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Attorneys for Plaintiff  
RUSSELL BRIMER

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

RUSSELL BRIMER,  
Plaintiff,  
vs.

Case No. CGC-05-443551

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

CRAZY MOUNTAIN IMPORTS; CREATIVE  
MERCHANDISING IDEAS; JO-ANN  
STORES, INC.; and DOES 1 through 150,  
Defendants.

**1. INTRODUCTION**

**1.1 Plaintiff and Settling Defendant** This Consent Judgment (sometimes referred to herein as "Agreement") is entered into by and between plaintiff RUSSELL BRIMER (hereafter "Brimer" or "Plaintiff") and CREATIVE MERCHANDISING IDEAS, INC., which also does business as CRAZY MOUNTAIN IMPORTS (collectively hereafter referred to as "Crazy

1 Mountain”), with Plaintiff and Crazy Mountain collectively referred to as the “Parties” and Brimer  
2 and Crazy Mountain each being a “Party.”

3 **1.2 Plaintiff** Brimer is an individual residing in Northern, California, who seeks to  
4 promote awareness of exposures to toxic chemicals and improve human health by reducing or  
5 eliminating hazardous substances contained in consumer and industrial products.

6 **1.3 General Allegations** Plaintiff alleges that Crazy Mountain has manufactured,  
7 distributed and/or sold in the State of California glass and metal candle holders that contain lead  
8 (and/or lead compounds) that are listed pursuant to the Safe Drinking Water and Toxic Enforcement  
9 Act of 1986, California Health & Safety Code §§25249.5, *et seq.*, also known as Proposition 65, to  
10 cause both cancer and birth defects (and other reproductive harm). Lead (and/or lead compounds)  
11 shall be referred to herein as the “Listed Chemicals.” Crazy Mountain denies Plaintiff’s allegations.

12 **1.4 Product Descriptions** The product that is covered by this Consent Judgment is  
13 defined as follows: glass and metal (containing lead) candle holders (#7 36850 90182 1) sold by  
14 Crazy Mountain, as further described in the 60-day notice Plaintiff served in this matter, which is  
15 attached hereto as Exhibit A. Such products collectively are referred to herein as the “Products.”

16 **1.5 Notices of Violation** On March 31, 2005, Brimer alleges that he served Crazy  
17 Mountain, Creative Merchandising Ideas and Jo-Ann Stores, Inc., and various public enforcement  
18 agencies (including the Attorney General of the State of California), with documents entitled “60-  
19 Day Notice of Violation” (“Notice”) that provided Crazy Mountain and such public enforcers with  
20 notice that alleged that Crazy Mountain was in violation of Health & Safety Code §25249.6 for  
21 failing to warn purchasers that certain products that it sold expose users in California to the Listed  
22 Chemicals.

23 **1.6 Complaint** On July 29, 2005, Brimer, who is acting in the interest of the general  
24 public in California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in  
25 the Superior Court for the City and County of San Francisco against Crazy Mountain, Creative  
26 Merchandising Ideas, Jo-Ann Stores, Inc., and Does 1 through 150, alleging violations of Health &  
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1 Safety Code §25249.6 based on the alleged exposures to one or more of the Listed Chemicals  
2 contained in certain products sold by Crazy Mountain.

3 1.7 **No Admission** Nothing in this Consent Judgment shall be construed as an  
4 admission by Crazy Mountain, or any other defendant, of any fact, finding, conclusion, issue of law,  
5 or violation of law, nor shall compliance with this Agreement constitute or be construed as an  
6 admission by Crazy Mountain, or any other defendant, of any fact, finding, conclusion, issue of law  
7 or violation of law. However, this section shall not diminish or otherwise affect the obligations,  
8 responsibilities and duties of Crazy Mountain under this Consent Judgment.

9 1.8 **Consent to Jurisdiction** For purposes of this Consent Judgment only, the Parties  
10 stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint  
11 and personal jurisdiction over Crazy Mountain as to the acts alleged in the Complaint, that venue is  
12 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent  
13 Judgment and to enforce the provisions thereof.

14 1.9 **Effective Date** For purposes of this Consent Judgment, the "Effective Date" shall be  
15 January <sup>17</sup> 2006.

16 2. **INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS AND REFORMULATION**

17 2.1 **Warning Obligations For Non-Reformulated Products**

18  
19 2.1.A. **Required Warnings** After December 31, 2005, Crazy Mountain shall not  
20 sell or offer for sale in California any Non-exempt Products containing the Listed Chemicals, unless  
21 warnings are given in accordance with one or more provisions in subsection 2.2 below.

22 2.1.B. **Exceptions** The warning requirements set forth in subsections 2.1.A. and 2.2  
23 below shall not apply to:

- 24 i. any Products manufactured before December 31, 2005; or
  - 25 ii. Reformulated Products as the term is defined in §2.3 below.
- 26  
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1           **2.2    Clear And Reasonable Warnings**

2                   **2.2.A.    Product Labeling** From the Effective Date, a warning will be affixed to the  
3 packaging, labeling or directly to or on the Product by Crazy Mountain or its agent, that states:

4                           **WARNING: The solder materials used on the exterior of this product contain**  
5                                   **lead, a chemical known to the State of California to cause birth**  
6                                   **defects or other reproductive harm. Please wash hands after**  
7                                   **handling.**

8                           From the Effective Date, and for the first six months therefrom, Crazy Mountain may, at its  
9 option, provide the following warning (instead of the warning described above) affixed to the  
10 packaging, labeling or directly to or on the Product by Crazy Mountain or its agent:

11                                   **WARNING: This product contains a chemical known to the state of California**  
12   **to cause cancer and birth defects or other reproductive harm.**  
13   **Please wash hands after handling.**

14                           Warnings issued for any Products pursuant to this subsection shall be prominently placed  
15 with such conspicuousness as compared with other words, statements, designs, or devices as to  
16 render it likely to be read and understood by an ordinary individual under customary conditions of  
17 use or purchase. Any changes to the language or format of the warning required by this subsection  
18 shall only be made following: (1) approval of Plaintiff; (2) approval from the California Attorney  
19 General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for  
20 the opportunity to comment; or (3) Court approval.

21                                   **2.2.B.    Point-of-Sale Warnings** Crazy Mountain may execute its warning  
22 obligations through arranging for the posting of signs at retail outlets in the State of California at  
23 which the Products are sold, in accordance with the terms specified in subsections 2.2.B.1., and  
24 2.2.B.2., so long as Crazy Mountain receives a written commitment from each retailer that it will  
25 post the warning signs.  
26

1                                    2.2.B.1.        From the Effective Date, point of sale warnings shall be  
 2 provided through one or more signs posted in close proximity to the point of display of the Products  
 3 that state:

4                                    **WARNING: The solder materials used on the exterior of this product**  
 5                                    **contain lead, a chemical known to the State of California to**  
 6                                    **cause birth defects or other reproductive harm. Please**  
 7                                    **wash hands after handling.**

8                                    From the Effective Date, and for the first six months therefrom, point of sale warnings may  
 9 be provided, at the retailer's option, through one or more signs in close proximity to the point of  
 10 display of the Products that state, instead of the warning described above:

11                                    **WARNING: This product contains a chemical known to the state of**  
 12                                    **California to cause cancer and birth defects or other**  
 13                                    **reproductive harm. Please wash hands after handling.**

14                                    2.2.B.2.        A point of sale warning provided pursuant to subsection  
 15 2.2.B.1 shall be prominently placed with such conspicuousness as compared with other words,  
 16 statements, designs, or devices as to render it likely to be read and understood by an ordinary  
 17 individual under customary conditions of use or purchase and shall be placed or written in a manner  
 18 such that the consumer understands to which *specific* Products the warnings apply. Any changes to  
 19 the language or format of the warning required for the Products by this subsection shall only be  
 20 made following: (1) approval of Plaintiff; (2) approval from the California Attorney General's  
 21 Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for the  
 22 opportunity to comment; or (3) Court approval.

23                                    **2.3    Reformulation Standards:** Products satisfying the conditions of section 2.3.A.  
 24 through 2.3.C. are referred to as "Reformulated Products."

25                                    2.3.A. Any Product containing 0.1 percent (.1%) lead or less (by weight) in each  
 26 material used in the Products (such as solder and came); or

1                   2.3.B. Any Product that yields a result of less than 5 micrograms (ugs) of lead by a  
 2 Ghost Wipe test conducted on all metal portions of the perimeter or other surface area of the  
 3 Product, that is reasonably performed as outlined in NIOSH method of detection 9100; or

4                   2.3.C. Should any court enter a final judgment in a case brought by Brimer or the  
 5 People of the State of California involving glass and metal candle holders allegedly containing lead  
 6 which sets forth standards defining when Proposition 65 warnings will or will not be required  
 7 ("Alternative Standards"), Crazy Mountain shall be entitled to seek a modification of this Consent  
 8 Judgment pursuant to section 16 herein, so as to be able to utilize and rely on such Alternative  
 9 Standards in lieu of those set forth in section 2.3 of this Consent Judgment. Brimer shall not  
 10 unreasonably contest any proposed application to effectuatc a modification provided that the  
 11 Products for which such a modification are sought are substantially similar in type and function to  
 12 those for which the Alternative Standards apply.

13       **3.    MONETARY PAYMENTS**

14                   **3.1    Penalties Pursuant To Health & Safety Code §25249.7(b)** Pursuant to Health &  
 15 Safety Code 25249.7(b), Crazy Mountain shall pay a total of \$16,000 in civil penalties in two  
 16 installments with the first payment of \$4,000 to be made on January <sup>18</sup>~~15~~, 2006, and made payable to  
 17 "Hirst & Chanler in Trust For Russell Brimer." The second penalty payment of \$12,000 shall be  
 18 paid on January <sup>18</sup>~~15~~, 2007, subject to entry of the Consent Judgment by the court prior to such date.

19                   The second payment shall be waived in the event that Crazy Mountain certifies on or before January  
 20 31, 2007, that 80% or more of the Products it sold in California in calendar year 2006 were  
 21 Reformulated Products, or that Crazy Mountain did not sell any Products that were not reformulated  
 22 in California in calendar year 2006. In order to determine the percentage of Reformulated Products  
 23 sold in calendar year 2006, Products manufactured before December 31, 2005 shall not be included.

24                   Any such certification with respect to the percentage of Reformulated Products sold shall  
 25 specify the Product (by Product name, SKU or UPC Code) and the number of units sold for each  
 26 such Product.  
 27

1 In the event Crazy Mountain pays any amount for civil penalties and the Consent Judgment  
 2 is not thereafter approved and entered by the Court, the Hirst & Chanler in Trust for Russell Brimer  
 3 shall return any funds paid under this agreement within fifteen (15) days of receipt of a written  
 4 request from Crazy Mountain following notice of the issuance of the Court's decision.

5  
 6 **3.2 Apportionment of Penalties Received** After Court approval of this Consent  
 7 Judgment pursuant to section 6, all penalty monies received shall be apportioned by Plaintiff in  
 8 accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of  
 9 California's Office of Environmental Health Hazard Assessment and the remaining 25% of these  
 10 penalty monies retained by Plaintiff as provided by Health & Safety Code §25249.12(d). Plaintiff  
 11 shall bear all responsibility for apportioning and paying to the State of California the appropriate  
 12 civil penalties paid in accordance with this section.

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

14  
 15 **4.1** The Parties have reached an accord on the compensation due to Plaintiff and his  
 16 counsel under the private attorney general doctrine codified at California Code of Civil Procedure  
 17 §1021.5 for all work performed through the Effective Date of the Agreement. Under the private  
 18 attorney general doctrine, Crazy Mountain shall reimburse Plaintiff and his counsel for fees and  
 19 costs incurred as a result of investigating, bringing this matter to Crazy Mountain's attention,  
 20 litigating and negotiating a settlement in the public interest as follows: Crazy Mountain shall pay  
 21 Plaintiff and his counsel \$26,000 for all attorneys' fees, expert and investigation fees, and litigation  
 22 costs. The payment shall be made payable to "Hirst & Chanler" and shall be delivered to Plaintiff's  
 23 counsel by January 15, 2005. Payment shall be delivered to Plaintiff's counsel at the following  
 24 address:

25 HIRST & CHANLER  
 26 Attn: Clifford A. Chanler  
 27 71 Elm Street, Suite 8  
 28 New Canaan, CT 06840

1           Except as specifically provided in this Consent Judgment, Crazy Mountain shall have  
 2 no further obligation with regard to reimbursement of Plaintiff's attorneys' fees and costs with  
 3 regard to the Products covered in this Action. In the event Crazy Mountain pays any amount for  
 4 attorneys' fees and costs and the Consent Judgment is not thereafter approved and entered by the  
 5 Court, Hirst & Chanler shall return any funds paid under this agreement within fifteen (15) days of  
 6 receipt of a written request from Crazy Mountain following notice of the issuance of the Court's  
 7 decision.

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 9  
 10 **5. MATTERS COVERED BY CONSENT JUDGMENT**

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

26           In addition, Plaintiff, on behalf of herself, his attorneys, and their agents, waives all rights to  
 27 institute or participate in, directly or indirectly, any form of legal action and releases all Claims

1 against the Crazy Mountain Releasees arising under Proposition 65 related to each of the Crazy  
 2 Mountain Releasees' alleged failures to warn about exposures to or identification of Listed  
 3 Chemicals contained in the Products and for all actions or statements made by Crazy Mountain or its  
 4 attorneys or representatives, in the course of responding to alleged violations of Proposition 65 by  
 5 Crazy Mountain. Provided however, Plaintiff shall remain free to institute any form of legal action  
 6 to enforce the provisions of this Consent Judgment.

7  
 8 **5.2 Crazy Mountain's Release of Plaintiff** Crazy Mountain and the Crazy Mountain  
 9 Releasees (and specifically including Jo-Ann Stores, Inc.) waive all rights to institute any form of  
 10 legal action against Plaintiff, or his attorneys or representatives, for all actions taken or statements  
 11 made by Plaintiff and his attorneys or representatives, in the course of seeking enforcement of  
 12 Proposition 65 in this Action.

13 **5.3 Effect of Consent Judgment** The Parties further agree and acknowledge that this  
 14 Consent Judgment is a full, final, and binding resolution of any violation of Proposition 65 that has  
 15 been or could have been asserted in the Complaint against Crazy Mountain or Crazy Mountain  
 16 Releasees for their alleged failure to provide clear and reasonable warnings of exposure to or  
 17 identification of Listed Chemicals in the Products. It is specifically understood and agreed that the  
 18 Parties intend that Crazy Mountain's compliance with the terms of this Consent Judgment resolves  
 19 all issues and liability, now and in the future (so long as Crazy Mountain complies with the terms  
 20 of the Consent Judgment) concerning Crazy Mountain's and the Crazy Mountain Releasees'  
 21 compliance with the requirements of Proposition 65 as to the Listed Chemicals in the Products.  
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24 **6. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
 26 be null and void if, for any reason, it is not approved and entered by the Court within one year after  
 27 it has been fully executed by all Parties.  
 28

1 **7. SEVERABILITY**

2 If, subsequent to court approval of this Consent Judgment, any of the provisions of this  
3 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions  
4 remaining shall not be adversely affected, except for the monetary payment provisions in Sections 3  
5 and 4 of this Consent Judgment, as to which the Parties reserve their respective rights to seek court  
6 adjudication of their enforceability.

7 **8. ATTORNEYS' FEES**

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

11 **9. GOVERNING LAW**

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

17 **10. NOTICES**

18 All correspondence and notices required to be provided pursuant to this Consent Judgment  
19 shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail, return  
20 receipt requested or (ii) overnight courier on either Party by the others at the following addresses.

21 To Crazy Mountain:

22 Ann G. Grimaldi, Esq.  
23 McKenna, Long & Aldridge  
24 101 California Street  
41<sup>st</sup> Floor  
San Francisco, CA 94111

25 To Plaintiff:

26 Christopher M. Martin, Esq.  
27 Hirst & Chanler  
23 N. Lincoln, Suite 204  
28 Chicago, IL 60521

1 Any Party, from time to time, may specify in writing to the other Party a change of address to  
2 which all notices and other communications shall be sent.

3 **11. NO ADMISSIONS**

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

12 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

24 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

25 The Parties shall mutually employ their best efforts to support the entry of this Agreement as  
26 a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.  
27 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is  
28

1 required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties agree to file  
 2 a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which Plaintiff's  
 3 counsel shall prepare, within a reasonable period of time after the Execution Date (*i.e.*, not to exceed  
 4 fourteen (14) days unless otherwise agreed to by the Parties' counsel based on unanticipated  
 5 circumstances). Plaintiff's counsel shall prepare a declaration in support of the Joint Motion that  
 6 shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to Section 4,  
 7 within a reasonable period of time after the Execution Date (*i.e.*, not to exceed twenty-one (21) days  
 8 unless otherwise agreed to by the Parties' counsel based on unanticipated circumstances). Crazy  
 9 Mountain shall have no additional responsibility to Plaintiff's counsel pursuant to Code of Civil  
 10 Procedure §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with  
 11 respect to the preparation and filing of the Joint Motion and its supporting declaration or with regard  
 12 to Plaintiff's counsel appearing for a hearing or related proceedings thereon.

13 **15. DISMISSAL**

14 Within fifteen (15) days of Entry of Order by the Court approving the Joint Motion to  
 15 Approve the Agreement, Plaintiff shall file a Request for Dismissal dismissing defendant Jo-Ann  
 16 Stores, Inc., without prejudice from this case.

17 **16. MODIFICATION**

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

23 **17. AUTHORIZATION**

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

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**AGREED TO:**

**AGREED TO:**

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

Date: 1/12/06

By: \_\_\_\_\_  
Russell Brimer

By: [Signature]  
Defendant Crazy Mountain Imports

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

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

Date: 1/13/06

HIRST & CHANLER

MCKENNA, LONG & ALDRIDGE

By: \_\_\_\_\_  
Christopher M. Martin  
Attorneys for Plaintiff  
RUSSELL BRIMER

By: [Signature]  
Ann Grimaldi  
Attorneys for Defendant  
CRAZY MOUNTAIN IMPORTS

**IT IS SO ORDERED.**

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

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

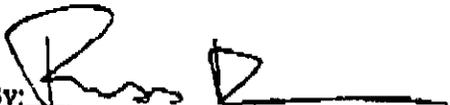
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**AGREED TO:**

**AGREED TO:**

Date: 1-24-06

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

By:   
Russell Brimer

By: \_\_\_\_\_  
Defendant Crazy Mountain Imports

**APPROVED AS TO FORM:**

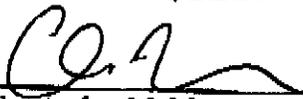
**APPROVED AS TO FORM:**

Date: 1-24-06

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

HIRST & CHANLER, L.L.P.

MCKENNA, LONG & ALDRIDGE

By:   
Christopher M. Martin  
Attorneys for Plaintiff  
RUSSELL BRIMER

By: \_\_\_\_\_  
Ann Grimaldi  
Attorneys for Defendant  
CRAZY MOUNTAIN IMPORTS

**IT IS SO ORDERED.**

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

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