

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Ema Bell (“Bell”) and Portmeirion Group Designs, LLC (“Portmeirion”). Together, Bell and Portmeirion are collectively referred to as the “Parties.” Bell 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. Bell 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.** Bell alleges that Portmeirion sold, or caused to be sold, its Botanic Garden/Portmeirion stacking ramekins, UPC # 749151522480 in violation of Proposition 65 as stated in the Notice (defined herein).

**1.3 Product Description.** The products covered by this Settlement Agreement are Botanic Garden/Portmeirion stacking ramekins, UPC # 749151522480 (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Portmeirion.

**1.4 Notice of Violation.** On August 31, 2023, Bell served The TJX Companies, Inc. (“TJX”), Portmeirion, 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”), as Portmeirion maintains robust testing of its Products and meticulously

scrutinizes its supply chain to ensure compliance with California's Proposition 65. Portmeirion has not had the opportunity to test the specific Product identified in the Notice. 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 knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65, and affirmatively disagrees with any evidence, including laboratory testing, proffered by Bell to the alternative.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Agreement is last executed by the Parties.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

**2.1 Reformulation of Products.** Commencing within ninety (90) days after 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.<sup>1</sup> Attached hereto as **Exhibit "A"** is a true and correct copy of the *Royal Doulton* Consent Judgment.


**2.3 Clear and Reasonable Warning.** Commencing within 90 days after the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3

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

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. There shall be no obligation for Portmeirion to provide an exposure warning for Products that entered the stream of commerce within 90 days after the Effective Date. 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](http://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](http://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. If “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Portmeirion shall provide the **Warning** or **Alternative Warning** in

the foreign language in accordance with applicable warning regulations adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA").

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 regulations adopted by the State of California's OEHHA applicable to the Product and the exposure at issue within 90 days 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 Bell. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below

**3.1 Civil Penalty.** Within thirty (30) 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) "Ema Bell" 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 Bell, 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

(b) **Copy of Payments to OEHHA.** Portmeirion agrees to provide Bell's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Bell, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

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

(i) “Ema Bell” 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 Bell 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 Bell 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 Bell’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 thirty (30) business days of the Effective Date, Portmeirion shall issue a check payable to “Brodsky Smith” in the amount of \$18,500.00 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 Bell, acting on her own behalf, and Portmeirion, of any violation of Proposition 65 that was or could have been asserted by Bell or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) for failure to provide warnings for alleged exposures 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 TJX, its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 within 90 days after 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, Bell, 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 or actual exposure to lead from use of the Products or any other alleged violations of Proposition 65 regarding the Products.

**5.2 Portmeirion's Release of Bell.** Portmeirion, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Bell, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Bell 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 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. Bell 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 90 days after 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.

Bell 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 by Portmeirion with Proposition 65 with respect to exposure to lead from use of the Products.

**5.5. Public Benefit.** It is Portmeirion's understanding that the commitments it has agreed to herein, and actions to be taken by Portmeirion under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Portmeirion that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Portmeirion's failure to provide a warning concerning exposure to lead prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Portmeirion is in material compliance with this Settlement Agreement.

## **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:

Kevin H. Gilmore  
Gibbons P.C.  
One Gateway Center  
Newark, NJ 07102

For Bell:

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)**

Bell 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:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 21 MAY 2024

By: \_\_\_\_\_

Ema Bell

By:  \_\_\_\_\_

Portmeirion Group Designs, LLC

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

Bell 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**

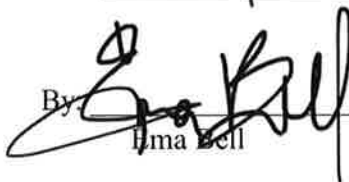
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 5 / 31 / 24

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Irma Bell

By: \_\_\_\_\_  
Portmeirion Group Designs, LLC

# **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 (66<sup>th</sup>) 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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 <sup>1</sup> 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 <sup>2</sup> 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  
28 as the “*People v. Wedgwood* Judgment.”

<sup>3</sup> 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.<sup>4</sup>

25  
26 <sup>4</sup> 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.<sup>5</sup>

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  
29 qualifications (collectively, these are referred to herein as the “Exterior Decoration Standard”):

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

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

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

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

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

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

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

- (i) Any *Exterior Decorations* that extend into the *Lip and Rim Area* only utilize decorating materials that contain *No Detectable Lead or Cadmium*, or
- (ii) The Product yields a test result showing a concentration level of 0.5 ug/ml or less of lead and a result of 4.0 ug/ml or less of cadmium using ASTM method C 927-99.<sup>8</sup>

<sup>6</sup> 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.

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

<sup>8</sup> 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.<sup>9</sup>

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 <sup>9</sup> 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.<sup>10</sup> 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 <sup>10</sup> 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:	For Settling Defendants:
4	Russell Brimer	Robert L. Falk
5	c/o Hirst & Chanler LLP	Morrison & Foerster LLP
6	2560 Ninth Street	425 Market Street
	Parker Plaza, Suite 214	San Francisco, CA 94105-2482
	Berkeley, CA 94710-2565	

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”).<sup>11</sup> 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;<sup>12</sup>  
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 <sup>11</sup> 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.

<sup>12</sup> “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**

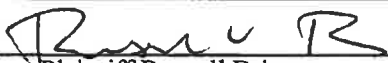
2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood and agree to all of the terms and conditions of this  
4 Consent Judgment.

5 **AGREED TO:**

**AGREED TO:**

6  
7 Date: 7-13-07

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  
16 RUSSELL BRIMER

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

17 **IT IS SO ORDERED.**

18  
19 Date: \_\_\_\_\_

\_\_\_\_\_  
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: \_\_\_\_\_

Date: 7/16/07

8 By: \_\_\_\_\_  
9 Plaintiff Russell Brimer

By: Austin M. Bayler  
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

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# **EXHIBIT 1**

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 RODERICK E. WALSTON  
Chief Assistant Attorney General  
3 THEODORA BERGER  
Assistant Attorney General  
4 CRAIG C. THOMPSON  
EDWARD G. WEIL  
5 CLIFFORD RECHTSCHAFFEN  
Deputy Attorneys General  
6 2101 Webster Street  
Oakland, Ca 94612  
7 Telephone: (510) 286-1354

8 Attorneys for the People of the State of California

9 CHARLOTTE URAM  
RAYMOND F. LYNCH  
10 LANDELS, RIPLEY & DIAMOND  
Hills Plaza  
11 350 Steuart Street  
San Francisco, California 94105  
12 Telephone: (415) 788-5000

13 DAVID A. HANQUIST  
MARK L. AUSTRIAN  
14 COLLIER, SHANNON, HILL & SCOTT  
3050 K Street, N.W.  
15 Washington, D.C. 20007  
Telephone: (202) 342-8400

16 Attorneys for Certain Defendants  
17

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO

20  
21 PEOPLE OF THE STATE OF CALIFORNIA ex. ) No. 938430  
rel. DANIEL E. LUNGREN, Attorney )  
22 General of the State of California, )  
23 Plaintiffs, )  
24 v. )  
25 JOSIAH WEDGWOOD & SONS, INC.; et al., )  
26 Defendants. )  
27

CONSENT JUDGMENT AS TO  
DEFENDANTS WEDGWOOD  
USA, INC.; FITZ &  
FLOYD, INC.; ROYAL  
DOULTON USA, INC.;  
NORITAKE COMPANY, INC.;  
VILLEROY & BOCH, LTD.;  
NIKASA; AMERICAN  
COMMERCIAL, INC.; THE  
PFALTZGRAFF COMPANY;  
PICKARD, INC.

1 any right, remedy or defense any Defendant may have in any other  
2 or future legal proceedings. However, this paragraph shall not  
3 diminish or otherwise affect the obligations, responsibilities  
4 and duties of any Defendant under this Consent Judgment.

5 2. Injunctive Relief: Clear and Reasonable Warnings.

6 2.1. Clear and reasonable warning that use of certain  
7 tableware exposes persons to a chemical known to the State of  
8 California to cause birth defects or other reproductive harm  
9 shall be provided under the circumstances and in the manner  
10 provided in this Consent Judgment. As of June 1, 1993 and  
11 continuing thereafter, said clear and reasonable warnings for all  
12 tableware for which warnings are required by this Consent  
13 Judgment ("Covered Tableware") shall be provided through the use  
14 of the Designated Symbol and Identifying Signs, as described  
15 below.

16 A. Identifying Signs and Designated Symbol

17 1. Identifying Signs. Each Identifying Sign shall be 8 1/2"  
18 by 11" in size and shall have the exact content, form, color and  
19 print style as Exhibit A.

20 2. Designated Symbol. The Designated Symbol shall appear  
21 exactly as shown in Exhibit B (3/4" high) and may appear on  
22 adhesive stickers, capable of adhering to an item of tableware, a  
23 placard, and a shelf. Except as otherwise provided in this  
24 Consent Judgment, any reproduction of the Designated Symbol must  
25 be in the same size and color as shown in Exhibit B. The  
26 Attorney General shall not agree to any settlement requiring the  
27 use of the Designated Symbol in giving a Proposition 65 warning



1 for exposures other than a consumer product exposure as defined  
2 under 22 CCR section 12601(b).

3 B. Covered Tableware Displayed in Retail Stores

4 1. Identifying Signs shall be placed in each California  
5 retail establishment in which any of Defendants' Covered  
6 Tableware is sold. Where a retail establishment sells only  
7 tableware that does not require a warning, it is not required to  
8 post the Identifying Sign. Identifying Signs shall not be  
9 covered or obscured, and shall be placed and displayed in a  
10 manner rendering them likely to be read and understood by an  
11 ordinary individual under customary conditions of purchase.  
12 Specifically, such signs shall be placed as follows:

13 a. Department Stores or other stores with separate  
14 check-out for tableware department: for a store selling  
15 tableware in a physically separate department or section, which  
16 contains cash registers within such department or section that  
17 are used primarily to purchase items sold in that department or  
18 section, signs shall be placed at each cash register in that  
19 section or department, and at a minimum of two additional  
20 locations where Covered Tableware is displayed within the section  
21 or department;

22 b. Large stores without a separate check-out for  
23 tableware department: any store that sells tableware and has  
24 more than 7,500 square feet of floor space and that uses one or  
25 more check-out stands for all merchandise purchased at the store,  
26 a single sign shall be posted at each location where Covered  
27 Tableware are displayed, plus as many additional signs as are

1 necessary to assure that any potential purchaser of tableware  
2 would be reasonably likely to see an Identifying Sign.

3 c. Small stores without a separate check-out for  
4 tableware department: any store that sells tableware and has less  
5 than 7,500 square feet of total floor space, and uses one or more  
6 check-out stands for all merchandise purchased at the store,  
7 shall post signs in the manner provided in (a) or (b) above.

8 2. The Designated Symbol shall be displayed in  
9 conjunction with the Covered Tableware, in any one or more of the  
10 following locations:

11 a. Affixed to every placard, "tent sign," shelf  
12 talker, or shelf sticker adjacent to the displayed article that  
13 identifies the brand name and pattern of the article displayed;  
14 or

15 b. Affixed to the displayed article of Covered  
16 Tableware on a part of the article where the symbol will be seen  
17 as the article is displayed; or

18 c. Affixed to the back of the displayed article of  
19 Covered Tableware, but only if the back of the article contains a  
20 sticker identifying the price or a sticker identifying the item  
21 or items available in the tableware pattern and listing their  
22 prices.

23 c. Covered Tableware for Sale in Retail Stores,  
24 But Not Displayed

25 Where Covered Tableware is available for sale in a retail  
26 store, but no article of the same pattern is displayed in the  
27 retail store, and instead is pictured in a catalog, brochure or

1 other graphic depiction available within the retail store, the  
2 warning shall be provided as follows:

3 1. Where the brochure or catalog contains the price, the  
4 following warning message shall be stated within the brochure or  
5 catalog, on the inside front cover, on the same page as any order  
6 form, or on the same page as the price, in at least 12 point  
7 type, with the Designated Symbol at least 3/4 inch: "Prop 65  
8 WARNING: Certain patterns of tableware for sale through this  
9 catalog will expose you to lead, a chemical known to the State of  
10 California to cause birth defects or other reproductive harm.  
11 Patterns identified with this symbol: [Designated Symbol] are the  
12 ones for which this warning is given." The Designated Symbol  
13 also shall be provided in conjunction with any picture or  
14 depiction of Covered Tableware, immediately following any text  
15 stating the name of the pattern in the same size as the name of  
16 the pattern.

17 2. Where such Covered Tableware is depicted in a brochure  
18 or catalog, but said brochure does not contain the price of the  
19 article, the warning message and Designated Symbol shall be  
20 provided on any price lists intended for display to the consumer.  
21 The warning message specified in Paragraph 2.1.C.1 shall be  
22 stated within the price list, either on the inside front cover or  
23 on the same page as the price, in at least 12 point type, with  
24 the Designated Symbol at least 3/4 inch. The Designated Symbol  
25 shall also be provided on the page where both the price and  
26 pattern name are provided, adjacent to the name of the pattern  
27 for which a warning is given, in the same size as the name of the

1 pattern. The Designated Symbol may be printed in the same colors  
2 as used in the price list.

3 D. Mail Order Tableware

4 Where Covered Tableware is available for sale by mail order  
5 to residents of the State of California, clear and reasonable  
6 warning shall be provided by including a warning, either in the  
7 mail order catalog or brochure or with the Covered Product when  
8 it is shipped to California customers, as follows:

9 1. Mail Order Catalog or Brochure. The following warning  
10 message shall be stated within the catalog or brochure, on the  
11 inside front cover, on the same page as any order form, or on the  
12 same page as the price, in at least 12 point type with the  
13 Designated Symbol at least 3/4 inch: "Prop 65 WARNING: Use of  
14 certain ceramic tableware for sale in this catalog or brochure  
15 will expose you to lead, a chemical known to the State of  
16 California to cause birth defects or other reproductive harm.  
17 Patterns identified in this catalog or brochure with this symbol:  
18 [Designated Symbol] are the ones for which this warning is given.  
19 The Designated Symbol shall also be provided on the page where  
20 both the price and pattern name are provided, adjacent to the  
21 name of the pattern for which a warning is given, in the same  
22 size as the name of the pattern.

23 2. Package Insert or Label. Alternatively, a warning may  
24 be provided with the Covered Tableware when it is shipped, by  
25 (a) inserting a card or slip of paper measuring at least 4" by 6"  
26 in the shipping carton, (b) affixing a pressure sensitive label  
27 measuring at least standard business-card size on the face of the

1 shipping carton, or (c) printing the warning on the packing slip  
2 or customer invoice identifying the Covered Tableware in  
3 lettering of the same size as the description of the Covered  
4 Tableware. The warning shall read as follows: "Prop 65 WARNING:  
5 Use of this product will expose you to lead, a chemical known to  
6 the State of California to cause birth defects or other  
7 reproductive harm. You may return this product for a full refund  
8 within 30 days of receipt, if you wish. You also may obtain a  
9 list of each pattern of ceramic tableware sold by this company  
10 for which the same warning is given." Upon request of the person  
11 receiving that warning, the mail order house shall provide a list  
12 of each pattern of tableware sold by that mail-order house for  
13 which a warning is required.

14 **B. Restaurants and Other Food Service Establishments**

15 Restaurants, hotels, and other food service establishments  
16 shall provide clear and reasonable warning, whenever Covered  
17 Tableware is used for service of food consumed by their  
18 customers, by posting an 8½" by 11" sign with the exact content,  
19 form, color and print style as Exhibit C. The sign shall be  
20 printed on at least 65-pound cover stock.

21 2.2. No later than April 30, 1993, Defendants shall mail  
22 warning materials as described below:

23 **A. Warning Materials for Retail Stores.**

24 Defendants shall mail to the central purchasing office for  
25 all distributors and retail stores with whom they transact  
26 business for sale of Covered Tableware in California the  
27 following materials:

- 1           1.     At least five Identifying Signs, printed on 65-pound  
2 cover stock.
- 3           2.     At least 100 Designated Symbols, which shall be  
4 provided on adhesive peel-off sheets.
- 5           3.     A letter explaining the warning program, providing  
6 posting instructions, and providing instructions for warnings for  
7 products not displayed. This letter shall contain the text shown  
8 in Exhibit D, and shall contain no further information or  
9 statements without advance written approval of the Attorney  
10 General.
- 11          4.     A document identifying all Covered Tableware, by  
12 pattern, determined pursuant to the testing program established  
13 under Section 4, as follows:
- 14           a.     Said document need not accompany any shipment of  
15 the Covered Tableware, and may be sent as a single document on  
16 behalf of a group of Defendants, or individually only to those  
17 distributors or retail stores selling the Covered Tableware of an  
18 individual Defendant.
- 19           b.     Documents updating or supplementing the list of  
20 Covered Tableware shall be provided to the central purchasing  
21 office for all distributors or retailers as frequently as  
22 necessary to advise retailers of any additional Covered Tableware  
23 or of any tableware pattern no longer requiring warnings. Where  
24 tableware that had required a warning is determined to no longer  
25 require a warning, Defendants shall not send any notice advising  
26 the central purchasing office for all distributors or retail  
27 stores that the tableware no longer requires a warning until 180

1 days after the last articles in that pattern that required a  
2 warning were shipped from the factory for potential sale in  
3 California. Where there is no change in the list of Covered  
4 Tableware, Defendants shall advise the central purchasing office  
5 for all distributors and retail stores with whom they transact  
6 business for sale of Covered Tableware in California at least  
7 once each calendar year that the list remains accurate. Once a  
8 Defendant has advised a retailer or distributor that no warnings  
9 are necessary on any of its tableware Patterns, then no further  
10 notices need be sent to such retailer or distributor unless  
11 warnings are subsequently required on any of Defendant's  
12 Patterns.

13 5. Beginning with the first regularly scheduled printing  
14 of the brochure, catalog or price list referred to in Paragraph  
15 2.1.C after April 30, 1993, and continuing with each regularly  
16 scheduled brochure, catalog or price list, Defendants shall  
17 provide warnings as specified in either (a) the brochure or  
18 catalog or (b) the price list. Such brochure, catalog or price  
19 list shall, however, be distributed no later than September 30,  
20 1993. Any supplement to the price list which includes a pattern  
21 requiring a warning shall provide the Designated Symbol adjacent  
22 to the name of the pattern as provided in Paragraph 2.1.C.2.

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**B. Warning Materials for Mail Order Houses.**

Each defendant shall mail to the central purchasing office for each company which they know or have reason to know sells that Defendant's Covered Tableware to residents of California by mail:

1. A letter explaining the warning program. This letter shall contain the text shown in Exhibit E, and shall contain no further information or statements without advance written approval of the Attorney General.

2. The same materials as those provided under Paragraph 2.2.A.4.

**C. Warning Materials for Restaurants.**

Defendants shall mail to the central purchasing office for each restaurant and other food service establishment with whom they transact business for commercial use of Covered Tableware in California:

1. Two copies of the warning sign set forth in Exhibit C.

2. Letter(s) explaining the warning program and providing posting instructions to the restaurant, and where necessary, the restaurant supplier. This letter shall contain the text shown in Exhibit F, and shall contain no further information or statements without advance written approval of the Attorney General.

3. A letter listing those pattern(s) of Covered Tableware sold to the individual restaurant or other food service establishment.

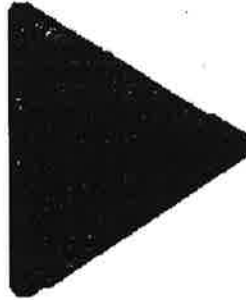
///  
///



**PROP 65**  
**WARNING**

Use of certain tableware for sale in this store will expose you to lead,  
a chemical known to the State of California to cause birth defects  
or other reproductive harm.

Patterns identified with this symbol:



displayed on or next to the product,  
are the ones for which this warning is given.



EXHIBIT B:  
DESIGNATED SYMBOL

**PROP 65**  
**WARNING**

The particular pattern of dishes used here  
will expose you to lead, a chemical known to  
the State of California to cause birth defects  
or other reproductive harm.

# **EXHIBIT 2**

## **TESTING PROTOCOL**

For purposes of the Reformulation Standards in this Consent Judgment, the method on the attached pages, ASTM C 927-80 (reapproved in 1999 and 2004), shall be modified for total immersion of the Covered Products.

As modified, carefully add 4% acetic acid leaching solution from a graduated cylinder to each container containing a sample until the sample is fully immersed in solution. Record the volume of solution used. The container must comply with the diameter requirements specified in the protocol, while being large enough to fully immerse the product.

The remainder of the protocol should be followed as set forth in the attached document.



## Standard Test Method for Lead and Cadmium Extracted from the Lip and Rim Area of Glass Tumblers Externally Decorated with Ceramic Glass Enamels<sup>1</sup>

This standard is issued under the fixed designation C 927; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon ( $\epsilon$ ) indicates an editorial change since the last revision or reapproval.

### 1. Scope

1.1 This test method covers the determination of lead and cadmium extracted by acetic acid from the lip and rim area of glassware used for drinking and which is exteriorly decorated with ceramic glass enamels. The procedure of extraction may be expected to accelerate the release of lead and cadmium from the decorated area and to serve, therefore, as a severe test that is unlikely to be matched under the actual conditions of usage of such glassware. This test method is specific for lead and cadmium.

NOTE 1—For additional information see Test Method C 738.

1.2 The values stated in acceptable metric units are to be regarded as the standard. The values given in parentheses are for information only.

1.3 *This standard may involve hazardous materials, operations, and equipment. This standard does not purport to address all of the safety concerns associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

### 2. Referenced Documents

#### 2.1 ASTM Standards:<sup>2</sup>

C 738 Test Method for Lead and Cadmium Extracted from Glazed Ceramic Surfaces

### 3. Terminology

#### 3.1 Definitions:

<sup>1</sup> This test method is under the jurisdiction of ASTM Committee C14 on Glass and Glass Products and is the direct responsibility of Subcommittee C14.10 on Glass Decoration. It was developed jointly by ASTM Committee C-14 and C-21 on Ceramic Whitewares and Related Products, the Society of Glass Decorators A-20 Subcommittee on Ceramic Enamelled Decorated Glass Tumblers, and an Inter-agency Task Force consisting of FDA, EPA, and CPSC of the U.S. Government.

Current edition approved Oct. 1, 2004. Published October 2004. Originally approved in 1980. Last previous edition C 927 - 80 (1999).

<sup>2</sup> For referenced ASTM standards, visit the ASTM website, [www.astm.org](http://www.astm.org), or contact ASTM Customer Service at [service@astm.org](mailto:service@astm.org). For *Annual Book of ASTM Standards* volume information, refer to the standard's Document Summary page on the ASTM website.

3.1.1 *ceramic glass decorations*—ceramic glass enamels fused to glassware at temperatures above 425°C (800°F) to produce a decoration.

3.1.2 *ceramic glass enamels (also ceramic enamels or glass enamels)*—predominately colored, silicate glass fluxes used to decorate glassware.

3.1.3 *lip and rim area*—that part of a drinking vessel which extends 20 mm below the rim on the outside of the specimen.

### 4. Summary of Test Method

4.1 Lead and cadmium are extracted from the lip and rim area of the article under test by leaching with a 4 % acetic acid solution at 20 to 24°C (68 to 75°F) for 24 h and are measured by atomic absorption spectrophotometry using specific hollow cathode or electrodeless discharge lamps for lead and cadmium respectively. Results are reported as micrograms per millilitre (ppm) extracted relative to the internal volume of the glass article.

### 5. Significance and Use

5.1 The heavy metals, lead and cadmium, are known to cause serious health effects in man if consumed in excess. It is, therefore, important to measure the amount that may be extracted from an area of the glass drinking vessel in contact with the lip. Even though the amount of lead and cadmium extracted by this test method is in no way representative of the amount of the metals extracted by actual lip contact, the relative magnitude of metals extracted from one test specimen in relation to another test specimen provides an effective tool for discrimination.

### 6. Interferences

6.1 Since specific hollow cathode lamps or electrodeless discharge lamps for lead and cadmium are used, there are no interferences.

### 7. Apparatus

7.1 *Atomic Absorption Spectrophotometer (AAS)*, equipped with a 102-mm (4-in.) single slot or Boling burner head and digital concentration readout attachment (DCR) if available. This instrument should have a sensitivity of about 0.5 µg/mL of

lead for 1 % absorption and a sensitivity of about 0.025 µg/mL of cadmium for 1 % absorption. Use the operating conditions as specified in the instrument manufacturer's analytical methods manual.

7.2 *Hollow Cathode or Electrodeless Discharge Lead Lamp*, set at 283.3 nm.

7.3 *Hollow Cathode or Electrodeless Discharge Cadmium Lamp*, set at 228.8 nm.

7.4 *Glassware* of chemically resistant borosilicate glass for use in preparing and storing reagents and solutions, and for use as test specimen containers.

7.5 Detection limits of lead and cadmium shall be determined and reported for individual instruments. In this test method, the detection limit shall be defined as twice the mean noise level at 0 µg/mL. Representative detection limits would be approximately 0.01 to 0.03 µg/mL for lead and 0.0005 to 0.0010 µg/mL for cadmium.

## 8. Reagents

8.1 *Purity of Reagents*—Reagent grade chemicals shall be used in all tests. Unless otherwise indicated, it is intended that all reagents shall conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available.<sup>3</sup> Other grades may be used provided it is first ascertained that the reagent is of sufficiently high purity to permit its use without lessening the accuracy of the determination. Analyze each new batch of reagents for lead and cadmium.

8.2 *Purity of Water*—Unless otherwise indicated, references to water shall be understood to mean distilled or deionized water.

8.3 *Acetic Acid* (4 volume %)—Mix 1 volume of glacial acetic acid with 24 volumes of water.

8.4 *Cadmium Standard Stock Solution* (1000 µg/mL of cadmium)—Dissolve 0.9273 g of anhydrous cadmium sulfate in 250 mL of 1 % HCl (8.6) and dilute to 500 mL with 1 % HCl. Commercially available standard cadmium solutions may also be used.

8.5 *Detergent Rinse*—Add 2 mL of hand dishwashing detergent to 1 L of lukewarm tap water.

8.6 *Hydrochloric Acid* (1 weight %)—Mix 1 volume of concentrated hydrochloric acid (HCl, sp gr 1.19) with 37 volumes of water.

8.7 *Lead Standard Stock Solution* (1000 µg/mL)—Dissolve 1.598 g of lead nitrate (Pb(NO<sub>3</sub>)<sub>2</sub>) in 4 % acetic acid and dilute to 1 L with 4 % acetic acid. Commercially available standard lead solutions may also be used.

## 9. Sampling

9.1 *Continuous Process*—Since the amount of metal released from a decoration can be affected by the firing conditions, which may not be uniform across the width of thelehr,

a minimum of six samples should be taken representing both sides and the center of the lehr.

9.2 *Load or Pile*—A minimum of six samples should be randomly selected from throughout the load.

## 10. Preparation of Standards

10.1 *Lead Standard Working Solutions*—Dilute lead nitrate solution (8.7) with acetic acid (8.3) to obtain working standards having final lead concentrations of 0, 5, 10, 15, and 20 µg/mL.

10.2 *Cadmium Standard Working Solutions*—Dilute cadmium stock solution (8.4) with acetic acid (8.3) to obtain working standards having final cadmium concentrations of 0.0, 0.3, 0.5, 1, 1.5, and 2.0 µg/mL.

10.3 Fresh working solutions should be prepared daily.

## 11. Procedure

11.1 *Preparation of Sample*—Take six identical units and cleanse each with a detergent rinse. Then rinse with tap water followed by distilled water followed by air drying. Mark each unit 7 mm below the rim. Record the internal volume of each article in millilitres by filling from a graduated cylinder to approximately 6 to 7 mm (¼ in.) of overflowing. Mark each article, in a nondecorated area (if possible), 20 mm below the rim on the outside. Invert the article in an appropriate laboratory glassware container whose diameter is a minimum of 1.25 times and a maximum of 2.0 times the diameter of the test specimen at the rim. Carefully add 4 % acetic acid leaching solution from a graduated cylinder to the 20-mm mark. Record the volume of solution used. Cover the glassware containers, if possible, to prevent evaporation and to protect them from contamination. Let stand for 24 h at room temperature (20 to 24°C) in the dark. Remove the article after the 24-h leaching period and determine the lead and cadmium by atomic absorption. Record the lead and cadmium found in micrograms per millilitre.

NOTE 2—The possibility of a significant amount of evaporation exists. The analyst should determine whether the acetic acid leaching is noticeably below the 20-mm mark before removing the article. If it is, sufficient acetic acid solution should be added to restore the leaching solution to the 20-mm mark.

11.2 *Determination of Lead*—Set the instrument (7.1) for maximum signal at 283.3 nm using the lead hollow cathode lamp (7.2) (Note 3) and air/acetylene (C<sub>2</sub>H<sub>2</sub>) flow rates recommended by the manufacturer. Stir the sample (leaching) solution and pour off a portion into a clean flask or aspirate from the extraction container if suitable. Flush the burner with water and check zero point between readings. Determine lead from a standard curve of absorbance against µg/mL of lead or calibrate the direct concentration reading (DCR) unit in the concentration mode with lead working solutions (11.1) and read and record the sample concentration directly. Bracket the sample solution with the next higher and lower working solutions. Dilute samples containing more than 20 µg/mL of lead with 4 % acetic acid and reanalyze.

NOTE 3—Electrodeless discharge lamps may be substituted for hollow cathode lamps.

<sup>3</sup> *Reagent Chemicals, American Chemical Society Specifications*, American Chemical Society, Washington, DC. For suggestions on the testing of reagents not listed by the American Chemical Society, see *Analar Standards for Laboratory Chemicals*, BDH Ltd., Poole, Dorset, U.K., and the *United States Pharmacopeia and National Formulary*, U.S. Pharmacopeial Convention, Inc. (USPC), Rockville, MD.

11.3 *Determination of Cadmium*—Proceed as in 11.2 using the cadmium hollow cathode lamp (7.3) and cadmium standards (10.2). If the sample (leaching) solution contains more than 2 µg/mL of cadmium, dilute with 4 % acetic acid and reanalyze.

## 12. Calculation

12.1 Use the following equations to calculate the total amount of lead or cadmium metal released from the lip and rim area of the article expressed (1) in total micrograms and (2) parts per million of lead or cadmium metal leached relative to the internal volume of the article.

12.1.1 Determine lead or cadmium, *A*, in micrograms as follows:

$$A = C \times V_1 \quad (1)$$

12.1.2 Determine lead or cadmium, *A*, in parts per million as follows:

$$A = \frac{C \times V_1}{V_2} \quad (2)$$

where:

*C* = concentration of lead or cadmium in leaching solution, µg/mL;

*V*<sub>1</sub> = volume of leaching solution, mL; and

*V*<sub>2</sub> = internal volume of article, mL (Note 4).

NOTE 4—The internal volume of the article expressed in millilitres of water closely approximates its weight in grams. Therefore, in this instance microgram per millilitre equals microgram per gram which equals parts per million.

## 13. Report

13.1 A suggested report form is given in Fig. 1.

## 14. Precision and Bias

14.1 Precision for the analytical method for single or multiple operator within a single laboratory is within the sensitivity of the AAS used and as specified is about 0.5 µg/mL for lead and 0.25 µg/mL for cadmium.

14.2 The accuracy and between-laboratory precision are dependent upon the ability to obtain representative samples for the statistical universe being sampled.

## 15. Keywords

15.1 atomic absorption; cadmium; ceramic glass enamels; glaze; heavy metals; lead





# C 927 – 80 (2004)

## LABORATORY TEST DATA

Lead and Cadmium Released from Lip and Rim Area of Drinking Glassware Decorated Externally with Ceramic Glass Enamels

Date \_\_\_\_\_

Manufacturer \_\_\_\_\_

Laboratory \_\_\_\_\_

Pattern \_\_\_\_\_

Detection Limit Lead \_\_\_\_\_

Reagent Blank Lead \_\_\_\_\_

Cadmium \_\_\_\_\_

Cadmium \_\_\_\_\_

Internal Volume, mL \_\_\_\_\_

Sample	Volume of Leaching Solution, mL	Concentration, µg/mL Lead,	Total µg	ppm Relative to Internal Volume
1				
2				
3				
4				
5				
6				
Avg				
		Cadmium		
1				
2				
3				
4				
5				
6				
Avg				

FIG. 1 Report Form

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# **EXHIBIT 3**

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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO  
12 UNLIMITED JURISDICTION  
13

14 RUSSELL BRIMER,  
15 Plaintiff,

16 v.

17 ROYAL DOULTON USA, INC.; and DOES 1  
18 through 150,  
19 Defendants.

Case No. CGC-07-459941

**STIPULATION FOR ENTRY OF  
JUDGMENT**

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1           1.       The following constitutes the knowing and voluntary election and stipulation of  
2 the entity named below (“Company” or “Opt-In Defendant”) to join as a Settling Defendant  
3 under the Consent Judgment previously entered by the Court in *Brimer v. Royal Doulton USA,*  
4 *Inc.; and Does 1 through 150*, San Francisco Superior Court Case No. CGC-07-459941  
5 (“Action”) and to be bound by the terms of that “Consent Judgment.”

6           2.       At any time during the three (3)-year period prior to the filing of this Stipulation  
7 (“Relevant Period”), the Company has employed ten (10) or more part-time or full-time  
8 persons and has manufactured, distributed, offered for use or sold one or more Products, as  
9 defined in the Consent Judgment (Section 1.3).

10          3.       At least one of these Products contained, during the Relevant Period, *Exterior*  
11 *Decorations* comprised of more than 600 parts per million of lead and/or 4800 parts per million  
12 of cadmium. The Company has not provided compliant Proposition 65 warnings in  
13 conjunction with the sale or use of all such Products in California at all times during the  
14 Relevant Period.

15          4.       The Company has not conducted a risk or exposure assessment on the *Exterior*  
16 *Decorations* used on all Products firmly establishing that the use of such Products will result in  
17 an exposure in an amount less than that deemed permissible in 22 Cal. Code Regs. §12805(b).

18          5.       The Company agrees to be bound by the injunctive relief provisions set forth in  
19 Section 2 of the Consent Judgment as it relates to the Products.

20          6.       At least 65 days prior to the submissions of this Stipulation to the Court for  
21 entry, provided that it has been mailed to counsel to the Settling Defendants at the address  
22 shown in Section 10 of the Consent Judgment, the Company agrees to be deemed to have  
23 accepted service of a 60-day notice letter from Russell Brimer (“Brimer”) alleging certain  
24 violations of Proposition 65 with respect to sales of the Products.

25          7.       The Company hereby stipulates to be deemed to have voluntarily accepted  
26 service of the summons and complaint in this Action upon the filing of this Stipulation and  
27 agrees to be subject to the jurisdiction of the Court for purposes of the Consent Judgment.  
28

1 8. Future notices concerning this Stipulation and the Consent Judgment shall be  
2 provided to the Company through Settling Defendants counsel as shown in Section 10 of the  
3 Consent Judgment. If the Company desires to change the individual and/or address designated  
4 to receive notice on its behalf, the Company shall provide written notice to Brimer and Settling  
5 Defendants' counsel via certified mail, return receipt requested or overnight courier at the  
6 addresses for them listed in Section 10 of the Consent Judgment.

7 9. The undersigned have read, and the person and/or entity named below  
8 knowingly and voluntarily agree to be bound by, all terms and conditions of this Stipulation  
9 and the Consent Judgment as previously approved and entered by the San Francisco County  
10 Superior Court in this Action.

11 10. The undersigned has full authority to make the written representations above  
12 and to enter into this Stipulation for the person/entity on behalf of which he/she is signing.

13 **IT IS HEREBY STIPULATED AND AGREED TO:**

14  
15 By: \_\_\_\_\_ By: \_\_\_\_\_  
16 (signature) On Behalf of Plaintiff, Russell Brimer

17 \_\_\_\_\_  
18 Name (printed/typed)

19 \_\_\_\_\_  
20 Title (printed/typed)

21 On Behalf of:

22 \_\_\_\_\_  
23 (Insert Company Name)

24 Opt-In Defendant

25 Dated: \_\_\_\_\_ Dated: \_\_\_\_\_  
26  
27  
28