a) **Product Labeling.** A warning is affixed to the packaging, labeling or
14 directly to or on a Product by Defendants, their agents, or the manufacturer, importer, or
15 distributor of the Product that states:

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

21 or

22 **WARNING: The materials used as colored decorations on the**
23 **exterior of these products contain chemicals**
24 **known to the State of California to cause cancer**
25 **and birth defects or other reproductive harm.¹**

26 Warnings affixed to Products pursuant to this subsection shall be prominently placed with
27 such conspicuousness as compared with other words, statements, designs, or devices as to render
28 it likely to be read and understood by an ordinary individual under customary conditions of use or
purchase. For purposes of this subsection, a warning placed on the bottom of a Product or on the
bottom of a Product's packaging is not an adequate warning. Any changes to the language or

¹ This warning language shall only be used where the Products are sold as a set.

1 format of the warning required by this subsection shall only be made following: (1) approval
2 from the California Attorney General's Office provided that written notice of at least fifteen (15)
3 days is given to Plaintiff for the opportunity to comment; or (2) Court approval pursuant to a
4 noticed motion provided that Plaintiff is provided statutory notice pursuant to CCP §1005(b).

5 (b) **Point-of-Sale Warnings.** Defendants may also satisfy the warning
6 requirements of Proposition 65 and subsection 2.1(a), above, where applicable, through arranging
7 for the posting of signs at retail outlets in the State of California at which Products are sold, in
8 accordance with the terms specified in subsections 2.2(b)(i)-(iv).

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

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

16 Where more than one Product is sold in proximity to other like items or to those
17 that do not require a warning (e.g., Reformulated Products as defined in section 2.3), the
18 following warning must be used:²

19 **WARNING: The materials used as colored decorations on**
20 **the exterior of the following glassware products**
21 **sold in this store contain lead and/or cadmium,**
22 **chemicals known to the State of California to**
23 **cause cancer and birth defects or other**
24 **reproductive harm:**

25 ***[List Each Product By Brand Name and Description]***

26 (ii) In lieu of displaying warning signs with the language set forth
27 above, a defendant may elect to combine the point-of-sale warning signs required under this
28 Consent Judgment with any warnings it provides or an entity to whom it ships products for retail
sale provides for ceramic tableware (as defined in the Consent Judgment in *People v. Josiah*

² For purposes of this Consent Judgment, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other so that the consumer, under customary conditions, could not reasonably determine which of the two products is subject to the warning sign.

1 *Wedgwood & Sons, Inc.*) or lead crystal (as defined in the Consent Judgment in *Mateel*
2 *Environmental Justice Foundation v. T.J. Maxx*), through use of the warning sign in the form of
3 Exhibit C-1. If a defendant elects to provide combined warnings pursuant to the terms of this
4 section through use of Exhibit C-1³, then a defendant or an entity to whom it ships products for
5 retail sale shall place the Designated Symbol (the yellow triangle shown in Exhibit C) next to
6 each display of Products, ceramic tableware, and lead crystal for which a warning is to be given.
7 If a defendant elects or an entity to whom it ships products for retail sale agrees to combine its
8 Products, ceramic tableware and lead crystal warnings pursuant to this subsection, display of
9 warnings for ceramic tableware, leaded crystal and the Products in the manner set forth in this
10 subsection shall constitute compliance with Proposition 65 for all such products.

11 (iii) If Ganz intends to utilize point of sale warnings to comply with
12 this Consent Judgment, it must provide notice as required by this Consent Judgment to each
13 retailer to whom Ganz ships the Products for sale in California and obtain the written consent of
14 such retailer before shipping the Products. Such notice shall include a copy of this Consent
15 Judgment and any required warning materials (including, as appropriate, signs and/or stickers). If
16 Ganz has obtained the written consent of a retailer to post warning signs in accordance with
17 subsection 2.2(b) of this agreement, Ganz shall not be found to have violated this Consent
18 Judgment if it has complied with the terms of this Consent Judgment and has proof that it
19 transmitted the requisite warnings and received written consent in the manner provided herein.

20 (iv) A point of sale warning provided pursuant to subsection 2.2(b)(i)-
21 (iii) shall be prominently placed with such conspicuousness as compared with other words,
22 statements, designs, or devices as to render it likely to be read and understood by an ordinary
23 individual under customary conditions of use or purchase and shall be placed or written in a
24 manner such that the consumer understands to which *specific* Products the warnings apply so as
25 to minimize if not eliminate the chances that an over-warning situation will arise. Any changes to

26 _____
27 ³ Defendant McCaulou's shall be deemed to have complied with this subsection if it elects
28 to provide combined warnings pursuant to the terms of this section through use of Exhibit C-2 in
lieu of Exhibit C-1.

1 the language or format of the warning required for Products by this subsection shall only be made
2 following: (1) approval from the California Attorney General's Office, provided that written
3 notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; and
4 (2) Court approval pursuant to a noticed motion provided that Plaintiff is provided statutory
5 notice pursuant to CCP §1005(b).

6 2.3 **Reformulation Standards.** The following section sets forth the specifications
7 which the Products must meet in order to be sold without a Proposition 65 warning. For purposes
8 of this section, the following definitions apply:

9 "Children's Product" is defined as any Product intended or
10 marketed primarily for use by children such as: Products of a reduced size
11 so as to be marketed primarily for children (*e.g.*, reduced-size juice glasses
12 intended for use by children); or Products with designs which are affiliated
13 with children's toys or entertainment.

14 "Exterior Decorations" is defined as all colored artwork, designs
15 and/or markings on the exterior surface of the Product.

16 "No Detectable lead or cadmium" shall mean that neither lead nor
17 cadmium is detected at a level above two one-hundredths of one percent
18 (0.02%) of lead or eight one-hundredths of one percent (0.08%) of
19 cadmium by weight, respectively, using a sample size of the materials in
20 question measuring approximately 50-100 mg and a test method of
21 sufficient sensitivity to establish a limit of quantitation of less than 200
22 ppm.⁴

23 "Reformulated Product" refers to any Product that meets the
24 reformulation standards described in sections 2.3.1, 2.3.2 or 2.3.3 as set
25 forth below.

26
27 ⁴ If the decoration is tested after it is affixed to the Product, the percentage of the Listed
28 Chemical by weight must relate only to the decorating material and must not include any quantity
attributable to non-decorating material (*e.g.*, the glass substrate).

1 “Glassware Food/Beverage Products” shall mean glass tableware
2 products with colored artwork and/or designs on the exterior surface that
3 are manufactured, decorated, imported, distributed or offered for use or
4 sale by Defendant and that are purchased and/or used by individuals in
5 California for the storage, serving or consumption of food or beverages
6 (other than the products identified on Exhibit A to the Consent Judgment
7 approved by the San Francisco Superior Court in the matter of *Brimer v.*
8 *Ganz, Inc.*, Case No. CGC-05-439990) including, but not limited to:
9 bottles, condiment dispensers, plates, trays, serving platters and other like
10 items.

11 “Glassware Non-Food/Beverage Use Product” are glassware
12 household products with colored artwork and/or designs on the exterior
13 surface that are manufactured, decorated, imported, distributed or offered
14 for use or sale by Defendant and that are purchased and/or used by
15 individuals in California that: (i) appear to be suitable for food or
16 beverage use but are labeled in accordance with requirements described in
17 21 Code of Federal Regulations (“C.F.R.”) 109.16 for products not
18 intended for use with food or beverages; (ii) physically could not be used
19 to store, serve or consume foods or beverages; or (iii) are not reasonably
20 used for the storage, serving or consumption of food or beverages. Such
21 products include, but are not limited to: lotion dispensers, soap
22 dispensers, toothbrush holders, soap dishes and other like items.

23 **2.3.1 Interim Glassware Reformulation Standards.** If any Ganz Product that
24 qualifies as a Glassware Food/Beverage Product is manufactured or shipped for sale in California,
25 or sold in California, after the Effective Date and before December 31, 2006, the product shall
26 achieve a result of 1.5 ppm or less for lead and 8.0 ppm or less for cadmium when tested under
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1 the protocol attached hereto as Exhibit D⁵ (the ASTM C927-80 test method modified for total
2 immersion with results corrected for internal volume.) A Children's Product must nevertheless
3 meet the standards outlined in subsection 2.3.2(b) to be considered a Reformulated Product.

4 **2.3.2 Final Glassware Reformulation Standards:**

5 A Product that qualifies as a Glassware Food/Beverage Product is a Reformulated Product
6 if it satisfies either the standard outlined in subsection 2.3.2 (a) *or* (b), subject to the following
7 qualifications:

8 All Children's Products must meet the Decorative Material Content-Based
9 standard outlined in subsection 2.3.2(b) to be considered a Reformulated Product.

10 A Product that qualifies as a Glassware Non-Food/Beverage Use Product may qualify as a
11 Reformulated Product by meeting the Glassware Food/Beverage Product standards outlined in
12 2.3.2(a) *or* 2.3.2(b) *or* the alternate Glassware Non-Food/Beverage Product standard outlined in
13 2.3.2(c) if applicable.

14 (a) **Wipe Test-Based Standard.** The Product must produce a test result no
15 higher than 1.0 micrograms (ug) of lead or 8.0 ug of cadmium as applied to the Exterior
16 Decorations and performed as outlined in NIOSH method no. 9100.

17 (b) **Decorating Material Content-Based Standard.** The Exterior
18 Decorations, exclusive of the Lip and Rim Area, must only utilize decorating materials that
19 contain six one-hundredths of one percent (0.06%) of lead *and* forty-eight one-hundredths of one
20 percent (0.48%) of cadmium by weight or less as measured either before or after the material is
21 fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050B.⁶

22 (c) **Alternative Non Food/Beverage Use Product Standard.** A Product that
23 is a Glassware Non Food/Beverage Use Product qualifies as a Reformulated Product if it achieves

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25 ⁵ Because this method requires correction for internal volume, this method is only
26 appropriate for glass hollowware, as such no adjustment for internal volume is required if the
Glass Food Product is one without internal volume, *e.g.* a plate.

27 ⁶ If the decoration is tested after it is affixed to the Product, the percentage of the Listed
28 Chemical by weight must relate only to the decorating material and must not include any quantity
attributable to non-decorating material (*e.g.*, the glass substrate).

1 a test result of 4.0 ug of lead *and* 32.0 ug of cadmium or less as applied to all of the decorated
2 portions of all surfaces of the Product performed as outlined in NIOSH method no. 9100. A
3 Children's Product that is also a Glassware Non-Food/Beverage Use Product must nevertheless
4 meet the standards outlined in subsection 2.3.2(b) to be considered a Reformulated Product.

5 **2.3.3 Ceramicware Reformulation Standards**

6 A McCaulou's Product that qualifies as a Product is a Reformulated Product if it satisfies
7 the standards outlined in subsections 2.3.3(a) *or* (b) *or* (c), subject to the following qualifications:

8 All Children's Product must meet the Decorating Materials Content-Based
9 Standard outlined in subsection 2.3.3(b) to be considered a Reformulated Product.

10 If the Product is decorated in the Lip and Rim Area, it must also satisfy subsection
11 2.3.3(d) to be considered a Reformulated Product.

12 A Product that qualifies as a Ceramic Non-Food/Beverage Use Product may qualify as a
13 Reformulated Product by meeting the Ceramic Food/Beverage standards outlined in 2.3.3(a) *or*
14 2.3.3(b) *or* the alternate Glassware Non-Food/Beverage standard outlined in 2.3.3(e) if
15 applicable.

16 (a) **Wipe Test-Based Standard.** The Product must produce a test result no
17 higher than 1.0 micrograms (ug) of lead or 8.0 ug of cadmium applied on decorated portions of
18 the surface of the Product performed as outlined in NIOSH method no. 9100.

19 (b) **Decorating Material Content-Based Standard.** The Exterior
20 Decorations, exclusive of the Lip and Rim Area, must only utilize decorating materials that
21 contain six one-hundredths of one percent (0.06%) of lead by weight or less *and* forty-eight one-
22 hundredths of one percent (0.48%) of cadmium by weight or less, as measured either before or
23 after the material is fired onto (or otherwise affixed to) the Product, using EPA Test Method
24 3050B.⁷

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27 ⁷ If the decoration is tested after it is affixed to the Product, the percentage of the Listed
28 Chemical by weight must relate only to the decorating material and must not include any quantity
attributable to non-decorating material (*e.g.*, the ceramicware substrate).

1 (c) **Total Acetic-Acid Immersion Test Based Standard.** The Product must
2 achieve a result of 0.99 ppm or less for lead *and* 7.92 ppm or less for cadmium after correction for
3 internal volume when tested under the protocol attached hereto as Exhibit D (the ASTM C927-80
4 test method, modified for total immersion with results corrected for internal volume).⁸

5 (d) **Lip and Rim Area Exterior Decoration.** If the Ceramicware
6 Food/Beverage Product contains Exterior Decorations in the Lip and Rim Area:

7 (i) Any Exterior Decorations that extend into the Lip and Rim Area
8 must only utilize decorating materials that contain No Detectable lead or cadmium *or*

9 (ii) The Ceramicware Food/Beverage Product must yield a test result
10 showing a concentration level of 0.5 ug/ml or less of lead *and* a result of 4.0 ug/ml or less of
11 cadmium using ASTM method C 927-80.⁹

12 (e) **Alternative Non Food/Beverage Use Product Standard.** A Product that
13 is a Ceramic Non Food/Beverage Use Product qualifies as a Reformulated Product if it achieves a
14 test result of 4.0 ug of lead *and* 32.0 ug of cadmium or less as applied to all of the decorated
15 portions of all surfaces of the Product performed as outlined in NIOSH method no. 9100. A
16 Children's Product that is also a Glassware Non-Food/Beverage Use Product must nevertheless
17 meet the standards outlined in subsection 2.3.3(b) to be considered a Reformulated Product.

18 **2.4 REFORMULATION COMMITMENT.** Ganz hereby commits to undertake
19 good faith efforts to ensure that as many of its Products (as set forth in Exhibit A hereto) as
20 reasonably possible that it manufactures, distributes or offers for sale in California beginning on
21 the Effective Date and thereafter, shall either qualify as Reformulated Products or will otherwise
22 be exempt from the warning requirements of section 2.2, with the commitment that at least eighty
23 percent (80%) of the Products manufactured beginning on December 31, 2006, and thereafter,
24 *and* reasonably likely to be sold in California will not require warnings pursuant to section 2.2,
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27 ⁸ Because this method requires correction for internal volume, this method and
subsections 2.3.3(c) and 2.3.3(d)(ii) are only appropriate for ceramic hollowware.

28 ⁹ This subsection 2.3.3(d)(ii) is only appropriate for ceramic hollowware.

1 with the further commitment to undertake all commercially reasonable efforts to sell one-hundred
2 percent (100%) Reformulated Products in California, after January 1, 2007.

3 **3. MONETARY PAYMENTS**

4 3.1 **Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to
5 Health & Safety Code §25249.7(b), Ganz shall pay the sum of \$24,000 in civil penalties payable
6 in two equal installments with the first payment of \$12,000 to be made not later than April 21,
7 2006. The second Ganz penalty payment of \$12,000 shall be paid on July 15, 2007. The second
8 Ganz penalty payment shall be waived in the event that Ganz certifies on or before July 10, 2007
9 that 100% of the Ganz Products (Exhibit A) it sold in California from January 1, 2007 through
10 June 30, 2007 were Reformulated Products. McCaulou's shall pay the sum of \$2,500 in civil
11 penalties. These payments by Ganz and McCaulou's shall be made payable to "Chanler Law
12 Group in Trust For Russell Brimer," and shall be delivered to Plaintiff's counsel on or before
13 April 21, 2005, at the following address:

14 CHANLER LAW GROUP
15 Attn: Clifford A. Chanler
16 71 Elm Street, Suite 8
New Canaan, CT 06840

17 (a) In the event that Defendants pay any penalty and the Consent Judgment is
18 not thereafter approved and entered by the Court, Brimer shall return to Ganz or McCaulou's,
19 respectively, any penalty funds paid by Ganz or McCaulou's under this agreement within fifteen
20 (15) days of receipt of a written request from Ganz or McCaulou's following notice of the
21 issuance of the Court's decision.

22 (b) The Parties agree that Defendants' potential interest in and ability to
23 acquire and market Reformulated Products is to be accounted for in this section and, since it is
24 not a remedy provided for by law, the absence of Defendants previously acquiring,
25 manufacturing, marketing or selling Reformulated Products is not relevant to the establishment
26 of a penalty amount pursuant to section 3.1 above.

27 3.2 **Apportionment of Penalties Received.** After Court approval of this Consent
28 Judgment pursuant to section 6, all monies received as civil penalties shall be apportioned by

1 Plaintiff in accordance with Health & Safety Code §25192, with 75% of these funds remitted to
2 the State of California's Office of Environmental Health Hazard Assessment and the remaining
3 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code
4 §25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of
5 California the appropriate civil penalties paid in accordance with this section.

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

7 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
8 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
9 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
10 Defendants then expressed a desire to resolve the fee and cost issue shortly after the other
11 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
12 the compensation due to Plaintiff and his counsel under the private attorney general doctrine
13 codified at Code of Civil Procedure §1021.5 for all work performed through the Effective Date of
14 the Agreement. Under the private attorney general doctrine codified at Code of Civil Procedure
15 §1021.5, Defendants shall reimburse Plaintiff and his counsel for fees and costs, incurred as a
16 result of investigating, bringing this matter to Defendants' attention, litigating and negotiating a
17 settlement in the public interest. Ganz shall pay Plaintiff and his counsel \$37,200 and
18 McCaulou's shall pay Plaintiff and his counsel \$12,500 for all attorneys' fees, expert and
19 investigation fees, and litigation costs. The payment shall be made payable to the "Chanler Law
20 Group" and shall be delivered to Plaintiff's counsel on or before April, 21 2006, at the following
21 address:

22 CHANLER LAW GROUP
23 Attn: Clifford A. Chanler
24 71 Elm Street, Suite 8
25 New Canaan, CT 06840

26 4.2 Except as specifically provided in this Consent Judgment, Defendants shall have
27 no further obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with
28 regard to the Products covered in this Action.

5. RELEASE OF ALL CLAIMS

1 5.1 **Plaintiff's Release of Defendants.** In further consideration of the promises and
2 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
3 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
4 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
5 participate in, directly or indirectly, any form of legal action and releases all claims, including,
6 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
7 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
8 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
9 unknown, fixed or contingent (collectively "Claims"), against Defendants and each of their
10 licensors, licensees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent
11 companies, corporate affiliates, subsidiaries and their respective officers, directors, attorneys,
12 representatives, shareholders, agents, and employees and against Ganz's distributors and
13 wholesalers (collectively, "Defendants Releasees") arising under Proposition 65 related to
14 Defendants' or Defendants Releasees' alleged failure to warn about exposures to or identification
15 of Listed Chemicals contained in the Products.

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

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

28

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

6 It is further understood that this release extends to Ganz only as to the Ganz Products
7 identified in Exhibit A hereto.

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

12 **6. 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 to the Party which paid such sums to Plaintiff.

18 **7. SALES DATA**

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

26 **8. SEVERABILITY**

1 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
2 Consent Judgment are held by a court of competent jurisdiction to be unenforceable, the validity
3 of the enforceable provisions remaining shall not be adversely affected.

4 **9. ATTORNEY'S FEES**

5 In the event that a dispute arises with respect to any provision(s) of this Consent
6 Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover
7 reasonable and necessary costs and reasonable attorney's fees incurred by the prevailing party to
8 fully and finally resolve such dispute.

9 **10. GOVERNING LAW**

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

15 **11. NOTICES**

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

21 To Ganz: Howard Ganz, President
22 GANZ, INC.
23 60 Industrial Parkway
Cheektowaga, NY 14227-9903

24 With a copy to: Penny Costa
25 John C. Mueller
26 BAKER & HOSTETLER LLP
333 South Grand Avenue, Suite 1800
27 Los Angeles, CA 90071-1523
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To McCaulou's: David McCaulou, CEO
MCCAULOU'S DEPARTMENT STORE
3512 Mt. Diablo Blvd.
Lafayette, CA 94549-3814

With a copy to: Steven J. Cramer
AIKEN, KRAMER & CUMMINGS, INCORPORATED
1111 Broadway, Suite 1500
Oakland, CA 94607

To Plaintiff: Russel Brimer
c/o Clifford A. Chanler, Esq.
CHANLER LAW GROUP
71 Elm Street, Suite 8
New Canaan, CT 06840

With a copy to: Laralei S. Paras
PARAS LAW GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

12. NO ADMISSIONS; SEVERAL LIABILITY

Nothing in this Consent Judgment shall constitute or be construed as an admission by Defendants 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 Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendants. Defendants reserve all of their 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 Defendants' obligations, responsibilities and duties under this Consent Judgment. The respective obligations and representations of Defendants Ganz and McCaulou's are several and not joint.

13. 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.

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1 **14. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

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

9 **15. ADDITIONAL POST EXECUTION ACTIVITIES**

10 The Parties shall mutually employ their best efforts to support the entry of this Agreement
11 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
12 manner. The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
13 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, Plaintiff
14 agrees to file a Motion to Approve the Agreement (“Motion”) within a reasonable period of time
15 after the execution date. Plaintiff’s counsel shall prepare a declaration in support of the Motion
16 which shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to
17 section 4. Defendants shall have no additional responsibility to Plaintiff’s counsel pursuant to
18 CCP §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with
19 respect to the preparation and filing of the Motion or with regard to Plaintiff’s counsel appearing
20 for a hearing or related proceedings thereon.

21 **16. MODIFICATION**

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

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1 17. **AUTHORIZATION**

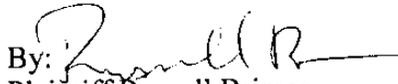
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agree to all of the terms and conditions of this
4 Consent Judgment.

5 AGREED TO:

APPROVED AS TO FORM:

6 Date: 4-13-06

Date: 4-27-2006

7
8 By: 
9 Plaintiff Russell Brimer

HIRST & CHANLER LLP

10 By: 
Laralei S. Paras
Attorneys for Plaintiff RUSSELL BRIMER

11 AGREED TO:

APPROVED AS TO FORM:

12 Date:

Date:

13
14 By:
15 Defendant GANZ INC.

BAKER & HOSTETLER LLP

16 By:
John C. Mueller
Attorney for Defendant GANZ INC.

17 AGREED TO:

APPROVED AS TO FORM

18 Date:

Date:

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21 By:
David R. McCaulou, CEO
22 McCaulou's, Inc.

AIKEN, KRAMER & CUMMINGS, INC.

23 By:
Steven J. Cramer
Attorney for Defendant McCAULOU'S, INC.

24 **IT IS SO ORDERED.**

25
26 Date: _____

JUDGE OF THE SUPERIOR COURT

17. **AUTHORIZATION**

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

AGREED TO:

APPROVED AS TO FORM:

Date:

Date:

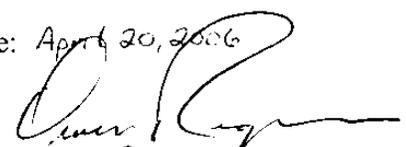
By:
Plaintiff Russell Brimer

HIRST & CHANLER LLP

By:
Laralei S. Paras
Attorneys for Plaintiff RUSSELL BRIMER

AGREED TO:

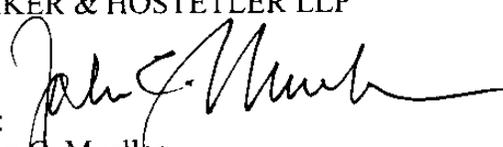
APPROVED AS TO FORM:

Date: *April 20, 2006*


Date: *April 21, 2006*

By: *Owen Rogers*
Defendant GANZ INC.

BAKER & HOSTETLER LLP


By: John C. Mueller
Attorney for Defendant GANZ INC.

AGREED TO:

APPROVED AS TO FORM

Date:

Date:

By:
David R. McCaulou, CEO
McCaulou's, Inc.

AIKEN, KRAMER & CUMMINGS, INC.

By:
Steven J. Cramer
Attorney for Defendant McCAULOU'S, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1 17. **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 AGREED TO:

APPROVED AS TO FORM:

6 Date:

Date:

7

HIRST & CHANLER LLP

8 By:

9 Plaintiff Russell Brimer

By:

10 Laralei S. Paras
Attorneys for Plaintiff RUSSELL BRIMER

11 AGREED TO:

APPROVED AS TO FORM:

12 Date:

Date:

13

BAKER & HOSTETLER LLP

14 By:

15 Defendant GANZ INC.

By:

16 John C. Mueller
Attorney for Defendant GANZ INC.

17 AGREED TO:

APPROVED AS TO FORM

18 Date: 4/19/06

Date: April 19, 2006

19

AIKEN, KRAMER & CUMMINGS, INC.

20 

21 By:

22 David R. McCaulou, CEO
McCaulou's, Inc.

By: 

23 Steven J. Cramer
Attorney for Defendant McCAULOU'S, INC.

24 **IT IS SO ORDERED.**

25

26 Date: _____

JUDGE OF THE SUPERIOR COURT

27

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EXHIBIT A

1
2 Salt and pepper shakers and other glassware with colored artwork or designs
3 (containing one or more Listed Chemicals) on the exterior including, but not limited to:

- 4 La Cocina Salt/Pepper Shakers, BC0630
5 Assorted Pre-pack Salt/Pepper Shakers, BC1840
6 Vineyard Salt/Pepper Shakers, BC1845
7 Mixed Fruit Salt/Pepper Shakers, BC1846
8 Rooster Salt/Pepper Shakers, BC1847
9 Tuscany Salt/Pepper Shakers, BC1848
10 Wine Salt/Pepper Shakers, BC1849
11 Blue Indigo Salt/Pepper Shakers, BC1850
12 Assorted Pre-pack Lotion/Soap Dispenser, BC1860
13 Grapes & Ivy Lotion/Soap Dispenser, BC1865
14 Mixed Fruit Lotion/Soap Dispenser, BC1866
15 Rooster Lotion/Soap Dispenser, BC1867
16 Tuscany Lotion/Soap Dispenser, BC1868
17 Wine Lotion/Soap Dispenser, BC1869
18 Blue Indigo Lotion/Soap Dispenser, BC1870
19 La Cocina – Prepak Oil Bottles, BC0621
20 Assorted Pre-pack Oil Bottles, BC9710
21 Mediterranean Oil Bottles, BC9711
22 Flamingo Oil Bottles, BC9712
23 French Rooster Oil Bottles, BC9713
24 Text Rustica Oil Bottles, BC9714
25 Salsa w/ a Twist Oil Bottles, BC9715
26 Black & White Oil Bottles, BC9716
27 Vineyard Oil Bottles, BC9731
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- 1 Sunflowers Oil Bottles, BC9733
- 2 Mixed Fruit Oil Bottles, BC9734
- 3 Olives Oil Bottles, BC9735
- 4 Assorted Pre-pack Oil Bottles, BC9737
- 5 Tuscan Hills Oil Bottles, BC9738
- 6 Wine Oil Bottles, BC9739
- 7 Cafe Oil Bottles, BC9740
- 8 Chef Oil Bottles, BC9743
- 9 Blue Indigo Oil Bottles, BC9744
- 10 Martini Oil Bottles, BC9745
- 11 Botanical Oil Bottles, BC9746
- 12 Rooster Oil Bottles, BC9747
- 13 La Cocina – Pre-pack Oil Dipper Bowl, BC0628
- 14 Tuscany Oil Dipper Bowl, BC9508
- 15 Wine & Cheese Oil Dipper Bowl, BC9510
- 16 Wine Oil Dipper Bowl, BC9511
- 17 Pasta Chef Oil Dipper Bowl, BC9512
- 18 Vineyard Oil Dipper Bowl, BC9513
- 19 Martini Oil Dipper Bowl, BC9516
- 20 Fruit Oil Dipper Bowl, BC9517
- 21 Cafe Oil Dipper Bowl, BC9519
- 22 Mediterranean Oil Dipper Bowl, BC9521
- 23 Rooster Oil Dipper Bowl, BC9523
- 24 Black/White Oil Dipper Bowl, BC9525
- 25 Martini Oil Dipper Bowl, BC9526
- 26 Merry Moose Plate, BC3068
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EXHIBIT B

Mugs, salt and pepper shakers and other tableware with colored artwork or designs
(containing one or more Listed Chemicals) on the exterior, including, but not limited to:

Mug, White/Blue, University of California Berkeley

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EXHIBIT C -1

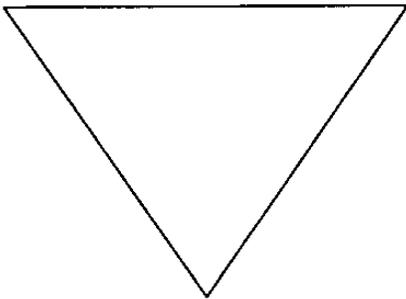
Combined Point of Sale Warnings [Yellow Triangle]

PROPOSITION 65

WARNING

Consuming foods or beverages that have been kept or served in leaded crystal products, certain ceramic tableware products or certain glassware products with colored decorations on the exterior, or handling products made of leaded crystal or certain glassware products with colored decorations on the exterior, will expose you to lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

The products for which this warning is given are identified with this symbol:



displayed on or next to the product.

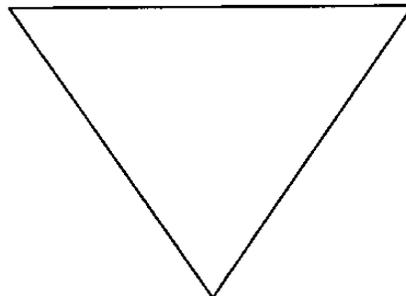
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EXHIBIT C -2

**PROP 65
WARNING**

Use of certain tableware products with colored decorations on the exterior, leaded crystal products and certain ceramicware for sale in this store will expose you to lead and/or cadmium, chemicals known to the State of California to cause birth defects or other reproductive harm.

Products identified with this symbol:



**displayed on the product,
are the ones for which this warning is given.**

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EXHIBIT D
TESTING PROTOCOL

For purposes of the Reformulation Standards in this Consent Judgment, the method on the attached pages, ASTM C 927-80 (reapproved in 1999 and 2004), shall be modified for total immersion of the Products.

As modified, carefully add 4% acetic acid leaching solution from a graduated cylinder to each container containing a sample until the sample is fully immersed in solution. Record the volume of solution used. The container must comply with the diameter requirements specified in the protocol, while being large enough to fully immerse the product.

The remainder of the protocol should be followed as set forth in the attached document.