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12 Attorneys for Defendants
13 DOLE PLANTATION; CASTLE & COOKE, INC.; DOLE FOOD COMPANY, INC.

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

19 RUSSELL BRIMER

20 Plaintiff,

21 v.

22 DOLE PLANTATION; CASTLE & COOKE,
23 INC.; DOLE FOOD COMPANY, INC.; and
24 DOES 1 through 150,

25 Defendants.

Case No. CGC-06-449070

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

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer And Dole**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter
4 Brimer or plaintiff) and defendant Castle & Cooke Properties, Inc., d/b/a Dole Plantation; Castle &
5 Cooke, Inc.; Dole Food Company, Inc., (hereinafter Dole or defendant), with Brimer and Dole
6 collectively referred to as the "parties."

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Dole employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code §§25249.5 et seq. (Proposition 65).

15 **1.4 General Allegations**

16 Brimer alleges that Dole has distributed and/or sold in the State of California certain shot
17 glasses and other glassware and mugs and other ceramic ware intended for the consumption of
18 food or beverages with colored artwork or designs containing lead on the exterior. Lead is listed
19 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects
20 and other reproductive harm. Lead shall be referred to herein as the "listed chemical."

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: certain
23 glass and ceramic beverageware identified in Exhibit A to this Consent Judgment. All such glass
24 and ceramic beverageware shall be referred to herein as the "products."

25 **1.6 Notices of Violation**

26 On November 23, 2005, Brimer served Dole and various public enforcement agencies with
27 a document entitled "60-Day Notice of Violation" (Notice) that provided Dole and such public
28 enforcers with notice that alleged that Dole was in violation of California Health & Safety Code

1 §25249.6 for failing to warn consumers and customers that the products that Dole sold exposed
2 users in California to the listed chemical.

3 **1.7 Complaint**

4 On July 7, 2006, Brimer, who is acting in the interest of the general public in California,
5 filed a complaint (Complaint or Action) in the Superior Court in and for the City and County of
6 San Francisco against Dole Plantation; Castle & Cooke, Inc.; Dole Food Company, Inc.; and Does
7 1 through 150, (*Brimer v. Dole Plantation; Castle & Cooke, Inc.; Dole Food Company, Inc.; and*
8 *Does 1 through 150*, San Francisco Superior Court Case No. CGC- 06-449070) alleging violations
9 of Health & Safety Code §25249.6 based on the alleged exposures to the listed chemical contained
10 in the products Dole sold.

11 **1.8 No Admission**

12 Dole denies the material, factual and legal allegations contained in Brimer's Notice and
13 Complaint and maintains that all products that it has sold and distributed in California, including
14 the products defined in Section 1.5 above, have been and are in compliance with all laws. Nothing
15 in this Consent Judgment shall be construed as an admission by Dole of any fact, finding, issue of
16 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
17 construed as an admission by Dole of any fact, finding, conclusion, issue of law or violation of
18 law, such being specifically denied by Dole. However, this Section shall not diminish or
19 otherwise affect the obligations, responsibilities and duties of Dole under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

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

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "effective date" shall mean December 29,
27 2006.

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

2 **2.1 Product Warnings**

3 After the effective date, Dole shall not sell, ship, or offer to be shipped for sale in
4 California products containing the listed chemical unless such products are sold or shipped with
5 the clear and reasonable warning set out in this Section 2.1, comply with the reformulation
6 standards set forth in Section 2.3 or are otherwise exempt pursuant to Section 2.2.

7 Any warning issued for products pursuant to this Section 2.1 shall be prominently placed
8 with such conspicuousness as compared with other words, statements, designs, or devices as to
9 render it likely to be read and understood by an ordinary individual under customary conditions
10 before purchase or, for products shipped directly to an individual in California or used in the
11 workplace, before use. Any warning issued pursuant to this Section 2.1 shall be provided in a
12 manner such that the consumer or user understands to which *specific* product the warning applies,
13 so as to minimize if not eliminate the chance that an overwarning situation will arise.

14 Sections 2.1(a)-(b) describe Dole's options for satisfying its warning obligations
15 depending, in part, on the manner of sale. The following warnings will be applicable when the
16 product is sold either to consumers or in a business-to-business transaction:

17 **(a) Retail Store Sales**

18 **(i) Product Labeling.** From the effective date, a warning will
19 be affixed to the packaging, labeling or directly on the product by Dole or its agent, that states:

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

23 **(ii) Point-of-Sale Warnings.** Dole may perform its warning
24 obligations by ensuring that signs are posted at retail outlets in the State of California where the
25 products are sold. In order to avail itself of the point-of-sale option, Dole shall provide a written
26 notice (via certified mail in the first quarter of each calendar year) to each retailer or distributor to
27 whom Dole sells or transfers the products directly, which informs such retailers or distributors that
28 point-of-sale warnings are required at each retail location in the State of California. Dole shall

1 include a copy of the warning signs and posting instructions with such notice. Further, Dole must
2 receive and make available for Brimer's inspection, upon request, a written commitment: (a) from
3 each retailer to whom Dole sells products directly that said retailer will post the warning signs; and
4 (b) from each distributor to whom Dole sells products directly that the distributor will transmit the
5 point-of-sale warning notice and instructions to its direct customers. Point-of-sale warnings shall
6 be provided through one or more signs posted in close proximity to the point of display of the
7 products that states:

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

11 **(b) Mail Order Catalog and Internet Sales.** Defendant shall satisfy its
12 warning obligations for products that are sold by mail order catalog or from the Internet to
13 California residents, by providing a warning: (i) in the mail order catalog; (ii) on the website;
14 and/or (iii) with the product when it is shipped to an address in California. Warnings given in the
15 mail order catalog or on the website shall identify the specific product to which the warning
16 applies as further specified in Sections 2.1(b)(i), (ii) and/or (iii) as applicable:

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

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

24 Where it is impracticable to provide the warning on the same page and in the same location
25 as the display and/or description of the product, Dole may utilize a designated symbol to cross
26 reference the applicable warning (designated symbol) and shall define the term "designated
27 symbol" with the following language on the inside of the front cover of the catalog or on the same
28 page as any order form for the product(s):

1 **WARNING:** The materials used as colored decorations on
2 the exterior of certain products identified with
3 this symbol ▼ and offered for sale in this
4 catalog contain lead, a chemical known to the
 State of California to cause birth defects and
 other reproductive harm.

5 The designated symbol (shown on Exhibit B attached hereto) must appear on the same
6 page and in close proximity to the display and/or description of the product. On each page where
7 the designated symbol appears, Dole must provide a header or footer directing the consumer to the
8 warning language and definition of the designated symbol.
9

10 If defendant elects to provide warnings in the mail order catalog, then the warnings must be
11 included in all catalogs offering to sell one or more products printed after December 29, 2006.

12 **(ii) Internet Web Sites and Pages.** A warning may be given in
13 conjunction with the sale of the product via the Internet, provided it appears either: (a) on the
14 same web page on which the product is displayed; (b) on the same web page as the order form for
15 the product; (c) on the same page as the price for any product; or (d) on one or more web pages
16 displayed to a purchaser during the checkout process. The following warning statement shall be
17 used and shall appear in any of the above instances adjacent to or immediately following the
18 display, description, or price of the product for which it is given in the same type size or larger as
19 the product description text:
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22 **WARNING:** The materials used as colored decorations on
23 the exterior of this product contain lead, a
24 chemical known to the State of California to
25 cause birth defects and other reproductive
 harm.

26 Alternatively, the designated symbol may appear adjacent to or immediately following the
27 display, description or price of the product for which a warning is being given, provided that the
28 following warning statement also appears elsewhere on the same web page:

1 **WARNING:** Products identified on this page with the
2 following symbol use materials that contain
3 lead as colored decorations on their exterior, a
4 chemical known to the State of California to
 cause birth defects and other reproductive
 harm: ▼.

5 **(iii) Package Insert or Label.** For all products sold by catalog
6 or via the Internet, a warning may be provided with the product when it is shipped directly to an
7 individual in California, by either: (a) affixing the following warning language to the packaging,
8 labeling or directly to a specific product; (b) inserting a warning card measuring at least 4" x 6" in
9 the shipping carton which contains the following warning language; or (c) by placing the following
10 warning statement on the packing slip or customer invoice on the line directly below the
11 description of the product on the packing slip or customer invoice:
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13 **WARNING:** The materials used on this product as exterior
14 decorations contain lead, a chemical known to
15 the State of California to cause birth defects
16 and other reproductive harm.

17 Alternatively, Dole may place the following language on the packing slip or invoice and
18 specifically identifying the product in lettering of the same size or larger as the description of the
19 product:

20 **WARNING:** The materials used as colored decorations on
21 the exterior of the following product(s)
22 contain lead, a chemical known to the State of
23 California to cause birth defects or other
 reproductive harm:

24 *[list products for which warning is given].*

25 The defendant shall, in any of these instances, in conjunction with providing the warning,
26 also inform the consumer, in a conspicuous manner, that he or she may return the product for a full
27 refund (including shipping costs for both the receipt and the return of the product) within thirty
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1 (30) days of his or her receipt of the product.

2 **2.2 Exceptions**

3 The warning requirements set forth in Section 2.1 shall not apply to:

- 4 (i) Any products shipped to a third party 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" and to comply with
8 Proposition 65 and be exempt from any Proposition 65 warning requirements under Sections 2.1:
9 The products must only utilize decorating materials that contain six one-hundredths of one percent
10 (0.06%) or less of lead by weight; and there must be no detectable lead in the lip-and-rim area¹.

11 **2.4 Reformulation Commitment**

12 Dole hereby commits that all products that it offers for sale in California after September 1,
13 2007, shall qualify as reformulated products.

14 **3. MONETARY PAYMENTS**

15 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

16 The total settlement amount shall be \$4,000, which shall be paid by Dole as set forth
17 herein. Dole shall receive a credit of \$2,000 against the penalty amount in light of its prompt
18 cooperation with Brimer in resolving this matter. Pursuant to Health & Safety Code §25249.7(b),
19 Dole shall pay the remaining \$2,000 in civil penalties in two installments. The first payment of
20 \$1,000 shall be made on or before December 29, 2006. The second payment of \$1,000 shall be
21 payable October 1, 2007. The second payment shall be waived in the event that Dole certifies in
22 writing under penalty of perjury with supporting facts and documentation, not later than September
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28 ¹"Lip-and-Rim Area" is defined as the exterior top 20 millimeters of a hollowware food or beverage product.

1, 2007, that it has complied with the Reformulation Commitment set forth in Section 2.4. Said payments shall be made payable to the "HIRST & CHANLER LLP in Trust For Russell Brimer" and shall be delivered to plaintiff's counsel at the following address:

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

3.2 Apportionment of Penalties Received

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

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Brimer and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Dole then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Brimer and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 for all work performed through the Court's approval of this agreement. Under the private attorney general doctrine, Dole shall reimburse Brimer and his counsel for fees and costs incurred as a result of investigating, bringing this matter to Dole's attention, litigating

1 and negotiating a settlement in the public interest and seeking the Court's approval of the
2 settlement agreement. Dole shall pay Brimer and his counsel \$15,000 for all attorneys' fees, expert
3 and investigation fees, litigation and related costs. The payment shall be made payable to HIRST
4 & CHANLER, LLP and shall be delivered on or before December 29, 2006, at the following
5 address:
6

7 HIRST & CHANLER LLP
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710-2565

12 **5. RELEASE OF ALL CLAIMS**

13 **5.1 Release of Dole and Downstream Customers**

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

3 The parties further understand and agree that this release shall not extend upstream to any
4 entities that manufactured the products or any component parts thereof, or any distributors or
5 suppliers who sold the products or any component parts thereof to Dole.
6

7 **5.2 Dole's Release of Brimer**

8 Dole waives any and all claims against Brimer, his attorneys and other representatives, for
9 any and all actions taken or statements made (or those that could have been taken or made) by
10 Brimer and his attorneys and other representatives, whether in the course of investigating claims or
11 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to
12 the products.
13

14 **6. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and
16 shall be null and void if, for any reason, it is not approved and entered by the Court within one
17 year after it has been fully executed by all parties, in which event any monies that have been
18 provided to plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be
19 refunded within fifteen (15) days after receiving written notice from Dole that the one-year period
20 has expired.
21

22 **7. SEVERABILITY**

23 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
24 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
25 provisions remaining shall not be adversely affected.
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8. ATTORNEYS' FEES

In the event that, after Court approval: (1) Dole or any third party seeks modification of this Consent Judgment pursuant to Section 14 below; or (2) Brimer takes reasonable and necessary steps to enforce the terms of this Consent Judgment, Brimer shall be entitled to his reasonable attorneys' fees and costs pursuant to CCP §1021.5.

9. GOVERNING LAW

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

10. NOTICES

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

To Dole:

Peter M. Morrisette
Cox, Castle & Nicholson
555 Montgomery Street
Suite 1500
San Francisco, CA 94111

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1 To Brimer:

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

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

9 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

16 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

17 Brimer and Dole agree to mutually employ their best efforts to support the entry of this
18 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
19 timely manner. The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a
20 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the
21 plaintiff agrees to file a Motion to Approve the Agreement (Motion). Dole shall have no additional
22 responsibility to plaintiff's counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with
23 regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of
24 the Motion or with regard to plaintiff's counsel appearing for a hearing thereon.

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15. AUTHORIZATION

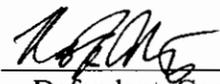
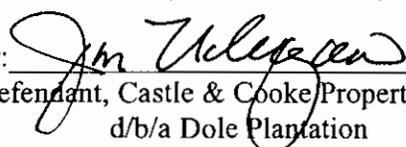
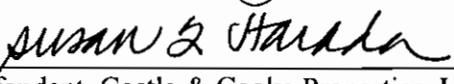
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:	AGREED TO:
Date: <u>12-15-06</u>	Date: _____
By:  Plaintiff, RUSSELL BRIMER	By: _____ Defendant, Dole Food Company, Inc. By: _____ Defendant, Dole Food Company, Inc. By: _____ Defendant, Castle & Cooke, Inc. By: _____ Defendant, Castle & Cooke, Inc. By: _____ Defendant, Castle & Cooke Properties, Inc. d/b/a Dole Plantation By: _____ Defendant, Castle & Cooke Properties, Inc. d/b/a Dole Plantation

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15. **AUTHORIZATION**

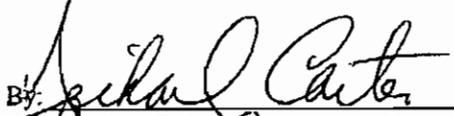
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:	AGREED TO:
Date: _____	Date: _____
By: _____ Plaintiff, RUSSELL BRIMER	By: _____ Defendant, Dole Food Company, Inc.
	By: _____ Defendant, Dole Food Company, Inc.
	By:  Defendant, Castle & Cooke, Inc.
	By:  Defendant, Castle & Cooke, Inc.
	By:  Defendant, Castle & Cooke Properties, Inc. d/b/a Dole Plantation
	By:  Defendant, Castle & Cooke Properties, Inc. d/b/a Dole Plantation

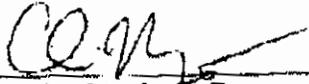
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15. AUTHORIZATION

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.

AGREED TO:	AGREED TO:
Date: _____	Date: _____
By: _____	By: 
Plaintiff, RUSSELL BRIMER	Defendant, Dole Food Company, Inc. Executive Vice President, General Counsel and Corporate Secretary
	By: 
	Defendant, Dole Food Company, Inc. Executive Vice President, General Counsel and Corporate Secretary
	By: _____
	Defendant, Castle & Cooke, Inc.
	By: _____
	Defendant, Castle & Cooke Properties, Inc. d/b/a Dole Plantation
	By: _____
	Defendant, Castle & Cooke Properties, Inc. d/b/a Dole Plantation

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<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>12/15/06</u> HIRST & CHANLER LLP</p> <p>By:  Christopher M. Martin, Esq. Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____ COX, CASTLE & NICHOLSON</p> <p>By: _____ Peter M. Monisette, Esq. Attorneys for Defendants CASTLE & COOKE PROPERTIES, INC., d/b/a DOLE PLANTATION; CASTLE & COOKE, INC.; and DOLE FOOD COMPANY, INC</p>

IT IS SO ORDERED.

Date: _____

Hon. _____
JUDGE OF THE SUPERIOR COURT

STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT CASE NO. CGC-06-449070
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<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____ HIRST & CHANLER LLP</p> <p>By: _____ Christopher M. Martin, Esq. Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>Dec. 21, 2006</u> COX, CASTLE & NICHOLSON</p> <p>By: <u>Peter M. Morrisette</u> Peter M. Morrisette, Esq. Attorneys for Defendants CASTLE & COOKE PROPERTIES, INC., d/b/a DOLE PLANTATION; CASTLE & COOKE, INC.; and DOLE FOOD COMPANY, INC</p>

IT IS SO ORDERED.

Date: _____

Hon.
JUDGE OF THE SUPERIOR COURT

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Exhibit A

The products that are covered by this Consent Judgment include:

- 1. *Shot Glass Label Set/4 #2, #363224*
- 2. *Dole Hawaii Logo Coffee Mug S/B Wht/Dec, #103563*
- 3. *Dole Hawaii Logo Gold Shot Glass, #190875*
- 4. *Can Label Mugs, #365711*
- 5. *Dole Hawaii Logo Souper Mug #260923*

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Exhibit B

The designated symbol that Dole will use to identify products containing the listed chemical which are sold through its catalogs or on its website is:

