

1 George W. Dowell, State Bar No. 234759
2 D. Joshua Voorhees, State Bar No. 241436
3 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

11 Robert L. Falk, State Bar No. 142007
12 Miles H. Imwalle, State Bar No. 230244
13 MORRISON & FOERSTER LLP
14 425 Market Street
15 San Francisco, California 94105-2482
16 Telephone: (415) 268-7000
17 Facsimile: (415) 268-7522

18 Attorneys for Defendants
19 BLUE SKY BRANDS, INC.,
20 and BITS & PIECES, INC.

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

24 RUSSELL BRIMER)

25 Plaintiff,)

26 v.)

27 BLUE SKY BRANDS, INC.; BITS & PIECES,)
28 INC.; and DOES 1 through 150,)

Defendants.)

Case No. CGC 06-452652

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

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer And Blue Sky Brands, Inc.,**
3 **The Paragon Gifts, Inc., and Bits & Pieces, Inc.**

4 This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter
5 “Brimer” or “Plaintiff”) and defendants Blue Sky Brands, Inc., The Paragon Gifts, Inc., and Bits &
6 Pieces, Inc. (hereafter “Blue Sky” or “Defendants”), with Brimer and Blue Sky collectively referred
7 to as the “Parties.”¹

8 **1.2 Plaintiff**

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

12 **1.3 Defendants**

13 Defendants Blue Sky Brands, Inc., The Paragon Gifts, Inc. and Bits & Pieces, Inc. are
14 corporations that employ 10 or more persons and each is a person in the course of doing business
15 for purposes of Proposition 65.

16 **1.4 General Allegations**

17 Brimer alleges that Blue Sky has manufactured, distributed and/or sold in the State of
18 California the Products (as defined below) that contain and cause exposure to lead and/or cadmium
19 without providing clear and reasonable warning as required by the Safe Drinking Water and Toxic
20 Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.*, also known as
21 Proposition 65. Lead and cadmium are listed under Proposition 65 as carcinogens and reproductive
22 toxicants. Lead and cadmium are listed under Proposition 65 and shall be referred to herein as the
23 “Listed Chemicals.”

24 **1.5 Product Description**

25 The products that are covered by this Consent Judgment are defined as follows:
26
27

28 _____
¹ Upon entry of this Consent Judgment, Paragon Gifts, Inc. shall be deemed added as a defendant to this action.

1 (A) Glass beverageware and tableware products with colored artwork, designs
2 and/or markings on the exterior surface that are offered for sale by Defendants and that are
3 purchased and/or used by individuals in California for the storage, serving or consumption of food
4 or beverages including, but not limited to: glasses, pilsners, mugs, carafes, tumblers, bottles,
5 condiment dispensers, bowls, cups, saucers, plates, trays, pitchers, punch bowls, serving utensils,
6 serving platters and other like items (herein after collectively referred to as “Glassware
7 Food/Beverage Products” or “Category A Products”);

8 (B) Ceramicware products with colored artwork, designs and/or markings on the
9 exterior surface that are offered for sale by Defendants and that are purchased and/or used by
10 individuals in California for the storage, serving or consumption of food or beverages, including but
11 not limited to: mugs, steins, carafes, bowls, drinking vessels, bottles, condiment dispensers, cups,
12 saucers, plates, trays, pitchers, punch bowls, serving utensils, serving platters, and other like items
13 (herein after collectively referred to as “Ceramicware Food/Beverage Products” or “Category B
14 Products”);

15 (C) Glassware household products with colored artwork, designs and/or markings
16 on the exterior surface that are offered for sale by Defendants and that are purchased and/or used by
17 individuals in California that: (i) appear to be suitable for food or beverage use but are labeled in
18 accordance with requirements described in 21 Code of Federal Regulations (“C.F.R.”) 109.16 for
19 products not intended for use with food or beverages; (ii) physically could not be used to store,
20 serve or consume foods or beverages; or (iii) are not reasonably used for the storage, serving or
21 consumption of food or beverages. Such products include, but are not limited to: vases, votive
22 holders, candleholders/candelabras, ashtrays, coasters, mirrors, napkin rings, centerpieces, trivets,
23 decorative tiles, holiday ornaments, keepsake/music boxes, pencil holders, desk sets, picture frames,
24 figurines, soap dispensers, toothbrush holders, soap dishes, tissue caddies, garden ornaments, flower
25 pots, plant holders, wall hangings, lamps, pet dishes, suncatchers, and other like items (herein after
26 collectively referred to as “Glassware Non-Food/Beverage Products” or “Category C Products”);
27
28

1 (D) Ceramicware household products with colored artwork, designs and/or
2 markings on the exterior surface that are offered for sale by Defendants, and that are purchased
3 and/or used by individuals in California that: (i) appear to be suitable for food or beverage use but
4 are labeled in accordance with requirements described in 21 C.F.R. 109.16 for products not
5 intended for use with food or beverages; (ii) physically could not be used to store, serve or consume
6 foods or beverages; or (iii) are not reasonably used for the storage, serving or consumption of foods
7 or beverages. Such products include, but are not limited to: vases, votive holders, ashtrays,
8 coasters, napkin rings, centerpieces, trivets, holiday ornaments, keepsake/music boxes, decorative
9 tiles, pencil holders, desk sets, picture frames, figurines, soap dispensers, toothbrush holders, soap
10 dishes, tissue caddies, garden ornaments, flower pots, plant holders, wall hangings, lamps, pet
11 dishes, and other like items (herein after collectively referred to as “Ceramicware Non-
12 Food/Beverage Products” or “Category D Products”).

13 (E) Glass and/or metalwork products containing lead solder to which consumers
14 may reasonably be exposed as the result of foreseeable use or handling that are offered for sale by
15 Defendants, and that are purchased and/or used by individuals in California. Such products include,
16 but are not limited to: suncatchers, terrariums, stained glass ornamentals, Tiffany-style lamps, glass
17 inserts with lead solder, mirrors, picture frames, votive holders or any other household product
18 using lead solder to which consumers may reasonably be exposed (herein after collectively referred
19 to as “Lead-Soldered Products” or “Category E Products”).

20 (F) Leaded crystal products, other than decanters, flacons, stopped pitchers, and
21 mustard and jampots manufactured by Baccarat, that are offered for sale by Settling Defendants,
22 including, among others, certain decanters, glasses, and other serveware, and that are purchased
23 and/or used by individuals in California (herein after collectively referred to as “Leaded Crystal
24 Products” or “Category F Products”).

25 Unless referred to separately by category, all of the products described in Section 1.5 above
26 shall be collectively referred to herein as “Products.”
27
28

1 **1.6 Notices of Violation**

2 On November 23, 2005, Brimer served Defendants and various public enforcement agencies
3 with documents, entitled “60-Day Notices of Violation” (“Notices”) that provided Defendants and
4 the public enforcers with notice that Defendants were allegedly in violation of Health & Safety
5 Code § 25249.6 for failing to warn individuals that Category A Products that Defendants sold in
6 California expose consumers to lead contained in the exterior colored decorations and Category E
7 Products expose consumers to lead from the solder on the Products. On or about July 7, 2006,
8 Brimer will have served Defendants and various public enforcement agencies with documents,
9 entitled “Supplemental Notice of Violation” (“Supplemental Notice”) that provided Defendants and
10 the public enforcers with notice that Defendants were allegedly in violation of Health & Safety
11 Code § 25249.6 for failing to warn individuals that Products that Defendants sold which were not
12 within the categories identified in the original Notices expose individuals in California to one or
13 more of the Listed Chemicals.²

14 **1.7 Complaint**

15 On May 26, 2006, Brimer, who is acting in the interest of the general public in California,
16 filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the Superior Court in
17 and for the City and County of San Francisco against Blue Sky Brands, Inc., and Bits & Pieces, Inc.
18 and Does 1 through 150, (*Brimer v. Blue Sky Brands, Inc., The Paragon Gifts, Inc., and Bits &*
19 *Pieces, Inc.*, Case No. CGC 06-452652 alleging violations of Health & Safety Code §25249.6 based
20 on the alleged exposures to the Listed Chemicals contained in the Products sold by Blue Sky.³ The
21 Complaint shall be deemed amended to allege exposure to cadmium from the Category A Products
22 and lead and cadmium from Category B, C, and D Products, and lead from the Category F Products,
23 as described in the Supplemental Notice, as of the sixty-sixth (66th) day following the date of the
24 Supplemental Notice, provided that no public enforcement authority designated under Health &
25 Safety Code §25249.7 has filed a complaint against the Defendants on behalf of the public interest
26 with respect to those new allegations set forth in the Supplemental Notice.

27 _____
28 ² The Supplemental Notice further alleges that Products within Category A contain cadmium in addition to lead.

1 **1.8 No Admission**

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

10 **1.9 Consent to Jurisdiction**

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

15 **1.10 Effective Date**

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

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

18 **2.1** After the Effective Date, Blue Sky shall not sell, ship or offer to be shipped for sale
19 in California Products containing one or more of the Listed Chemicals unless such Products are sold
20 or shipped with the clear and reasonable warnings set out in Section 2.2 or comply with the
21 Reformulation Standards set forth in Section 2.3.

22 Any warning issued for Products pursuant to Section 2.2 below shall be prominently placed
23 with such conspicuousness as compared with other words, statements, designs, or devices as to
24 render it likely to be read and understood by an ordinary individual under customary conditions
25 before purchase or, for Products shipped directly to an individual in California, before use.
26
27
28

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

3 If Defendants 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
5 September 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:** This product contains lead and/or cadmium, chemicals
15 known to the State of California to cause birth defects
or other reproductive harm.

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

19 **WARNING:** Products identified on this page with the following
20 symbol contains lead and/or cadmium, chemicals
known to the State of California to cause birth defects
21 or other reproductive harm: ▼

22 (iii) **Package Insert or Label.** For all Products sold by catalog or
23 via the internet, a warning may be provided with the Product when it is shipped directly to an
24 individual in California, by either: (a) affixing the following warning language to the packaging,
25 labeling or directly to a specific Product;⁵ (b) inserting a warning card measuring at least 4" x 6" in
26

27 _____
28 ⁵ 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 cadmium by weight or less as measured either before or after the material is fired onto (or otherwise
2 affixed to) the Product using a test method of sufficient sensitivity to establish a limit of
3 quantification of less than 600 parts per million (“ppm”)⁷;

4 **2.3.2** Category A and B Products with decorations within the “Lip and Rim Area”⁸
5 that contain two one-hundredths of one percent (0.02%) of lead by weight or less using a sample
6 size of the material in question measuring approximately 50-100 mg and a test method of sufficient
7 sensitivity to establish a limit of quantitation of less than 200 ppm; and

8 **2.3.2** Category E Products containing one tenth of one percent (0.1%) lead or less
9 by weight in each material used in the Products (such as solder or came).

10 **2.4 Reformulation Commitment**

11 Blue Sky hereby commits that all Category A, B, C, D and E Products that it offers for sale
12 in California after July 31, 2007, shall qualify as Reformulated Products.⁹

13 **3. MONETARY PAYMENTS**

14 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

15 The total settlement amount shall be \$30,000, which shall be paid by Blue Sky as set forth
16 herein. Blue Sky shall receive a credit of \$10,000 against the penalty amount in light of its prompt
17 cooperation with Brimer in resolving this matter. Pursuant to Health & Safety Code §25249.7(b),
18 Blue Sky shall pay the remaining \$20,000 in civil penalties in two installments. The first payment
19 of \$10,000 shall be made on or before July 31, 2006. The second payment of \$10,000 shall be
20 payable September 1, 2007. The second payment shall be waived in the event that Blue Sky
21 certifies in writing under penalty of perjury with supporting facts and documentation, not later than
22 August 15, 2007, that it has complied with the Reformulation Commitment set forth in
23 Section 2.4.¹⁰ Said payments shall be made payable to the “HIRST & CHANLER LLP in Trust For

24 _____
25 ⁷ If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by weight must
26 relate only to the decorating material and must not include any quantity attributable to non-decorating material (e.g., the
glass substrate).

27 ⁸ “Lip and Rim Area” is defined as the exterior top 20 millimeters of a hollowware food or beverage Product.

28 ⁹ The commitment provided for in this Section shall exclusively be enforced through Section 3.1 below.

¹⁰ Failure to submit such a timely certification shall be addressed through the second penalty payment provided for in

1 Russell Brimer” and shall be delivered to plaintiff’s counsel at the following address:

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

7 **3.2 Apportionment of Penalties Received**

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

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

15 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
16 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
17 issue to be resolved after the material terms of the agreement had been settled. Blue Sky then
18 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
19 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
20 Brimer and his counsel under the private attorney general doctrine codified at California Code of
21 Civil Procedure §1021.5 for all work performed through the Court’s approval of this agreement.
22 Under the private attorney general doctrine, Blue Sky shall reimburse Brimer and his counsel for
23 fees and costs incurred as a result of investigating, bringing this matter to Blue Sky’s attention,
24 litigating and negotiating a settlement in the public interest and seeking the Court’s approval of the
25 settlement agreement. Blue Sky shall pay Brimer and his counsel \$33,500 for all attorneys’ fees,
26 expert and investigation fees, litigation and related costs. The payment shall be made payable to
27 HIRST & CHANLER LLP and shall be delivered on or before July 31, 2006, at the following
28 address:

this Section and not otherwise give rise to sanctions, additional remedies, or enforcement actions.

1 HIRST & CHANLER LLP
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565

6 **5. RELEASE OF ALL CLAIMS**

7 **5.1 Release of Blue Sky and Downstream Customers**

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

23 The Parties further understand and agree that this release shall not extend upstream to any
24 entities that manufactured the Products or any component parts thereof, or any distributors or
25 suppliers who sold the Products or any component parts thereof to Blue Sky.

26 **5.2 Blue Sky's Release of Brimer**

27 Blue Sky waives any and all claims against Brimer, his attorneys and other representatives,
28 for any and all actions taken or statements made (or those that could have been taken or made) by

1 Brimer and his attorneys and other representatives, whether in the course of investigating claims or
2 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
3 Products.

4 **6. COURT APPROVAL**

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

10 **7. SEVERABILITY**

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

14 **8. ATTORNEYS' FEES**

15 In the event that, after Court approval: (1) a dispute arises with respect to any provision of
16 this Consent Judgment; (2) Blue Sky or any third party seeks, in the absence of stipulation with
17 Plaintiff, modification of this Consent Judgment pursuant to Section 14 below; or (3) Brimer takes
18 reasonable and necessary steps to enforce the terms of this Consent Judgment, Brimer shall be
19 entitled to seek his reasonable attorneys' fees and costs pursuant to CCP §1021.5. Blue Sky shall
20 retain the right to oppose the amount sought in any such fee or cost application.

21 **9. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California
23 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
24 rendered inapplicable by reason of law generally, or as to the Products, then Blue Sky shall provide
25 written notice to Brimer of any asserted change in the law, and shall have no further obligations
26 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
27 affected.
28

1 **10. NOTICES**

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

6 To Blue Sky:

7 Robert L. Falk, Esq.
8 MORRISON & FOERSTER, LLP
9 425 Market Street
 San Francisco, CA 94105

10 To Brimer:

11 Proposition 65 Controller
12 HIRST & CHANLER LLP
13 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

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

16 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

23 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

24 Brimer and Blue Sky agree to mutually employ their best efforts to support the entry of this
25 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
26 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a
27 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the
28

1 Parties agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of
2 which Blue Sky's counsel shall prepare, within a reasonable period of time after the Execution Date
3 (i.e., not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on
4 unanticipated circumstances). Blue Sky shall have no additional responsibility to Plaintiff's counsel
5 pursuant to Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees
6 and costs incurred with respect to the preparation and filing of the Joint Motion and its supporting
7 declaration or with regard to Plaintiff's counsel appearing for a hearing thereon.

8 **14. MODIFICATION**

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

14 **15. AUTHORIZATION**

15 The undersigned are authorized to execute this Consent Judgment on behalf of their
16 respective Parties and have read, understood and agree to all of the terms and conditions of this
17 Consent Judgment.

<p>18 AGREED TO:</p> <p>19 Date: _____</p> <p>20</p> <p>21 By: _____</p> <p>22 Plaintiff Russell Brimer</p>	<p>18 AGREED TO:</p> <p>19 Date: <u>7/19/06</u></p> <p>20</p> <p>21 By: <u>Michele G. Wood V.P. Finance</u></p> <p>22 Defendant Blue Sky Brands, Inc.</p>
	<p>23 AGREED TO:</p> <p>24 Date: <u>7/19/06</u></p> <p>25</p> <p>26 By: <u>Michele G. Wood V.P. Finance</u></p> <p>27 Defendant The Paragon Gifts, Inc.</p> <p>28</p>

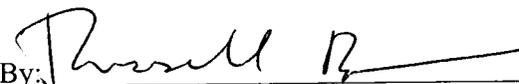
1 Parties agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of
2 which Blue Sky's counsel shall prepare, within a reasonable period of time after the Execution Date
3 (i.e., not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on
4 unanticipated circumstances). Blue Sky shall have no additional responsibility to Plaintiff's counsel
5 pursuant to Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees
6 and costs incurred with respect to the preparation and filing of the Joint Motion and its supporting
7 declaration or with regard to Plaintiff's counsel appearing for a hearing thereon.

8 **14. MODIFICATION**

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

14 **15. AUTHORIZATION**

15 The undersigned are authorized to execute this Consent Judgment on behalf of their
16 respective Parties and have read, understood and agree to all of the terms and conditions of this
17 Consent Judgment.

<p>18 AGREED TO:</p> <p>19</p> <p>20 Date: <u>7.20.06</u></p> <p>21 By: <u></u></p> <p>22 Plaintiff Russell Brimer</p>	<p>18 AGREED TO:</p> <p>19</p> <p>20 Date: _____</p> <p>21 By: _____</p> <p>22 Defendant Blue Sky Brands, Inc.</p>
	<p>23 AGREED TO:</p> <p>24</p> <p>25 Date: _____</p> <p>26</p> <p>27 By: _____</p> <p>28 Defendant The Paragon Gifts, Inc.</p>

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

	AGREED TO: Date: <u>7/19/06</u> By: <u>Michael G. Wood, V.P. Finance</u> Defendant Bits & Pieces, Inc.
APPROVED AS TO FORM: Date: _____ HIRST & CHANLER LLP By: _____ D. Joshua Voorhees Attorneys for Plaintiff Russell Brimer	APPROVED AS TO FORM: Date: <u>7/17/06</u> MORRISON & FOERSTER, LLP By: <u>Robert L. Falk</u> Robert L. Falk Attorneys for Defendants Blue Sky Brands, Inc., The Paragon Gifts, Inc. and Bits and Pieces, Inc.

IT IS SO ORDERED.

Date: _____

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

	AGREED TO: Date: _____ By: _____ Defendant Bits & Pieces, Inc.
APPROVED AS TO FORM: Date: <u>7/31/06</u> HIRST & CHANLER LLP By:  D. Joshua Voorhees Attorneys for Plaintiff Russell Brimer	APPROVED AS TO FORM: Date: _____ MORRISON & FOERSTER, LLP By: _____ Robert L. Falk Attorneys for Defendants Blue Sky Brands, Inc., The Paragon Gifts, Inc. and Bits and Pieces, Inc.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

Exhibit A

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

