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10 Attorneys for Defendant
U.S. TRADING COMPANY, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER

Plaintiff,
v.

U.S. TRADING COMPANY, INC.; and
DOES 1 through 150, inclusive,

Defendants.

Case No. RG07325392

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

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer And U.S. Trading Company, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter
4 "Brimer" or "Plaintiff") and defendant U.S. Trading Company, Inc., (hereafter "U.S. Trading" or
5 "Defendant"), with Brimer and U.S. Trading collectively referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 U.S. Trading employs ten or more persons and is a person in the course of doing business
12 for purposes of Proposition 65.

13 **1.4 General Allegations**

14 Brimer alleges that U.S. Trading has manufactured, distributed and/or sold in the State of
15 California certain glass jars and other glassware intended for the storage, serving and consumption
16 of food or beverages with colored artwork or designs (containing lead) on the exterior. Lead is
17 listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
18 & Safety Code §§25249.5 et seq. ("Proposition 65"), as a chemical known to the State of
19 California to cause birth defects and other reproductive harm. Lead shall be referred to herein as
20 the "Listed Chemical."

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: glass jars
23 and other glassware intended for the storage, serving and consumption of food or beverages with
24 colored artwork or designs (containing lead) on the exterior including, but not limited to, the
25 glassware products identified in this Consent Judgment. All such glass jars and other glassware
26 intended for the storage, serving and consumption of food or beverages with colored artwork or
27 designs (containing lead) on the exterior shall be referred to herein as the "Products."

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1 **1.6 Notices of Violation**

2 On or about November 7, 2006, Brimer served U.S. Trading and various public
3 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that
4 provided U.S. Trading and such public enforcers with notice that alleged that U.S. Trading was in
5 violation of California Health & Safety Code §25249.6 for failing to warn consumers and
6 customers that the Products that U.S. Trading sold exposed users in California to the Listed
7 Chemical.

8 **1.7 Complaint**

9 On or about May 10, 2007, Brimer, who is acting in the interest of the general public in
10 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the
11 Superior Court in and for the County of Alameda against U.S. Trading Company, Inc. and Does 1
12 through 150, (Brimer v. U.S. Trading Company, Inc., Alameda Superior Court Case No. RG 07
13 253392) alleging violations of Health & Safety Code §25249.6 based on the alleged exposures to
14 the Listed Chemical contained in the Products sold by U.S. Trading.

15 **1.8 No Admission**

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

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over U.S. Trading as to the allegations contained in the Complaint, that venue is
27 proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the
28 provisions of this Consent Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 19,
3 2007.

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

5 **2.1** After the Effective Date, U.S. Trading shall not sell, ship or offer to be shipped for
6 sale in California Products containing the Listed Chemical unless such Products are sold or
7 shipped with the clear and reasonable warnings set out in Section 2.2 or comply with the
8 Reformulation Standards set forth in Section 2.3.

9 Any warning issued for Products pursuant to this Section 2.2 below shall be prominently
10 placed with such conspicuousness as compared with other words, statements, designs, or devices
11 as to render it likely to be read and understood by an ordinary individual under customary
12 conditions before purchase or, for Products shipped directly to an individual in California, before
13 use. Any warning issued pursuant to Section 2.2 shall be provided in a manner such that the
14 consumer or user understands to which *specific* product the warning applies, so as to minimize if
15 not eliminate the chance of an overwarning situation.

16 **2.2 Product Warnings**

17 **2.2.1** Clear and Reasonable Warnings. This Section describes U.S. Trading's
18 options for satisfying the warning obligations required by Section 2.1, depending, in part, on the
19 manner of sale:

20 **(A) Mail Order Catalog and Internet Sales.** Defendant shall satisfy
21 its warning obligations for Products that are sold by mail order catalog or from the internet to
22 California individuals and/or businesses, by providing a warning: (a) in the mail order catalog
23 and/or on the website; or (b) with the Product when it is shipped to an address in California.
24 Warnings given in the mail order catalog or on the website shall identify the specific Product to
25 which the warning applies as further specified in Sections 2.2.1(b)(i), (ii) and/or (iii) as applicable:

26 **(i) Mail Order Catalog.** Any warning provided in a mail order
27 catalog must be in the same type size or larger as the product description text within the catalog.
28 The following warning shall be provided on the same page and in the same location as the display

1 and/or description of the Product:

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

7 Where it is impracticable to provide the warning on the same page and in the same location
8 as the display and/or description of the Product, U.S. Trading may utilize a designated symbol to
9 cross reference the applicable warning ("Designated Symbol" or "▼") and shall define the term
10 Designated Symbol with the following language on the inside of the front cover of the catalog or
11 on the same page as any order form for the Product(s):

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

18 The Designated Symbol (shown on Exhibit A attached hereto) must appear on the same
19 page and in close proximity to the display and/or description of the Product. On each page where
20 the Designated Symbol appears, U.S. Trading must provide a header or footer directing the
21 consumer to the warning language and definition of the Designated Symbol.

22 If Defendant elects to provide warnings in the mail order catalog, then the warnings must
23 be included in all catalogs offering to sell one or more Products printed after January 31, 2006.

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

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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 and other reproductive harm.

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

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

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

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

Alternatively, U.S. Trading may place the following language on the packing slip or invoice and specifically identifying the Product in lettering of the same size or larger as the description of the Product:

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

[list products for which warning is given].

The Defendant shall, in any of these instances, in conjunction with providing the warning, also inform the consumer, in a conspicuous manner, that he or she may return the Product for a

1 full refund (including shipping costs for both the receipt and the return of the Product) within
2 thirty (30) days of his or her receipt of the Product.

3 **2.2.2 Exceptions**

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

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

7 **2.3 Reformulation Standards**

8 The following products shall be deemed "Reformulated Products" and to comply with
9 Proposition 65 and be exempt from any Proposition 65 warning requirements under Sections 2.2:
10 The products must only utilize decorating materials that contain six one-hundredths of one percent
11 (0.06%) or less of lead by weight; and there must be no detectable lead in either the lip-and-rim
12 area.

13 **2.4 Reformulation Commitment**

14 Defendant hereby commits to undertake commercially reasonable and good faith effort to
15 ensure that as many Products as possible that it distributes and/or offers for sale in California,
16 shall either qualify as Reformulated Products or will otherwise be exempt from the warning
17 requirements of Section 2.1

18 **3. MONETARY PAYMENTS**

19 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

20 The total settlement amount shall be \$500, which shall be paid by U.S. Trading as set forth
21 herein. Pursuant to Health & Safety Code §25249.7(b), U.S. Trading shall pay the \$500.00, in
22 civil penalties on or before October 19, 2007. Said payments shall be made payable to the
23 "HIRST & CHANLER LLP in Trust For Russell Brimer" and shall be delivered to plaintiff's
24 counsel at the following address:

25 HIRST & CHANLER LLP
26 Attn: Proposition 65 Controller
27 2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

1 **3.2 Apportionment of Penalties Received**

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

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

9 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
11 this fee issue to be resolved after the material terms of the agreement had been settled. U.S.
12 Trading then expressed a desire to resolve the fee and cost issue shortly after the other settlement
13 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
14 compensation due to Brimer and his counsel under the private attorney general doctrine codified at
15 California Code of Civil Procedure §1021.5 for all work performed through the Court's approval
16 of this agreement. Under the private attorney general doctrine, U.S. Trading shall reimburse
17 Brimer and his counsel for fees and costs incurred as a result of investigating, bringing this matter
18 to U.S. Trading's attention, litigating and negotiating a settlement in the public interest and
19 seeking the Court's approval of the settlement agreement. U.S. Trading shall pay Brimer and his
20 counsel \$12,500, for all attorneys' fees, expert and investigation fees, litigation and related costs.
21 The payment shall be made payable to HIRST & CHANLER LLP and shall be delivered on or
22 before October 19, 2007, at the following address:

23 HIRST & CHANLER LLP
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

28 **5. RELEASE OF ALL CLAIMS**

5.1 Release of U.S. Trading and Downstream Customers

 In further consideration of the promises and agreements herein contained, and for the

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

15 The Parties further understand and agree that this release shall not extend upstream to any
16 entities that manufactured the Products or any component parts thereof, or any distributors or
17 suppliers who sold the Products or any component parts thereof to U.S. Trading.

18 **5.2 U.S. Trading's Release of Brimer**

19 U.S. Trading waives any and all claims against Brimer, his attorneys and other
20 representatives, for any and all actions taken or statements made (or those that could have been
21 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
22 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
23 and/or with respect to the Products.

24 **6. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and
26 shall be null and void if, for any reason, it is not approved and entered by the Court within one
27 year after it has been fully executed by all Parties, in which event any monies that have been
28 provided to Plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be

1 refunded within fifteen (15) days after receiving written notice from U.S. Trading that the
2 one-year period has expired.

3 **7. SEVERABILITY**

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

7 **8. ATTORNEYS' FEES**

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

12 **9. GOVERNING LAW**

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

19 **10. NOTICES**

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

24 To U.S. Trading: 25 U.S. Trading Company, Inc. 26 c/o Gary C. Cooper 27 Whiteley & Cooper 28 2140 Shattuck Avenue, Suite 502 Berkeley, CA 94704	To Brimer: Proposition 65 Coordinator HIRST & CHANLER LLP 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565
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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
5 shall be deemed an original, and all of which, when taken together, shall constitute one and the
6 same document.

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

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

10 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

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

20 **14. APPEARANCE FEES**

21 Defendant is responsible for its appearance fee of \$320.

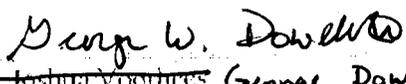
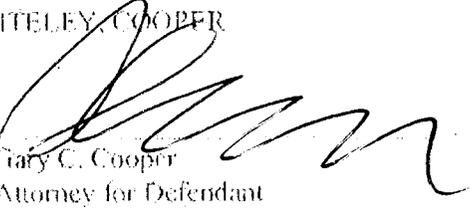
22 **15. MODIFICATION**

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

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Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>10-18-07</u></p> <p>By:  Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>10/16/07</u></p> <p>By:  Defendant, U.S. TRADING COMPANY, INC.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>10-18-07</u></p> <p>HIRST & CHANLER LLP</p> <p>By:  D. Joshua Voorhes George Dowell Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>10/16/07</u></p> <p>WHITELEY, COOPER</p> <p>By:  Gary C. Cooper Attorney for Defendant U.S. TRADING COMPANY, INC.</p>

IT IS SO ORDERED.

Date: _____ JUDGE OF THE SUPERIOR COURT

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Exhibit A

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

