

SETTLEMENT AGREEMENT

I. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Precifa Balabbo ("Balabbo") and Portmeirion Group (USA, Inc. and Portmeirion Group UK Limited (collectively, "Portmeirion")); Together, Balabbo and Portmeirion are collectively referred to as the "Parties." Balabbo is an individual who resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Balabbo alleges that Portmeirion is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. ("Proposition 65").

1.2 General Allegations. Balabbo alleges that Portmeirion sold, or caused to be sold, its *Spode®* Mug & Tray Sets, UPC #749151761148 (item number X0011859144) in violation of Proposition 65 as stated in the Notice (defined herein).

1.3 Product Description. The products covered by this Settlement Agreement are *Spode®* Mug & Tray Sets, including UPC #749151761148 (item number X0011859144) (the "Products"), that have been imported, distributed, offered for sale and/or sold in California by Portmeirion.

1.4 Notice of Violation. On October 28, 2022, Balabbo served Portmeirion, Tuesday Morning, Inc., Tuesday Morning Partners, Ltd., Tuesday Morning Corporation (collectively, "Tuesday Morning"), and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.6, et seq." (the "Notice"). The Notice provided Portmeirion and such others, including public enforcers, with notice that alleged that Portmeirion was in violation of California Health & Safety Code § 25249.6. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Portmeirion denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including 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 (“Royal Doulton Consent Judgment”). Nothing in this Settlement Agreement shall be construed as an admission by Portmeirion 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 Portmeirion of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Portmeirion. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Portmeirion maintains that it has not manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean July 1, 2023 or the date this Agreement is last executed by the Parties, whichever date is later in time.

2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS

2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Products that Portmeirion directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 - 2.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 - 2.4 shall not apply to any Reformulated Product.

2.2 Reformulation Standard. “Reformulated Products” shall mean Products that produce a test result compliant with the Exterior Decoration Standard set forth in the Royal Doulton Consent Judgment.¹ Attached hereto as **Exhibit “A”** is a true and correct copy of the Royal Doulton Consent Judgment.

¹ Portmeirion was an opt-in signatory to the Royal Doulton Consent Judgment which specifies testing standards pertaining to the exterior decorations of ceramic mugs.

2.3 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this § 2.3 and 2.4 must be provided for all Products that Portmeirion manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The "Warning" shall consist of the statement:

⚠ WARNING: This product can expose you to chemicals including lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** Portmeirion may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) ("**Alternative Warning**") as follows:

⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2.4 A **Warning** or **Alternative Warning** provided pursuant to § 2.3 must print the word "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word "**WARNING:**". The **Warning** or **Alternative Warning** shall be affixed to or printed on the Products' packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

In addition to affixing the **Warning** or **Alternative Warning** to the Product's packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Portmeirion offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the

Warning or **Alternative Warning**, or a clearly marked hyperlink using the word "**WARNING**," appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, Portmeirion shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

2.5 Exceptions. The warning requirement set forth in §§ 2.3 and 2.4 above shall not apply to: (i) any Products manufactured before the Effective Date; and (ii) any Products meeting the Exterior Decoration Standard as defined in the Royal Daulton Consent Judgment. See Exhibit A, § 2.2.

2.6 Compliance with Warning Regulations. The Parties agree that Portmeirion shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the Product and the exposure at issue after the Effective Date.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Portmeirion shall pay \$1,000.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Balabbo. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below

3.1 Civil Penalty. Within fifteen (15) business days of the Effective Date, Portmeirion shall issue two (2) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of

\$750.00; and to (b) "Precila Balabbo" in the amount of \$250.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.2 Payment Procedures.

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Balabbo, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

(c) **Tax Documentation.** Portmeirion agrees to provide a completed IRS 1099 for its payments to, and Balabbo agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Precila Balabbo" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties:

(ii) "Brodsky & Smith" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

4. **REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Balabbo and her counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Balabbo and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Portmeirion shall reimburse Balabbo's counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Portmeirion, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, Portmeirion shall issue a check payable to "Brodsky & Smith" in the amount of \$18,000.00 for delivery to the address identified in § 3.2(a)(i), above.

5. **RELEASE OF ALL CLAIMS**

5.1 **Release of Portmeirion and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Balabbo, acting on her own behalf, and Portmeirion, of any alleged violation of Proposition 65 that was or could have been asserted by Balabbo or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposure to lead from use of the Products, and Releasers hereby release any such claims against Portmeirion and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Portmeirion directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees, including Tuesday Morning (collectively, the

"Releasees"), from any and all claims for alleged violations of Proposition 65 through the Effective Date based on exposure to lead from use of the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Balabbo, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged exposures to lead from the Products.

5.2 Portmeirion's Release of Balabbo. Portmeirion, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Balabbo, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Balabbo and/or her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to alleged exposure to lead from the Products.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Balabbo on behalf of herself only, on one hand, and Portmeirion, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

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

MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

Balabbo and Portmeirion each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Portmeirion with this Settlement Agreement constitutes compliance with Proposition 65 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 deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law 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 or limited by reason of law generally, or as to the Products, Portmeirion shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

8. NOTICES

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

For Portmeirion:

Michael R. McDonald
Kevin H. Gilmore
Gibbons P.C.
One Gateway Center,

Newark, NJ 07102

For Balabbo:

Evan J. Smith
Brodsky & Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

9. **COUNTERPARTS: SIGNATURES**

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

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

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

11. **MODIFICATION**

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

12. **ENTIRE AGREEMENT**


This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.


AGREED TO:

Date: 05/30/2023

By: 
Precilia Balabbo

AGREED TO:

Date: 06/13/23

By: 
Authorized Representative of
Portmeirion Group USA, Inc. *John R. ...*

AGREED TO:

Date: 06/13/23


By: 
Authorized Representative of
Portmeirion Group UK Limited *John R. ...*

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,
21 Plaintiff,
22 v.
23 ROYAL DOULTON USA, INC.;
and DOES 1 through 150
24 Defendants.
25

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

26
27
28

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. al.*, No. 964212. (Collectively these two cases are referred to herein as the "AG Action.")

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

27 ³ Cadmium was not listed under Proposition 65 as a chemical known to the State to cause reproductive harm until
28 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.

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

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

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

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

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

28 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 to 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
Parker Plaza, Suite 214
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 ¹¹ These include the named defendants in the AG Action, companies (or their corporate parents or corporate
26 affiliates) that are successors to or assigns of such defendants or all or part of such defendants' ceramic tableware
27 businesses/brands, and companies which, *inter alia*, are the authorized exclusive U.S. distributors of such defendants'
or such successors' ceramic tableware.

28 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.

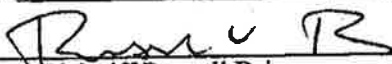
7 14.5 Once Plaintiff's counsel has filed all Opt-in Stipulations with the Court pursuant to
8 the preceding subsection, it shall, within thirty (30) additional days, prepare and file with the
9 Court and serve on Defendant's counsel, a report summarizing the results of the Opt-In program
10 provided 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.
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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
8 By: 
9 Plaintiff Russell Brimer

Date: _____
By: _____
Defendant Royal Doulton USA, Inc.

10 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

11 Date: July 13, 2007
12 HIRST & CHANLER LLP
13 By: 
14 Clifford A. Chanler
15 Attorneys for Plaintiff
16 RUSSELL BRIMER

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

17 **IT IS SO ORDERED.**

18
19 Date: 12-20-07


JUDGE OF THE SUPERIOR COURT

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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: _____
8 By: _____
9 Plaintiff Russell Brimer

Date: 7/16/07
By: *Justin M. Bayler*
Defendant Royal Doulton USA, Inc.

10 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

11
12 Date: _____
HIRST & CHANLER LLP
13 By: _____
14 Clifford A. Chanler
15 Attorneys for Plaintiff
16 RUSSELL BRIMER

Date: 7/16/07
MORRISON & FOERSTER LLP
By: *Robert L. Falk*
Robert L. Falk
Attorneys for Defendant
Royal Doulton USA, Inc.

17 **IT IS SO ORDERED.**

18
19 Date: 12.20.07

Thomas C. Davis
JUDGE OF THE SUPERIOR COURT

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