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 19 PETRO STOPPING CENTERS, LP

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

23 RUSSELL BRIMER

24 Plaintiff,

25 v.

26 PETRO STOPPING CENTERS, LP; and  
 27 DOES 1 through 150, inclusive,

28 Defendants.

Case No. CGC 05-447009

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

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer And Petro Stopping Centers, LP**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter  
4 "Brimer" or "Plaintiff") and defendant Petro Stopping Centers, LP, (hereafter "Petro" or  
5 "Defendant"), with Brimer and Petro collectively referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Petro employs ten or more persons and is a person in the course of doing business for  
12 purposes of Proposition 65.

13 **1.4 General Allegations**

14 Brimer alleges that Petro has manufactured, distributed and/or sold in the State of  
15 California certain shot glasses and other glassware intended for the consumption of food or  
16 beverages with colored artwork or designs (containing lead) on the exterior. Lead is listed  
17 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
18 Safety Code §§25249.5 et seq. ("Proposition 65"), as a chemical known to the State of California  
19 to cause birth defects and other reproductive harm. Lead shall be referred to herein as the "Listed  
20 Chemical."

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: shot  
23 glasses and other glassware intended for the consumption of food or beverages with colored  
24 artwork or designs (containing lead) on the exterior including, but not limited to, the glassware  
25 products identified in Exhibit A to this Consent Judgment. All such shot glasses and other  
26 glassware intended for the consumption of food or beverages with colored artwork or designs  
27 (containing lead) on the exterior shall be referred to herein as the "Products."

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**1.6 Notices of Violation**

On or about September 2, 2005, Brimer served Petro and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Petro and such public enforcers with notice that alleged that Petro was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products that Petro sold exposed users in California to the Listed Chemical.

**1.7 Complaint**

On November 23, 2005, Brimer, who is acting in the interest of the general public in California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the Superior Court in and for the City and County of San Francisco against Petro Stopping Centers, LP and Does 1 through 150, (*Brimer v. Petro Stopping Centers, LP*, San Francisco Superior Court Case No. CGC 05-447009) alleging violations of Health & Safety Code §25249.6 based on the alleged exposures to the Listed Chemical contained in the Products sold by Petro.

**1.8 No Admission**

Petro denies the material factual and legal allegations contained in Brimer's Notice and Complaint and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Petro of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Petro of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Petro. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Petro under this Consent Judgment.

**1.9 Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Petro as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean February 1,  
3 2007.

4 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

5 **2.1** After the Effective Date, Petro shall not sell, ship or offer to be shipped for sale in  
6 California Products containing the Listed Chemical unless such Products are sold or shipped with  
7 the clear and reasonable warnings set out in Section 2.2 or comply with the Reformulation  
8 Standards set forth in Section 2.3.

9 Any warning issued for Products pursuant to this Section 2.2 below shall be prominently  
10 placed with such conspicuousness as compared with other words, statements, designs, or devices  
11 as to render it likely to be read and understood by an ordinary individual under customary  
12 conditions before purchase or, for Products shipped directly to an individual in California, before  
13 use. Any warning issued pursuant to Section 2.2 shall be provided in a manner such that the  
14 consumer or user understands to which *specific* product the warning applies, so as to minimize if  
15 not eliminate the chance of an overwarning situation. The warning requirement set forth in  
16 Paragraphs 2.1 and 2.2 shall not apply to Reformulated Products as defined in Paragraphs 2.3, 2.4  
17 and 2.5.

18 **2.2 Product Warnings**

19 **2.2.1** Clear and Reasonable Warnings. This Section describes Petro's options for  
20 satisfying the warning obligations required by Section 2.1, depending, in part, on the manner of  
21 sale:

22 (a) **Retail Store Sales**

23 (i) **Product Labeling.** From the Effective Date, a warning will  
24 be affixed to the packaging, labeling or directly on the Product by Petro or its agent, that states:

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

28 (ii) **Point-of-Sale Warnings.** Petro may perform its warning

1 obligations by insuring to the greatest extent possible that signs are posted at retail outlets in the  
 2 State of California where the Products are sold. Petro must receive a written commitment from  
 3 each retailer to whom Petro sells Products directly that it will post the warning signs. Point-of-sale  
 4 warnings shall be provided through one or more signs posted in close proximity to the point of  
 5 display of the Products that state:

6                   **WARNING:** The materials used as colored decorations on  
 7                                   the exterior of this product contain lead, a  
 8                                   chemical known to the State of California to  
                                   cause birth defects and other reproductive  
                                   harm.

9                   **(b) Mail Order Catalog and Internet Sales.** Defendant shall satisfy its  
 10 warning obligations for Products that are sold by mail order catalog or from the internet to  
 11 California residents, by providing a warning: (a) in the mail order catalog and/or on the website;  
 12 or (b) with the Product when it is shipped to an address in California. Warnings given in the mail  
 13 order catalog or on the website shall identify the specific Product to which the warning applies as  
 14 further specified in Sections 2.2.1(b)(i), (ii) and/or (iii) as applicable:

15                   **(i) Mail Order Catalog.** Any warning provided in a mail order  
 16 catalog must be in the same type size or larger as the product description text within the catalog.  
 17 The following warning shall be provided on the same page and in the same location as the display  
 18 and/or description of the Product:

19                   **WARNING:** The materials used as colored decorations on  
 20                                   the exterior of this product contain lead, a  
 21                                   chemical known to the State of California to  
                                   cause birth defects and other reproductive  
                                   harm.

22  
 23                   Where it is impracticable to provide the warning on the same page and in the same location  
 24 as the display and/or description of the Product, Petro may utilize a designated symbol to cross  
 25 reference the applicable warning ("Designated Symbol" or "▼") and shall define the term  
 26 Designated Symbol with the following language on the inside of the front cover of the catalog or  
 27 on the same page as any order form for the Product(s):

28                   **WARNING:** The materials used as colored decorations on

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the exterior of certain products identified with this symbol ▼ and offered for sale in this catalog contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

The Designated Symbol (shown on Exhibit A attached hereto) must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the Designated Symbol appears, Petro must provide a header or footer directing the consumer to the warning language and definition of the Designated Symbol.

If Defendant elects to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Products printed after February 1, 2007.

(ii) **Internet Web Sites and Pages.** A warning may be given in conjunction with the sale of the Product via the internet, provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger as the product description text:

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

Alternatively, the Designated Symbol may appear adjacent to or immediately following the display, description or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page:

**WARNING:** Products identified on this page with the following symbol use materials that contain lead as colored decorations on their exterior, a chemical known to the State of California to cause birth defects and other reproductive harm: ▼

(iii) **Package Insert or Label.** For all Products sold by catalog

1 or via the internet, a warning may be provided with the Product when it is shipped directly to an  
 2 individual in California, by either: (a) affixing the following warning language to the packaging,  
 3 labeling or directly to a specific Product; (b) inserting a warning card measuring at least 4" x 6" in  
 4 the shipping carton which contains the following warning language; or (c) by placing the  
 5 following warning statement on the packing slip or customer invoice on the line directly below the  
 6 description of the Product on the packing slip or customer invoice:

7                   **WARNING:** The materials used on this product as exterior  
 8                                   decorations contain lead, a chemical known to  
 9                                   the State of California to cause birth defects  
                                  and other reproductive harm.

10                   Alternatively, Petro may place the following language on the packing slip or invoice and  
 11 specifically identifying the Product in lettering of the same size or larger as the description of the  
 12 Product:

13                   **WARNING:** The materials used as colored decorations on the exterior  
 14                                   of the following product(s) contain lead, a chemical known  
                                  to the State of California to cause birth defects or other  
                                  reproductive harm:

15                                   *[list products for which warning is given].*

16                   The Defendant shall, in any of these instances, in conjunction with providing the warning,  
 17 also inform the consumer, in a conspicuous manner, that he or she may return the Product for a full  
 18 refund (including shipping costs for both the receipt and the return of the Product) within thirty  
 19 (30) days of his or her receipt of the Product.

20                   **2.2.2 Exceptions**

21                   The warning requirements set forth in Section 2.2.1 shall not apply to:

- 22                   (i) Any Products shipped to a third party before the Effective Date; or
- 23                   (ii) Reformulated Products (as defined in Section 2.3 below).

24                   **2.3 Reformulation Standards**

25                   The following Products shall be deemed "Reformulated Products" and to comply with  
 26 Proposition 65 and be exempt from any Proposition 65 warning requirements under Sections 2.2:  
 27 The products must only utilize decorating materials that contain six one-hundredths of one percent  
 28 (0.06%) or less of lead by weight; and there must be no detectable lead in either the lip-and-rim

1 area.

2 **2.4 Reformulation Standards**

3 The following products shall be deemed "Reformulated Products" and to comply with  
4 Proposition 65 and be exempt from any Proposition 65 warning requirements under Sections 2.2:  
5 The products must only utilize decorating materials that contain six one-hundredths of one percent  
6 (0.06%) or less of lead by weight; and there must be no detectable lead in either the lip-and-rim  
7 area.

8 **2.5 Reformulation Commitment**

9 Petro hereby commits that all Products that it offers for sale in California after April 2,  
10 2007 shall qualify as Reformulated Products.

11 **3. MONETARY PAYMENTS**

12 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

13 The total settlement amount shall be \$2,000, which shall be paid by Petro as set forth  
14 herein. Pursuant to Health & Safety Code §25249.7(b), Petro shall pay the \$2,000 in civil  
15 penalties on or before February 15, 2007. Said payments shall be made payable to the "HIRST &  
16 CHANLER LLP in Trust For Russell Brimer" and shall be delivered to plaintiff's counsel at the  
17 following address:

18 HIRST & CHANLER LLP  
19 Attn: Proposition 65 Controller  
20 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

21 **3.2 Apportionment of Penalties Received**

22 All penalty monies received shall be apportioned by Brimer in accordance with Health &  
23 Safety Code §25192, with 75% of these funds remitted by Brimer to the State of California's  
24 Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty  
25 monies retained by Brimer as provided by Health & Safety Code §25249.12(d). Brimer shall bear  
26 all responsibility for apportioning and paying to the State of California the appropriate civil  
27 penalties paid in accordance with this Section.

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

2 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute  
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
4 this fee issue to be resolved after the material terms of the agreement had been settled. The Parties  
5 then attempted to (and did) reach an accord on the compensation due to Brimer and his counsel  
6 under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5  
7 for all work performed through the Court's approval of this agreement. Under the private attorney  
8 general doctrine, Petro shall reimburse Brimer and his counsel for fees and costs incurred as a  
9 result of investigating, bringing this matter to Petro's attention, litigating and negotiating a  
10 settlement in the public interest and seeking the Court's approval of the settlement agreement.  
11 Petro shall pay Brimer and his counsel \$23,000 for all attorneys' fees, expert and investigation  
12 fees, litigation and related costs. The payment shall be made payable to HIRST & CHANLER  
13 LLP and shall be delivered on or before February 15, 2007, at the following address:

14 HIRST & CHANLER LLP  
15 Attn: Proposition 65 Controller  
16 2560 Ninth Street  
17 Parker Plaza, Suite 214  
18 Berkeley, CA 94710-2565

17 **5. RELEASE OF ALL CLAIMS**

18 **5.1 Release of Petro, Downstream Customers and Upstream Suppliers**

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

1 companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,  
 2 representatives, shareholders, agents, and employees, and sister and parent entities for all Products  
 3 sold by Petro (collectively "Releasees"). This release is limited to those claims that arise under  
 4 Proposition 65, as such claims relate to Petro's alleged failure to warn about exposures to or  
 5 identification of the Listed Chemical contained in the Products. This release does not extend to  
 6 Products sold by such Releasees to other entities for sale in California, other than Petro.

7 Except for the Products sold by Petro as described and released in the above paragraph, the  
 8 Parties further understand and agree that this release shall not extend upstream to any entities that  
 9 manufactured the Products or any component parts thereof, or any distributors or suppliers who  
 10 sold the Products or any component parts thereof.

11 **5.2 Petro's Release of Brimer**

12 Petro waives any and all claims against Brimer, his attorneys and other representatives, for  
 13 any and all actions taken or statements made (or those that could have been taken or made) by  
 14 Brimer and his attorneys and other representatives, whether in the course of investigating claims or  
 15 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to  
 16 the Products.

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and  
 19 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
 20 year after it has been fully executed by all Parties, in which event any monies that have been  
 21 provided to Plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be  
 22 refunded within fifteen (15) days after receiving written notice from Petro that the one-year period  
 23 has expired.

24 **7. SEVERABILITY**

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

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1 **8. ATTORNEYS' FEES**

2 In the event that a dispute arises with respect to any provision of the Consent Judgment, the  
3 prevailing party shall, except as otherwise provided herein, be entitled to reasonable attorneys' fees  
4 and costs incurred in connection with the resolution of such dispute pursuant to CCP §1021.5.

5 **9. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of  
7 California and apply within the State of California. In the event that Proposition 65 is repealed or  
8 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Petro  
9 shall provide written notice to Brimer of any asserted change in the law, and shall have no further  
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products  
11 are so affected.

12 **10. NOTICES**

13 Unless specified herein, all correspondence and notices required to be provided pursuant to  
14 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
15 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the  
16 other party at the following addresses:

17 To Petro:

18 Petro Stopping Centers, LP  
19 c/o Cary G. Palmer, Esq.  
20 JACKSON LEWIS LLP  
801 K Street, Suite 2300  
Sacramento, CA 95814

21 To Brimer:

22 Proposition 65 Coordinator  
23 HIRST & CHANLER LLP  
24 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

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1 **11. 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 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6 Brimer agrees to comply with the reporting form requirements referenced in Health &  
7 Safety Code §25249.7(f).

8 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

9 Brimer and Petro agree to mutually employ their best efforts to support the entry of this  
10 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
11 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a  
12 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the  
13 Plaintiff agrees to file a Motion to Approve the Agreement ("Motion"). Petro shall have no  
14 additional responsibility to Plaintiff's counsel pursuant to Code of Civil Procedure §1021.5 or  
15 otherwise with regard to reimbursement of any fees and costs incurred with respect to the  
16 preparation and filing of the Motion or with regard to Plaintiff's counsel appearing for a hearing  
17 thereon.

18 **14. MODIFICATION**

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

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**15. 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.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>2-2-07</u></p> <p>By: <u></u> Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>2-11-07</u></p> <p>By: <u></u> Defendant, PETRO STOPPING CENTERS, LP</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>1/29/2007</u></p> <p>HIRST &amp; CHANLER LLP</p> <p>By: <u></u> Keith G. Adams Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>2-14-07</u></p> <p>JACKSON LEWIS LLP</p> <p>By: <u></u> Cary G. Palmer Attorneys for Defendant PETRO STOPPING CENTERS, LP</p>

**IT IS SO ORDERED.**

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

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