

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Laralei S. Paras (State Bar No. 203319)
HIRST & CHANLER LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Clifford A. Chanler (State Bar No. 135534)
D. Joshua Voorhees (State Bar No. 241436)
HIRST & CHANLER LLP
The Whitney Building
71 Elm Street, Suite 8
New Canaan, CT 06840
Telephone: (203) 966-9911
Facsimile: (203) 801-5222

Attorneys for Plaintiff
RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA – HAYWARD BRANCH
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,) No. HG 06251256
)
Plaintiff) **STIPULATION AND [PROPOSED]**
) **ORDER RE: CONSENT JUDGMENT**
v.)
)
FOUR STAR INTERNATIONAL TRADING;)
JO-ANN STORES, INC.,; and DOES 1 through)
150,)
)
Defendants.)

1 This Consent Judgment (“Agreement”) is entered into by and between Russell Brimer
2 (hereinafter “Brimer”), and Four Star International Trading (hereinafter “Four Star”) and Jo-Ann
3 Stores, Inc. (hereinafter “Jo-Ann”) (all collectively referred to as “the parties”) as of March 14,
4 2006 (the "Effective Date"). The parties agree to the following terms and conditions:

5 **WHEREAS:**

6 1.0 Introduction.

7 1.1 Noticing Party. Russell Brimer is a citizen of the state of California, who
8 seeks to promote awareness of exposures to toxic chemicals and improve human health by
9 reducing or eliminating hazardous substances contained in consumer and industrial products.

10 1.2 Noticed Party. Four Star and Jo-Ann (sometimes collectively referred to
11 herein as the “Noticed Parties”), are engaged in the distribution and retail sale of oil & vinegar
12 bottles with colored artwork and/or designs on the exterior that contain lead as well as glass and
13 metal (containing lead) wind chimes.

14 1.3 Notices. Beginning on or about September 9, 2005, Brimer served the
15 Noticed Parties and various public enforcement agencies with two distinct documents, entitled “60-
16 Day Notice of Violation,” which are collectively referred to herein as the “Notices.” The Notices
17 allege that Four Star and Jo-Ann were in violation of California Health & Safety Code §25249.6 by
18 virtue of their having distributed or otherwise offered for sale certain oil & vinegar bottles with
19 colored artwork and/or designs (containing lead) on the exterior as well as glass and metal
20 (containing lead) wind chimes. Lead is a substance known to the State of California to cause birth
21 defects or other reproductive harm and is hereinafter referred to as the "Listed Chemical."

22 1.4 Covered Products. This agreement covers those certain oil & vinegar bottles
23 with colored artwork and/or designs (containing lead) on their exterior as well as those certain glass
24 and metal (containing lead) wind chimes listed on Exhibit A, which are sold or offered for sale in
25 California. Such products are collectively referred to hereinafter as the “Products”.

26 1.5 Complaint. On January 19, 2006, Brimer filed a complaint entitled *Russell*
27 *Brimer v. Four Star International Trading, et al.* (Case No. HG06251256), in the Alameda Superior
28

1 Court, naming the defendants Four Star International Trading and Jo-Ann Stores, Inc. as having
2 violated Health & Safety Code §25249.6 on behalf of individuals in California who allegedly have
3 been exposed to the Listed Chemical contained in certain Products that defendants offer for sale.

4 2.0 Purpose of Agreement. The parties enter into this Agreement as a full and final
5 resolution of all claims and allegations that were or that could have been alleged by Plaintiff in the
6 Notices, the Actions, or any future complaints and actions against Four Star and Jo-Ann based on
7 the above-referenced Notices or Actions, and in order that the Parties may avoid protracted
8 litigation on such claims and, to the maximum extent permitted by law, provide the Noticed Parties
9 protection against future claims pertaining to the Products at issue based on the same or
10 substantially similar allegations for past acts (and future acts) so long as they are consistent with
11 the terms contained herein. This Consent Judgment is not and shall not be construed as an
12 admission by the Noticed Parties of any allegation or issue of fact or law asserted in the Notices
13 and/or Actions. The Noticed Parties expressly deny any alleged violation of Proposition 65.
14 However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and
15 duties of Noticed Parties under this Consent Judgment.

16 3.0 Warnings. After the Effective Date of this Consent Judgment, the Noticed Parties
17 shall not distribute or offer for sale any Products in California unless those Products are
18 reformulated pursuant to the conditions of Paragraph 4.0, or are accompanied by a warning
19 statement in accordance with the terms specified in either subsections 3.0(a)-(b):

20 (a) Product Labeling. A warning or label is affixed to the packaging or directly
21 on a Product by Four Star and/or Jo-Ann, its agent, the manufacturer or the importer of the
22 Products that states:

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.¹**

27 or

28 ¹ This warning can only be used in conjunction with the sale of Products with colored artwork and/or designs on the exterior that contain lead.

1 **WARNING: This product contains lead a chemical known to**
2 **the state of California to cause birth defects or**
3 **other reproductive harm.**

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

11 (b) Point of Sale. Point of Sale warnings may be provided through one or more
12 signs posted at or near the point of sale or display of the Products that state:

13 **WARNING: The following products will expose consumers to**
14 **lead a chemical known to the state of California to**
15 **cause birth defects or other reproductive harm:**

16 ***[List each Product by brand name and description.]***

17 or

18 **WARNING: These products contain lead a chemical known to the**
19 **state of California to cause birth defects or other**
20 **reproductive harm.**

21 ***[List each Product by brand name and description.]***

22 A point of sale warning provided pursuant to subsection 3.0(b) shall be prominently
23 placed with such conspicuousness as compared with other words, statements, designs, or devices as
24 to render it likely to be read and understood by an ordinary individual under customary conditions
25 of use or purchase and shall be placed or written in a manner such that the consumer understands to
26 which *specific* Products the warnings apply so as to minimize if not eliminate the chances that an
27 over-warning situation will arise. Any material changes to the language or format of the warning
28 required for Products by section 3.0 shall only be made following: (1) approval from the California
Attorney General's Office, provided that written notice of at least fifteen (15) days is given to
Plaintiff for the opportunity to comment; or (2) Court approval.

1 4.0 Reformulation Standards. Notwithstanding any other provision of this Consent
2 Judgment, no warning pursuant to section 3.0 above for exposure to lead shall or need be provided
3 by the Noticed Parties for “Reformulated Products.” Products satisfying the conditions set forth
4 below qualify as Reformulated Products.

5 4.1 Reformulation Standards for Products Intended for Consumption of Food or
6 Beverages. The following standards apply to any Products designed and marketed to be used for
7 the storage or consumption of foods or beverages.

8 (a) The materials for all colored artwork, designs or markings on the
9 exterior must contain by weight no more than six one-hundredths of one percent (0.06%) lead as
10 measured at Four Star and Jo-Ann’s option, either before or after the material is fired onto (or
11 otherwise affixed to) the Product, using EPA Test Method 3050b or an equivalent test method of
12 sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less
13 than 600 ppm.²; or

14 (b) The Product must produce a test result no higher than
15 1.0 micrograms (“ug”) of lead using a Ghost Wipe™ test applied on the decorated portions of the
16 surface of the Product performed as outlined in NIOSH Method No. 9100.

17 4.2 Reformulation Standards for Products Not Intended for Consumption of
18 Food or Beverages. The following standards apply to the wind chime Products.

19 (a) If the Product is a wind chime, then:

20 (i) The Product must produce a test result no higher than
21 5.0 micrograms (“ug”) of lead using a Ghost Wipe™ test applied to all metal portions of the
22 Product performed as outlined in NIOSH Method No. 9100; or

23 (ii) The Product must contain by weight no more than one-tenth
24 of one percent (0.1%) of lead in each material used in the Products (such as solder and came).

25
26
27 ² If the Noticed Parties test the decoration after it is affixed to the Product, the percentage of lead by weight must relate
28 only to the other portions of the decorating material and not include any calculation of non-decorating material.

1 4.3 Reformulation Commitment. By entering into this Consent Judgment, Four
2 Star and Jo-Ann hereby commit to undertake the good faith efforts to distribute the Products, in the
3 future as Reformulated Products³ with the commitment:

4 (a) to reach eighty percent (80%) or more Reformulated Products for
5 Products intended for consumption of food or beverages of those distributed, licensed, or offered
6 for sale by Four Star and Jo-Ann on or after December 31, 2006, and the commitment to make
7 commercially reasonable efforts thereafter to reach one-hundred percent (100%) Reformulated
8 Products for Products intended for consumption of food or beverages; and

9 (b) to undertake all commercially reasonable efforts to ensure that all of
10 its Products not intended for consumption of food or beverages qualify as reformulated products.

11 5.0 Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health &
12 Safety Code §25249.7(b), the Noticed Parties shall deliver a check for a civil penalty of \$6,250
13 made payable to "Hirst & Chanler LLP In Trust For Russell Brimer" on March 24, 2006. All
14 penalty monies shall be apportioned by Brimer in accordance with Health & Safety Code §25192,
15 with 75% of these funds remitted to the Office of Environmental Health Hazard Assessment and
16 the remaining 25% of these penalty monies retained by Plaintiff as provided by Health and Safety
17 Code §25249.12(d).

18 5.1 In the event Four Star and Jo-Ann pay any penalty and the Consent
19 Judgment is not thereafter approved and entered by the Court, Brimer shall return any penalty funds
20 paid under this Agreement within fifteen (15) days of receipt of a written request from Four Star
21 and Jo-Ann or its counsel following notice of the issuance of the Court's decision.

22 6.0 Reimbursement of Fees and Costs. The parties acknowledge that Brimer and his
23 counsel offered to resolve this dispute which resolution includes an agreement on the amount of
24 fees and costs to be reimbursed to them, under the private attorney general doctrine codified at
25 C.C.P. §1021.5 for all work performed through the Effective Date of the Consent Judgment. Under
26 the private attorney general doctrine codified at C.C.P. §1021.5, the Noticed Parties shall reimburse

27 ³ This provision is in no way intended to Four Star and Jo-Ann at a competitive disadvantage but rather to follow the
28 industry trend towards eliminating lead from materials used to design or manufacture consumer products.

1 Brimer and his counsel for his fees and costs, incurred as a result of investigating, bringing this
2 matter to the Noticed Parties' attention and negotiating a settlement in the public interest. Four
3 Star and Jo-Ann shall pay Brimer and his counsel the total amount of \$38,750 for all attorneys'
4 fees, expert and investigation fees on March 24, 2006. Except as specifically provided in this
5 Consent Judgment, the Noticed Parties shall not have any further obligation with regard to
6 reimbursement of plaintiff's attorney's fees and costs, and each party shall bear its own costs and
7 attorney's fees. The full payment shall be made payable to the "Hirst & Chanler LLP" and shall be
8 delivered to Plaintiff's counsel at the following address:

9 Hirst & Chanler LLP
10 Attn: Clifford A. Chanler
11 The Whitney Building
71 Elm Street, Suite 8
New Canaan, CT 06840.

12 6.1 Return of Funds. In the event that the Consent Judgment is not thereafter
13 approved and entered by the Court, Brimer shall return the full amount of the fees and costs paid
14 under this Consent Judgment, by check payable to Four Star and Jo-Ann, within fifteen (15) days
15 of receipt of a written request from Four Star and Jo-Ann or counsel for Four Star and Jo-Ann
16 following notice of the issuance of the Court's decision.

17 7.0 Brimer's Release of Four Star and Jo-Ann. Brimer, by this Consent Judgment, on
18 behalf of himself, his agents, representatives, attorneys, assigns, and in the interest of the general
19 public ("Releasing Parties"), waives all rights to institute or participate in, directly or indirectly,
20 any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses,
21 fines, penalties, fees, and all rights to damages, restitution, injunctive relief, and any other form of
22 relief, whether legal or equitable (collectively the "Claims"), against Four Star and Jo-Ann and
23 their directors, officers, employees, parents, subsidiaries, affiliates, customers, successors and
24 assigns, whether under Proposition 65 or other statutory law Claims based solely on their alleged
25 failure to warn about exposure to the Listed Chemical contained in any of the Products. This
26 Consent Judgment is a full, final and binding resolution between Brimer, on behalf of himself and
27 in the interest of the general public, and Four Star and Jo-Ann of any violation of Proposition 65 or
28 any other claim that was or could have been asserted based on alleged failure to warn for exposure

1 to the Listed Chemical in the Products (collectively the “Released Claims”), or other facts alleged
2 in the 60-Day Notices. The parties intend compliance with this Consent Judgment to resolve any
3 issue now, in the past, or in the future concerning the Products’ past and present, and future (up to
4 the date of compliance established in Paragraph 3.0, above, and in the future so long as Four Star
5 and Jo-Ann comply with this Consent Judgment) compliance with Proposition 65 as such
6 compliance pertains to the Products at issue. In addition, Brimer, on behalf of himself, his
7 attorneys, and his agents, waives all rights to institute any form of legal action against Four Star
8 and Jo-Ann, their attorneys or representatives, directors, officers, employees, parents, subsidiaries,
9 affiliates, customers, successors and assigns for all actions or statements made by Four Star and Jo-
10 Ann or their attorneys or representatives, in the course of responding to violations of Proposition
11 65 by Four Star and Jo-Ann alleged in the 60-Day Notices.

12 8.0 Four Star and Jo-Ann’s Release of Brimer. Four Star and Jo-Ann, by this Consent
13 Judgment, waive all rights to institute any form of legal action against Brimer and his attorneys or
14 representatives, for all actions or statements made by Brimer or his attorneys or representatives, in
15 the course of seeking enforcement of Proposition 65 against Four Star and Jo-Ann in this litigation.
16 Provided, however, that Four Star and Jo-Ann shall remain free to institute any form of legal
17 action to enforce the provisions of this Consent Judgment.

18 9.0 Four Star and Jo-Ann’s Sales Data. Four Star and Jo-Ann understand that the sales
19 data provided to counsel for Brimer by Four Star and Jo-Ann was a material factor upon which
20 Brimer has relied to determine the amount of payments made pursuant to Health & Safety Code
21 §25249.7(b) in this Consent Judgment. To the best of Four Star and Jo-Ann’s knowledge, the sales
22 data provided is true and accurate.

23 10.0 Severability. In the event that any of the provisions of this Consent Judgment is
24 held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
25 affected.

26 11.0 Attorney’s Fees. In the event that a dispute arises with respect to any provision(s) of
27 this Consent Judgment (including, but not limited to, disputes arising from payments to be made
28 under this Consent Judgment), reasonable attorney’s fees shall be awarded to the prevailing party.

1 12.0 Governing Law. The terms of this Consent Judgment shall be governed by the laws
2 of the State of California.

3 13.0 Notices. All correspondence to Brimer shall be mailed to:

4 Clifford A. Chanler, Esq.
5 HIRST & CHANLER LLP
6 The Whitney Building
7 71 Elm Street, Suite 8
8 New Canaan, CT 06840
9 Tel: (203) 966-9911
10 Fax: (203) 801-5222

 Laralei S. Paras, Esq.
 HIRST & CHANLER LLP
 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, California 94710
 Tel: (510) 848-8880
 Fax: (510) 848-8118

11 All correspondence to Four Star and Jo-Ann shall be mailed to:

12 Eric L. Zalud, Esq.
13 BENESCH FRIEDLANDER
14 COPLAN & ARONOFF LLP
15 2300 BP Tower
16 200 Public Square
17 Cleveland, Ohio 44114-2378
18 Tel: (216) 363-4500
19 Fax: (216) 363-4588

 General Counsel
 JO-ANN STORES, INC.
 5555 Darrow Road
 Hudson, Ohio 44236
 Tel: (330) 656-2600
 Fax: (330) 463-6675

20 14.0 Compliance With Reporting Requirements (Health & Safety Code §25249.7(f)).

21 The parties acknowledge that the reporting provisions of Health & Safety Code § 25249.7(f) apply
22 to this Consent Judgment. Counsel for Brimer shall comply with that Paragraph by submitting the
23 required reporting form to, and serving a copy of this Consent Judgment on, the California
24 Attorney General's Office.

25 15.0 Additional Post Execution Activities

26 The Parties shall mutually employ their best efforts to support the entry of this Agreement
27 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
28 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
 Four Star and Jo-Ann shall prepare, within a reasonable period of time after the Execution Date

1 (i.e., not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on
2 unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the Joint
3 Motion which shall, inter alia, set forth support for the fees and costs to be reimbursed pursuant to
4 Section 6. Defendants shall have no additional responsibility to plaintiff's counsel pursuant to
5 C.C.P. §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with
6 respect to the preparation and filing of the Joint Motion and its supporting declaration or with
7 regard to plaintiff's counsel appearing for a hearing or related proceedings thereon.

8 16.0 Duties Limited to California. This Consent Judgment shall have no effect on
9 Products sold by Four Star and Jo-Ann for use outside the State of California.

10 17.0 Entire Agreement. This Consent Judgment contains the sole and entire agreement
11 and understanding of the parties with respect to the entire subject matter hereof, and any and all
12 prior discussions, negotiations, commitment and understandings related hereto. No
13 representations, oral or otherwise, express or implied, other than those contained herein have been
14 made by any party hereto. No other agreements not specifically referred to herein, oral or
15 otherwise, shall be deemed to exist or to bind any of the parties.

16 18.0 Counterparts and Facsimile. This Consent Judgment may be executed in
17 counterparts and facsimile, each of which shall be deemed an original, and all of which, when
18 taken together, shall constitute one and the same document.

19 19.0 Authorization. The undersigned are authorized to execute this Consent Judgment
20 on behalf of their respective parties and have read, understood and agree to all of the terms and
21 conditions of this Consent Judgment.

22 20.0 Binding Effect. This Consent Judgment shall inure to the benefit of, and shall be
23 binding upon, the parties and their respective agents, alter egos, attorneys, directors, divisions,
24 employees, heirs, legal predecessors, licensees, officers, parent companies, partners,
25 representatives, shareholder, subsidiaries, successors, and any trustee or other officer appointed in
26 the event of bankruptcy.

1 21.0 Representation. The parties acknowledge and warrant that they have been
2 represented by counsel of their own choosing through all negotiations which preceded the
3 execution of this Consent Judgment.

4 **AGREED TO:**

5 Date:

6 RUSSELL BRIMER

7
8 By: 
9 RUSSELL BRIMER

AGREED TO:

 Date:

 FOUR STAR INTERNATIONAL
 TRADING

 By: 

AGREED TO:

 Date:

 JO-ANN STORES, INC

 By: _____

16 **APPROVED AS TO FORM:**

17 Date:

18 HIRST & CHANLER LLP

19
20 By: 
21 D. Joshua Voorhees
22 Attorney for Plaintiff
23 RUSSELL BRIMER

APPROVED AS TO FORM:

 Date:

 HANSON BRIDGETT MARCUS
 VLACHOS & RUDY

 By: _____
 Raymond Lynch
 Attorney for FOUR STAR
 INTERNATIONAL TRADING and JO-
 ANN STORES, INC.

24 **IT IS SO ORDERED.**

25
26
27 Date: _____

28 JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

21.0 **Representation.** The parties acknowledge and warrant that they have been represented by counsel of their own choosing through all negotiations which preceded the execution of this Consent Judgment.

AGREED TO:

Date:

RUSSELL BRIMER

By: _____
RUSSELL BRIMER

AGREED TO:

Date:

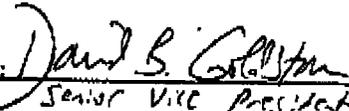
FOUR STAR INTERNATIONAL TRADING

By: 

AGREED TO:

Date: April 28, 2006

JO-ANN STORES, INC

By: 
Senior Vice President General Counsel & Secretary

APPROVED AS TO FORM:

Date:

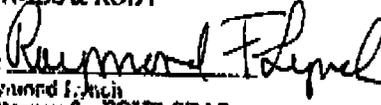
HIRST & CHANLER LLP

By: _____
D. Joshua Voorhees
Attorney for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: May 15, 2006

HANSON BRIDGETT MARCUS
VI ANOS & RUDY

By: 
Raymond J. Anich
Attorney for FOUR STAR
INTERNATIONAL TRADING and JO-
ANN STORES, INC.

IT IS SO ORDERED.

Date: _____
JUDGE OF THE SUPERIOR COURT

Exhibit A

1. Garden Gate Designs Wind Chime, #851-0894; #0 49696 69562 69 5; and
2. Oil & Vinegar Bottle, #752-7123; #0 49696 45286 1.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28