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21 Russell Brimer

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
23 COUNTY OF SAN FRANCISCO  
24 UNLIMITED JURISDICTION

25 RUSSELL BRIMER,

26 Plaintiff,

27 v.

28 THE BOELTER COMPANIES, et al.,

Defendants.

Case No. CGC-05-440811

**STIPULATION FOR ENTRY OF  
JUDGMENT**

1. The following constitutes the knowing and voluntary election and stipulation of the entity named below ("Company" or "Opt-In Defendant") to join as a Settling Defendant under the Consent Judgment previously entered by the Court in *Brimer v. The Boelter Companies*,

STIPULATION AND (PROPOSED) ORDER RE: CONSENT JUDGMENT  
SFSC CASE NO. CGC 05-440811

sf-2012773  
sf-2012773

1 Inc., San Francisco Superior Court Case No. CGC 05 -440811 (“Action”) and to be bound by  
2 the terms of that Consent Judgment.

3 2. At any time during the one-year period prior to the filing of this Stipulation  
4 (“Relevant Period”), the Company has employed ten (10) or more part-time or full-time  
5 persons and has manufactured, distributed, offered for use or sold one or more items in each of  
6 the following categories of Covered Products, as defined in the Consent Judgment (section 1.4)  
7 (check all that apply):

8 **X Glassware Food/Beverage Products** (“Category A Products”)

9 **X Glassware Non-Food/Beverage Products** (“Category C Products”)

10 **X Ceramicware Food/Beverage Products** (“Category B Products”)

11 **X Ceramicware Non-Food/Beverage Products** (“Category D Products”)

12 3. The categories of products identified above are hereafter designated “Covered  
13 Products” in the Action with respect to the Company.

14 4. At least one of the items in each of the categories checked above did not during the  
15 Relevant Period or does not currently meet the Reformulation Standards set forth for that  
16 category of Covered Products in section 2.3 of the Consent Judgment. The Company has not  
17 provided compliant Proposition 65 warnings in conjunction with the sale or use of all such  
18 Covered Products in California at all times during the Relevant Period.

19 5. The Company has not conducted a risk or exposure assessment for all Covered  
20 Products within each separate category checked above firmly establishing that the use of such  
21 Covered Products will result in an exposure in an amount less than that deemed permissible in  
22 Cal. Code Regs. §12805(b) (i.e., less than 0.5 micrograms of lead per day and/or less than  
23 4.1 micrograms of cadmium per day).

24 6. To the extent the Consent Judgment applies to the categories of Covered Products  
25 checked above, the Company agrees to be bound by the injunctive relief provisions of the  
26 Consent Judgment as it relates to each such category of Covered Products.

27 7. In conjunction with the execution of this Stipulation, the Company has provided the  
28 ~~payments applicable to it as set forth in Table 4.4 of the Consent Judgment in the manner~~

STIPULATION AND (PROPOSED) ORDER RE: CONSENT JUDGMENT  
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1 described in Exhibit E to the Consent Judgment. In this regard, the Company hereby  
2 represents and warrants that under the criteria set forth in subsections 14.4(a), (b), and (c) of  
3 the Consent Judgment, with respect to the Covered Products applicable to it pursuant to the  
4 categories checked in Paragraph 2 of this Stipulation, it is a (check only one)<sup>1</sup>:

- 5  (a) **Manufacturer** with combined sales in California of less than 350,000  
6 consumer units in calendar year 2004
- 7  (a.1) **Low Volume Manufacturer** with combined sales in California of less  
8 than 10,000 consumer units in calendar year 2004
- 9  (b) **Distributor and/or Importer** with combined sales in California of less than  
10 350,000 consumer units in calendar year 2004
- 11  (b.1) **Low Volume Distributor and/or Importer** with combined sales in  
12 California of less than 10,000 consumer units in calendar year 2004
- 13  (c) **Retailer and/or Amusement & Recreation Establishment**
- 14  (d) **Bar, Restaurant, Hotel, or Other Food/Beverage Service Defendant**
- 15  (e) **Opt-In Defendant with De Minimis Sales**, i.e., combined sales in

16 California of less than 500 consumer units in calendar year 2004 (attach to this Stipulation a  
17 list of the names of all product lines (by narrative description and, where available, UPC code)  
18 comprising these consumer units of Covered Products).

19 8. At least 65 days prior to the submissions of this Stipulation to the Court for entry,  
20 provided that it has been mailed to the address shown in Exhibit C attached hereto, the  
21 Company agrees to be deemed to have accepted service of a 60-day notice letter from Russell  
22 Brimer ("Brimer") alleging certain violations of Proposition 65 with respect to sales of the  
23 Covered Products identified herein.

24 \_\_\_\_\_  
25 <sup>1</sup> Any entity which has conducted activities which comprise more than one of the  
26 categories of business listed in (a)-(d) below shall be deemed to be a Manufacturer if 15% or  
27 more of its sales of Covered Products in California were the result of its Manufacturing of  
28 Covered Products; any entity otherwise in categories (c) or (d) shall be deemed to be a  
Distributor/Importer if 15% or more of its sales of Covered Products in California were the result  
of its Distributing/Importing of Covered Products.

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9. The Company hereby stipulates to be deemed to have voluntarily accepted service of the summons and complaint in this Action upon the filing of this Stipulation and agrees to be subject to the jurisdiction of the Court for purposes of the Consent Judgment.

10. Future notices concerning this Stipulation and the Consent Judgment shall be provided to the Company at the address shown in Exhibit C as attached hereto. If the Company desires to change the individual and/or address designated to receive notice on its behalf, the Company shall provide notice to Brimer and Boelter's counsel at the addresses for them listed in Exhibit C to the Consent Judgment.

11. The undersigned have read, and the person and/or entity named below knowingly and voluntarily agree to be bound by, all terms and conditions of this Stipulation and the Consent Judgment as previously approved and entered by the San Francisco County Superior Court in this Action.

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1 12. The undersigned have full authority to make the written representations above  
2 and to enter into this Stipulation for the person/entity on behalf of which he/she is signing.

3 IT IS HEREBY STIPULATED AND AGREED TO:

4  
5 By: [Signature]  
6 (signature)

By: [Signature]  
LARA LEI S. PARAS

On Behalf of Plaintiff Russell Brimer

8 Zack Romaya  
Name (printed/typed)

9 President  
Title (printed/typed)

11 On Behalf of:  
12 Nelly's Market, Inc., d.b.a. Old Town Liquor &

13 Deli  
14 Nelly's Market INC.  
(Insert Company Name)

15 Opt-In Defendant

17 Dated: 01-04-06

Dated: 2-6-2006

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LIST OF PRODUCT LINES FOR NELLY'S MARKET,  
 INC., d.b.a. OLD TOWN LIQUOR & DELI  
 (ATTACHMENT TO STIPULATION FOR ENTRY OF  
 JUDGMENT IN BRIMER V. BOELTER, ETC., ET AL.,  
 SFSC CASE NO. CGC-05-440811:

<u>PRODUCT NAME:</u>	<u>PRODUCT DESCRIPTION:</u>	<u>UPC:</u>
El Gran Viejo Tequila	Tequila	
Don Alvaro	Tequila	
Castel	Tequila	
Tequila Canicas	Tequila	
Sol Dios	Tequila	
Dios Altos	Tequila	
Seleccion Suprema	Tequila	
Chinaco	Tequila	
Casa 1921	Tequila	
Pyrat	Rum	
Vanfiogh	Vodka	
Level	Vodka	
Belvedere	Vodka	
Mezzaluna	Vodka	
Chopin	Vodka	
Roth	Vodka	
Pravda	Vodka	
Hacienda del Cristero	Tequila	
Hacienda del Oro	Tequila	
Finlandia	Vodka	
Casa Noble	Tequila	
El Jimador	Tequila	
Don Fulano	Tequila	
Don Julio	Tequila	
Penca Azul	Tequila	
Milagro	Tequila	
Tequila Romance	Tequila	
Asom Broso	Tequila	
Gran Patron	Tequila	
Cent Cinquantaire Grand Marnier	Brandy	

LIST OF PRODUCT LINES FOR NELLY'S MARKET,  
 INC., d.b.a. OLD TOWN LIQUOR & DELI  
 (ATTACHMENT TO STIPULATION FOR ENTRY OF  
 JUDGMENT IN BRIMER V. BOELTER, ETC., ET AL.,  
 SFSC CASE NO. CGC-05-440811:

<u>PRODUCT NAME:</u>	<u>PRODUCT DESCRIPTION:</u>	<u>UPC:</u>
Gold Schlager	Alcoholic Beverage	
Gold Rush	Alcoholic Beverage	
Gray Goose	Vodka	
Absolut	Vodka	
Svedka	Vodka	
Coballo/Coballo Morro	Tequila	
Amate	Tequila	
Cabo Wabo	Tequila	
Tenocn	Tequila	
Beyond	Vodka	
Hussong SMR	Tequila	
Conquistador	Tequila	
El Mayor Reserve	Tequila	
El Amo	Tequila	
42 Below	Vodka	
Dewars Special Reserve	Scotch Whisky	
Malibu	Rum	
Citadelle	Gin	
Damrak	Gin	
Starbuck Coffee Liqueur	Liqueur	
Tequipal	Tequila	
Tequila Rose	Tequila	
Cuvee du Centenaire Grand Marnier	Brandy	
Los Tres Tonos	Tequila	
Los Arango	Tequila	
El Reformador	Tequila	
Rain	Vodka	
Don Julio Real	Tequila	
Remy Martin Extra	Cognac	
Noblige Martell	Cognac	

