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REJUVENATION INC.

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
16 UNLIMITED CIVIL JURISDICTION

18 RUSSELL BRIMER ) Case No. CGC-06-449-899  
19 )  
20 Plaintiff, ) **STIPULATION AND [PROPOSED]**  
21 v. ) **ORDER RE: CONSENT JUDGMENT**  
22 )  
23 REJUVENATION INC.; and DOES 1 through )  
150, )  
Defendants. )

24 **1. INTRODUCTION**

25 **1.1 Russell Brimer And Rejuvenation Inc.**

26 This Consent Judgment (“Agreement”) is entered into by and between plaintiff Russell  
27 Brimer (hereinafter “Brimer” or “Plaintiff”) and defendant Rejuvenation Inc. (hereinafter  
28

1 “Rejuvenation” or “Defendant”), with Brimer and Rejuvenation collectively referred to as the  
2 “Parties.”

3 **1.2 Plaintiff**

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

7 **1.3 Defendant**

8 Rejuvenation is an Oregon corporation that employs ten or more persons and is a person in  
9 the course of doing business for purposes of Proposition 65.

10 **1.4 General Allegations**

11 Brimer alleges that Rejuvenation has manufactured, distributed and/or sold in the State of  
12 California certain glass and metal (containing lead) lamp shades. Lead is listed pursuant to the Safe  
13 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et*  
14 *seq.* (“Proposition 65”), as a chemical known to the State of California to cause birth defects and  
15 other reproductive harm. Lead shall be referred to herein as the “Listed Chemical.”

16 **1.5 Product Description**

17 The products that are covered by this Consent Judgment are defined as follows: glass and  
18 metal lamp shades alleged to contain a Listed Chemical, including, but not limited to, the products  
19 identified in Exhibit A to this Consent Judgment. All such glass and metal shades shall be referred  
20 to herein as the “Products.”

21 **1.6 Notices of Violation**

22 On or about November 23, 2005, Brimer served Rejuvenation and various public  
23 enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that  
24 provided Rejuvenation and such public enforcers with notice that alleged that Rejuvenation was in  
25 violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers  
26 that the Products that Rejuvenation sold exposed users in California to the Listed Chemical.

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1           **1.7    Complaint**

2           On February 28, 2006, Brimer, who is acting in the interest of the general public in  
3 California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the  
4 Superior Court in and for the City and County of San Francisco against Rejuvenation Inc. and Does  
5 1 through 150, (*Brimer v. Rejuvenation Inc.*, CGC-06-449-899) alleging violations of Health &  
6 Safety Code §25249.6 based on the alleged exposures to the Listed Chemical contained in the  
7 Products sold by Rejuvenation. Brimer filed a First Amended Complaint on April 12, 2006.

8           **1.8    Answer**

9           Rejuvenation filed an Answer to Plaintiff’s Complaint on April 24, 2006, and an Answer to  
10 Plaintiff’s First Amended Complaint on May 12, 2006, denying in each the claims asserted by  
11 Plaintiff in the Complaint and First Amended Complaint.

12           **1.9    No Admission**

13           Rejuvenation denies the material factual and legal allegations contained in Brimer’s Notice  
14 and Complaint and maintains that all products that it has sold and distributed in California,  
15 including the Products, have been and are in compliance with all laws. Nothing in this Consent  
16 Judgment shall be construed as an admission by Rejuvenation of any fact, finding, issue of law, or  
17 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
18 admission by Rejuvenation of any allegation, fact, finding, conclusion, issue of law or violation of  
19 law. Rejuvenation expressly denies any alleged violation of Proposition 65. However, this  
20 paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of  
21 Rejuvenation under this Consent Judgment.

22           **1.10   Consent to Jurisdiction**

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

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**(a) California Retail Store Sales**

Warnings for Products offered for sale in California Retail Stores may be provided either on the Product Label or at the Point-of-Sale, as provided below.

**(i) Product Labeling.** A warning affixed to the packaging, labeling or directly on the Product shall state:

**WARNING:** The metal materials in this product contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

**(ii) Point-of-Sale Warnings.** Point-of-Sale warnings shall include one or more signs posted in close proximity to the display of the Products and shall state:

**WARNING:** The metal materials in the following products contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.  
*[Display List Of Each Specific Product For Which A Warning Is Given.]*

A Point-of-Sale Warning shall include the Product name and/or model number, and shall be provided in a manner such that the consumer understands to which specific Product(s) the warning applies. Rejuvenation shall ensure to the greatest extent possible that independent retailers post Point-of-Sale Warnings by obtaining a written commitment from each independent retailer to whom Rejuvenation sells Products directly, that it will post the Point-of-Sale Warning.

**(b) Mail Order Catalog and Internet Sales.** Defendant shall satisfy its warning obligations for Products that are sold by mail order catalog or from the internet to California residents, by providing a warning either: (a) in the mail order catalog and/or on the website as applicable; or (b) with the Product when it is shipped to an address in California. Warnings given in the mail order catalog or on the website shall be provided in a manner such that the consumer understands to which *specific* Product(s), as distinguished by name and/or model number, the warning applies, as further specified in Sections 2.2.1(b)(i), (ii) and/or (iii) as applicable:

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1 (i) **Mail Order Catalog.** Any warning provided in a mail order  
2 catalog must be in the same type size or larger as the product description text within the catalog.  
3 The warning shall be provided on the same page and in close proximity to the display and/or  
4 description of the Product. The warning shall state:

5 **WARNING:** The metal materials in this product contain lead, a  
6 chemical known to the State of California to cause  
7 birth defects and other reproductive harm.

8 Where it is impracticable to provide the warning on the same page and in close proximity to  
9 the display and/or description of the Product, Rejuvenation may utilize a designated symbol to cross  
10 reference the applicable warning ("Designated Symbol"). The Designated Symbol must appear on  
11 the same page and in close proximity to the display and/or description of the Product. On each page  
12 where the Designated Symbol appears, Rejuvenation must provide a header or footer directing the  
13 consumer to the warning language represented by the Designated Symbol.

14 The warning represented by the Designated Symbol shall appear either on the inside of the  
15 front cover of the catalog or on the same page as any order form for the Product(s) and shall state:

16 **WARNING:** The products identified with this symbol ▼ contain one  
17 or more chemicals known to the State of California to  
18 cause birth defects and other reproductive harm.

19 If Defendant elects to provide warnings in the mail order catalog, then the warnings must be  
20 included in all catalogs offering to sell one or more Products printed after December 8, 2006.

21 (ii) **Internet Web Sites and Pages.** A warning may be given in  
22 conjunction with the sale of the Product via the internet, provided it appears either: (a) on the same  
23 web page on which the Product is displayed or described; (b) on the same web page as the order  
24 form for the Product; (c) on the same page as the price for the Product; or (d) on one or more web  
25 pages displayed to a purchaser during the checkout process.

26 The following warning statement shall be used and shall appear in any of the above instances  
27 in close proximity to the display, description, or price of the Product for which it is given in the  
28 same type size or larger as the product description text:

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1 refund<sup>3</sup> within thirty (30) days of his or her receipt of the Product.

2 **2.2.2 Exceptions**

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

- 4 (i) Any Products shipped into California before the Effective Date; or
- 5 (ii) Reformulated Products (as defined in Section 2.3 below).

6 **2.3 Reformulation Standards**

7 The following Products shall be deemed "Reformulated Products" that comply with  
8 Proposition 65 and are exempt from any Proposition 65 warning requirements, including but not  
9 limited to those under Sections 2.2: All Products that contain no more than one-tenth of one percent  
10 (0.1%) of lead by weight in each metal material used in the Products (such as solder and came).

11 **2.4 Reformulation Commitment**

12 Rejuvenation hereby agrees to undertake commercially reasonable efforts to obtain Products  
13 meeting the reformulation standards of 2.3 for sale in California after December 8, 2006.<sup>4</sup>

14 **2.5 Limitation to California**

15 This Consent Judgment shall have no effect on Products sold to customers located outside of  
16 the State of California.

17 **3. MONETARY PAYMENTS**

18 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

19 The total settlement amount shall be \$5,000, which shall be paid by Rejuvenation as set forth  
20 herein. Pursuant to Health & Safety Code §25249.7(b), the first payment of \$2,000 shall be made  
21 by December 11, 2006. The second payment of \$3,000 shall be payable on January 30, 2007. The  
22 second payment shall be waived in the event that Rejuvenation certifies in writing by January 15,  
23 2007, under penalty of perjury with supporting facts and documentation that it has complied with  
24

25 \_\_\_\_\_  
26 <sup>3</sup> Refund shall include the shipping cost of receipt and return of the product.

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

1 the Reformulation Commitment set forth in Section 2.4.<sup>5</sup> Said payments shall be made payable to  
2 the “HIRST & CHANLER LLP in Trust For Russell Brimer” and shall be delivered to plaintiff’s  
3 counsel by December 11, 2006 at the following address:

4 HIRST & CHANLER LLP  
5 Attn: Proposition 65 Controller  
6 2560 Ninth Street  
7 Parker Plaza, Suite 214  
8 Berkeley, CA 94710-2565

9 **3.2 Apportionment of Penalties Received**

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

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

17 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
19 issue to be resolved after the material terms of the Agreement had been settled. Rejuvenation then  
20 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
21 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
22 Brimer and his counsel under the private attorney general doctrine codified at California Code of  
23 Civil Procedure §1021.5 for all work performed through the Court’s approval of this Agreement.  
24 Under the private attorney general doctrine, Rejuvenation shall reimburse Brimer and his counsel  
25 for fees and costs incurred as a result of investigating, bringing this matter to Rejuvenation’s  
26 attention, litigating and negotiating a settlement in the public interest and seeking the Court’s  
27 approval of this Agreement. Rejuvenation shall pay Brimer and his counsel \$23,000 for all

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

1 attorneys' fees, expert and investigation fees, litigation and related costs. The payment shall be  
2 made payable to HIRST & CHANLER LLP and shall be delivered no later than December 11, 2006  
3 via wire transfer or at the following address:

4 HIRST & CHANLER LLP  
5 Attn: Proposition 65 Controller  
6 2560 Ninth Street  
7 Parker Plaza, Suite 214  
8 Berkeley, CA 94710-2565

9 **5. RELEASE OF ALL CLAIMS**

10 **5.1 Release of Rejuvenation and Downstream Customers**

11 In further consideration of the promises and agreements herein contained, and for the  
12 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and current  
13 agents, representatives, attorneys, successors and/or assignees, and in the interest of the general  
14 public ("Releasing Parties"), hereby waives all rights to institute or participate in, directly or  
15 indirectly, any form of legal action, and releases all claims, including, without limitation, all actions,  
16 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,  
17 fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and  
18 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
19 (collectively "Claims"), against Rejuvenation and its directors, officers, employees, parents,  
20 subsidiaries, affiliates, customers, successors and assigns, and each of its downstream distributors,  
21 wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners,  
22 purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers,  
23 directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent  
24 entities (collectively "Releasees"). This release is limited to those claims that arise under  
25 Proposition 65, as such claims relate to Rejuvenation's alleged failure to warn about exposures to or  
26 identification of the Listed Chemical contained in the Products.

27 The Parties further understand and agree that this release shall not extend upstream to any  
28 entities that manufactured the Products or any component parts thereof, or any distributors or  
suppliers who sold the Products or any component parts thereof to Rejuvenation.

1           The Releasing Parties further waive any and all claims against Rejuvenation, its attorneys  
2 and other representatives, for any and all actions taken or statements made (or those that could have  
3 been taken or made) by Rejuvenation and its attorneys in the course of responding to violations of  
4 Proposition 65 alleged by Brimer against Rejuvenation with respect to the Products, with the  
5 exception of seeking his fees and costs as provided by Section 4.

6           **5.2 Rejuvenation's Release of Brimer**

7           Rejuvenation, by this Agreement, waives any and all claims against Brimer, his attorneys  
8 and other representatives, for any and all actions taken or statements made (or those that could have  
9 been taken or made) by Brimer and his attorneys and other representatives, whether in the course of  
10 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
11 and/or with respect to the Products. Provided, however, that Rejuvenation shall remain free to  
12 undertake any form of legal action to enforce the provisions of this Consent Judgment.

13          **6. COURT APPROVAL**

14           This Consent Judgment is not effective until it is approved and entered by the Court and  
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
16 year after it has been fully executed by all Parties, in which event any monies that have been  
17 provided to Plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded  
18 within fifteen (15) days after receiving written notice from Rejuvenation that the one-year period  
19 has expired. Rejuvenation shall be entitled to recover interest accrued at a rate of 10% per annum  
20 on the principle amount, which shall begin to accrue either fifteen (15) days following the date the  
21 Court denies approval of the Consent Judgment or one year after the Consent Judgment has been  
22 signed (assuming no motion to approve the consent judgment has been filed), whichever event  
23 occurs first. Said interest will continue to accrue through any appeal process initiated by Brimer.

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 provisions  
27 remaining shall not be adversely affected.

1       **8. ATTORNEYS' FEES**

2               In the event that, after Court approval: (1) a dispute arises with respect to any provision of  
3 this Consent Judgment; (2) Rejuvenation or any third party seeks modification of this Consent  
4 Judgment pursuant to Section 14 below; or (3) Brimer takes reasonable and necessary steps to  
5 enforce the terms of this Consent Judgment, reasonable attorneys' fees shall be awarded to the  
6 prevailing party.

7       **9. GOVERNING LAW**

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

14       **10. NOTICES**

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

19       To Rejuvenation:

20               Wendy L. Manley, Esq.  
21               STOEL RIVES LLP  
22               111 Sutter St. #700  
23               San Francisco, CA 94104

24       To Brimer:

25               Proposition 65 Controller  
26               HIRST & CHANLER LLP  
27               2560 Ninth Street  
28               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.

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 same  
4 document.

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

6               Brimer agrees to comply with the reporting form requirements referenced in Health & Safety  
7 Code §25249.7(f) by submitting the required reporting form to, and serving a copy of this Consent  
8 Judgment on, the California Attorney General’s Office.

9       **13. ADDITIONAL POST EXECUTION ACTIVITIES**

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

21       **14. MODIFICATION**

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

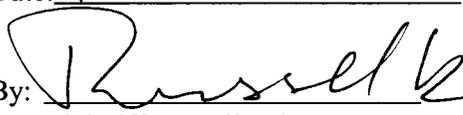
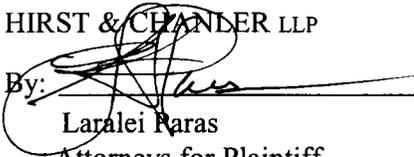
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**15. AUTHORIZATION**

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>AGREED TO:</p> <p>Date: <u>12-08-06</u></p> <p>By: <u></u> Plaintiff Russell Brimer</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant Rejuvenation Inc.</p>
<p>APPROVED AS TO FORM:</p> <p>Date: <u>12.8-06</u></p> <p>HIRST &amp; CHANDLER LLP</p> <p>By: <u></u> Laralei Paras Attorneys for Plaintiff RUSSELL BRIMER</p>	<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>STOEL RIVES LLP</p> <p>By: _____ Wendy L. Manley Attorneys for Defendant REJUVENATION INC.</p>

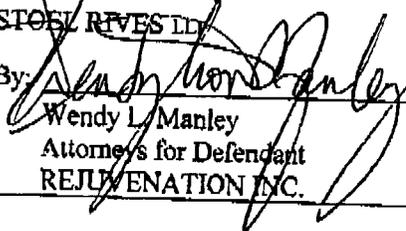
**IT IS SO ORDERED.**

DATED:

\_\_\_\_\_  
JUDGE OF THE SUPERIOR 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>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Plaintiff Russell Brimer</p>	<p>AGREED TO:</p> <p>Date: <u>12/7/06</u></p> <p>By:  Defendant Rejuvenation Inc. Brian D. Reynolds CFO/VP Finance</p>
<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: _____ Laralei Paras Attorneys for Plaintiff RUSSELL BRIMER</p>	<p>APPROVED AS TO FORM:</p> <p>Date: <u>12/7/06</u></p> <p>STOEL RIVES LLP</p> <p>By:  Wendy L. Manley Attorneys for Defendant REJUVENATION INC.</p>

IT IS SO ORDERED.

DATED:

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

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**Exhibit A**

1. Lamp Shade, Model No. 154A
2. Lamp Shade, Model No. 020A
3. Lamp Shade, Model No. 026A
4. Lamp Shade, Model No. 128A
5. Lamp Shade, Model No. 149A
6. Lamp Shade, Model No. 166A
7. Lamp Shade, Model No. 197A
8. Lamp Shade, Model No. 259A