

1 D. Joshua Voorhees, State Bar No. 241436
Aparna L. Reddy, State Bar No. 242895
2 HIRST & CHANLER LLP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 RUSSELL BRIMER

7 Trenton H. Norris, State Bar No. 164781
Sarah Esmaili, State Bar No. 206053
8 BINGHAM McCUTCHEN LLP
3 Embarcadero Center
9 San Francisco, CA 94111
Telephone: (415) 393-2000
10 Facsimile: (415) 393-2286

11 Attorneys for Defendant
THE WORLD OF 98 CENTS, INC.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF STANISLAUS
15 UNLIMITED CIVIL JURISDICTION
16

17 RUSSELL BRIMER,
18 Plaintiff,
19 v.
20

21 THE WORLD OF 98 CENTS INC.; DOLLAR
CITY; UNIVERSAL DISTRIBUTION CENTER
22 LLC; and DOES 1 through 150, inclusive,
23 Defendants.

Case No. 612633

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

24
25
26
27
28

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and The World of 98 Cents, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer
4 (hereinafter “Brimer” or “plaintiff”) and defendant The World of 98 Cents, Inc., (hereinafter
5 “The World of 98 Cents” or “Defendant”), with Brimer and The World of 98 Cents collectively
6 referred to as the “Parties.” Within five business days of entry of this Consent Judgment, Brimer
7 shall dismiss his complaint in the above-entitled action without prejudice as to defendant Dollar
8 City.

9 **1.2 Plaintiff**

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

13 **1.3 Defendant**

14 The World of 98 Cents employs ten or more persons and is a person in the course of
15 doing business for purposes of Proposition 65.

16 **1.4 General Allegations**

17 Brimer alleges that The World of 98 Cents has manufactured, distributed and/or sold in
18 the State of California certain glassware intended for the consumption of food or beverages with
19 colored artwork or designs containing lead on the exterior. Lead is listed pursuant to the Safe
20 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
21 §§25249.6 *et seq.* (“Proposition 65”), as a chemical known to the State of California to cause
22 birth defects and other reproductive harm. Lead shall be referred to herein as the “Listed
23 Chemical.”

24 **1.5 Product Description**

25 The products that are covered by this Consent Judgment are defined as follows: oil
26 bottles and other glass containers intended for the consumption of food or beverages with
27 colored artwork or designs (containing lead) on the exterior including, but not limited to, *Oil*
28 *Bottle (# 76979 29058 4)*. All such glassware shall be referred to herein as the “Products.”

1 **1.6 Notice of Violation**

2 On November 7, 2006, Brimer served The World of 98 Cents and various public
3 enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that
4 provided The World of 98 Cents and such public enforcers with notice that alleged that The
5 World of 98 Cents was in violation of California Health & Safety Code §25249.6 for failing to
6 warn consumers and customers that the Products that The World of 98 Cents sold exposed users
7 in California to the Listed Chemical.

8 **1.7 Complaint**

9 On January 26, 2007, Brimer, who is acting in the interest of the general public in
10 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the
11 County of Stanislaus against The World of 98 Cents, Inc.; Dollar City; Universal Distribution
12 Center, LLC and Does 1 through 150, *Brimer v. The World of 98 Cents, Inc., et al., Stanislaus*
13 *Superior Court Case No. 612633*, alleging violations of California Health & Safety Code
14 §25249.6 based on the alleged exposures to the Listed Chemical contained in the Products sold
15 by The World of 98 Cents.

16 **1.8 No Admission**

17 The World of 98 Cents denies the material factual and legal allegations contained in
18 Brimer’s Notice and Complaint and maintains that all products that it has sold and distributed in
19 California, including the Products, have been and are in compliance with all laws. Nothing in
20 this Consent Judgment shall be construed as an admission by The World of 98 Cents of any fact,
21 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
22 constitute or be construed as an admission by The World of 98 Cents of any fact, finding,
23 conclusion, issue of law or violation of law, such being specifically denied by The World of 98
24 Cents. However, this Section shall not diminish or otherwise affect the obligations,
25 responsibilities and duties of The World of 98 Cents under this Consent Judgment.

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 jurisdiction over The World of 98 Cents as to the allegations contained in the Complaint, that

1 venue is proper in the County of Stanislaus and that this Court has jurisdiction to enter and
2 enforce the provisions of this Consent Judgment.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 1,
5 2007.

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

7 **2.1 Product Warnings**

8 After the Effective Date, The World of 98 Cents shall not sell in California Products
9 containing the Listed Chemical unless such Products are sold with the clear and reasonable
10 warning set out in this Section 2.1, comply with the reformulation standards set forth in Section
11 2.3 or are otherwise exempt pursuant to Section 2.2.

12 Any warning issued for Products pursuant to this Section 2.1 shall be prominently placed
13 with such conspicuousness as compared with other words, statements, designs, or devices as to
14 render it likely to be read and understood by an ordinary individual under customary conditions
15 before purchase or used in the workplace, before use. Any warning provided under Section 2.1
16 must comply with the requirements set out in Section 2.1(a)(i) or 2.1(a)(ii). The following
17 warnings will be applicable when the Product is sold to consumers:

18 **(a) Retail Store Sales**

19 **(i) Product Labeling.** From the Effective Date, a warning may be
20 affixed to the packaging, labeling or directly on the Product by The World of 98 Cents, its agent,
21 the manufacturer, the decorator, the distributor, the wholesaler, or the retailer of the Product with
22 language that is identical or substantially similar¹ to the following:

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

26 ¹ "Substantially similar" shall mean that the warning identifies "lead" as a toxin, the
27 exterior colored artwork as the source of the lead; and birth defects and reproductive harm as the
28 health hazard.

1 (ii) **Point-of-Sale Warnings.** Defendant may perform its warning
2 obligations by insuring to the greatest extent possible that signs are posted at its retail outlets in
3 the State of California where the Products are sold. Point-of-sale warnings shall be provided
4 through signs posted in close proximity to the point of display of the Products that state:

5 **WARNING: The materials used as colored decorations on the**
6 **exterior of products in this section contain lead,**
7 **a chemical known to the State of California to**
8 **cause birth defects and other reproductive harm.**

9 A point-of-sale warning shall be provided in a manner such that the consumer
10 understands to which *specific* Products the warning applies.

11 2.2 Exceptions To Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to:

- 12 (i) Any Products in The World of 98 Cents' inventory before the Effective
13 Date; or
14 (ii) Reformulated Products (as defined in Section 2.3 below).

15 2.3 Reformulation Standards

16 Reformulated Products are defined as follows: any Product with exterior decorations
17 containing less than or equal to six one-hundredths of one percent (0.06%) of lead by weight or
18 less, as measured either before or after the material is fired onto (or otherwise affixed to) the
19 Product using EPA test methodology 3050B.² Products with decorations within the lip-and-rim
20 area³ must *also* contain less than or equal to two one-hundredths of one percent (0.02%) of lead
21 by weight or less using a sample size of the material in question measuring approximately 50-
22 100 mg and a test method of sufficient sensitivity to establish a limit of quantitation of less than
23 200 ppm.

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

28 ³ Lip-and-rim area is defined as the exterior top 20 millimeters of a hollowware food or
beverage Product.

1 **2.4 Reformulation Goal**

2 Defendant hereby commits to undertake good faith efforts to ensure that as many
3 Products as reasonably possible that it offers for sale in California, shall either qualify as
4 Reformulated Products or will otherwise be exempt from the warning requirements of sections
5 2.1, with the commitment that at least eighty percent (80%) of the Products sold in California on
6 or after October 1, 2007, will not require warnings pursuant to section 2.1, with further
7 commitment to undertake all commercially reasonable efforts to sell one-hundred percent
8 (100%) Reformulated Products in California, after January 1, 2008.

9 **3. MONETARY PAYMENTS**

10 **3.1 Penalties Pursuant to California Health & Safety Code**
11 **§25249.7(b)**

12 In settlement of all of the claims referred to in this Consent Judgment against The World
13 of 98 Cents, The World of 98 Cents shall pay \$500 in civil penalties to be apportioned by Brimer
14 in accordance with California Health & Safety Code §25192, with 75% of these funds remitted
15 to the State of California's Office of Environmental Health Hazard Assessment and the
16 remaining 25% of these penalty monies retained by Brimer as provided by California Health &
17 Safety Code §25249.12(d). Brimer shall bear all responsibility for apportioning and paying to
18 the State of California the appropriate civil penalties paid in accordance with this section. The
19 payment set forth in this paragraph shall be made payable to "HIRST & CHANLER LLP in
20 Trust For Russell Brimer" on or before September 30, 2007, and be delivered to Brimer's
21 counsel at the following address:

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

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

26 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
28 leaving this fee issue to be resolved after the material terms of the agreement had been settled.

1 The World of 98 Cents then expressed a desire to resolve the fee and cost issue shortly after the
2 other settlement terms had been finalized. The Parties then attempted to (and did) reach an
3 accord on the compensation due to Brimer and his counsel under the private attorney general
4 doctrine codified at California Code of Civil Procedure §1021.5 for all work performed through
5 the Court's approval of this agreement. Under the private attorney general doctrine, The World
6 of 98 Cents shall reimburse Brimer and his counsel for fees and costs incurred as a result of
7 investigating, bringing this matter to defendant's attention, litigating and negotiating a settlement
8 in the public interest and seeking the Court's approval of the settlement agreement. The World
9 of 98 Cents shall pay Brimer and his counsel \$16,000 for all attorneys' fees, expert and
10 investigation fees, litigation and related costs. The payment shall be made in three installments
11 payable to HIRST & CHANLER, LLP. The first payment of \$5,000 shall be delivered on or
12 before September 30, 2007. The second payment of \$5,500 shall be delivered on or before
13 October 31, 2007. The final payment of \$5,500 shall be delivered on or before January 11, 2008.

14 The payments shall be delivered to the following address:

15 HIRST & CHANLER llp
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710-2565

18 **5. RELEASE OF ALL CLAIMS**

19 **5.1 Release of The World of 98 Cents and Downstream Customers**

20 In further consideration of the promises and agreements herein contained, and for the
21 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and
22 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
23 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
24 form of legal action and releases any and all claims, including, without limitation, all actions,
25 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,
26 fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees
27 and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
28 (collectively "Claims"), against The World of 98 Cents and each of its downstream distributors,

1 wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners,
2 purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective
3 officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and
4 parent entities, (collectively "Releasees"). This release is limited to those claims that arise under
5 Proposition 65, as such claims relate to The World of 98 Cents' alleged failure to warn about
6 consumer or occupational exposures to or identification of the Listed Chemical contained in the
7 Products.

8 The Parties further understand and agree that this release shall not extend upstream to any
9 entities that manufactured the Products or any component parts thereof, or any distributors or
10 suppliers who sold the Products or any component parts thereof to The World of 98 Cents.

11 **5.2 The World of 98 Cents' Release of Brimer**

12 The World of 98 Cents waives any and all claims against Brimer, his attorneys and other
13 representatives, for any and all actions taken or statements made (or those that could have been
14 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
15 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
16 and/or with respect to the Products.

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved and entered by the Court within one
20 year after it has been fully executed by all Parties, in which event any monies that have been
21 provided to plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be
22 refunded within fifteen (15) days after receiving written notice from The World of 98 Cents that
23 the one-year period has expired.

24 **7. SEVERABILITY**

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

28

1 **8. ATTORNEYS' FEES**

2 In the event that, after the execution of this Consent Judgment: (1) a dispute arises with respect
3 to any provision of this Consent Judgment; or (2) Brimer or The World of 98 Cents takes
4 reasonable and necessary steps to enforce the terms of this Consent Judgment, the prevailing
5 party shall be entitled to reasonable attorneys' fees and costs. In the event that, after the
6 execution of this Consent Judgment The World of 98 Cents seeks modification of this Consent
7 Judgment pursuant to Section 14 below, Brimer shall be entitled to his reasonable attorneys' fees
8 and costs pursuant to CCP §1021.5.

9 **9. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California and apply within the State of California. In the event that Proposition 65 is repealed
12 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then The
13 World of 98 Cents shall provide written notice to Brimer of any asserted change in the law, and
14 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
15 extent that, the Products are so affected.

16 **10. NOTICES**

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

21 To The World of 98 Cents:

22 Sarah Esmaili, Esq.
23 BINGHAM MCCUTHCHEN LLP
24 3 Embarcadero Center
San Francisco, CA 94111

25 To Brimer:

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

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

3 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **12. COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE**
8 **§25249.7(F)**

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

11 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

12 Brimer and The World of 98 Cents agree to mutually employ their best efforts to support
13 the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment
14 by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health &
15 Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent
16 Judgment. Accordingly, plaintiff agrees to file a Motion to Approve the Agreement (“Motion”).
17 The World of 98 Cents shall have no additional responsibility to plaintiff’s counsel pursuant to
18 Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees and
19 costs incurred with respect to the preparation and filing of the Motion or with regard to plaintiff’s
20 counsel appearing for a hearing thereon.

21 **14. MODIFICATION**

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

27
28

1 **15. AUTHORIZATION**

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

<p>5 AGREED TO:</p> <p>6 Date: <u>9-9-07</u></p> <p>7 By: <u>[Signature]</u> Plaintiff, RUSSELL BRIMER</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, THE WORLD OF 98 CENTS, INC.</p>
<p>10 APPROVED AS TO FORM:</p> <p>11 Date: <u>9/7/07</u></p> <p>12 <u>[Signature]</u> HIRST & CHANLER LLP</p> <p>13 By: <u>[Signature]</u> Aparna L. Reddy Attorneys for Plaintiff RUSSELL BRIMER</p>	<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>BINGHAM MCCUTCHEN LLP</p> <p>By: _____ Sarah Esmaili Attorneys for Defendant THE WORLD OF 98 CENTS, INC.</p>

16 **IT IS SO ORDERED**

17
18 Date: _____ JUDGE OF THE SUPERIOR COURT

19
20
21
22
23
24
25
26
27
28

1 **15. AUTHORIZATION**

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

<p>5 AGREED TO:</p> <p>6 Date: _____</p> <p>7 By: _____ Plaintiff, RUSSELL BRIMER</p>	<p>5 AGREED TO:</p> <p>6 Date: <u>9/26/07</u></p> <p>7 By: <u>[Signature]</u> Defendant, THE WORLD OF 98 CENTS, 8 INC.</p>
<p>10 APPROVED AS TO FORM:</p> <p>11 Date: _____</p> <p>12 HIRST & CHANLER LLP</p> <p>13 By: _____ Aparna L. Reddy 14 Attorneys for Plaintiff 15 RUSSELL BRIMER</p>	<p>10 APPROVED AS TO FORM:</p> <p>11 Date: <u>9/27/07</u></p> <p>12 BINGHAM MCCUTCHEN LLP</p> <p>13 By: <u>[Signature]</u> Sarah Esmaili 14 Attorneys for Defendant 15 THE WORLD OF 98 CENTS, INC.</p>

16 **IT IS SO ORDERED**

17

18 Date: _____

19 _____
20 JUDGE OF THE SUPERIOR COURT