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11 Attorneys for Defendant
THE GIFT SHOP AT SOUTH COAST; SOUTH COAST WINERY, INC.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION
16

17
18 RUSSELL BRIMER

19 Plaintiff,

v.

20 THE GIFT SHOP AT SOUTH COAST; SOUTH
21 COAST WINERY, INC.; and DOES 1 through
150, inclusive,

22 Defendants.

Case No. CGC - 06 - 449074

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

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer And South Coast Winery, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter
4 Brimer or Plaintiff) and defendant South Coast Winery, Inc., d/b/a. The Gift Shop at South Coast,
5 (hereafter "South Coast Winery" or "Defendant"), with Brimer and South Coast Winery collectively
6 referred to as the "parties."

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 South Coast Winery employs ten or more persons and is a person in the course of doing business
13 for 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 South Coast Winery has manufactured, distributed and/or sold in the State of
17 California certain stemware and other glassware intended for the consumption of food or beverages with
18 colored artwork or designs (containing lead) on the exterior. Lead is listed pursuant to Proposition 65 as
19 a chemical known to the State of California to cause birth defects and other reproductive harm. Lead
20 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: stemware and
23 other glassware intended for the consumption of food or beverages with colored artwork or designs
24 (containing lead) on the exterior including, but not limited to, the glass products identified in Exhibit A
25 to this Consent Judgment. All such stemware and other glassware intended for the consumption of food
26 or beverages with colored artwork or designs (containing lead) on the exterior shall be referred to
27 hereinafter as the "Products."

1 **1.6 Notices of Violation**

2 On or about November 23, 2005, Brimer served South Coast Winery and various public
3 enforcement agencies with a document entitled "60-Day Notice of Violation" (the Notice) that provided
4 South Coast Winery and such public enforcers with notice that alleged that South Coast Winery was in
5 violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that
6 the Products that South Coast Winery sold exposed users in California to the Listed Chemical.

7 **1.7 Complaint**

8 On February 1, 2006, Brimer, who is acting in the interest of the general public in California,
9 filed a complaint (hereinafter referred to as the Complaint or the Action) in the Superior Court in and for
10 the City and County of San Francisco against The Gift Shop At South Coast; South Coast Winery and
11 Does 1 through 150, (*Brimer v. The Gift Shop At South Coast; South Coast Winery*, CGC - 06 - 449074)
12 alleging violations of Health & Safety Code §25249.6 based on the alleged exposures to the Listed
13 Chemical contained in the Products sold by South Coast Winery.

14 **1.8 No Admission**

15 South Coast Winery denies the material factual and legal allegations contained in Brimer's Notice
16 and Complaint and maintains that all products that it has sold and distributed in California, including the
17 Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
18 construed as an admission by South Coast Winery of any fact, finding, issue of law, or violation of law,
19 nor shall compliance with this Consent Judgment constitute or be construed as an admission by South
20 Coast Winery of any fact, finding, conclusion, issue of law or violation of law, such being specifically
21 denied by South Coast Winery.

22 **1.9 Consent to Jurisdiction**

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

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean December 15,
3 2006.

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

5 **2.1** After the Effective Date, South Coast Winery shall not sell, ship or offer to be shipped for
6 sale in California Products containing the Listed Chemical unless such Products either: (1) are sold or
7 shipped with the clear and reasonable warnings set out in Section 2.2; or (2) comply with the
8 Reformulation Standards set forth in Section 2.3.

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

13 **2.2 Product Warnings**

14 **2.2.1** Clear and Reasonable Warnings. This Section describes South Coast Winery's
15 options for satisfying the warning obligations required by Section 2.1, depending, in part, on the manner
16 of sale:

17 **(a) Retail Store Sales**

18 **(i) Product Labeling.** From the Effective Date, a warning will be
19 affixed to the packaging, labeling or directly on the Product by South Coast Winery or its agent, that
20 states:

21 **WARNING:** The colored artwork or designs used on this product
22 contain lead, a chemical known to the State of
23 California to cause birth defects and other
24 reproductive harm.

25 **(ii) Point-of-Sale Warnings.** South Coast Winery may perform its
26 warning obligations by insuring to the greatest extent possible that one or more signs are posted at each
27 retail outlet in the State of California where the Products are sold. South Coast Winery must receive a
28 written commitment from each retailer to whom South Coast Winery sells Products directly that it will
post the warning signs. Point-of-sale warnings shall be provided through one or more signs posted in

1 The Designated Symbol (shown on Exhibit A attached hereto) must appear on the same page and
2 in close proximity to the display and/or description of the Product. On each page where the Designated
3 Symbol appears, South Coast Winery must provide a header or footer directing the consumer to the
4 warning language and definition of the Designated Symbol.

5 If Defendant elects to provide warnings in the mail order catalog, then the warnings must be
6 included in all catalogs offering to sell one or more Products printed after December 15, 2006.

7 (ii) **Internet Web Sites and Pages.** A warning may be given in
8 conjunction with the sale of the Product via the internet, provided it appears either: (a) on the same web
9 page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c)
10 on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
11 during the checkout process. The following warning statement shall be used and shall appear in any of
12 the above instances adjacent to or immediately following the display, description, or price of the Product
13 for which it is given in the same type size or larger as the product description text:

14 **WARNING:** The colored artwork or designs used on this product
15 contain lead, a chemical known to the State of
16 California to cause birth defects and other
reproductive harm.

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

20 **WARNING:** Products identified on this page with the following
21 symbol use colored artwork or designs that contain
lead, a chemical known to the State of California to
cause birth defects and other reproductive harm: ▼

22 (iii) **Package Insert or Label.** For all Products sold by catalog or via
23 the internet, a warning may be provided with the Product when it is shipped directly to an individual in
24 California, by either: (a) affixing the following warning language to the packaging, labeling or directly to
25 a specific Product; (b) inserting a warning card measuring at least 4" x 6" in the shipping carton which
26 contains the following warning language; or (c) by placing the following warning statement on the
27

1 packing slip or customer invoice on the line directly below the description of the Product on the packing
2 slip or customer invoice:

3 **WARNING:** The colored artwork or designs used on this product
4 contain lead, a chemical known to the State of
5 California to cause birth defects and other
6 reproductive harm.

7 Alternatively, South Coast Winery may place the following language on the packing slip or
8 invoice and specifically identify the Product in lettering of the same size or larger as the description of
9 the Product:

10 **WARNING:** The colored artwork or designs used in the
11 following product(s) contain lead, a chemical
12 known to the State of California to cause birth
13 defects or other reproductive harm: [*list products*
14 *for which warning is given*].

15 The Defendant shall, in any of these instances, in conjunction with providing the warning, also inform
16 the consumer, in a conspicuous manner, that he or she may return the Product for a full refund (including
17 shipping costs for both the receipt and the return of the Product) within thirty (30) days of his or her
18 receipt of the Product.

19 **2.2.2 Exceptions**

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

- 21 (i) Any Products shipped to a third party before the Effective Date; or
- 22 (ii) Reformulated Products (as defined in Section 2.3 below).

23 **2.3 Reformulation Standards**

24 Any Product containing .06% (or 600 parts per million) or less by weight of the Listed Chemical
25 shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning
26 requirements under Sections 2.2.

27 **2.4 Reformulation Commitment**

28 South Coast Winery hereby commits that all Products that it offers for sale in California after
April 1, 2007, shall qualify as Reformulated Products.

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1 **2.5 Warnings and Reformulation Period**

2 The warning and reformulation requirements provided herein shall remain in full force and effect
3 for a period of five years from the Effective Date, at which time the requirements of this Section 2 shall
4 automatically expire and become unenforceable. The expiration of Section 2, however, will not relieve
5 Defendant of its subsequent obligation to comply with the requirements of Proposition 65 as it relates to
6 the Products.

7 **3. MONETARY PAYMENTS**

8 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

9 The total settlement amount shall be \$2,000, which shall be paid by South Coast Winery as set
10 forth herein. South Coast Winery shall receive a credit of \$1,000 against the penalty amount in light of
11 its prompt cooperation with Brimer in resolving this matter. Pursuant to Health & Safety Code
12 §25249.7(b), South Coast Winery shall pay the remaining \$1,000 in civil penalties in one installment on
13 December 15, 2006. Settling Defendant shall deliver this amount by check made payable to “Hirst &
14 Chanler LLP in Trust for Russell Brimer” to plaintiff’s counsel at the following address:

15 HIRST & CHANLER LLP
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710-2565

20 Counsel for Brimer shall deposit \$1,000 into its Client Trust Account and shall hold the entire amount in
21 escrow until the Court enters an Order approving the Consent Judgment and any appeal or right to
22 appeal has been exhausted and the Consent Judgment has become final for all purposes. Upon a single
23 written request by Defendant, Clifford Chanler, counsel for Brimer, shall provide Defendant with written
24 assurance that the funds have been held and/or disbursed in compliance with this provision.

25 **3.2 Apportionment of Penalties Received**

26 All penalty monies received shall be apportioned by Brimer in accordance with Health & Safety
27 Code §25192, with 75% of these funds remitted by Brimer to the State of California's Office of
28 Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained by

1 Brimer as provided by Health & Safety Code §25249.12(d). Brimer shall bear all responsibility for
2 apportioning and paying to the State of California the appropriate civil penalties paid in accordance with
3 this Section.

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

5 South Coast Winery shall pay Brimer and his counsel \$19,500 for all attorneys' fees, expert and
6 investigation fees, litigation and related costs incurred in connection with this matter on December 15,
7 2006. Settling Defendant shall deliver a check in this amount made payable to HIRST & CHANLER
8 LLP to:

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

14 Counsel for Brimer shall deposit \$19,500 into its Client Trust Account and shall hold the entire amount
15 in escrow until the Court enters an Order approving the Consent Judgment and any appeal or right to
16 appeal has been exhausted and the Consent Judgment has become final for all purposes. Upon a single
17 written request by Defendant, Clifford Chanler, counsel for Brimer, shall provide Defendant with written
18 assurance that the funds have been held and/or disbursed in compliance with this provision.

19 **5. RELEASE OF ALL CLAIMS**

20 **5.1 Release of South Coast Winery and Downstream Customers**

21 In further consideration of the promises and agreements herein contained, and for the payments
22 to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and current agents,
23 representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby
24 waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases
25 all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,
26 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not
27 limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known
28 or unknown, fixed or contingent (collectively Claims), against South Coast Winery and each of its

1 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers,
2 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their
3 respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister
4 and parent entities (collectively Releasees). This release is limited to those claims that arise under
5 Proposition 65, as such claims relate to South Coast Winery's alleged failure to warn about exposures to
6 or identification of the Listed Chemical contained in the Products.

7 The Parties further understand and agree that this release shall not extend upstream to any entities
8 that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold
9 the Products or any component parts thereof to South Coast Winery.

10 **5.2 South Coast Winery's Release of Brimer**

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

16 **6. COURT APPROVAL**

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

22 **7. SEVERABILITY**

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

26 *////*

1 **8. ATTORNEYS' FEES**

2 In the event that, after Court approval a dispute arises with respect to any provision of this
3 Consent Judgment the prevailing party shall be entitled to its reasonable attorneys' fees and costs in
4 connection with such dispute.

5 **9. GOVERNING LAW**

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

11 **10. NOTICES**

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

16 To South Coast Winery:

17 James A. Carter, President
18 The Gift Shop At South Coast; South Coast Winery
19 34843 Rancho California Road
20 Temecula, CA 92591

21 With copy to:

22 Malcolm C. Weiss, Esq.
23 JEFFER, MANGELS, BUTLER & MARMARO LLP
24 1900 Avenue of the Stars, 7th Floor
25 Los Angeles, CA 90067

26 To Brimer:

27 Proposition 65 Coordinator
28 HIRST & CHANLER LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

3 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

9 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

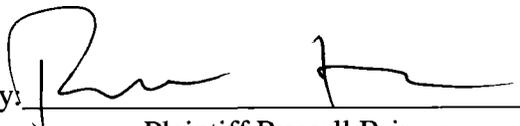
10 Brimer and South Coast Winery agree to mutually employ their best efforts to support the entry
11 of this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
12 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
13 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties agree
14 to file a Joint Motion to Approve the Agreement (Joint Motion), the first draft of which Brimer's
15 counsel shall prepare, within a reasonable period of time after the Execution Date (i.e., not to exceed
16 thirty (30) days unless otherwise agreed to by the Parties' counsel based on unanticipated circumstances).
17 South Coast Winery shall have no additional responsibility to Plaintiff's counsel pursuant to Code of
18 Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with
19 respect to the preparation and filing of the Joint Motion and its supporting declaration or with regard to
20 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 upon
23 entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any Party
24 and entry of a modified Consent Judgment by the Court. The Attorney General shall be served with
25 notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance of its
26 consideration by the Court.

1 **15. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties
3 and have read, understood and agree to all of the terms and conditions of this Consent Judgment.
4

AGREED TO:	AGREED TO:
Date: <u>11-29-06</u>	Date: _____
By:  Plaintiff Russell Brimer	By: _____ Defendant South Coast Winery

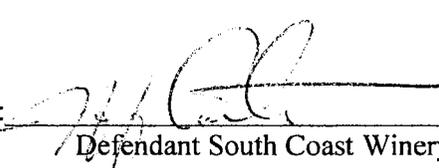
11 **IT IS SO ORDERED.**

12 Date: _____

13 _____
14 JUDGE OF THE SUPERIOR COURT

1 **15. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties
3 and have read, understood and agree to all of the terms and conditions of this Consent Judgment.
4

AGREED TO:	AGREED TO:
Date: _____ By: _____ Plaintiff Russell Brimer	Date: <u>11-30-06</u> By:  Defendant South Coast Winery

11 **IT IS SO ORDERED.**

12 Date: _____

13 _____
14 JUDGE OF THE SUPERIOR COURT

Exhibit A

The Designated Symbol that Defendant will use to identify Products containing the Listed Chemical which are sold through its catalogs or on its website is:

