

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC,
PORTMEIRION GROUP DESIGNS LLC, AND PORTMEIRION GROUP PLC**

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between Portmeirion Group Designs LLC and Portmeirion Group PLC (collectively “Portmeirion”) (“Defendants”) on the one hand, and APS&EE, LLC (“APS&EE”), on the other hand (each individually referred to as a “Party” and collectively as the “Parties”). APS&EE and Defendants shall hereinafter collectively be referred to as the “Parties.”

1.1.2 APS&EE alleges that it is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.2 Allegations

1.2.1 APS&EE alleges that Portmeirion sold Pimpernel mugs with exterior decorations, including but not limited to “Poppy De Villeneuve” Mug, 2016348006; “American Flag” 2016348965; “Dogwood In Spring” 2016348827; “Martha’s Choice” 2016348412; and “Spice Road” 2016348859 (hereinafter the “Products”) in the State of California in violation of Proposition 65.

1.2.2 On September 23, 2020, APS&EE sent a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to Defendants and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to Pimpernel “Poppy De Villeneuve” Mug, 2016348006. On March 16, 2021, APS&EE sent a Supplemental Sixty-Day Notice of Violation (the “Supplemental Notice”), along with a Certificate of Merit, to Defendants and the various public

enforcement agencies regarding the alleged violation of Proposition 65 with respect to all of the Products. The Notice and Supplemental Notice shall hereinafter collectively be referred to as the “Notices”.

1.3 No Admissions

Portmeirion denies all allegations in APS&EE’s Notices and maintain that the Products have been, and are, in compliance with all laws and court orders, including the Consent Judgment entered in July, 2007, in the matter *Brimer v. Royal Doulton USA, Inc., et al.*, San Francisco Superior Court, Case No. CGC-07-459941, and that Portmeirion has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Portmeirion but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Agreement.

1.4 Compromise

The Parties enter into this Agreement in order to resolve the controversy described above and avoid prolonged and costly litigation between them.

1.5 Effective Date

The “Effective Date” shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party or its counsel.

2. INJUNCTIVE RELIEF

Portmeirion Group PLC (and affiliated entities) was an opt-in signatory to the Consent Judgment entered in July, 2007, in the matter *Brimer v. Royal Doulton USA, Inc., et al.*, San Francisco Superior Court, Case No. CGC-07-459941 (“Royal Doulton Consent Judgment”) which specifies testing standards pertaining to the exterior decorations of ceramic mugs. Attached hereto as **Exhibit “A”** is a true and correct copy of the Royal Doulton Consent Judgment. With respect to the Products, Plaintiff alleges that Defendants failed to comply with Proposition 65 and the injunctive relief of the Royal Doulton Consent Judgment. Defendants deny the allegation that they failed to

comply with Proposition 65 and the Royal Doulton Consent Judgment. In any case, the Parties agree that as of the Effective Date, Defendants' compliance with the injunctive relief described in the Royal Doulton Consent Judgment shall constitute compliance with Proposition 65 with respect to lead exposure from the Products.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Portmeirion shall pay a total civil penalty of two thousand five hundred dollars (\$2,500.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,875.00) for State of California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% (\$625.00) for APS&EE.

Portmeirion shall issue these payments collectively as part of the total payment described below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective payments to OEHHA and APS&EE.

3.2 Reimbursement Of APS&EE's Fees And Costs

Portmeirion shall reimburse APS&EE's reasonable experts' and attorneys' fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement, in the amount of twenty-five thousand dollars (\$25,000.00). Accordingly, Portmeirion shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of twenty-seven thousand five hundred dollars (\$27,500.00), which includes the civil penalty described in Section 3.1, within five (5) business days of the Effective Date. Wire instructions have been exchanged between the Parties' counsel.

///

4. RELEASES

4.1 APS&EE's Release Of Portmeirion

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases Portmeirion, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, including Portmeirion USA Inc. and Portmeirion Group UK Limited, as well as its downstream distributors, retailers, and franchisees, including The TJX Companies, Inc. dba HomeGoods (collectively “Released Parties”), from any alleged Proposition 65 violation claims asserted in APS&EE’s Notices regarding Products that Portmeirion has caused to be sold and/or offered for sale in California before and up to the Effective Date.

4.2 Portmeirion’s Release Of APS&EE

Defendants, by this Agreement, waive all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Defendants in this matter. If any Released Party should institute any such action, then APS&EE’s release of said Released Party in this Agreement shall be rendered void and unenforceable.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory

or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

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

7. NOTICE

All correspondence and notice required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO PORTMEIRION: Michael R. McDonald, Esq. Joshua S. Levy, Esq. Gibbons P.C. One Gateway Center Newark, NJ 07102	TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
--------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------

///

///

///

8. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

9. AUTHORIZATION

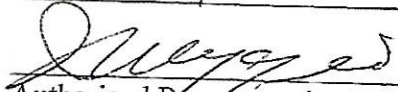
The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

AGREED TO:

Date:

7/30/21

By:

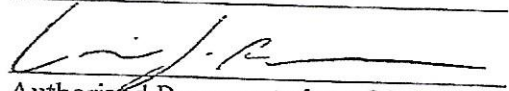

Authorized Representative of APS&EE, LLC

AGREED TO:

Date:

7-27-21

By:


Authorized Representative of Portmeirion Group Designs LLC

AGREED TO:

Date:

7-27-21

By:

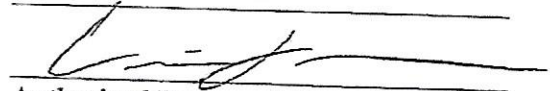

Authorized Representative of Portmeirion Group PLC

EXHIBIT A

1 Clifford A. Chanler (State Bar No. 135534)
George W. Dowell (State Bar No. 234759)
2 D. Joshua Voorhees (State Bar No. 241436)
HIRST & CHANLER LLP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
RUSSEL BRIMER

7

8 Robert L. Falk (State Bar No. 142007)
Priscillia Jourdain de Muizon (State Bar No. 244881)
9 MORRISON & FOERSTER LLP
425 Market Street
10 San Francisco, California 94105-2482
Telephone: (415) 268-7000
11 Facsimile: (415) 268-7522

12 Attorneys for Defendant
ROYAL DOULTON USA, INC.

13

14

15

16

SUPERIOR COURT OF THE STATE OF CALIFORNIA

17

COUNTY OF SAN FRANCISCO

18

UNLIMITED JURISDICTION

19

20

RUSSELL BRIMER,

Case No. CGC-07-459941

21

Plaintiff,

22

v.

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

23

ROYAL DOULTON USA, INC.;
and DOES 1 through 150

24

Defendants.

25

26

27

28

STIPULATION AND [PROPOSED] ORDER RE CONSENT JUDGMENT
Case No. CGC 07-459941

1 **1. INTRODUCTION**

2 1.1 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and
3 between plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”) and defendant Royal Doulton
4 USA, Inc. (hereinafter “Royal Doulton” or “Defendant”), with Plaintiff and Defendant
5 collectively referred to as the “Parties” and Brimer and Defendant each being a “Party.”

6 1.2 **Plaintiff.** Brimer is an individual residing in California who seeks to promote
7 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
8 hazardous substances contained in consumer products.

9 1.3 **General Allegations.** Plaintiff alleges that Defendant has manufactured,
10 distributed and/or sold in the State of California cups and other ceramic containers intended for
11 the consumption of food or beverages (“tableware”) with colored artwork or designs on the
12 exterior (non-food contact) surface containing lead and/or cadmium (“Products”). Lead (and lead
13 compounds) and cadmium are listed pursuant to the Safe Drinking Water and Toxic Enforcement
14 Act of 1986, California Health & Safety Code §§25249.5 et seq., also known as Proposition 65,
15 to cause cancer and birth defects (and other reproductive harm) and are referred to herein as the
16 “Listed Chemicals.”

17 1.4 **Notices of Violation.** On November 7, 2006, Brimer served Royal Doulton, the
18 Office of the California Attorney General (“AG”), and various other public enforcement agencies
19 authorized to enforce Proposition 65 with a document entitled “60-Day Notice of Violation”
20 (“Notice”) that provided Royal Doulton, the AG, and the other public enforcers with notice that
21 Brimer alleged that Royal Doulton was in violation of Proposition 65 for failing to warn
22 purchasers that exterior decorations on certain Products that it manufactured, distributed and/or
23 sold expose users in California to lead. Prior to the hearing on the motion for approval of this
24 Consent Judgment, Brimer will also have served Royal Doulton and the required public
25 enforcement agencies with documents, entitled “Supplemental Notice of Violation”
26 (“Supplemental Notice”) with notice that Defendant is also alleged to be in violation of Health &
27 Safety Code § 25249.6 for failing to warn individuals that Products it offered for sale in
28 California contained cadmium in their exterior decorations.

1 **1.5 Defendant’s Action in Response to Notice.** Royal Doulton represents and
2 warrants that, in immediate response to its receipt of the Notice, on November 9, 2006, it directed
3 all stores in California with remaining inventory of the product Plaintiff cited as an exemplar in
4 its Notice to remove such items and all like products sourced from the same vendor from sale in
5 California and to confirm such by no later than the following day. Royal Doulton further
6 represents and warrants that it has not and will not reintroduce such items or like product lines for
7 sale in California unless they meet the Exterior Decoration Standard set forth in subsection 2.2
8 below.

9 **1.6 Consultations with the AG.** Both before and after the Notice was issued, counsel
10 for Defendant contacted the AG on a number of occasions concerning the alleged violations
11 described in the preceding subsection and Royal Doulton’s potential defenses thereto and sought
12 the AG’s intervention, including by means of stipulating to a potential modification of the People
13 v. Wedgwood Judgment discussed in subsection 1.7 below; however, the AG declined to take any
14 action based on these requests. Counsel for Brimer also contacted the AG following issuance of
15 the Notice to determine if the AG wished to intercede in or take over the matter, but the AG did
16 not elect to do so.

17 **1.7 Complaint.** In the absence of public prosecutors initiating an action or the AG
18 otherwise interceding or requesting that one not be filed, on January 26, 2007, Brimer filed a
19 complaint in the interest of the general public in California (hereafter referred to as the
20 “Complaint” or the “Action”) in the Superior Court for the City and County of San Francisco
21 (“Court”) against Royal Doulton and Does 1 through 150, alleging violations of Health & Safety
22 Code § 25249.6 based on the allegations described in the Notice. The Complaint shall be deemed
23 amended by this Consent Judgment to include the allegations in the Supplemental Notice on the
24 sixty-sixth (66th) day following the issuance of the Supplemental Notice if an authorized public
25 prosecutor has not, prior to that date, filed a Proposition 65 enforcement action as to cadmium in
26 exterior decorations of the Products; the definitions of Products and Listed Chemicals as to Royal
27 Doulton under this Consent Judgment shall also not be deemed to include cadmium until that
28 time.

1 1.8 **Prior Action.** On November 12, 1991, the AG filed a complaint for civil penalties
2 and injunctive relief in this Court on behalf of the People of the State of California against Royal
3 Doulton and a number of other defendants that manufacture, distribute and/or sell ceramic
4 tableware in California, *People v. Wedgwood USA, Inc., et. al.*, No. 938430.¹ On January 15,
5 1993, consent judgments reflecting a settlement of the AG Action were entered by the Court as to
6 Royal Doulton and certain other defendants.² The *People v. Wedgwood* Judgment contains a
7 detailed Proposition 65 warning program and specifies standards and related test protocols
8 defining when these Proposition 65 warnings must be given for ceramic tableware based on lead
9 leaching characteristics from their food/beverage contact (non-exterior) surfaces.³

10 1.9 **Dispute in Positions and Mutual Desire to Effectuate Settlement.** Royal
11 Doulton contends that the *People v. Wedgwood* Judgment bars and/or estops the claims contained
12 in the Brimer Complaint. Brimer denies that such is the case and contends that the *People v.*
13 *Wedgwood Judgment* only addresses Proposition 65 obligations with respect to exposures to the
14 lead arising from the food/beverage contact (non-exterior) surfaces of the Products.
15 Notwithstanding the foregoing dispute in positions, the Parties mutually desire to set their
16 disparate views aside without engaging in litigation and to instead effectuate a settlement on the
17 terms contained herein.

18 1.10 **Settling Defendants.** Settling Defendants are: (1) Royal Doulton, and (2) other
19 companies which have manufactured, decorated, imported, distributed, or offered for use or sale
20 Products and are subject to the requirements of the *People v. Wedgwood* Judgment that have
21 become “Opt-In Defendants” as defined in and pursuant to Section 14 below.

22 1.11 **No Admission.** Defendant denies (and all other Settling Defendants deny) the
23 material factual and legal allegations contained in Plaintiff’s Notice, Supplemental Notice, and

24 ¹ On October 5, 1994, the AG filed a companion complaint in the Court entitled *People v. A.T. Finney and Sons, et.*
25 *al.*, No. 964212. (Collectively these two cases are referred to herein as the “AG Action.”)

26 ² On October 21, 1994, a parallel consent judgment entered into between the AG and a number of the other
27 defendants to the AG Action was entered by the Court. Collectively, these consent judgments are referred to herein
as the “*People v. Wedgwood* Judgment.”

28 ³ Cadmium was not listed under Proposition 65 as a chemical known to the State to cause reproductive harm until
May 1, 1997; it is also deemed, as of 1991, by regulation, to pose a significant risk of cancer, except by means of the
ingestion route of exposure.

1 Complaint and maintains that all products that it has sold and distributed in California including
2 the Products have been and are in compliance with all laws. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant (or any other Settling Defendant) of any fact
4 (with the exception of the information contained within any Stipulation completed by a Settling
5 Defendant pursuant to Section 14 below), finding, issue of law, or violation of law, nor shall
6 compliance with this Agreement constitute or be construed as an admission by Defendant (or any
7 other Settling Defendant) of any fact, finding, conclusion, issue of law or violation of law.
8 However, this subsection shall not diminish or otherwise affect the obligations, responsibilities
9 and duties of Defendant (or any other Settling Defendant) under this Consent Judgment.

10 1.12 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, Plaintiff
11 and Settling Defendants stipulate that this Court has jurisdiction over them and concerning the
12 alleged violations at issue in the Complaint and personal jurisdiction over Settling Defendants as
13 to the acts alleged, that venue is proper in the County of San Francisco, and that this Court has
14 jurisdiction to enter this Consent Judgment and to enforce the provisions thereof.

15 1.13 **Effective Date.** For purposes of this Consent Judgment, “Effective Date” shall be
16 the date upon which it is entered by the Court.

17 **2. INJUNCTIVE RELIEF**

18 2.1 **Warning Obligations for Products**

19 (a) **Required Warnings.** After the Effective Date, Settling Defendants shall
20 not manufacture, decorate, import, distribute or offer for use or sale any Products containing the
21 Listed Chemicals in their non-food contact (exterior) surfaces (or supply any Product containing
22 the Listed Chemicals in such surfaces to any entity) for distribution, sale or use in California,
23 unless clear and reasonable warnings are given in a manner consistent with the method and
24 language set forth in Section 2 of the *People v. Wedgwood* Judgment.⁴

25 _____
26 ⁴ The warning provisions of the *People v. Wedgwood* Judgment are appended for reference as Exhibit 1 hereto. As
27 the warning language contained therein does not include a reference to cadmium (because cadmium had not then
28 been listed as a chemical known to the State to cause reproductive harm), Settling Defendants may insert the words
“and/or cadmium” into the required warning language immediately after the word “lead” if warnings for cadmium
are required pursuant to the Exterior Decoration Standard set forth in subsection 2.2 below.

1 (b) **Exceptions.** The warning requirement set forth in subsections 2.1(a) above
2 shall not apply to:

- 3 (i) any Products manufactured before the Effective Date; and
4 (ii) any Products meeting the Exterior Decoration Standard (as defined
5 below in subsection 2.2 below).

6 **2.2 Exterior Decoration Standard.**

7 (a) For purposes of the Exterior Decoration Standard set forth in the following
8 subsections 2.2.(b) and (c), the following definitions apply:

9 “*Children’s Product*” is defined as any Product whose use in the household is
10 reasonably anticipated substantially for use by children rather than substantially by
11 adults such as: Products with designs on their exterior surface which are affiliated
12 with children’s toys or entertainment (e.g., cartoon characters), Products of a
13 reduced size so as to be marketed primarily for children, or Products of a type or
14 category which typically would be used by children, and all similar items.

15 “*Exterior Decorations*” is defined as all colored artwork, designs and/or markings
16 on the exterior surface of the Product.

17 “*Lip and Rim Area*” is defined as the interior and exterior top 20 millimeters of a
18 ceramic hollowware food/beverage Product, as defined by American Society of
19 Testing and Materials Standard Test Method C927-99.

20 “*No Detectable Lead or Cadmium*” shall mean that no lead is detected at a level
21 above two one-hundredths of one percent (0.02%) by weight or eight one-
22 hundredths of one percent (0.08%) of cadmium by weight, respectively, using a
23 sample size of the decorating materials in question measuring approximately 50-
24 100 mg and a test method of sufficient sensitivity to establish a limit of
25 quantitation of less than 200 ppm.⁵

26 (b) A Product shall be deemed to meet the requirements of Proposition 65
27 without warnings with respect to the Listed Chemicals in *Exterior Decorations* if it satisfies one
28 of the standards outlined in subsections 2.2.(c)(1) or (2) or (3) below, subject to the following
qualifications (collectively, these are referred to herein as the “Exterior Decoration Standard”):

- (1) All *Children’s Products* must satisfy the Decorating Materials Content-
Based Standard outlined in subsection 2.2.(c)(1) (i.e., the alternative
standards set forth in subsections 2.2 (c)(2) and 2.2.(c)(3) may not be
used with respect to the assessment of a *Children’s Product*); and

⁵ If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by weight must relate only to the decorating material and must not include any quantity attributable to the ceramic substrate.

1 (2) If a Product is decorated in the *Lip and Rim Area*, in addition to
2 satisfying one of subsections 2.2.(c)(1) or (2) or (3) below, the
3 additional Exterior Decoration Standard set forth in subsection 2.2.(c)(4)
4 also must be satisfied.

5 (c)(1). **Decorating Materials Content-Based Standard.** The *Exterior*
6 *Decorations*, exclusive of the *Lip and Rim Area*, only utilize decorating materials
7 that contain six one-hundredths of one percent (0.06%) lead by weight or less *and*
8 forty-eight one-hundredths of one percent (0.48%) of cadmium by weight or less,
9 as measured either before or after the material is fired onto (or otherwise affixed
10 to) the Product, using EPA Test Method 3050B.⁶

11 (c)(2). **Wipe Test-Based Standard.** The Product produces a test result no higher
12 than 1.0 microgram (ug) of lead and no higher than 8.0 ug of cadmium, as
13 applied to the *Exterior Decorations* and performed as outlined in NIOSH method
14 no. 9100.

15 (c)(3). **Total Acetic Acid Immersion Test-Based Standard.** The Product
16 achieves a result of 0.99 ppm or less for lead and 7.92 ppm or less for cadmium
17 after correction for internal volume when tested under the protocol attached hereto
18 as Exhibit 2 (the ASTM C927-99 test method, modified for total immersion with
19 results corrected for internal volume).⁷

20 (c)(4). **Lip and Rim Area Decoration Standard.** If the Product contains
21 *Exterior Decorations* in the *Lip and Rim Area*:

- 22 (i) Any *Exterior Decorations* that extend into the *Lip and Rim Area* only
23 utilize decorating materials that contain *No Detectable Lead or*
24 *Cadmium*, or
- (ii) The Product yields a test result showing a concentration level of 0.5
25 ug/ml or less of lead and a result of 4.0 ug/ml or less of cadmium using
26 ASTM method C 927-99.⁸

27 ⁶ If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by weight must
28 relate only to the decorating material and must not include any quantity attributable to the ceramic substrate.

⁷ Because this method requires correction for internal volume, this method is only appropriate for ceramic
hollowware.

⁸ The result must be evaluated without correction for internal volume; this method is only appropriate for ceramic
hollowware.

1 **3. MONETARY PAYMENTS.**

2 3.1 **Penalties Pursuant to Health & Safety Code § 25249.7(b).** Based on the actions
3 Royal Doulton took upon receipt of the Notice (as described in subsection 1.5 above) and by
4 means of negotiating this Consent Judgment and facilitating its extension to others who are
5 similarly situated via the Opt-In program set forth in Section 14 below, and the Settling
6 Defendants' agreement to voluntarily subscribe to the terms of injunctive relief provided for in
7 Section 2 above without the need for litigation to otherwise resolve the Parties' dispute, there
8 shall be no penalty required by or resulting from this Consent Judgment.

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

10 4.1 The Parties acknowledge that Brimer and his counsel offered to resolve this
11 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
12 leaving this fee issue to be resolved after the material terms of the Consent Judgment had been
13 agreed upon. Defendant instead expressed a desire to resolve the fee and cost issue shortly after
14 the other settlement terms had been finalized and the Parties then attempted to (and did) reach an
15 accord on the compensation due to Brimer's counsel under the private attorney general doctrine
16 codified at California Code of Civil Procedure §1021.5 and contractual principles of law for all
17 work performed in association with this Consent Judgment (including in investigation, bringing
18 this matter to Royal Doulton's attention through the Notice, the filing and service of the
19 Complaint, negotiating a settlement in the public interest, submitting it the California Attorney
20 General's Office and the Court for review, and overseeing and implementing its terms, including
21 with respect to Plaintiff's and Plaintiff's counsel's responsibilities under the Opt-In program set
22 forth in Section 14 below). Specifically,:

23 (a) on or before July 25, 2007, Defendant shall pay \$38,000, on behalf of
24 itself, for fees and costs attributable to Plaintiff's investigation, prosecution, and efforts to resolve
25 this matter with respect to Royal Doulton.

26 (b) within fifteen (15) days of the Effective Date, Settling Defendants, or an
27 entity acting on their behalf, shall pay the collective sum of \$24,000, for all attorneys' fees and
28 costs with respect to the negotiation, drafting, and anticipated process of obtaining approval by

1 the Court of features of this Consent Judgment relating to the Opt-In program set forth in Section
2 14 below, and

3 (c) within fifteen (15) days of the Effective Date, the Settling Defendants, or
4 an entity acting on their behalf, shall also pay a fee of \$6,500 with each Opt-In Stipulation
5 submitted pursuant to subsection 14.1 below for all attorneys' fees, expert and investigation fees
6 and costs to be incurred by Brimer and his counsel in association with executing their
7 responsibilities pursuant to Section 14 below.⁹

8 4.2 The payments required under the preceding sentences shall be made payable to
9 "Hirst & Chanler LLP" and delivered to Hirst & Chanler LLP, Attn. Proposition 65 Controller,
10 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California 94710. Except as set forth
11 herein, Settling Defendants shall have no obligation with regard to reimbursement of Brimer or
12 his counsel's attorneys' fees and costs with regard to the matters addressed herein unless this
13 Consent Judgment fails to become a final judgment of the Court pursuant to its terms (or as they
14 may be hereinafter modified by mutual agreement of the Parties in order to obtain the Court's
15 approval and entry), in which event the Parties reserve all their potential rights and defenses to
16 litigate, arbitrate, or mediate such matters and any potential related attorney fee and cost recovery
17 issues. If this Consent Judgment does not become a final order of this Court without an appeal,
18 the potential recovery by Plaintiff of additional attorneys' fees and costs incurred in association
19 with any such appellate proceedings shall be determined, at the election of Defendant, by means
20 of application to the Court or binding arbitration, one of which shall be initiated within ninety
21 (90) days of the Court's order becoming final. If this Consent Judgment does not become a final
22 judgment of this Court within eighteen (18) months of its execution, unless otherwise mutually
23 agreed upon by the Parties, Plaintiff's counsel shall reimburse to Defendant, within fifteen (15)
24 additional days, all funds it received pursuant to this Section.

25
26
27 ⁹ Subsection 14.5 below requires Plaintiff's counsel to submit a report to the Court at the conclusion of the Opt-In
28 program concerning the total amount of fees collected relative to fees and costs incurred pursuant to subsection
4.1.(c) above and provides for refunding any excess amount collected back to the Settling Defendants.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 **Plaintiff’s Release of Settling Defendants.** In further consideration of the
3 commitments contained herein, Plaintiff, on behalf of himself, his past and current agents,
4 representatives, attorneys, successors assignees, or any person or entity who may now or in the
5 future claim through him in a derivative manner, and in the interest of the general public, hereby
6 waives all rights to institute or participate in, directly or indirectly, any form of legal action and
7 release all claims, including, without limitation, all actions, causes of action, in law or in equity,
8 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses
9 (including, but not limited to, investigation fees, expert fees and attorneys’ fees) of any nature
10 whatsoever, whether known or unknown, fixed or contingent (collectively “Claims”), against the
11 Settling Defendants and each of their distributors, wholesalers, licensors, licensees, auctioneers,
12 retailers, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates
13 (*i.e.*, sister companies), subsidiaries and their respective officers, directors, attorneys,
14 representatives, shareholders, agents, representatives, insurers and employees and any other
15 persons or entities to whom Settling Defendants may be liable (collectively, “Settling Defendants’
16 Releasees”) arising under Proposition 65 related to Settling Defendants’ or Settling Defendants’
17 Releasees’ alleged failure to warn about exposures to or identification of the Listed Chemicals
18 contained in Exterior Decorations on the Products.¹⁰ It is specifically understood and agreed that
19 the Parties and the Court intend that a Settling Defendant’s compliance with the terms of this
20 Consent Judgment resolves all issues and liability, now and in the future (so long as that Settling
21 Defendant complies with the terms of the Consent Judgment) concerning that Settling
22 Defendant’s and that Settling Defendant’s Releasees’ compliance with the requirements of
23 Proposition 65 as to the Listed Chemicals in *Exterior Decorations* in the Products.

24 5.2 **Settling Defendants’ Release of Plaintiff.** Settling Defendants waive all rights to
25 institute any form of legal action or claim against Plaintiff, or his attorneys or representatives, for
26

27 _____
28 ¹⁰ Nothing in this paragraph is intended to affect the AG’s enforcement rights as set forth in the *People v. Wedgwood*
Judgment.

1 all actions taken or statements made by Plaintiff or his attorneys or representatives, in the course
2 of seeking enforcement of Proposition 65 in association with this Action.

3 **6. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one
6 year after it has been fully executed by all Parties.

7 **7. SEVERABILITY**

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

11 **8. MODIFICATION**

12 This Consent Judgment may be modified only by: (1) written agreement of the Parties
13 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party
14 as provided by law and upon entry of a modified Consent Judgment by the Court. The AG shall
15 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)
16 days in advance of its consideration by the Court.

17 **9. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California and apply within the State of California. In the event that Proposition 65 is repealed or
20 is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically,
21 then Defendant shall have no further obligations pursuant to this Consent Judgment with respect
22 to, and to the extent that, those Products are so affected under the specific terms of this Consent
23 Judgment.

24 **10. NOTICES**

25 All correspondence and notices required to be provided pursuant to this Consent Judgment
26 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
27 return receipt requested or (ii) overnight courier at the addresses listed below. Either Party (or
28

1 another Settling Defendant) may specify a change of address to which all notices and other
2 communications shall be sent.

3 For Plaintiff:

4 Russell Brimer
5 c/o Hirst & Chanler LLP
6 2560 Ninth Street
7 Parker Plaza, Suite 214
8 Berkeley, CA 94710-2565

For Settling Defendants:

Robert L. Falk
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

7 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

12 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
13 Safety Code §25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
14 present this Consent Judgment to the California Attorney General’s Office within two (2) days
15 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment
16 will then be served on the Attorney General’s Office at least forty-five (45) days prior to the date
17 a hearing is scheduled on such motion in the Court unless the Court allows a shorter period of
18 time.

19 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

20 The Parties shall mutually employ their best efforts to support the entry of this Agreement
21 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
22 manner. The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
23 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
24 agree to file a Joint Motion to Approve the Agreement (“Joint Motion”), the first draft of which
25 Defendant’s counsel shall prepare, within a reasonable period of time after the Execution Date
26 (*i.e.*, not to exceed thirty (30) days unless otherwise agreed to by the Parties’ counsel based on
27 unanticipated circumstances). Plaintiff’s counsel shall prepare a declaration in support of the
28 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed

1 pursuant to Section 4. Defendant shall have no additional responsibility to Plaintiff's counsel
2 pursuant to C.C.P. §1021.5 or otherwise with regard to reimbursement of any fees and costs
3 incurred with respect to the preparation and filing of the Joint Motion and its supporting
4 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings
5 thereon.

6 **14. OPT-IN PROGRAM**

7 14.1 This Consent Judgment is executed with the understanding that additional persons
8 and entities subject to the requirements of the *People v. Wedgwood* Judgment who are not Parties
9 to this Consent Judgment may wish to be bound by the terms of this Consent Judgment (“Opt-In
10 Defendants”).¹¹ These Opt-In Defendants must be able to represent under penalty of perjury that
11 they have: (1) employed ten or more persons at any time within the Relevant Period;¹²
12 (2) manufactured, imported, distributed, or offered for use or sale one or more Products that,
13 during the Relevant Period, contain or contained the Listed Chemicals in their *Exterior*
14 *Decorations*; and (3) sold and/or offered for use some such Products in the State of California
15 during the Relevant Period without “clear and reasonable” Proposition 65 warnings as that term is
16 defined under 22 California Code of Regulations (“CCR”) §12601. At any time, either prior to
17 the date of entry of this Consent Judgment or within fifteen (15) days thereafter, counsel for
18 Royal Doulton may provide Brimer with names of Opt-In Defendants who are willing to confirm
19 these representations by means of executing the Stipulation for Entry of Judgment as provided in
20 subsection 14.2 below. Counsel for Royal Doulton shall provide Brimer with the names and
21 mailing addresses of all entities wishing to “Opt-In” and all relevant information as required
22 under this Consent Judgment (“Opt-in List”) following its receipt of such information.

23 14.2 Each Opt-In Defendant shall execute a “Stipulation for Entry of Judgment” in the
24 general form appearing in Exhibit 3 hereto (“Opt-In Stipulation”) identifying whether the Opt-In

25 _____
26 ¹¹ These include the named defendants in the AG Action, companies (or their corporate parents or corporate
27 affiliates) that are successors to or assigns of such defendants or all or part of such defendants’ ceramic tableware
28 businesses/brands, and companies which, *inter alia*, are the authorized exclusive U.S. distributors of such defendants’
or such successors’ ceramic tableware.

¹² “Relevant Period” is defined for purposes of this Consent Judgment as the three (3) year period prior to the
execution of the Opt-In Stipulation described in section 14.2.

1 Defendant has manufactured, imported, distributed or offered for use or sale in California the
2 Products and attesting under penalty of perjury to the following facts: (1) the Opt-In Defendant
3 has employed ten or more persons at any time within the Relevant Period; (2) the Opt-In
4 Defendant manufactured, imported, distributed or offered for use or sale in California one or
5 more Products without a “clear and reasonable” Proposition 65 warning during the Relevant
6 Period, (3) one or more Products identified by the Opt-In Defendant contained, during the
7 Relevant Period, *Exterior Decorations* comprised of more than 600 parts per million of lead
8 and/or 4800 parts per million of cadmium; (4) the Opt-In Defendant has not performed a risk or
9 exposure assessment establishing that the *Exterior Decorations* on all of the Products it offered
10 for sale in California during the Relevant Period did not require Proposition 65 warnings; and
11 (5) other than arguments arising from the *People v. Wedgwood* Judgment, the Opt-In Defendant is
12 currently otherwise unaware of evidence which would establish a legally sustainable affirmative
13 defense to an enforcement action under Proposition 65 with respect to all Products. Each Opt-In
14 Defendant shall cooperate with Brimer in providing additional information, including technical
15 information if requested by the Attorney General, or representations necessary to enable Brimer
16 to issue a 60-day notice (“Notice”) to the Opt-In Defendant with a certificate of merit in support
17 thereof with respect to the Products. Brimer shall be excused from a failure to provide such
18 Notice within thirty (30) days with respect to an Opt-In Defendant if that Opt-In Defendant fails
19 to timely cooperate with Brimer in providing such additional information or representations.

20 14.3 Not later than thirty (30) days after Brimer receives an Opt-in List and necessary
21 information to support a Certificate of Merit, Brimer shall send sixty-day notices pursuant to
22 California Health & Safety Code §25249.7(d) to each Opt-In Defendant on the Opt-In List at the
23 addresses provided, to the AG, to every California district attorney, and to every California city
24 attorney required to receive such a notice pursuant to Health & Safety Code §25249.7.

25 14.4 Once more than sixty-five (65) days has run from the date specified in a notice
26 sent to an Opt-In Defendant and provided that no authorized public prosecutor of Proposition 65
27 has filed a lawsuit against that Opt-In Defendant with respect to Exterior Decorations on the
28 Products, Plaintiff shall, within fourteen (14) days, file in this Court any executed Opt-In

1 Stipulation it has received pursuant to the above and serve notice thereof on Defendant's counsel.
2 At the time any executed Opt-In Stipulation is filed, the Complaint shall be deemed to have been
3 amended to specifically name the Opt-In Defendant that executed the Opt-In Stipulation as a
4 named defendant in this Action and each such Opt-In Defendant shall be deemed to have become
5 a full Settling Defendant under this Consent Judgment and will likewise assume all obligations
6 set forth under Section 2 hereof.

7 14.5 Once Plaintiff's counsel has filed all Opt-in Stipulations with the Court pursuant to
8 the preceding subsection, it shall, within thirty (30) additional days, prepare and file with the
9 Court and serve on Defendant's counsel, a report summarizing the results of the Opt-In program
10 provided for in this Section, including a delineation of all expenses and attorneys fees incurred by
11 Plaintiff's counsel relative to the attorneys fee and cost reimbursement provided by subsection
12 4.1.(c) above. In the event that the total amount of expenses and attorneys fees incurred by
13 Plaintiff's counsel is less than that provided by subsection 4.1.(c) above, Plaintiff's counsel shall,
14 within an additional fifteen (15) days, tender the difference to counsel to the Settling Defendants.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **15. AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

6
7 Date: 7-13-07

Date: _____

8 By: 
9 Plaintiff Russell Brimer

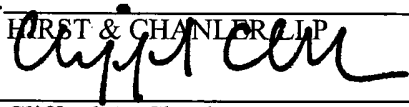
By: _____
Defendant Royal Doulton USA, Inc.

10 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

11 Date: July 13, 2007

Date: _____

12 HIRST & CHANLER LLP
13 By: 
14 Clifford A. Chanler
15 Attorneys for Plaintiff
RUSSELL BRIMER

MORRISON & FOERSTER LLP
By: _____
Robert L. Falk
Attorneys for Defendant
Royal Doulton USA, Inc.

16
17 **IT IS SO ORDERED.**

18
19 Date: _____

JUDGE OF THE SUPERIOR COURT

20
21
22
23
24
25
26
27
28

1 **15. AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

6
7 Date: _____

Date: 7/16/07

8 By: _____
9 Plaintiff Russell Brimer

By: *Austin M. Bylin*
Defendant Royal Doulton USA, Inc.

10 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

11
12 Date: _____
HIRST & CHANLER LLP

Date: 7/16/07
MORRISON & FOERSTER LLP

13 By: _____
14 Clifford A. Chanler
15 Attorneys for Plaintiff
16 RUSSELL BRIMER

By: *Robert L. Falk*
Robert L. Falk
Attorneys for Defendant
Royal Doulton USA, Inc.

17 **IT IS SO ORDERED.**

18
19 Date: _____

JUDGE OF THE SUPERIOR COURT

20
21
22
23
24
25
26
27
28