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19 Attorneys for Defendants
20 ANTHROPOLOGIE, INC. and
21 URBAN OUTFITTERS, INC.

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

25 RUSSELL BRIMER,

26 Plaintiff,

27 v.

28 ANTHROPOLOGIE; URBAN OUTFITTERS,
INC.; and DOES 1 through 150,

Defendants.

Case No. CGC-05-445622

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

1 **1. INTRODUCTION**

2 **1.1 Parties to the Agreement**

3 This Settlement Agreement is entered into by and between Russell Brimer (hereafter
4 “Brimer”) and Anthropologie, Inc. (“Anthropologie”) and Urban Outfitters, Inc. (“Urban
5 Outfitters”) (Anthropologie and Urban Outfitters are collectively referred to where appropriate as
6 “Urban”), with Brimer and Urban collectively referred to as the “Parties” and individually referred
7 to as a “Party,” where appropriate.

8 **1.2 Brimer**

9 Brimer is a citizen of the State of California, who seeks to promote awareness of exposures
10 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
11 contained in consumer and industrial products.

12 **1.3 Urban/Anthropologie**

13 Anthropologie and Urban Outfitters are corporations that sell, among other things, glassware
14 and other items to consumers in California.

15 **1.4 General Contentions**

16 Brimer has contended that Urban has distributed and/or sold in the State of California certain
17 glass containers and other glass items with colored artwork or designs (allegedly containing lead
18 and/or cadmium) on the exterior. Lead (and/or lead compounds) and cadmium are listed pursuant to
19 the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
20 §§25249.5 et seq. (“Proposition 65”), to cause cancer and birth defects and other reproductive harm.
21 Lead (and/or lead compounds) and cadmium (and/or cadmium compounds) shall be referred to
22 herein as “Listed Chemicals.”
23

24 **1.5 Products Descriptions**

25 The specific products that are covered by this Settlement and Release are glassware intended
26 for the consumption of food and beverages with colored artwork or designs (containing lead and/or
27 cadmium) on their exterior and glassware not intended for the consumption of food and beverages
28

1 with colored artwork or designs (containing lead and/or cadmium) on their exterior that are listed on
2 Exhibit A. Said products listed on Exhibit A are referred to herein as the "Products" and
3 specifically exclude any items released as a result of a supplier's participation in the *Brimer v.*
4 *Boelter* (Case No. CGC-05-440811) opt-in provision, such as those items supplied by Formation,
5 Inc. to Urban.

6 **1.6 Notices of Violations**

7 On or about March 31, 2005, Brimer served Anthropologie and/or Urban Outfitters and
8 various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the
9 Anthropologie Notice") regarding the sale by Anthropologie of certain items of glassware described
10 herein. On or about August 5, 2005 Brimer served a document entitled 60 Day Notice of Violation
11 on Urban Outfitters (the "Urban Notice") regarding the sale by Urban of various items of glassware
12 described herein. A third Notice will be served on or about March 17, 2006 that covers alleged
13 exposures to lead and/or cadmium from the reasonably foreseeable use of glassware not intended for
14 the consumption of food or beverage regarding sales by Anthropologie. The 60-Day Notices
15 referenced above are collectively referred to as "the 60 Day Notices" or "the Notices" where
16 appropriate.

17 **1.7 No Admission**

18 Urban denies the material factual and legal allegations contained in the Notice and maintains
19 that the Products that it has sold and distributed in California have been and are in compliance with
20 all laws. Nothing in this Settlement Agreement shall be construed as an admission by Urban of any
21 fact finding, conclusion of law, or violation of law, nor shall compliance with this Agreement
22 constitute or be construed as an admission by Urban of any fact, finding, conclusion, issue of law or
23 violation of law, such being specifically denied by Urban. Nothing in this Settlement Agreement
24 shall apply to, or be used as evidence regarding compliance for, any other product sold, or offered
25 for sale, by Urban with Proposition 65 or any other statute or regulation. However, this Section
26 shall not diminish or otherwise affect the obligations, responsibilities and duties of Urban under this
27 Settlement Agreement.
28

1 **1.8 Consent to Jurisdiction**

2 For purposes of this Settlement Agreement only, the Parties stipulate that the Superior Court
3 of the State of California for the City and County of San Francisco has jurisdiction to enforce the
4 provisions of this Settlement Agreement.

5 **1.9 Effective Date**

6 For purposes of this Settlement Agreement, the term “Effective Date” shall mean March 10,
7 2006.

8 **2. INJUNCTIVE RELIEF**

9 **2.1** After June 1, 2006, Urban shall not sell or offer for sale in California the Products
10 containing the Listed Chemicals in their exterior decoration unless such Products comply with
11 Section 2.2, 2.3, or 2.4 below. Any Products still in Urban’s care, custody, or control, as of June 1,
12 2006, shall not be sold in California, directly or indirectly, unless such Products comply with
13 Sections 2.2, 2.3, or 2.4 below.

14 **2.2 Product Warnings**

15 Subject to Section 2.4 and Section 2.1, after June 1, 2006, Urban shall not ship to or
16 otherwise cause to be sold the Products in California stores, unless warnings are provided in one or
17 more of the following ways at Urban’s discretion.

18 **2.2.1 Warning on the Products or Product Packaging**

19 A warning is affixed to the packaging, labeling or directly onto the Products by the
20 manufacturer, importer, or distributor of the Product, unless Urban consents, in writing, to
21 provide the warning itself, that states:
22

23 **WARNING: The materials used as colored decorations on the**
24 **exterior of this product contain lead, a chemical**
25 **known to the State of California to cause birth**
26 **defects or other reproductive harm.**

27 In addition, Urban may utilize any warning adopted and approved by the Office of
28 Environmental Health Hazard Assessment (“OEHHA”) and/or the Attorney General’s Office

1 for the specific Products at issue in this Consent Judgment, provided that Urban serves
2 Brimer with notice of the alternative warning at least fifteen (15) days in advance of its
3 implementation of such a warning.

4 Warnings issued for the Products pursuant to this subsection shall be prominently
5 placed with such conspicuousness as compared with other words, statements, designs, or
6 devices so as to render it likely to be read and understood by an ordinary individual under
7 customary conditions of use or purchase. Any material changes to the language of the
8 warning required by this subsection shall only be made with the approval of Brimer.

9 **2.2.2 Point of Sale**

10 At its discretion, Urban may satisfy its warning obligations under this Agreement by
11 arranging for the placement of sign(s), the wording of which shall be in accordance with the
12 wording of Section 2.2.1 above, to be posted in its retail outlets at which the Products are
13 sold directly to consumers. The signs shall be placed in such reasonable locations such that
14 they are likely to be read and understood at the point of display for the Products by the
15 ordinary consumer exercising reasonable purchasing behavior.

16 **2.3 Mail Order and Internet Sales**

17 Subject to Sections 2.3.3 and 2.4, after June 1, 2006, Urban shall not sell or distribute the
18 Products by mail order catalog or the Internet to California residents, unless warnings are provided
19 as set forth below.

20 For the Products that require a warning pursuant to this Settlement Agreement that are sold
21 by Urban by mail order or from the Internet to California residents, a warning containing the
22 language in subsection 2.2 shall be included, at Urban's sole option, either: (a) in the mail order
23 catalog (if any) or on the website (if any) pursuant to subsection 2.3.1 or 2.3.2; or (b) with the
24 Products when any of them are shipped to an address in California pursuant to subsection 2.3.3.
25 Any warnings given in the mail order catalogs or on the website shall identify the *specific* Products
26 so as to significantly minimize, if not eliminate, the chances that an overwarning situation will arise.
27 Nothing in this subsection 2.3 shall require Urban to provide warnings for the Products ordered
28

1 from a mail order catalog printed prior to June 1, 2006.

2 **2.3.1 Mail Order Catalog**

3 The warning message shall be stated within the catalog on the inside front cover and
4 either: (i) on the same page as any order form; or (ii) on the same page as the price, in the
5 same size as the surrounding, non-heading text, with the same language as that appearing in
6 subsection 2.2.

7 **2.3.2 Internet Web Sites**

8 The warning text, or a link to a page containing the warning text, shall be displayed
9 either: (a) on the same page on which the Products are displayed; (b) on the same page as
10 any order form for the Products; (c) on the same page as the price for the Products; (d) on
11 one or more pages displayed to a purchaser over the internet or via electronic mail during the
12 checkout and order confirmation process for sale of the Products; or (e) in any manner such
13 that is likely to be read and understood by an ordinary individual under customary conditions
14 of purchase of the Products. This warning shall including the same language as that
15 appearing in subsection 2.2. If a link is used, it shall state "Health Hazard Warning
16 Information for California Residents," and shall be of a size equal to the size of other links
17 on the page.

18 **2.3.3 Package Insert or Label**

19 Alternatively, a warning may be provided with the Products when shipped directly to
20 a consumer in California, by: (a) Product labeling pursuant to section 2.2, above; (b)
21 inserting a card or slip of paper measuring at least 4" x 6" in the shipping carton; or (c)
22 including the warning on the packing slip or customer invoice identifying the Products in
23 lettering of the same size as the description of the Products. The warning shall include the
24 language appearing in subsection 2.2 and shall clearly inform the consumer that he or she
25 may return the Product(s) for a full refund (including all shipping costs) within thirty (30)
26 days of receipt.
27
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1 **2.4 Reformulated Commitment**

2 Urban commits that all designs applied to the exterior surface of the Products manufactured
3 after the Effective Date, that are reasonably likely to be sold in California at its stores, via catalog or
4 by use of the internet, shall contain less than 0.06% lead by weight in the decoration as measured
5 either before or after the decoration is applied to the Product, using a test method of sufficient
6 sensitivity to establish a limit of quantification of less than 600 parts per million (“ppm”). These
7 Products shall be deemed to comply with Proposition 65, as “Reformulated”, and be exempt from
8 any Proposition 65 warning requirements under Sections 2.2 through 2.3.

9 **3. MONETARY PAYMENTS**

10 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

11 Pursuant to Health & Safety Code section 25249.7(b), Urban shall pay \$10,000 in civil
12 penalties on or before March 31, 2006, to be sent by overnight delivery, with the penalty payment
13 made payable to “Hirst & Chanler LLP in Trust for Russell Brimer”, to Hirst & Chanler LLP, 71
14 Elm Street, Suite 8, New Canaan, CT 06840.

15 **3.2 Apportionment of Penalties Received**

16 All penalty monies received shall be apportioned by Brimer in accordance with Health &
17 Safety Code §25192, with 75% of these funds remitted by Brimer to the State of California’s Office
18 of Environment Health Hazard Assessment and the remaining 25% of these penalty monies retained
19 by Brimer as provided by Health & Safety Code §25249.12(d). Brimer shall bear all responsibility
20 of apportioning and paying to the State of California the appropriate civil penalties in accordance
21 with this Section.
22

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

24 The Parties have reached an accord on the compensation due to Brimer and his counsel
25 under the Private Attorney General doctrine codified at California Code of Civil Procedure §1021.5
26 for all work performed through the Effective Date of the Agreement. Under the Private Attorney
27 Doctrine, Urban shall reimburse Brimer and his counsel for fees and costs incurred as a result of
28

1 investigating, bringing this matter to Urban's attention, and negotiating a settlement in the public
2 interest. On or before March 31, 2006, Urban shall pay Brimer and his counsel \$88,000 for all
3 attorneys' fees, expert and investigation fees, and related costs. The check made payable to "Hirst
4 & Chanler LLP" shall be delivered to Brimer's counsel at Hirst & Chanler LLP, 71 Elm Street,
5 Suite 8, New Canaan, CT 06840.

6 **5. RELEASE OF ALL CLAIMS**

7 **5.1 Release of Urban and Downstream Customers**

8 In further consideration of the promises and agreements herein contained, and for the
9 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and current
10 agents, representatives, attorneys, successors and/or assignees, and in the interest of the general
11 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
12 action and releases all claims, including, without limitations, all actions, causes of action, in law or
13 in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses
14 (including, but not limited to, investigation fees, experts fees and attorneys' fees) of any nature
15 whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Urban
16 and each of its vendors, suppliers, distributors, wholesalers, licensors, licensees, auctioneers,
17 retailers (including, but not limited to, Urban Outfitters), franchisees, dealers, customers, owners,
18 purchasers, users, patent companies, corporate affiliates, subsidiaries, related companies and their
19 respective officers, directors, attorneys, representatives, shareholders, agents, and employees
20 (collectively "Releasees") arising under Proposition 65, Business & Professions Code §17200 et
21 seq. and Business & Professions Code §17500 et seq., related to Urban's alleged failures to warn
22 about exposures to or identification of Listed Chemicals contained in the specific Products subject
23 to this Settlement Agreement. This release does not extend to Products sold by such Releasees to
24 other entities for sale in California other than Urban.

25 In addition, Brimer, on behalf of himself, his attorneys, and his agents, waives all rights to
26 institute or participate in, directly or indirectly, any form of legal action and releases all Claims
27 against the Releasees arising under Proposition 65, Business & Professions Code §§17200 et seq.,
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1 or Business & Professions Code §§17500 et seq. This waiver and release is null and void if Urban
2 does not comply with all of the terms of this Settlement Agreement, and Brimer shall remain free to
3 institute any form of legal action to enforce the provisions of this Settlement Agreement and to seek
4 damages for the breach of this Agreement by Urban under CCP §1021.5.

5 The Parties further agree and acknowledge that this Settlement Agreement is a full, final and
6 binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200 et
7 seq. and Business & Professions Code §§ 17500 et seq., that have been or could have been asserted
8 against Urban for its alleged failure to provide clear and reasonable warnings of exposure to or
9 identification of Listed Chemicals in the specific Products which are the subject of this Settlement
10 Agreement. Provided however, Brimer shall remain free to institute any form of legal action to
11 enforce the provisions of this Settlement Agreement.

12 It is specifically understood and agreed that the Parties intend that Urban's compliance with
13 the terms of this Settlement Agreement resolves all issues and liability, now and in the future (so
14 long as Urban complies with the terms of the Settlement Agreement) concerning Urban's
15 compliance with the requirements of Proposition 65, Business & Professions Code §§17200 et seq.
16 and Business & Professions Code §§17500 et seq., as to the Listed Chemicals in the specific
17 Products which are the subject of this Settlement Agreement.

18 Upon approval of this Consent Judgment by the Court, Brimer shall dismiss *Brimer v.*
19 *Urban Outfitters, Inc. (Case No. CGC-05-447240)* without prejudice.

20 **5.2 Urban's Release of Brimer**

21 Urban waives all rights to institute any form of legal action against Brimer, his attorneys or
22 representatives, for all actions taken or statements made by Brimer or his attorneys or
23 representatives, in the course of seeking enforcement herein of Proposition 65, Business &
24 Professions Code §§17200 et seq., or Business & Professions Code §§17500 et seq. against Urban
25 and its affiliates.

26 ///

27 ///

1 **6. COURT APPROVAL**

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

7 **7. SEVERABILITY**

8 If any of the provisions of this Settlement Agreement are held by a court to be
9 unenforceable, the ability of the enforceable provisions shall not be adversely affected.

10 **8. ATTORNEYS' FEES**

11 In the event that a dispute arises, with respect to any provision(s) of this Settlement
12 Agreement, the prevailing party shall, except as otherwise provided herein, be entitled to recover
13 reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of such
14 dispute except in situations in which CCP §1021.5 would apply.

15 **9. GOVERNING LAW**

16 The terms of this Settlement Agreement shall be governed by the laws of the State of
17 California and apply within the State of California. In the event that Proposition 65 is repealed or is
18 otherwise rendered inapplicable by reason of law generally, or as to the specific Products subject to
19 this Agreement, then Urban shall have no further obligations pursuant to this Settlement Agreement
20 with respect to, and to the extent that, the Products are so affected so long as Urban provides Brimer
21 with written notice of such change and its application to this agreement.

22 **10. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant to
24 this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class,
25 registered or certified mail, return receipt requested or (ii) overnight courier to any Party by the
26 others at the following addresses:

1 be served on the Attorney General's Office at least forty-five (45) days prior to the date a hearing is
2 scheduled on such motion in the Superior Court for the City and County of San Francisco unless the
3 Court allows a shorter period of time.

4 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

5 The Parties shall mutually employ their best efforts to support the entry of this Agreement as
6 a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.

7 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is
8 required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties agree to file
9 a Motion to Approve the Agreement ("Motion"), the first draft of which Defendants shall prepare,
10 within a reasonable period of time after the Effective Date. Plaintiff's counsel shall finalize the
11 Motion to Approve and prepare a declaration in support of the Joint Motion which shall, inter alia,
12 set forth support for the fees and costs to be reimbursed pursuant to Section 4. Urban shall have no
13 additional responsibility to Plaintiff's counsel pursuant to Code of Civil Procedure § 1021.5 or
14 otherwise with regard to reimbursement of any fees and costs incurred with respect to the
15 preparation and filing of the Joint Motion and its supporting declaration or with regard to Plaintiff's
16 counsel appearing for a hearing or related proceedings thereon.

17 **14. MODIFICATION**

18 This Settlement Agreement may be modified only by written agreement of the Parties. The
19 Attorney General shall be served with notice of any proposed modification to this Settlement
20 Agreement.

21 **15. AUTHORIZATION**

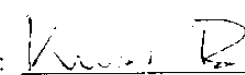
22 The undersigned are authorized to execute this Settlement Agreement on behalf of their
23 respective Parties and have read and agree to all of the terms and conditions of this Settlement
24 Agreement.

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AGREED TO:

Date: 5-17-06

RUSSELL BRIMER

By: 
Plaintiff Russel. Brimer

AGREED TO:

Date: _____

ANTHROPOLOGIE, INC.

By: _____

AGREED TO:

Date: _____

URBAN OUTFITTERS, INC.

By: _____

APPROVED AS TO FORM:

Date: 5/17/06

HIRST & CHANLER LLP

By: 
Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: _____

KRIEG, KELLER, SLOAN, REILLEY &
ROMAN LLP

By: _____
Kenneth E. Keller, Esq.
Attorneys for Defendants
URBAN OUTFITTERS, INC. and
ANTHROPOLOGIE, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

Date: _____

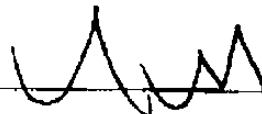
RUSSELL BRIMER

By: _____
Plaintiff Russell Brimer

AGREED TO:

Date: 3/14/06

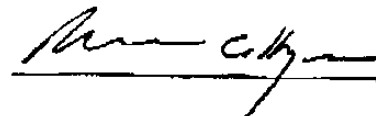
ANTHROPOLOGIE, INC.

By:  _____

AGREED TO:

Date: 3/14/06

URBAN OUTFITTERS, INC.

By:  _____

APPROVED AS TO FORM:

Date: _____


HIRST & CHANLER LLP

By: _____
Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: 3/15/06

KRIEG, KELLER, SLOAN, REILLEY &
ROMAN LLP

By:  _____
Kenneth E. Keller, Esq.
Attorneys for Defendants
URBAN OUTFITTERS, INC. and
ANTHROPOLOGIE, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

<u>Product Name</u>	<u>Item Number</u>
Juice Glass, "Juice"	10244556; 4531 69724
Glass, Cow, Green	07986417; 4531 54722
Glass, Cow, Yellow	08095044; 4531 54722
Glass, Cow, Blue	07986425; 4531 54722
Glass, Cow, Pink	07986433; 4531 54722
Glass, "In the Lap of Luxury"	08256828; 4531 02037
Glass, "Yours Faithfully"	08256844; 4531 02037
Glass, "It's a Beautiful Mornin'!"	08256810; 4531 02037
Glass, "It's a Dog's Life!"	08256836; 4531 02037
Coaster	08710568; 4533 25959
Candle, "Green Lawn"	11074846; 4552 06728
Kitchen/Bar Glass, "Gary Is My Nizzle"	10098044; 0531 25006
Martini Glass, Orange Dots	11117660; 0531 06282
Martini Glass, Yellow Dots	11117645; 0531 06282
Martini Glass, Lavender Dots	11117637; 0531 06282
Martini Glass, Green Dots	11117652; 0531 06282
Kitchen & Bar Set 4 Pc	10849875; 0531 28842