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Attorneys for Defendant
Beverages & More, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER and WHITNEY R.)
LEEMAN, Ph.D.)
)
Plaintiffs,)
)
v.)
)
BEVERAGES & MORE, INC.; and DOES 1)
through 150,)
Defendants.)
_____)

CASE NO. CGC-05-444270

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

1 **1. INTRODUCTION**

2 **1.1 Plaintiffs and Settling Defendant.** This Consent Judgment is entered into by and
3 between Plaintiffs Russell Brimer and Whitney R. Leeman, Ph.D., (hereafter “Plaintiffs”) and
4 Beverages & More, Inc. (hereafter “Beverages”), with Plaintiffs and Beverages collectively
5 referred to as the “Parties” and each being a “Party.”

6 **1.2 Plaintiffs.** Mr. Brimer and Dr. Leeman are individuals residing in California whose
7 complaint alleges that they seek to promote awareness of exposures to toxic chemicals and
8 improve human health by reducing or eliminating hazardous substances contained in consumer and
9 industrial products.

10 **1.3 General Allegations.** Plaintiffs allege that Beverages has manufactured,
11 distributed and/or sold in the State of California glass soda bottles and other glassware with
12 colored artwork containing lead on the exterior surface, as well as lead within the beverage itself.
13 Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California
14 Health & Safety Code Sections 25249.6 *et seq.*, (“Proposition 65”), and known to cause birth
15 defects and other reproductive harm. Lead is referred to herein as the “Listed Chemical.”

16 **1.4 Product Descriptions.** The products that are covered by this Consent Judgment are
17 defined as follows: (a) glass containers used to bottle soda on behalf of The Coca-Cola Company
18 in Mexico, used to bottle soda under the label of The Coca-Cola Company in Mexico, or used to
19 bottle soda by a bottler authorized to do so or under license by The Coca-Cola Company in
20 Mexico, with colored artwork or designs containing lead on their exteriors; and (b) soda contained
21 in such bottles, some of which contains lead within the beverage itself. Such products collectively
22 are referred to herein as the “Products.”

23 **1.5 Notices of Violation.** Beginning on July 30, 2004, and again on January 3, 2005,
24 Mr. Brimer served Beverages and various public enforcement agencies with documents, each
25 entitled “60-Day Notice of Violation” (“Notice”), that provided Beverages and such public
26 enforcers with notice that alleged that Beverages was in violation of Health & Safety Code Section
27 25249.6 for failing to warn purchasers that the Products that it sold exposed users in California to
28 lead. On October 5, 2004, Mr. Brimer filed a suit in the San Francisco Superior Court entitled,

1 *Brimer v. Beverages & More, Inc. (Case No. CGC-04-435215)*. On May 18, 2005, Dr. Leeman
2 also served Beverages, The Coca-Cola Company and various public enforcement agencies with a
3 “60-Day Notice of Violation” that informed said parties of the existence of lead within the
4 beverage itself, as well as on the exterior of the glass containers. Two days later, on May 20, 2005,
5 Mr. Brimer and Beverages signed a Consent Judgment in Case No. CGC-04-435215, which was
6 approved by the Court on October 6, 2005. The settlement of Mr. Brimer’s case specifically
7 excluded the allegations related to the Products, and in conjunction with the settlement the parties
8 entered into a tolling agreement signed on or about May 24, 2005, which tolled the statute of
9 limitation as to those products.

10 **1.6 Complaint.** On August 22, 2005, Plaintiffs, alleging that they were acting in the
11 interest of the general public in California, filed a complaint (hereafter referred to as the
12 “Complaint” or the “Action”) in the Superior Court for the City and County of San Francisco
13 against Beverages and Does 1 through 150, alleging violations of Health & Safety Code Section
14 25249.6 based on the alleged exposures to the Listed Chemical contained in the Products sold by
15 Beverages.

16 **1.7 No Admission.** Beverages denies the material factual and legal allegations
17 contained in Plaintiffs’ Notices and Complaint and maintains that all products that it has sold in
18 California, including the Products, have been and are in compliance with all laws. Nothing in this
19 Consent Judgment shall be construed as an admission by Beverages of any fact, finding, issue of
20 law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an
21 admission by Beverages of any fact, finding, conclusion, issue of law or violation of law.
22 However, this Section shall not diminish or otherwise affect the obligations, responsibilities and
23 duties of Beverages under this Consent Judgment.

24 **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
25 stipulate that this Court has jurisdiction over the allegations of violations contained in the
26 Complaint and personal jurisdiction over Beverages as to the acts alleged in the Complaint, that
27 venue is proper in the County of San Francisco, that this Court has jurisdiction to enter this
28 Consent Judgment as a full and final settlement and resolution of the allegations contained in the

1 Complaint and of all claims which were or could have been raised based on the facts alleged
2 therein or arising therefrom, and to enforce the provisions thereof.

3 **1.9 Effective Date.** For purposes of this Consent Judgment, the “Effective Date” shall
4 be June 20, 2006.

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

6 **2.1 Warnings and Reformulation Obligations**

7 (a) **Required Warnings.** Within thirty calendar days after the Effective Date,
8 Beverages shall not sell or offer for sale in California any Products containing the Listed Chemical,
9 unless warnings are given in accordance with one or more provisions in Section 2.2 below.

10 (b) **Exceptions.** The warning requirements set forth in Sections 2.1(a) and 2.2
11 below shall not apply to Reformulated Products as defined in Section 2.4 below.

12 **2.2 Clear and Reasonable Warnings For Future Sales**

13 (a) **Product Labeling.** A warning shall be affixed to the packaging, labeling or
14 directly to or on a Product by Beverages, its agent, or the manufacturer, importer, wholesaler or
15 distributor of the Product that states:

16
17 **WARNING: The soda contained in this product as well as the**
18 **materials used as colored decorations on the**
19 **exterior of this product contain lead, a chemical**
20 **known to the State of California to cause birth**
21 **defects or other reproductive harm.**

22 **or**

23 **WARNING: The soda contained in these products as well as**
24 **the materials used as colored decorations on the**
25 **exterior of these products contain lead a**
26 **chemical known to the State of California to**
27 **cause birth defects or other reproductive harm.¹**

28 Warnings issued for Products pursuant to this Section shall be prominently placed with
such conspicuousness as compared with other words, statements, designs, or devices as to render it

¹ This warning may be used only when the Products are sold as a set, such as a six-pack.

1 likely to be read and understood by an ordinary individual under customary conditions of use or
2 purchase. Any changes to the language or format of the warnings required by this Section shall
3 only be made following: (1) approval of Plaintiffs; (2) approval from the California Attorney
4 General's Office, provided that written notice of at least fifteen days is given to Plaintiffs for the
5 opportunity to comment; or (3) Court approval.

6 **(b) Point-of-Sale Warnings.** Beverages may execute its warning obligations,
7 where applicable, through the posting of signs at its retail outlets in the State of California at which
8 Products are sold, in accordance with the terms specified in Sections 2.2(b)(i) and 2.2(b)(ii).

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

11
12 **WARNING: The soda contained in this product as well as the**
13 **materials used as colored decorations on the**
14 **exterior of this product contain lead, a chemical**
15 **known to the State of California to cause birth**
16 **defects or other reproductive harm.**

17 **or**

18 **WARNING: The soda contained in these products as well as**
19 **the materials used as colored decorations on the**
20 **exterior of these products contain lead, a**
21 **chemical known to the State of California to**
22 **cause birth defects or other reproductive harm.²**

23 **or**

24 **WARNING: The soda contained in, as well as the materials**
25 **used as colored decorations on the exterior of, the**
26 **following products sold in this store contain lead,**
27 **a chemical known to the State of California to**
28 **cause birth defects or other reproductive harm:**

[List the specific products for which a warning is given.]

² This warning may be used only when the Products are sold as a set, such as a six-pack.

1 (ii) A point of sale warning provided pursuant to Section 2.2(b)(i) shall
2 be prominently placed with such conspicuousness as compared with other words, statements,
3 designs, or devices so as to render it likely to be read and understood by an ordinary individual
4 under customary conditions of use or purchase and shall be placed or written in a manner such that
5 the consumer understands to which *specific* Products the warnings apply so as to minimize if not
6 eliminate the chances that an overwarning situation will arise. Any changes to the language or
7 format of the warning required for Products by this Section shall only be made following: (1)
8 approval of Plaintiffs; (2) approval from the California Attorney General's Office, provided that
9 written notice of at least fifteen days is given to Plaintiffs for the opportunity to comment; or (3)
10 Court approval.

11 **2.3 Clear and Reasonable Warnings For Past Sales**

12 Under Proposition 65, consumers in California have the right to be warned of chemicals
13 known to the State to cause cancer or reproductive toxicity to which they are exposed. The Notice
14 and Complaint allege that Beverages has sold Products without such a warning, and thereby has
15 exposed consumers who have purchased Products containing lead without receiving any such
16 warning.

17 In order to address such past sales, Beverages shall undertake good faith efforts to provide
18 clear and reasonable warnings, pursuant to Health & Safety Code §25249.6, for those Products
19 previously sold in California to consumers during the two years prior to the Effective Date. In
20 order to comply with this portion of the injunction, the Defendant shall advise its customers that
21 they may exchange, without cost, any of the Products remaining in their possession for a lead-free
22 alternative at any Beverages retail outlet. This advice may be provided either through Beverages'
23 internet website, or through its current forms of advertising or mailings to customers ("the
24 advisory").

25 Beverages shall comply with this Section no later than August 19, 2006. On or before July
26 25, 2006, Beverages shall provide Mr. Brimer and Dr. Leeman with a letter specifying the method
27 that it will employ to provide the information required in this Section and the date that the advisory
28 will begin to be disseminated.

1 (a) **Apportionment of Penalties Received.** After Court approval of this
2 Consent Judgment pursuant to Section 6, all penalty monies received shall be apportioned by
3 Plaintiffs in accordance with Health & Safety Code Section 25192, with 75% of these funds
4 remitted to the State of California's Office of Environmental Health Hazard Assessment and the
5 remaining 25% of these penalty monies retained by Plaintiffs as provided by Health & Safety Code
6 Section 25249.12(d)³. Plaintiffs shall bear all responsibility for apportioning and paying to the
7 State of California the appropriate civil penalties paid in accordance with this Section.

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

9 **4.1** The Parties acknowledge that Plaintiffs and their counsel offered to resolve this
10 dispute without reaching agreement on the amount of fees and costs to be reimbursed to them,
11 thereby leaving this fee and cost issue to be resolved after the material terms of the agreement had
12 been settled. Beverages then expressed a desire to resolve the fees and cost issue shortly after the
13 other settlement terms had been finalized. The Parties then attempted to (but did not) reach
14 complete accord on the total compensation for such fees and costs due to Plaintiffs and their
15 counsel under the private attorney general doctrine codified at Code of Civil Procedure §1021.5 for
16 all work performed through court approval of the Agreement. The parties do agree, however, that
17 Plaintiffs and their counsel are entitled to their reasonable attorney's fees and costs under the
18 prerequisites set forth by Code of Civil Procedure §1021.5, and that Plaintiffs' reasonable
19 attorneys' fees and costs are within a range of not less than \$65,000 and not more than \$160,000.
20 Beverages shall therefore pay to Plaintiffs, as specified below, the amount of \$65,000 by July 20,
21 2006.

22 In an effort to save resources, the Parties agree to have the remaining fee and cost issue
23 adjudicated by "baseball" style binding arbitration through the use of a single arbitrator selected
24 jointly by the Parties from JAMS Resolution Services, San Francisco, and in accordance with its
25 rules and procedures governing binding arbitration. Payment of any further amount so determined
26 by the arbitrator, if any further amount be determined appropriate, shall be made by Beverages to

27 ³ The proceeds of the civil penalties that will be paid to plaintiffs will be divided among Dr. Leeman and Mr. Brimer
28 on the following basis: Dr. Leeman will receive 20% and Mr. Brimer will receive 5% of the civil penalties paid by
Beverages.

1 Plaintiffs within five days of receipt of the arbitrator's determination. The Parties agree to request
2 that the arbitration process and award be finalized no later than August 25, 2006.

3 No later than July 28, 2006, the Parties shall jointly select the arbitrator. If a mutually
4 agreeable arbitrator cannot be agreed upon, then the name of the arbitrator shall be selected at
5 random by JAMS at its sole discretion no later than July 31, 2006. On or before August 4, 2006,
6 Plaintiffs shall submit to the selected arbitrator and to Beverages their documentation supporting
7 their claim that the payment of fees and costs should be greater than \$65,000 (but with the
8 acknowledgement that the supplemental award shall not exceed \$95,000). In this context,
9 Plaintiffs reserve the right to claim that their attorneys' fees should include a multiplier or
10 enhancement of the lodestar as permitted for fee claims under Code of Civil Procedure §1021.5
11 and their reasonably anticipated fees associated with the binding arbitration process.

12 No later than August 9, 2006, the Parties shall meet and confer to determine whether they
13 can reach agreement on the total amount of fees and costs to be paid. If no such agreement is
14 reached by August 11, 2006, Plaintiffs and Beverages shall simultaneously submit to the arbitrator
15 on August 14, 2006, a proposed monetary amount for full and final payment for all such fees and
16 costs, to which the arbitrator must select one or the other of the two proposed figures in light of all
17 of the circumstances the arbitrator finds relevant, without compromise thereof, as the final
18 determination of fees and costs payable by Beverages to Plaintiffs and their counsel. The
19 simultaneous submission of each side's proposed figure to the arbitrator shall be transmitted by
20 facsimile to the arbitrator at 12:00 p.m., with service by facsimile on the respective parties of the
21 submissions by 5:00 p.m. that same date.

22 On August 14, 2006, Beverages shall also submit its brief supporting its proposed monetary
23 amount. Plaintiffs shall then have until August 18, 2006, to submit any response to the arbitrator.
24 Further argument, but no further submission of documentation or presentation of evidence, will be
25 presented to the arbitrator as soon as practicable thereafter, but in no event later than August 25,
26 2006, and such argument shall not exceed one half hour each for the Plaintiffs and Beverages,
27 respectively, for no more than one hour total.

28 The briefing submitted by the parties shall be limited to no more than ten pages, exclusive

1 of declarations and any supporting documentation, with Plaintiffs' response not to exceed five
2 pages; and the parties shall share the cost of the arbitrator, which cost Plaintiffs may seek to
3 recover as part of the arbitrator's award.

4 **4.2** Except as specifically provided in this Consent Judgment, Beverages shall have no
5 further obligation with regard to reimbursement of Plaintiffs' attorneys' fees and costs with regard
6 to the Products covered in this Action.

7 **5. RELEASE OF ALL CLAIMS**

8 **5.1 Plaintiffs' Release of Beverages.** As to the Products, this Consent Judgment is a
9 full, final and binding resolution between the Plaintiffs, acting on behalf of the public interest
10 pursuant to Health and Safety Code Section 25249.7(d), on the one hand, and Beverages, on the
11 other hand, of any violation of Proposition 65, of all claims made or which could have been made
12 in the Notice and/or the Complaint, and of any other statutory, regulatory or common law claim
13 that could have been asserted against Beverages and/or its affiliates, subsidiaries, divisions,
14 successors, assignees, and/or customers for failure to provide clear, reasonable, and lawful
15 warnings of exposure to lead contained in or otherwise associated with Products manufactured,
16 sold or distributed by, for, or on behalf of Beverages. Compliance with the terms of this Consent
17 Judgment resolves any issue, now and in the future, concerning compliance by Beverages and/or
18 its affiliates, subsidiaries, divisions, successors, and assigns with the requirements of Proposition
19 65 with respect to the Products.

20 In further consideration of the promises and agreements herein contained, and for the
21 payments to be made pursuant to Sections 3 and 4, Plaintiffs, on behalf of themselves, their past
22 and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
23 general public, hereby waive all rights to institute or participate in, directly or indirectly, any form
24 of legal action and releases all claims, including, without limitation, all actions, causes of action, in
25 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
26 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any
27 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"),
28 against Beverages and each of its customers, owners, purchasers, users, parent companies,

1 corporate affiliates, subsidiaries and their respective officers, directors, attorneys, representatives,
2 shareholders, agents, and employees (collectively “Beverages’ Releasees”) arising under
3 Proposition 65, Business & Professions Code Section 17200 et seq., and Business & Professions
4 Code Section 17500 et seq., related to Beverages or Beverages’ Releasees’ alleged failure to warn
5 about exposures to or identification of the Listed Chemical contained in or on the Products.

6 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
7 binding resolution of any violation of Proposition 65, Business & Professions Code Sections 17200
8 et seq., and Business & Professions Code Sections 17500 *et seq.*, that have been or could have
9 been asserted in the Complaints against Beverages for its alleged failure to provide clear and
10 reasonable warnings of exposure to or identification of the Listed Chemical in or on the Products.

11 In addition, Plaintiffs, on behalf of themselves, their attorneys, and their agents, waive all
12 rights to institute or participate in, directly or indirectly, any form of legal action and release all
13 Claims against the Beverages’ Releasees arising under Proposition 65, Business & Professions
14 Code Sections 17200 *et seq.*, and Business & Professions Code Sections 17500 *et seq.*, related to
15 each of the Beverages’ Releasees’ alleged failures to warn about exposures to or identification of
16 the Listed Chemical contained in or on the Products and for all actions or statements made by
17 Beverages or its attorneys or representatives, in the course of responding to alleged violations of
18 Proposition 65, Business & Professions Code Sections 17200, or Business & Professions Code
19 Sections 17500 by Beverages. It is agreed, however, that Plaintiffs shall remain free to institute
20 any form of legal action to enforce the provisions of this Consent Judgment. It is specifically
21 understood and agreed that the Parties intend that Beverages’ compliance with the terms of this
22 Consent Judgment resolves all issues and liability, now and in the future (so long as Beverages
23 complies with the terms of the Consent Judgment) concerning Beverages and the Beverages’
24 Releasees’ compliance with the requirements of Proposition 65, Business and Professions Code
25 Sections 17200 *et seq.*, and Business & Professions Code Sections 17500 et seq., as to the
26 Products.

27 The Parties understand and agree that the release provided by Plaintiffs herein shall not
28 extend upstream to the Product manufacturers or to any distributor or supplier from whom

1 Beverages purchased directly or indirectly any of the Products including, but not limited to, The
2 Coca-Cola Company.

3 **5.2 Beverages' Release of Plaintiffs.** Beverages waives all rights to institute any form
4 of legal action and all claims against Plaintiffs, and their attorneys or representatives, for all
5 actions taken or statements made by Plaintiffs and their attorneys or representatives, in the course
6 of seeking enforcement of Proposition 65, Business & Professions Code Sections 17200 *et seq.*, or
7 Business & Professions Code Sections 17500 *et seq.* in this action.

8 **6. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and
10 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
11 after it has been fully executed by all Parties, in which event any monies that have been provided
12 to Plaintiffs or their counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within
13 fifteen days of their receipt of any such demand from Beverages.

14 **7. ENFORCEMENT OF CONSENT JUDGMENT**

15 **7.1** Before moving to enforce the terms and conditions of Section 2 of this Consent
16 Judgment against Beverages with respect to an alleged violation occurring at a retail store located
17 in California, Plaintiffs and others must follow the procedures set forth in Sections 7.2 through 7.3.

18 **7.2** In the event that Plaintiffs and/or their attorneys, agents, assigns, or any other
19 person acting in the public interest under Health & Safety Code Section 25249.7(d) (hereinafter
20 "Notifying Person") identifies one or more retail stores owned and operated by Beverages at which
21 the Products are sold (hereinafter "retail outlet") for which the warnings for those Products
22 required under Section 2 of this Consent Judgment are not being given, such Notifying Person
23 shall notify, in writing, Beverages of such alleged failure to warn (the "Notice of Breach"). The
24 Notice of Breach shall be sent by first class mail, with proof of service, to the persons identified in
25 Section 11 of this Consent Judgment, and must be served within sixty days of the date the alleged
26 violation was observed. The Notice of Breach shall identify the date the alleged violation was
27 observed and the retail outlet in question, and reasonably describe the nature of the alleged
28 violation with sufficient detail to allow Beverages to determine the basis of the claim being

1 asserted and the identities of the Products to which those assertions apply.

2 **7.3** The Notifying Person shall take no further action against Beverages unless the
3 Notifying Person discovers, at least thirty (30) days after service of the Notice of Breach served
4 pursuant to Section 7.2, another failure to warn for any Products whether or not the alleged failure
5 to warn is at the same retail outlet(s) identified in the Notice of Breach served pursuant to Section
6 7.2.

7 **8. SEVERABILITY**

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

11 **9. ATTORNEYS' FEES**

12 In the event that, after Court approval: (1) a dispute arises with respect to any provision of
13 this Consent Judgment; or (2) Plaintiffs take reasonable and necessary steps to enforce the terms of
14 this Consent Judgment, the prevailing party shall be entitled to recover their reasonable attorneys'
15 fees and costs. Should Beverages or any third party seek modification of this Consent Judgment
16 pursuant to Section 16 below, Plaintiffs shall be entitled to their reasonable attorneys' fees and
17 costs pursuant to Code of Civil Procedure §1021.5 for stipulating, opposing or taking any other
18 reasonable action in response to such modification processes.

19 **10. GOVERNING LAW**

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

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11. NOTICES

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

To Beverages:

Bannus Hudson, President
BEVERAGES & MORE, INC.
1470 Enea Circle, Suite 1600
Concord, CA 94520

With a copy to:

Richard C. Jacobs, Esq.
HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111-4024

To Plaintiffs:

HIRST & CHANLER LLP
Attn: George W. Dowell
2560 Ninth Street, Suite 214
Berkeley, CA 94710

12. NO ADMISSIONS

Nothing in this Consent Judgment shall constitute or be construed as an admission by Beverages 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 Beverages of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Beverages.

Beverages reserves all of its rights and defenses with regard to any claim by any party under Proposition 65 or otherwise. However, this Section shall not diminish or otherwise affect Beverages' obligations, responsibilities and duties under this Consent Judgment.

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1 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

13 **15. ADDITIONAL POST EXECUTION ACTIVITIES**

14 The Parties shall mutually employ their best efforts to support the entry of this Agreement
15 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
16 manner. The Parties acknowledge that, pursuant to Health & Safety Code Section 25249.7, a
17 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the
18 Parties agree to file a Joint Motion to Approve the Agreement (“Joint Motion”), the first draft of
19 which Plaintiffs’ counsel shall prepare, within a reasonable period of time after the Execution Date
20 (*i.e.*, not to exceed thirty days unless otherwise agreed to by the Parties’ counsel based on
21 unanticipated circumstances). Plaintiffs’ counsel shall prepare a declaration in support of the Joint
22 Motion which shall, inter alia, set forth support for the fees and costs to be reimbursed pursuant to
23 Section 4. Beverages shall have no additional responsibility to Plaintiffs’ counsel pursuant to
24 Code of Civil Procedure Section 1021.5 or otherwise with regard to reimbursement of any fees and
25 costs incurred with respect to the preparation and filing of the Joint Motion and its supporting
26 declaration or with regard to Plaintiffs’ counsel appearing for a hearing or related proceedings
27 thereon, unless the parties invoke the binding arbitration in Section 4.1 above, in which event
28 Plaintiffs may seek their reasonable fees and costs for procuring court approval of this agreement.

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16. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified Consent Judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen 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
6 **AGREED TO:**

AGREED TO:

7
8 Date: 6/24/06

Date: _____

9
10 By: Whitney R. Leeman
11 Plaintiff Whitney R. Leeman, Ph.D.

By: _____
Defendant BEVERAGES & MORE, INC.

12
13 By: Russell Brimer
14 Plaintiff Russell Brimer

15 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

16
17 Date: 6/21/06

Date: _____

18 **HIRST & CHANLER LLP**

**HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN**

19
20
21 By: George W. Dowell, For
22 George W. Dowell
23 Attorney for Plaintiffs
24 RUSSELL BRIMER, and
WHITNEY R. LEEMAN, Ph.D.

By: _____
Richard C. Jacobs
Attorney for Defendant
BEVERAGES & MORE, INC.

25 **IT IS SO ORDERED.**

26
27 Date: _____

JUDGE OF THE SUPERIOR COURT

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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:

AGREED TO:

Date: _____

Date: 6-23-06

By: _____
Plaintiff Whitney R. Leeman, Ph.D.

By: [Signature]
Defendant BEVERAGES & MORE, INC.

By: _____
Plaintiff Russell Brimer

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: 6-23-06

HIRST & CHANLER LLP

**HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN**

By: _____
George W. Dowell
Attorney for Plaintiffs
RUSSELL BRIMER, and
WHITNEY R. LEEMAN, Ph.D.

By: [Signature]
Richard C. Jacobs
Attorney for Defendant
BEVERAGES & MORE, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 **BILL LOCKYER**, Attorney General
2 **THOMAS GREENE**,
3 Chief Assistant Attorney General
4 **THEODORA BERGER**,
5 Assistant Attorney General
6 **EDWARD G. WEIL**, Bar No. 88302
7 Supervising Deputy Attorney General
8 **DENNIS A. RAGEN**, Bar No. 106468
9 Deputy Attorney General
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12 P.O. Box 85266
13 San Diego, California 92186-5266
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15 Fax: (619) 645-2012

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17 **ROCKARD J. DELGADILLO**, City Attorney, Bar No. 125465
18 **JEFFREY B. ISAACS**, Chief, Criminal and Special Litigation Branch, Bar No. 117104
19 **PATTY BILGIN**, Supervising Attorney, Environmental Justice Unit, Bar No. 164090
20 **ELISE RUDEN**, Deputy City Attorney, Bar No. 124970
21 **JAMES COLBERT III**, Supervising Attorney, Special Litigation Branch, Bar No. 47605
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PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. **BILL LOCKYER**, Attorney General, and
ROCKARD J. DELGADILLO, Los Angeles City
Attorney,

Plaintiffs,

v.

PEPSICO, INC., and Does 1 through 150,
inclusive,

Defendants.

CASE NO.

CONSENT JUDGMENT