

**PROPOSITION 65
SETTLEMENT AGREEMENT**

This Proposition 65 Settlement Agreement ("Agreement") is entered into by and between Russell Brimer (hereinafter "Brimer"), and Sunbelt Marketing Group, Inc. (hereinafter "Sunbelt" or "Noticed Party") as of March 28, 2006 (the "Effective Date"). Brimer and Sunbelt are collectively referred to herein as "the parties". The parties agree to the following terms and conditions:

1.0 Introduction.

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

1.2 Noticed Party. Sunbelt Marketing Group, Inc. is engaged in the distribution and retail sale of certain glassware items intended for the storage, serving or consumption of food or beverages with colored artwork, designs and/or markings (containing lead) on their exterior surface, as well as certain glass and metal (containing lead) votive holders.

1.3 Notices. Beginning on or about November 23, 2005, Brimer served the Sunbelt and various public enforcement agencies with two distinct documents entitled "60-Day Notice of Violation," which are collectively referred to herein as the "Notices." The Notices allege that Sunbelt was in violation of Health & Safety Code §25249.6¹ by virtue of having distributed or otherwise offered for sale certain glassware items intended for the storage, serving or consumption of food or beverages with colored artwork, designs and/or markings (containing lead) on their exterior surface, as well as certain glass and metal (containing lead) votive holders. Lead is a substance known to the State of California to cause birth defects or other reproductive harm and is hereinafter referred to as the "Listed Chemical."

1.4 Covered Products. This agreement covers those glassware items intended for the storage, serving or consumption of food or beverages with colored artwork, designs

¹ Unless otherwise specified all statutory references are to California law.

and/or markings (containing lead) on their exterior surface (the "Glassware Products"), as well as those glass and metal (containing lead) votive holders (the "Glass & Metal Products"), which Glassware Products and Glass & Metal Products are sold or offered for sale in California and are listed on **Exhibit A**. Such Glassware Products and Glass & Metal Products are collectively referred to herein as the "Products" and are limited to those items listed on Exhibit A.

2.0 Purpose of Agreement. The parties enter into this Agreement as a full and final resolution of all claims and allegations that were or that could have been alleged by Brimer in any complaints or actions against Sunbelt based on the above-referenced Notices, and in order that the parties may avoid protracted litigation regarding such claims and, to the maximum extent permitted by law, provide Sunbelt protection against future claims pertaining to the Products at issue based on the same or substantially similar allegations for past acts (and future acts so long as they are consistent with the terms contained herein). This Agreement is not and shall not be construed as an admission by Sunbelt of any allegation or issue of fact or law asserted in the Notices. Sunbelt expressly denies any alleged violation of Proposition 65. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Sunbelt under this Agreement.

3.0 Warnings. After the Effective Date of this Agreement, Sunbelt shall not distribute for resale in California, or offer any Products for sale in California, unless those Products are reformulated pursuant to the conditions of Paragraph 4.0, *or* are accompanied by a warning statement in accordance with the terms specified in subsections 3.0(a)-(b):

(a) Product Labeling. A warning or label is affixed to the packaging or directly onto the Product by Sunbelt and/or its agent, the manufacturer or the importer of the Products that states:

WARNING: The materials used as colored decorations on the exterior of this product contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.²

² This warning can only be used in conjunction with the sale of Glassware Products with colored artwork

or

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

A warning issued for Products pursuant to this subsection shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use or purchase. Any material changes to the language or format of the warning required by this subsection shall only be made following 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.

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

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

[List each Product by brand name and description.]

or

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

[List each Product by brand name and description.]

A point of sale warning provided pursuant to subsection 3.0(b) shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use or purchase and shall be placed or written in a manner such that the consumer understands to which *specific* Products the warnings apply so as to minimize if not eliminate the chances that an over-warning situation will arise. Any material changes to the language or format of the warning required for Products by section 3.0 shall only be made or designs on the exterior that contain lead.

following 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.

4.0 Reformulation Standards. Notwithstanding any other provision of this Agreement, no warning pursuant to section 3.0 above for exposure to lead shall or need be provided by Sunbelt for "Reformulated Products." Products satisfying the conditions set forth below qualify as Reformulated Products.

4.1 Reformulation Standards for Glassware Products. The following standards apply to any Glassware Products designed and marketed to be used for the storage or consumption of foods or beverages.

(a) Exclusive of the top 20 millimeters on the exterior of the Glassware Product (hereinafter "Lip and Rim Area"),

(i) the materials for all colored artwork, designs or markings on the exterior must contain by weight no more than six one-hundredths of one percent (0.06%) lead and no more than forty-eight one-hundredths of one percent (0.48%) cadmium as measured at Sunbelt's option, either before or after the material is fired onto (or otherwise affixed to) the Glassware Product, using EPA Test Method 3050b or an equivalent test method of sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less than 600 ppm³; or

(ii) the Glassware Product must produce a test result no higher than 1.0 micrograms ("ug") of lead using a Ghost Wipe™ test applied on the decorated portions of the surface of the Glassware Product performed as outlined in NIOSH Method No. 9100.

(b) If the Glassware Product has artwork, designs or markings within the Lip and Rim Area, the materials for all colored artwork, designs or markings within Lip and Rim Area must contain "no detectable lead." For purposes of this subsection, "no detectable lead" shall mean that no lead is detected at a level above two one-hundredths of one percent

³ If Sunbelt tests, or causes to be tested, the decoration after it is affixed to the Glassware Product, the percentage of lead or cadmium by weight must relate only to the other portions of the decorating material and not include any calculation of non-decorating material.

(0.02%) for lead by weight as measured at Sunbelt's option, either before or after the material is fired onto (or otherwise affixed to) the Glassware Product, using EPA Test Method 3050b or an equivalent test method of sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less than 600 ppm.⁴

4.2 Reformulation Standards for Glass & Metal Products.

Glass & Metal Products must contain by weight no more than one-tenth of one percent (0.1%) of lead in any metal material used in the Glass & Metal Products (such as solder or came).

4.3 Reformulation Commitment. Sunbelt shall require its suppliers of

Products to supply only Reformulated Products after the Effective Date. Sunbelt shall undertake commercially reasonable efforts to distribute or offer for sale only Reformulated Products on or after December 31, 2006.

5.0 Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health &

Safety Code §25249.7(b), Sunbelt shall deliver a check for a civil penalty of \$4,000 made payable to "Hirst & Chanler LLP In Trust For Russell Brimer" no later than March 31, 2006. All penalty monies shall be apportioned by Brimer in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained by Plaintiff as provided by Health and Safety Code §25249.12(d).

6.0 Reimbursement of Fees and Costs. Under the private attorney general doctrine

codified at C.C.P. §1021.5, Sunbelt shall reimburse Brimer and his counsel for his fees and costs, incurred as a result of investigating, bringing this matter to Sunbelt's attention and negotiating a settlement in the public interest. Sunbelt shall pay Brimer and his counsel the total amount of \$24,000 for all attorneys' fees, expert and investigation fees in six equal monthly payments of \$4,000 each, due not later than April 30, 2006, May 31, 2006, June 30, 2006, July 31, 2006, August 31, 2006, and September 29, 2006. Except as specifically provided in this Agreement,

⁴ Footnote 2, supra, is referred to and incorporated herein by reference.

Sunbelt shall not have any further obligation with regard to reimbursement of plaintiff's attorney's fees and costs, and each party shall bear its own costs and attorney's fees. The full payment shall be made payable to "Hirst & Chanler LLP" and shall be delivered to Plaintiff's counsel at the following address:

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

7.0 Brimer's Release of Sunbelt. Brimer, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns, and in the interest of the general public ("Releasing Parties"), waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines, penalties, fees, and all rights to damages, restitution, injunctive relief, and any other form of relief, whether legal or equitable (collectively the "Claims"), against Sunbelt and its directors, officers, employees, parents, subsidiaries, affiliates, licensors, retailers, customers, successors and assigns ("Releasees"), whether under Proposition 65 or other statutory law Claims based solely on their alleged failure to warn about exposure to the Listed Chemical contained in any of the Products. This Agreement is a full, final and binding resolution between Brimer, on behalf of himself and the Releasing Parties, and Sunbelt and the Releasees of any violation of Proposition 65 or any other claim that was or could have been asserted based on alleged failure to warn for exposure to the Listed Chemical in the Products (collectively the "Released Claims"). The parties intend compliance with this Agreement to resolve any issue now, in the past, or in the future concerning the Products' past and present, and future (up to the date of compliance established in Paragraph 3.0, above, and in the future so long as Sunbelt complies with this Agreement) compliance with Proposition 65 as such compliance pertains to the Products at issue. In addition, Brimer, on behalf of himself and the Releasing Parties, waives all rights to institute any form of legal action against Sunbelt, its attorneys and Releasees for all actions or statements made Sunbelt or its attorneys or representatives, in the course of

responding to violations of Proposition 65 by Sunbelt alleged in the 60-Day Notices.

8.0 Sunbelt's Release of Brimer. Sunbelt, by this Agreement, waives all rights to institute any form of legal action against Brimer or his attorneys or representatives, for all actions or statements made by Brimer or his attorneys or representatives, in the course of seeking enforcement of Proposition 65 against Sunbelt in this litigation. Provided, however, Sunbelt shall remain free to institute any form of legal action to enforce the provisions of this Agreement.

9.0 Sunbelt's Sales Data. Sunbelt understands that the sales data provided to counsel for Brimer by Sunbelt was a material factor upon which Brimer has relied to determine the amount of payments made pursuant to Health & Safety Code §25249.7(b) in this Agreement. To the best of Sunbelt's knowledge, the sales data provided is true and accurate.

10.0 Modification. Subject to the right of Sunbelt to seek a modification of warnings pursuant to Sections 3.0(a) and (b), this Agreement may only be modified by written agreement of the parties.

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

12.0 Governing Law. The terms of this Agreement shall be governed by the laws of the State of California.

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

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

With a copy to:

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

All correspondence to Sunbelt shall be mailed to:

Clayton H. Burrous
President
Sunbelt Marketing Group, Inc.
4275 Arco Lane, Suite A
North Charleston, SC 29418

With a copy to:

Jeffrey B. Margulies, Esq.
Fulbright & Jaworski L.L.P.
555 S. Flower Street, 41st Floor
Los Angeles, California 90071
Tel: (213) 892-9286
Fax: (213) 892-9494

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

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

15.0 Duties Limited to California. This Agreement shall have no effect on Products sold by Sunbelt for use outside the State of California.

16.0 Exemption Under § 25249.11(b). Sunbelt shall not be required to comply with the injunctive portions of the Agreement in paragraphs 3 and 4 for shipments of the Products that are intended for sale in California if, at the time of each such shipment, Sunbelt is not a "person in the course of doing business" as defined in Health & Safety Code §25249.11(b), by virtue of its employing fewer than ten part-time and/or full-time employees. This paragraph shall not apply to the reformulation commitment made by Sunbelt in subparagraph 4.3.

17.0 Entire Agreement. This Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitment and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any

party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

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

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

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

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 Agreement.

AGREED TO:

Date: 3-31-06

By: 
RUSSELL BRIMER

APPROVED AS TO FORM:

Date:

HIRST & CHANLER

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

AGREED TO:

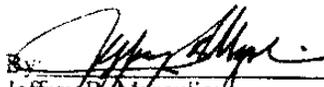
Date: March 23, 2006

By: 
SUNBELT MARKETING GROUP, INC.

APPROVED AS TO FORM:

Date: 3/29/06

FULBRIGHT & JAWORSKI L.L.P.

By: 
Jeffrey B. Margulies
Attorney for Defendant
SUNBELT MARKETING GROUP, INC.

AGREED TO:

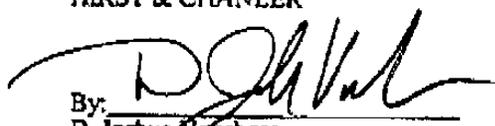
Date:

By: _____
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: 3/31/06

HIRST & CHANLER

By: 
D. Joshua Voorhees
Attorney for Plaintiff
RUSSELL BRIMER

AGREED TO:

Date: March 29, 2006

By: 
SUNBELT MARKETING GROUP, INC.

APPROVED AS TO FORM:

Date: 3/29/06

FULBRIGHT & JAWORSKI L.L.P.

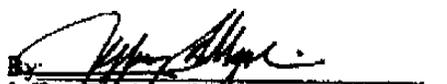
By: 
Jeffrey B. Margulies
Attorney for Defendant
SUNBELT MARKETING GROUP, INC.

Exhibit A

The Products covered by this Agreement are:

1. KO Votive Holder, Tiffany Style, #6406-08 (#7 55203 40514 3);
2. Coca-Cola Bottle S&P Shakers, #9050-03, #6039 (7 52203 01105 4); and
3. Coca-Cola Gourmet Bottle, #9050-01, #9050-04.