

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Russell Brimer and catstudio. This Settlement Agreement is entered into by and between Russell Brimer (hereafter "Brimer") and catstudio (hereafter "catstudio"), with Brimer and catstudio collectively referred to as the "Parties" and with Brimer and catstudio each being a "Party."

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

1.3 catstudio. catstudio employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

1.4 Covered Products. The products that are covered by this Settlement Agreement are: glass beverageware and glass candleholders with colored artwork, designs and/or markings on the exterior surface, containing lead and/or cadmium, that are imported, distributed or offered for use or sale by catstudio and that are purchased and/or used by individuals in California for the storage, serving or consumption of food or beverage including, but not limited to, the *Lake Tahoe 4PkGls Asst. (KO 053483)*. All such glassware shall be referred to herein as the "Products."

1.5 General Allegations. Brimer alleges that catstudio has manufactured, imported, distributed and/or offered for use or sale in the State of California Products with colored artwork, designs and/or markings on the exterior surface that contain (and cause exposure to) lead and/or cadmium. Lead and cadmium are listed pursuant to the Safe Drinking Water and Toxic

Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.*, also known as Proposition 65, as carcinogens and reproductive toxicants. Lead and cadmium shall be referred to herein as the "Listed Chemicals."

1.6 Notice of Violation. On June 27, 2006, Brimer served catstudio and various public enforcement agencies with a document, entitled "60-Day Notice of Violation" ("Notice") that provided catstudio and the public enforcers with notice that catstudio was allegedly in violation of Health & Safety Code §25249.6 for failing to warn individuals that Products it sold in California expose consumers to lead contained in the exterior decorations on the Products. On or about October 12, 2006, Brimer will have served catstudio and various public enforcement agencies with a document, entitled "Supplemental Notice of Violation" ("Supplemental Notice") that will provide catstudio and the public enforcers with notice that catstudio was allegedly in violation of Health & Safety Code §25249.6 for failing to warn individuals that Products that catstudio sold expose individuals in California to cadmium.

1.7 No Admission. catstudio denies the material factual and legal allegations contained in Brimer's Notice and Supplemental Notice and maintains that all Products that it has manufactured, decorated, imported, distributed and/or offered for use or sale in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by catstudio of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by catstudio of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of catstudio under this Settlement Agreement.

1.8 Effective Date. For purposes of this Settlement Agreement, the "Effective Date" shall be October 20, 2006.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Warning Obligations for Products

(a) **Required Warnings.** After the Effective Date, catstudio shall not manufacture, decorate, import, distribute and/or offer for use or sale any Products containing the Listed Chemicals (or supply any Products containing the Listed Chemicals to any entity) for distribution, sale and/or use in California, unless clear and reasonable warnings are given in accordance with one or more provisions in subsection 2.2 below.

(b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and 2.2 below shall not apply to:

- (i) any Products manufactured thirty (30) days following the Effective Date;
- (ii) Reformulated Products (as defined below in subsection 2.3 below); or
- (iii) any Products supplied to catstudio by any other person in the course of doing business who is subject to a final judgment in an action brought by Brimer, Dr. Whitney Leeman or Michael DiPirro or a public enforcer whose action was brought on behalf of the People of the State of California addressing Proposition 65 warning obligations arising from alleged exposures to lead and/or cadmium from glassware products with colored artwork, designs or markings on the exterior surface.

2.2 Clear and Reasonable Warnings. The methods and language outlined in the following subsections describe catstudio's options for satisfying the warning obligations described in section 2.1(a) depending, in part, on the manner of sale of the Product.

(a) **Retail Sales.** If the Product is sold at a retail outlet in California, catstudio must comply with its warning requirement by affixing the following language to the packaging, labeling, or directly to a specific Product by catstudio, its agent, the manufacturer, the decorator, the importer, the distributor or the retailer of the Product that states:

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

Warnings 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 prior to use or purchase. For purposes of this subsection, a warning statement or sticker placed on the bottom of the product packaging is not an adequate warning. Similarly, for purposes of this Settlement Agreement, a warning insert that is placed inside the product packaging that is not intended to be opened prior to leaving the retail establishment is deemed not reasonably calculated to transmit the health hazard warning to the individual prior to purchase.

Any changes to the language or format of the warning required for Products by this subsection shall only be made by written approval from the California Attorney General's Office, provided that written notice of at least fifteen (15) days is given to Brimer for the opportunity to comment.

(b) **Internet Sales.** Catstudio shall satisfy its warning obligations for Products that are sold by the Internet to California residents, by arranging for the provision of a warning containing the language in subsection 2.2(a) to be (i) included in an email to the

customer before the sale of the Product is confirmed by the customer, and (ii) on the packing slip or customer invoice specifically identifying the Product in lettering of the same size as the description of the Product.

2.3 Reformulation Standards. The following section sets forth the specifications which the Products must meet in order to be sold without a Proposition 65 warning. For purposes of this section, the following definitions apply:

"Children's Product" is defined as any Product intended or marketed primarily for use by children such as: Products with designs on their exterior surface which are affiliated with children's toys or entertainment; Products of a reduced size so as to be marketed primarily for children (*e.g.*, reduced-size juice glasses intended for use by children); or Products of a type or category which typically would be used by children, and all similar items.

"Exterior Decorations" is defined as all colored artwork, designs and/or markings on the exterior surface of the Product.

"Lip-and-Rim Area" is defined as the exterior top twenty (20) millimeters of a hollowware food or beverage Product, as defined by American Society of Testing and Materials Standard Test Method C927-99.

"No Detectable lead or cadmium" shall mean that neither lead nor cadmium is detected at a level above two one-hundredths of one percent (0.02%), *i.e.* 200 parts per million ("ppm"), of lead or eight one-hundredths of one percent (0.08%), *i.e.* 800 ppm, of cadmium by weight, respectively, using a sample size of the materials in question measuring

approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation of less than 200 ppm.¹

"Reformulated Product" refers to any Product that meets the reformulation standards described in section 2.3 as set forth below.

2.3.1 Reformulation Standards:

A Product is a Reformulated Product if it satisfies the standard outlined in subsection 2.3.1 (a) and (b), subject to the following qualifications:

All Children's Products must meet the Decorative Material Content-Based standard outlined in subsection 2.3.1(a) to be considered a Reformulated Product.

If a Product has Exterior Decorations in the Lip-and-Rim Area, it must also satisfy subsection 2.3.1(b) to be considered a Reformulated Product.

(a) Decorating Material Content-Based Standard. The Exterior Decorations, exclusive of the Lip-and-Rim Area, must only utilize decorating materials that contain six one-hundredths of one percent (0.06%), i.e. 600 ppm, of lead and forty-eight one-hundredths of one percent (0.48%), i.e. 4800 ppm, of cadmium by weight or less as measured either before or after the material is fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050B.²

¹ If the decoration is tested after it is affixed to the Covered Product, the percentage of the Listed Chemical by weight must relate only to the decorating material and must not include any quantity attributable to non-decorating material (e.g., the glass substrate).

² If the decoration is tested after it is affixed to the Covered Product, the percentage of the Listed Chemical by weight must relate only to the decorating material and must not include any quantity attributable to non-decorating material (e.g., the glass substrate).

(b) Lip-and-Rim Area Decoration. All Exterior Decorations that extend into the Lip-and-Rim Area must only utilize decorating materials that contain No Detectable lead or cadmium.

2.4 Reformulation Goal. catstudio hereby commits to undertake its best efforts to ensure that as many Products as possible that it offers for sale in California after the Effective Date, shall either qualify as Reformulated Products or will otherwise be exempt from the warning requirements of section 2.1.

3. MONETARY PAYMENTS

3.1 In settlement of all of the claims referred to in this Settlement Agreement against catstudio, it shall pay \$1,500 in civil penalties to be apportioned by Brimer in accordance with Health & Safety Code §25192, with 75% of these funds remitted 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.

3.2 Payment Schedule. The payment set forth in this paragraph shall be made payable to "HIRST & CHANLER LLP in Trust For Russell Brimer" on or before October 31, 2006, and be delivered to Brimer's counsel at the following address:

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

4. REIMBURSEMENT OF FEES AND COSTS

4.1 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. catstudio 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 Code of Civil Procedure §1021.5 for all work performed through the Effective Date. Under the private attorney general doctrine, catstudio shall reimburse Brimer and his counsel for fees and costs, incurred as a result of investigating, bringing this matter to catstudio's attention and negotiating a settlement in the public interest. catstudio shall pay Brimer and his counsel \$16,000 for all attorneys' fees, expert and investigation fees, and litigation costs. The payment shall be made payable to the "Hirst & Chanler, LLP in Trust for Russell Brimer" and shall be delivered to Brimer's counsel on or before October 31, 2006, at the following address:

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

Except as specifically provided in this Settlement Agreement, catstudio shall have no further obligation with regard to reimbursement of Brimer's attorneys' fees and costs with regard to the Products.

5. RELEASE OF ALL CLAIMS

5.1 Brimer's Release of catstudio. In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to sections 3 and 4, Brimer, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and release all claims, including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorney's fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against catstudio and its distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively, "catstudio's Releasees") arising under or derived from Proposition 65, related to catstudio or catstudio's Releasees' alleged failure to warn about exposures to or identification of the Listed Chemicals contained in the exterior decorations on the Products manufactured, decorated, imported, distributed and/or offered for use or sale by catstudio.

The Parties further agree and acknowledge that this Settlement Agreement is a full, final, and binding resolution of any direct or derivative violation of Proposition 65, that has been or could have been asserted against catstudio for catstudio's Releasees alleged failure to provide clear and reasonable warnings of exposure to or identification of the Listed Chemicals in the exterior decorations on the Products manufactured, decorated, imported, distributed and/or

offered for use or sale by catstudio.

It is specifically understood and agreed that catstudio's compliance with the terms of this Settlement Agreement resolves all issues and liability, now and in the future (so long as catstudio complies with the terms of the Settlement Agreement) concerning catstudio's and catstudio's Releasees' compliance with the requirements of Proposition 65, as to the Listed Chemicals in the exterior decorations of the Products manufactured, decorated, imported, distributed and/or offered for use or sale by catstudio.

The releases provided by Brimer in this subsection shall not extend upstream to the Product manufacturer or decorator or to any Product importer, distributor or supplier from whom catstudio purchased any Products, except insofar as such entity has otherwise satisfied its Proposition 65 obligations. This Settlement Agreement expressly does not release catstudio for exposures to the Listed Chemicals from sources other than the paints, pigments, decals, dyes and other materials used as exterior decoration on the Products. This release also expressly excludes the potential liability of catstudio's Releasees for the use or sale of any Product not supplied to them by catstudio or an entity that has not satisfied its Proposition 65 obligations.

5.2 catstudio's Release of Brimer. catstudio waives all rights to institute any form of legal action against Brimer, or his attorneys or representatives, for all actions taken or statements made by Brimer and his attorneys or representatives, in the course of investigating and/or seeking enforcement of Proposition 65, against catstudio in this matter and/or with respect to the Products.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

7. ATTORNEYS' FEES

In the event that a dispute arises with respect to any provision of this Settlement Agreement, the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable costs and attorneys' fees incurred in connection with such dispute.

8. GOVERNING LAW

The terms of this Settlement Agreement 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 specifically, then catstudio and catstudio's Releasees shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, those Products are so affected.

9. NOTICES

All correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by first-class, registered, certified mail, return receipt requested or overnight courier to Brimer at the address in sections 3.2 and 4.1, and to catstudio at the address listed below:

catstudio
Attn: Terrell Swan
1340 Industrial Avenue - Suite A
Petaluma, CA 94952

10. COUNTERPARTS; FACSIMILE SIGNATURES

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

11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)

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

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

13. AUTHORIZATION

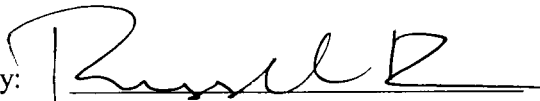
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 10-27-06

Date: _____

By: 
Russell Brimer

By: _____
Terrell Swan

10. COUNTERPARTS; FACSIMILE SIGNATURES

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

11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)

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

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

13. AUTHORIZATION

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

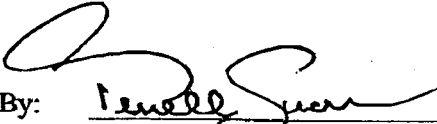
AGREED TO:

Date: _____

By: _____
Russell Brimer

AGREED TO:

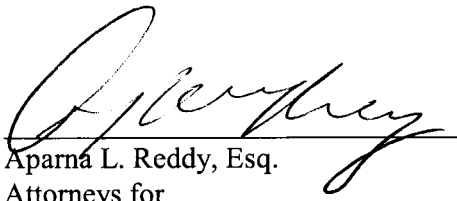
Date: October 26, 2006

By: 
Terrell Swan

APPROVED AS TO FORM:

Date: 10/27/06

HIRST & CHANLER, LLP

By: 

Aparna L. Reddy, Esq.
Attorneys for
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: _____
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: _____
Eileen M. Nottoli, Esq.
Attorneys for
CATSTUDIO

APPROVED AS TO FORM:

Date: _____

HIRST & CHANLER, LLP


By: _____

Aparna L. Reddy, Esq.
Attorneys for
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: October 24, 2006

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: 

Eileen M. Nottoli, Esq.
Attorneys for
CATSTUDIO