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19 HOME DECORATORS COLLECTION, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 FOR THE CITY AND COUNTY OF SAN FRANCISCO

22 UNLIMITED CIVIL JURISDICTION

23 RUSSELL BRIMER	)	Case No. CGC-05-446473
	)	
24 Plaintiff,	)	<b>STIPULATION AND [PROPOSED]</b>
	)	<b>ORDER RE: CONSENT JUDGMENT</b>
25 v.	)	
	)	
26 HOME DECORATORS COLLECTION, INC.;	)	
27 and DOES 1 through 150,	)	
	)	
28 Defendants.	)	

1       **1. INTRODUCTION**

2               **1.1 Russell Brimer And Home Decorators Collection, Inc.**

3               This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter  
4       “Brimer” or “Plaintiff”) and defendant Home Decorators Collection, Inc., (hereafter “Home  
5       Decorators” or “Defendant”), with Brimer and Home Decorators collectively referred to as the  
6       “Parties.”

7               **1.2 Plaintiff**

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

11              **1.3 Defendant**

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

14              **1.4 General Allegations**

15              Brimer alleges that Home Decorators has manufactured, distributed and/or sold in the State  
16       of California certain stained glass products containing lead in the solder or came used on or in the  
17       stained glass. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of  
18       1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical known  
19       to the State of California to cause birth defects and other reproductive harm. Lead shall be referred  
20       to herein as the “Listed Chemical.”

21              **1.5 Product Description**

22              The products that are covered by this Consent Judgment are defined as follows: stained  
23       glass products containing lead in the solder or came including, but not limited to, the stained glass  
24       products identified in Exhibit A to this Consent Judgment. All such stained glass products  
25       containing lead in the solder or came shall be referred to herein as the “Products.”

26              **1.6 Notices of Violation**

27              On or about September 2, 2005, Brimer served Home Decorators and various public

1 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that  
2 provided Home Decorators and such public enforcers with notice that alleged that Home Decorators  
3 was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and  
4 customers that the Products that Home Decorators sold exposed users in California to the Listed  
5 Chemical.

6 **1.7 Complaint**

7 On November 8, 2005, Brimer, who is acting in the interest of the general public in  
8 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the  
9 Superior Court in and for the City and County of San Francisco against Home Decorators  
10 Collection, Inc. and Does 1 through 150, (*Brimer v. Home Decorators Collection, Inc.*, Case No.  
11 CGC-05-446473) alleging violations of Health & Safety Code §25249.6 based on the alleged  
12 exposures to the Listed Chemical contained in the Products sold by Home Decorators.

13 **1.8 No Admission**

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

23 **1.9 Consent to Jurisdiction**

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

1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” shall mean July 15, 2006.

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

4           **2.1**     After the Effective Date, Home Decorators shall not sell, ship or offer to be  
5 shipped for sale in California Products containing the Listed Chemical unless such Products are sold  
6 or shipped with the clear and reasonable warnings set out in Section 2.2 or comply with the  
7 Reformulation Standards set forth in Section 2.3.

8           Any warning issued for Products pursuant to Section 2.2 below shall be prominently placed  
9 with such conspicuousness as compared with other words, statements, designs, or devices as to  
10 render it likely to be read and understood by an ordinary individual under customary conditions  
11 before purchase or, for Products shipped directly to an individual in California, before use.

12           **2.2 Product Warnings**

13           **2.2.1 Clear and Reasonable Warnings.** This Section describes Home  
14 Decorators’ options for satisfying the warning obligations required by Section 2.1, depending, in  
15 part, on the manner of sale:

16                   **(a) Retail Store Sales.** Home Decorators or its agents may either:

17                           **(i) Product Labeling.** From the Effective Date, affix a warning  
18 to the packaging, labeling or directly on the Product by Home Decorators or its agent, that states:

19                                   **WARNING:** The solder or came used on this product contains lead,  
20 a chemical known to the State of California to cause  
21 birth defects and other reproductive harm

21                                   Or,

22                           **(ii) Point-of-Sale Warnings.** Insure to the greatest extent  
23 possible that signs are posted at retail outlets in the State of California where the Products are sold.  
24 To utilize this method of warning, Home Decorators must receive a written commitment from each  
25 retailer to whom Home Decorators sells Products directly stating that it will post the warning signs.  
26 Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the  
27 point of display of the Products that state:

1                   **WARNING:** The solder or came used on this product contains  
2   lead, a chemical known to the State of California to  
3   cause birth defects and other reproductive harm.

4                   A point-of-sale warning shall be provided in a manner such that the consumer understands to  
5                   which *specific* Products the warning applies.<sup>1</sup>

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

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

15   **WARNING:** The solder or came used on this product contains lead,  
16   a chemical known to the State of California to cause  
17   birth defects and other reproductive harm.

18                   Where it is impracticable to provide the warning on the same page and in the same location as the  
19                   display and/or description of the Product, Home Decorators may utilize a designated symbol to  
20                   cross reference the applicable warning (“Designated Symbol”) and shall provide the following  
21                   language on the inside of the front cover of the catalog or on the same page as any order form for the  
22                   Product(s):

23   **WARNING:** The solder or came used on certain products identified  
24   with this symbol ▼ and offered for sale in this catalog  
25   contain lead, a chemical known to the State of  
26   California to cause birth defects and other reproductive  
27   harm.

28                   The Designated Symbol (shown on Exhibit B 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

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<sup>1</sup> The *specific* identification referenced here and in Section 2.2.1(b) must provide the product name and model number so as to minimize if not eliminate the chances that an overwarning situation will arise.

1 Designated Symbol appears, Home Decorators must provide a header or footer directing the  
2 consumer to the warning language and definition of the Designated Symbol.

3 If Defendant elects to provide warnings in the mail order catalog, then the warnings must be  
4 included in any catalogs offering to sell one or more Products that are laid out for printing after July  
5 1, 2006.

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

14 **WARNING:** The solder or came used on this product contains lead,  
15 a chemical known to the State of California to cause  
16 birth defects and other reproductive harm.

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

20 **WARNING:** Products identified on this page with the following  
21 symbol use solder or came that contains lead, a  
22 chemical known to the State of California to cause  
23 birth defects and other reproductive harm: ▼

24 (iii) **Package Insert or Label.** For all Products sold by catalog or  
25 via the internet, a warning may be provided with the Product when it is shipped directly to an  
26 individual in California, by either: (a) affixing the following warning language to the packaging,  
27 labeling or directly to a specific Product;<sup>2</sup> (b) inserting a warning card measuring at least 4" x 6" in

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28 <sup>2</sup> A warning statement or sticker placed on the bottom of the product packaging is deemed an inadequate warning for purposes of this Consent Judgment.



1           **2.4 Reformulation Commitment**

2           Home Decorators hereby commits that all Products that it offers for sale in California after  
3           January 1, 2007, shall qualify as Reformulated Products.<sup>4</sup>

4           **3. MONETARY PAYMENTS**

5           **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

6           The total settlement amount shall be \$25,000, which shall be paid by Home Decorators as  
7           set forth herein. Home Decorators shall receive a credit of \$5,000 against the penalty amount in  
8           light of its prompt cooperation with Brimer in resolving this matter. Pursuant to Health & Safety  
9           Code §25249.7(b), Home Decorators shall pay the remaining \$20,000 in civil penalties in two  
10          installments. The first payment of \$10,000 shall be made on or before July 14, 2006. The second  
11          payment of \$10,000 shall be payable on or before March 1, 2007. The second payment shall be  
12          waived in the event that Home Decorators certifies in writing under penalty of perjury with  
13          supporting facts and documentation, not later than February 1, 2007, that it has complied with the  
14          Reformulation Commitment set forth in Section 2.4.<sup>5</sup> Said payments shall be made payable to the  
15          “HIRST & CHANLER LLP in Trust For Russell Brimer” and shall be delivered to plaintiff’s  
16          counsel at the following address:

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

22          **3.2 Apportionment of Penalties Received**

23          All penalty monies received shall be apportioned by Brimer in accordance with Health &  
24          Safety Code §25192, with 75% of these funds remitted by Brimer to the State of California’s Office  
25          of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies

26          \_\_\_\_\_  
27          <sup>4</sup> The commitment provided for in this Section shall exclusively be enforced through Section 3.1  
28          below.

29          <sup>5</sup> Failure to submit such a timely certification shall be addressed through the second penalty  
30          payment provided for in this Section 3.1 and not be the basis for additional remedies or enforcement  
31          actions.



1 retained by Brimer as provided by Health & Safety Code §25249.12(d). Brimer shall bear all  
2 responsibility for apportioning and paying to the State of California the appropriate civil penalties  
3 paid in accordance with this Section.

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

5 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
6 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
7 issue to be resolved after the material terms of the agreement had been settled. Home Decorators  
8 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
9 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
10 Brimer and his counsel under the private attorney general doctrine codified at California Code of  
11 Civil Procedure §1021.5 for all work performed through the Court's approval of this agreement.  
12 Under the private attorney general doctrine, Home Decorators shall reimburse Brimer and his  
13 counsel for fees and costs incurred as a result of investigating, bringing this matter to Home  
14 Decorators' attention, litigating and negotiating a settlement in the public interest and seeking the  
15 Court's approval of the settlement agreement. Home Decorators shall pay Brimer and his counsel  
16 \$31,500 for all attorneys' fees, expert and investigation fees, litigation and related costs. The  
17 payment shall be made payable to HIRST & CHANLER LLP and shall be delivered on or before  
18 July 14, 2006, at the following address:

19 HIRST & CHANLER LLP  
20 Attn: Proposition 65 Controller  
21 2560 Ninth Street  
22 Parker Plaza, Suite 214  
23 Berkeley, CA 94710-2565

24 **5. RELEASE OF ALL CLAIMS**

25 **5.1 Release of Home Decorators and Downstream Customers**

26 In further consideration of the promises and agreements herein contained, and for the  
27 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and  
28 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
general public, hereby waives all rights to institute or participate in, directly or indirectly, any form



Hazelwood, MO 63042

To Brimer:

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

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

**11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

**13. ADDITIONAL POST EXECUTION ACTIVITIES**

Brimer and Home Decorators agree to mutually employ their best efforts to support the entry of this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties agree to file a Joint Motion to Approve the Agreement (“Joint Motion”), the first draft of which Home Decorators’ counsel shall prepare, within a reasonable period of time after the Execution Date (*i.e.*, not to exceed thirty (30) days unless otherwise agreed to by the Parties’ counsel based on unanticipated circumstances). Home Decorators shall have no additional responsibility to Plaintiff’s counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of the Joint Motion and its supporting declaration or with regard to Plaintiff’s counsel appearing for a hearing thereon.

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**14. 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 (15) days in advance of its consideration by the Court.

**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><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Plaintiff Russell Brimer</p>	<p><b>AGREED TO:</b></p> <p>Date: <u>6/22/06</u></p> <p>By: <u>Ruthy Byrler</u> Defendant Home Decorators Collection, Inc.</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: _____ Clifford A. Chanler Attorneys for Plaintiff Russell Brimer</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>6/30/06</u></p> <p>MORRISON &amp; FOERSTER LLP</p> <p>By: <u>Robert L. Falk</u> Robert L. Falk Attorneys for Defendant Home Decorators Collection, Inc.</p>

**IT IS SO ORDERED.**

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

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

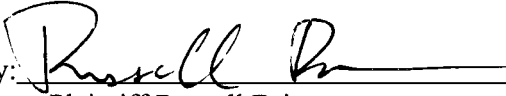
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<p><b>AGREED TO:</b></p> <p>Date: <u>6-26-06</u></p> <p>By: <u></u> Plaintiff Russell Brimer</p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant Home Decorators Collection, Inc.</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: _____ Clifford A. Chanler Attorneys for Plaintiff Russell Brimer</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>MORRISON &amp; FOERSTER LLP</p> <p>By: _____ Robert L. Falk Attorneys for Defendant Home Decorators Collection, Inc.</p>

**IT IS SO ORDERED.**

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

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


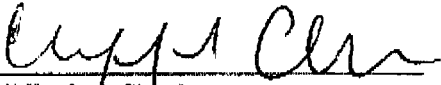
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<p><b>AGREED TO:</b></p> <p>Date: <u>6-26-06</u></p> <p>By: <u></u> Plaintiff Russell Brimer</p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant Home Decorators Collection, Inc.</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>6-26-06</u></p> <p>HIRST &amp; CHANLER LLP</p> <p>By: <u></u> Clifford A. Chanler Attorneys for Plaintiff Russell Brimer</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>MORRISON &amp; FOERSTER LLP</p> <p>By: _____ Robert L. Falk Attorneys for Defendant Home Decorators Collection, Inc.</p>

**IT IS SO ORDERED.**

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

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

**Exhibit A**

The Products that are covered by this Consent Judgement are stained glass products containing lead in the solder or came including, but not limited to:

1. *Fan/ Vanity Light Shade 2.25" Neck Fruit, #13028-00890*

**Exhibit B**

The Designated Symbol [Yellow Triangle] that Defendant will use to identify Products containing the Listed Chemical which are sold through its catalogs or on its website is:

