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9 Attorneys for Plaintiff
Russell Brimer
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION
14

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 99 CENTS ONLY STORES; and DOES 1
through 150,,

19 Defendants.
20

Case No. CGC-04-435211

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

21 **1. INTRODUCTION**

22 1.1 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and
23 between plaintiff Russell Brimer (hereafter "Brimer" or "Plaintiff") and 99¢ Only Stores
24 (erroneously sued herein as 99 Cents Only Stores) (hereafter "99¢" or "Defendant"), with
25 Plaintiff and 99¢ collectively referred to as the "Parties" and Brimer and 99¢ each being a
26 "Party."
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1 1.2 **Plaintiff.** Brimer is an individual residing in Alameda County, California who
2 seeks to promote awareness of exposures to toxic chemicals and improve human health by
3 reducing or eliminating hazardous substances contained in consumer and industrial products.

4 1.3 **General Allegations.** Plaintiff alleges that 99¢ has distributed and/or sold in the
5 State of California champagne goblets, and other glass and ceramic beverageware products with
6 colored artwork, designs or markings on the exterior surface with materials that contain lead
7 and/or cadmium that are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act
8 of 1986, California Health & Safety Code §§ 25249.5 *et seq.*, also known as Proposition 65, to
9 cause cancer and birth defects (or other reproductive harm). Lead and/or cadmium shall be
10 referred to herein as the “Listed Chemicals.”

11 1.4 **Product Descriptions.** The products that are covered by this Consent Judgment
12 are defined as follows: glass and ceramic beverageware products sold and/or distributed by 99¢
13 with colored artwork, designs or markings on the exterior surface including, by way of example
14 and without limitation, the glassware and ceramic products listed in Exhibit A. Such products
15 collectively are referred to herein as the “Products.”

16 1.5 **Notices of Violation.** Beginning on July 30, 2004, Brimer served 99¢ and
17 various public enforcement agencies with documents, entitled “60-Day Notice of Violation”
18 (“Notice”) that provided 99¢ and such public enforcers with notice that alleged that 99¢ was in
19 violation of Health & Safety Code § 25249.6 for failing to warn purchasers that the Products that
20 it sold expose users in California to the Listed Chemicals.

21 1.6 **Complaint.** On October 5, 2004, Brimer, in the interest of the general public in
22 California, filed a complaint entitled *Russell Brimer v. 99 Cents Only Stores; et al.*, Case No.
23 CGC-04-435211 (hereafter referred to as the “Complaint” or the “Action”) in the Superior Court
24 for the City and County of San Francisco against 99¢ and Does 1 through 150, alleging
25 violations of Health & Safety Code § 25249.6 based on the alleged exposures to one or more of
26 the Listed Chemicals contained in certain Products sold by 99¢.

27 1.7 **No Admission.** 99¢ denies the material factual and legal allegations contained in
28 Plaintiff’s Notices and Complaint. 99¢ maintains that all Products that it has sold and distributed

1 in California have been and are in compliance with all laws and that it had no knowledge of the
2 presence of Proposition 65-listed chemicals in the Products it has sold. Nothing in this Consent
3 Judgment shall be construed as an admission by 99¢ of any fact, finding, issue of law, or
4 violation of law, nor shall compliance with this Agreement constitute or be construed as an
5 admission by 99¢ of any fact, finding, conclusion, issue of law or violation of law. However,
6 this section shall not diminish or otherwise affect the obligations, responsibilities and duties of
7 99¢ under this Consent Judgment.

8 **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the
9 Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the
10 Complaint and personal jurisdiction over 99¢ as to the acts alleged in the Complaint, that venue
11 is proper in the City and County of San Francisco, and that this Court has jurisdiction to enter
12 this Consent Judgment and to enforce the provisions thereof.

13 **1.9 Effective Date.** For purposes of this Consent Judgment, the “Effective Date”
14 shall be the date that this Stipulation And [Proposed] Order Re: Consent Judgment is approved
15 and entered by the Court.

16 **2. INJUNCTIVE RELIEF: PROPOSITION 65**

17 **2.1 WARNINGS AND REFORMULATION OBLIGATIONS**

18 (a) **Required Warnings.** After the Effective Date, 99¢ shall not sell in
19 California any Products containing the Listed Chemicals that it purchases after the Effective Date,
20 unless warnings are given in accordance with one or more provisions in subsection 2.2 below

21 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and
22 2.2 below shall not apply to any Reformulated Products as defined in subsection 2.3
23 below.

24 **2.2 CLEAR AND REASONABLE WARNINGS**

25 (a) **Product Labeling.** A warning is affixed to the packaging, labeling or
26 directly to or on a Product by 99¢, its agent, or the manufacturer, importer, or distributor of the
27 Product that states:
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WARNING: The materials used as colored decorations on the exterior of this product contain lead and cadmium, chemicals known to the State of California to cause birth defects and other reproductive harm.

or

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

or

WARNING: This product contains chemicals known to the State of California to cause birth defects and other reproductive harm.

Warnings issued for Products pursuant to this subsection shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use or purchase. Any changes to the language or format of the warning required by this subsection shall only be made following: (1) approval of Plaintiff; (2) approval from the California Attorney General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or (3) Court approval.

(b) **Point-of-Sale Warnings.** 99¢ may execute its warning obligations, where applicable, through arranging for the posting of signs at its retail outlets in the State of California at which Products are used or sold, or at every cash register or other location where a sale occurs, in accordance with the terms specified in subsections 2.2(b)(i), and 2.2(b)(ii).

(i) Point of Sale warnings may be provided through one or more signs posted at or near the point of use, sale or display of the Products, or at every cash register or other location where a sale occurs that state:

WARNING: The materials used as colored decorations on the exterior of certain glass and ceramic beverageware products sold in this store contain lead and cadmium, chemicals known to the State of California to cause birth defects or other reproductive harm.

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The products for which this warning is given are identified with this symbol:



displayed on or next to the product.

or

WARNING: The materials used as colored decorations on the exterior of the following products sold in this store contain lead and cadmium, chemicals known to the State of California to cause birth defects or other reproductive harm:

(identify *specific* products to which warnings apply)

or

WARNING Use of certain glass and ceramic products with colored decorations on the exterior and 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.

Products identified with this symbol:



Displayed on our next to the product, are the ones for which this warning is given.

(ii) A point of sale warning provided pursuant to subsection 2.2(b)(i) shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use or purchase and shall be placed or written in a manner reasonably calculated to alert the consumer to which *specific* Products the warnings apply so as to minimize if not eliminate the chances that an overwarning situation will arise. Any changes to the language or format of the warning required for Products by this subsection shall

1 only be made following: (1) approval of Plaintiff; (2) approval from the California Attorney
2 General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for
3 the opportunity to comment; or (3) Court approval.

4 The requirements in Sections 2.1 and 2.2 above are not meant to reduce or expand 99¢
5 duty to warn beyond that required by Proposition 65 and its implementing regulations.

6 **2.3 REFORMULATION STANDARDS:** Products satisfying the conditions of
7 section 2.3(a), 2.3(b) 2.3(c) are referred to as "Reformulated Products" and are defined as
8 follows:

9 The colored artwork, designs or markings on the exterior surface of the Product do not
10 extend into the top 20 millimeters of the ware (*i.e.*, only appear below the exterior portion of the
11 lip and rim area as defined by American Society of Testing and Materials Standard Test Method
12 C 927-99, hereinafter the "Lip and Rim Area"), and either

13 (a) produces a test result no higher than 1.0 micrograms (ug) of lead and 4.0
14 micrograms (ug) of cadmium using a Ghost Wipe™ test applied on the decorated portions of the
15 surface of the Product performed as outlined in NIOSH method no. 9100; or

16 (b) If the Product utilizes materials for all colored artwork, designs or
17 markings that contain six one-hundredths of one percent (0.06%) lead and twenty-four hundredths
18 of one percent (0.24%) cadmium or less by weight as measured at the option of 99¢ or the
19 manufacturer or vendor of the Product, either before or after the material is fired onto (or
20 otherwise affixed to) the Product, using a sample size of the materials in question measuring
21 approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of
22 quantitation (as distinguished from detection) of less than 600 parts per million ("ppm").¹

23 (c) If the colored artwork, designs or markings on the exterior surface of the
24 Product extend into the top 20 millimeters of the ware, the materials used as colored artwork,
25 designs or markings must contain two one-hundredths of one percent (0.02%) lead and eight one-

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27 ¹ If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by weight
28 must relate only to the other portions of the decorating material and not include any calculation of non-decorating
material.

1 hundredths of one percent of cadmium (0.08%) or less by weight as measured at the option of 99¢
2 or the manufacturer or vendor of the Product, either before or after the material is fired onto (or
3 otherwise affixed to) the Product, using a sample size of the materials in question measuring
4 approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of
5 quantitation (as distinguished from detection) of less than 600 parts per million ("ppm").¹

6 2.4 COMPLIANCE COMMITMENT.

7 After the effective date, as part of its commitment to promote public health, 99¢
8 agrees, to take the following actions:

9 (a) To inform each manufacturer or distributor from whom 99¢ purchases
10 Products that they must comply with Proposition 65 by selling only Reformulated Products or by
11 providing the appropriate warning materials that meet the requirements of Proposition 65 as set
12 forth in this Consent Judgment; and

13 (b) To require each manufacturer or vendor from whom 99¢ purchases the
14 Products to certify that the Products have been tested using appropriate testing protocols and
15 either, (1) no Proposition 65 warning is required, or (2) the manufacturer or vendor will comply
16 with Proposition 65 by providing Proposition 65 warnings materials (as defined in Section 2.2
17 above) with the products. .

18 3. MONETARY PAYMENTS.

19 3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b). Pursuant to
20 Health & Safety Code Section 25249.7(b), 99¢ shall pay \$18,250 in civil penalties. The penalty
21 payment shall be made payable to "Chanler Law Group in Trust For Russell Brimer," and ,
22 within fifteen (15) days after plaintiff and plaintiffs counsel have executed this Stipulation and
23 delivered executed copies of the Stipulation to counsel for 99¢, shall be delivered to Plaintiff's
24 counsel at the following address:

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27 ¹ If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by weight
28 must relate only to the other portions of the decorating material and not include any calculation of non-decorating
material

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2 CHANLER LAW GROUP
3 Attn: Clifford A. Chanler
4 71 Elm Street, Suite 8
5 New Canaan, CT 06840

6 (a) In the event that 99¢ pays any penalty and the Consent Judgment is not
7 thereafter approved and entered by the Court, Brimer shall return any penalty funds paid under this
8 agreement within fifteen (15) days of receipt of a written request from 99¢ following notice of the
9 issuance of the Court's decision.

10 (b) The Parties agree that 99¢' potential interest in and ability to acquire and
11 market Reformulated Products is to be accounted for in this section and, because it is not a remedy
12 provided for by law, the absence of 99¢ previously acquiring, manufacturing, marketing or selling
13 Reformulated Products is not relevant to the establishment of a penalty amount pursuant to
14 section 3.1 above.

15 (c) **Apportionment of Penalties Received.** After Court approval of this
16 Consent Judgment pursuant to section 6, all penalty monies received shall be apportioned by
17 Plaintiff in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to
18 the State of California's Office of Environmental Health Hazard Assessment and the remaining
19 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code
20 § 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of
21 California the appropriate civil penalties paid in accordance with this section.

22 3.2 **Additional Penalty Payments.** If 99¢ does not commit, by means of sending
23 written notice to Plaintiff in the manner specified in Section 11 on or before June 30, 2007, that,
24 beginning on or before January 1, 2007, it has purchased (and will continue to purchase) for sale
25 in California only Reformulated Products, 99¢ shall on July 31, 2007, tender to Plaintiff an
26 additional sum of \$25,000 in civil penalties. Any such payments shall be made payable to
27 "Chanler Law Group in Trust For Russell Brimer."
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1 **4. REIMBURSEMENT OF FEES AND COSTS**

2 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
3 dispute without reaching terms on the amount of fees and costs to be reimbursed to them,
4 thereby leaving this fee issue to be resolved after the material terms of the agreement had been
5 settled. 99¢ then expressed a desire to resolve the fee and cost issue shortly after the other
6 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
7 the compensation due to Plaintiff and his counsel under the private attorney general doctrine
8 codified at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date
9 of the Agreement. Under the private attorney general doctrine codified at Code of Civil
10 Procedure § 1021.5, 99¢ shall reimburse Plaintiff and his counsel for fees and costs, incurred as
11 a result of investigating, bringing this matter (as well as any other matters reasonably related to
12 the sale of 99¢' Products allegedly sold in violation of Proposition 65) to 99¢' attention,
13 litigating and negotiating a settlement in the public interest. 99¢ shall pay Plaintiff and his
14 counsel \$68,750 for all attorneys' fees, expert and investigation fees, and litigation costs related
15 to the various claims made against 99¢. The payment shall be made payable to the "Chanler
16 Law Group" and shall be delivered to Plaintiff's counsel, within fifteen (15) days after plaintiff
17 and plaintiff's counsel have executed this Stipulation and delivered a copy of this Stipulation to
18 counsel for 99¢, shall be delivered to Plaintiff's counsel at the following address:

19 CHANLER LAW GROUP
20 Attn: Clifford A. Chanler
21 71 Elm Street, Suite 8
22 New Canaan, CT 06840

23 4.2 Except as specifically provided in this Consent Judgment, 99¢ shall have
24 no further obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with
25 regard to the Products covered in this Action.

26 **5. RELEASE OF ALL CLAIMS**

27 5.1 **Plaintiff's Release of 99¢.** In further consideration of the promises and
28 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors

1 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
2 participate in, directly or indirectly, any form of legal action and release all claims, including,
3 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
4 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
5 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
6 unknown, fixed or contingent (collectively "Claims"), against 99¢ and each of its licensors,
7 licensees, auctioneers, dealers, customers, owners, purchasers, users, parent companies,
8 corporate affiliates, subsidiaries and their respective officers, directors, attorneys,
9 representatives, shareholders, agents, and employees (collectively, "99¢ Releasees") arising
10 under Proposition 65, Business and Professions Code § 17200, and Business and Professions
11 Code § 17500 related to 99¢ or 99¢ Releasees' alleged failure to warn about exposures to or
12 identification of Listed Chemicals contained in the Products.

13 The Parties further agree and acknowledge that this Consent Judgment is a full,
14 final, and binding resolution of any violation of Proposition 65, Business and Professions Code §
15 17200, and Business and Professions Code § 17500 that have been or could have been asserted in
16 the Complaint against 99¢ for its alleged failure to provide clear and reasonable warnings of
17 exposure to or identification of Listed Chemicals in the Products.

18 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waive all
19 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
20 Claims against the 99¢ Releasees arising under Proposition 65, Business and Professions Code §
21 17200, and Business and Professions Code § 17500 related to each of the 99¢ Releasees' alleged
22 failures to warn about exposures to or identification of Listed Chemicals contained in the
23 Products identified in Exhibit A and for all actions or statements made by 99¢ or its attorneys or
24 representatives, in the course of responding to alleged violations of Proposition 65, Business and
25 Professions Code § 17200, and Business and Professions Code § 17500 by 99¢. Provided
26 however, Plaintiff shall remain free to institute any form of legal action to enforce the provisions
27 of this Consent Judgment.

1 It is specifically understood and agreed that the Parties intend that 99¢,
2 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in
3 the future (so long as 99¢ complies with the terms of the Consent Judgment) concerning 99¢ and
4 the 99¢ Releasees' compliance with the requirements of Proposition 65, Business and Professions
5 Code § 17200, and Business and Professions Code § 17500 as to the Listed Chemicals in the
6 Products.

7 This release expressly excludes any entity that manufactured or supplied any of the
8 Products to 99¢ other than Aroma Trading Company.

9 5.2 **99¢' Release of Plaintiff.** 99¢ waives all rights to institute any form of legal
10 action against Plaintiff, or his attorneys or representatives, for all actions taken or statements
11 made by Plaintiff and his attorneys or representatives, in the course of seeking enforcement of
12 Proposition 65, Business and Professions Code § 17200, and Business and Professions Code
13 § 17500 in this Action.

14 **6. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the
16 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
17 within one year after it has been fully executed by all Parties, in which event any monies that
18 have been provided to Plaintiff or his counsel pursuant to section 3 and/or section 4 above, shall
19 be refunded within fifteen (15) days.

20 **7. SEVERABILITY**

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

24 **8. ATTORNEYS' FEES**

25 In the event that a dispute arises with respect to any provision(s) of this Consent
26 Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover
27 reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of
28 such dispute.

1 **9. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically,
5 then 99¢ shall have no further obligations pursuant to this Consent Judgment with respect to, and
6 to the extent that, those Products are so affected.

7 **10. ENFORCEMENT OF CONSENT JUDGMENT WITH REGARD TO RETAIL
8 STORES IN CALIFORNIA**

9 10.1 Before moving to enforce the terms and conditions of Section 2 of this Consent
10 Judgment against 99¢ with respect to an alleged violation occurring at a retail store located in
11 California, Plaintiff and others must follow the procedures set forth in subsections 10.2 through
12 10.4.

13 10.2 In the event that Plaintiff and/or his attorneys, agents, assigns, or any other person
14 acting in the public interest under Health & Safety Code §25249.7(d), (hereinafter "Notifying
15 Person") identify one or more retail stores in California owned and operated by 99¢ at which
16 Products are sold (hereinafter "retail outlet") for which the warnings of the Products required
17 under subsections 2.2.A or 2.2.B of this Consent Judgment are not being given, such Notifying
18 Person shall notify 99¢, in writing, of such alleged failure to warn (the "Notice of Breach"). The
19 Notice of Breach shall be sent by first class mail, with proof of service, to the person(s)
20 identified in Section 11, and must be served within sixty (60) days of the date the alleged
21 violation was first observed. The Notice of Breach shall identify the date the alleged violation
22 was observed and the retail outlet in question, and reasonably describe the nature of the alleged
23 violation with sufficient detail to allow 99¢ to determine the basis of the claim being asserted
24 and the identities of the Covered Products to which those assertions apply.

25 10.3 In the event that the Notifying Person identifies a specific retail outlet, other than
26 the specific one identified in subsection 10.2 of this Consent Judgment, not giving warnings for
27 Covered Products as required under subsections 2.2.A or 2.2.B of this Consent Judgment, such
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1 Notifying Person shall serve 99¢ with another Notice of Breach in the manner described in
2 subsection 10.2 and provide the information required in subsection 10.2.

3 10.4 The Notifying Person shall take no further action against 99¢ unless the Notifying
4 Person discovers, at least thirty (30) days after service of the Notices of Breach served pursuant
5 to subsections 10.2 and 10.3, another failure to warn for any Covered Product or that the alleged
6 failure to warn is at the same retail outlet(s) identified in the Notices of Breach served pursuant
7 to subsections 10.2 and 10.3.

8 11. NOTICES

9 All correspondence and notices required to be provided pursuant to this Consent
10 Judgment shall be in writing and personally delivered or sent by: (1) first-class, registered,
11 certified mail, return receipt requested or (ii) overnight courier on either Party by the other at the
12 following addresses. (Either Party, from time to time, may, pursuant to the methods prescribed
13 above, specify a change of address to which all future notices and other communications shall be
14 sent.)

15 To 99¢:

16 Eric Schiffer, CEO
17 99¢ Only Stores
18 4000 E. Union Pacific Avenue
19 Los Angeles, CA 90023

20 With a copy to:

21 Patrick J. Cafferty, Jr., Esq.
22 MUNGER, TOLLES & OLSON
23 560 Mission Street, 27th Floor
24 San Francisco, CA 94105-2907

25 To Plaintiff:

26 Clifford A. Chanler
27 CHANLER LAW GROUP
28 71 Elm Street, Suite 8
New Canaan, CT 06840

12. NO ADMISSIONS

Nothing in this Consent Judgment shall constitute or be construed as an admission
by 99¢ of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance

1 with this Consent Judgment constitute or be construed as an admission by 99¢ of any fact,
2 finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by
3 99¢. 99¢ reserves all of its rights and defenses with regard to any claim by any party under
4 Proposition 65, Business and Professions Code § 17200, and Business and Professions Code §
5 17500 or otherwise. However, this section shall not diminish or otherwise affect 99¢'
6 obligations, responsibilities and duties under this Consent Judgment.

7 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

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

11 **14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

12 Plaintiff agrees to comply with the reporting form requirements referenced in
13 Health & Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section,
14 Plaintiff shall present this Consent Judgment to the California Attorney General's Office within
15 five (5) days after receiving all of the necessary signatures. A noticed motion to enter the
16 Consent Judgment will then be served on the Attorney General's Office at least forty-five (45)
17 days prior to the date a hearing is scheduled on such motion in the Superior Court for the City and
18 County of San Francisco unless the Court allows a shorter period of time.

19 **15. ADDITIONAL POST EXECUTION ACTIVITIES**

20 The Parties shall mutually employ their best efforts to support the entry of this
21 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
22 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a
23 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the
24 Plaintiff agrees to file a Motion to Approve the Agreement ("Motion"), within a reasonable
25 period of time after the Execution Date. 99¢ shall have no additional responsibility to Plaintiff's
26 counsel pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and
27 costs incurred with respect to the preparation and filing of the Motion and its supporting
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1 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings
2 thereon.

3 **16. MODIFICATION**

4 This Consent Judgment may be modified only by: (1) written agreement of the
5 Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of
6 any Party as provided by law and upon entry of a modified Consent Judgment by the Court. The
7 Attorney General shall be served with notice of any proposed modification to this Consent
8 Judgment at least fifteen (15) days in advance of its consideration by the Court. Plaintiff shall not
9 unreasonably withhold its agreement to a modification of this Consent Judgment to incorporate a
10 change in the warning language, format, size, posting location or method of warning that has been
11 approved in writing by the California Attorney General's Office.

12 **17. AUTHORIZATION**

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

23
24 AGREED TO:

25 Date: May 23, 2005

26 By: 
27 Plaintiff RUSSELL BRIMER

AGREED TO:

25 Date: May __, 2005

26 By: _____
27 Defendant 99¢ ONLY STORES
28 By: Mike Zelkind
Its: Executive Vice-President

1 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings
2 thereon.

3 **16. MODIFICATION**

4 This Consent Judgment may be modified only by: (1) written agreement of the
5 Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of
6 any Party as provided by law and upon entry of a modified Consent Judgment by the Court. The
7 Attorney General shall be served with notice of any proposed modification to this Consent
8 Judgment at least fifteen (15) days in advance of its consideration by the Court. Plaintiff shall not
9 unreasonably withhold its agreement to a modification of this Consent Judgment to incorporate a
10 change in the warning language, format, size, posting location or method of warning that has been
11 approved in writing by the California Attorney General's Office.

12 **17. AUTHORIZATION**

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

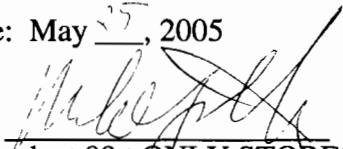
23 AGREED TO:

24 Date: May __, 2005

26 By: _____
27 Plaintiff RUSSELL BRIMER

AGREED TO:

24 Date: May ¹⁷__, 2005

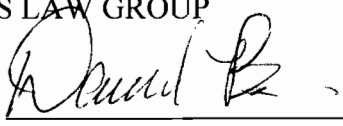
26 By: 
27 Defendant 99¢ ONLY STORES
28 By: Mike Zelkind
Its: Executive Vice-President

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APPROVED AS TO FORM:

Date: 5/23/05

PARAS LAW GROUP

By: 

Daniel Bornstein
Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date:

MUNGER , TOLLES & OLSON

By: _____

Patrick J. Cafferty, Jr.
Attorney for Defendant
99¢ ONLY STORES.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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PARAS LAW GROUP

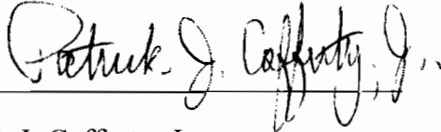
By: _____

Daniel Bornstein
Attorneys for Plaintiff
RUSSELL BRIMER

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MUNGER, TOLLES & OLSON

By:  _____

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Exhibit A

EXHIBIT A

All champagne goblets and glass and ceramic beverageware products with colored artwork, designs or markings on the exterior surface including, but not limited to:

8" Champagne Goblet H/P Wine Glass/Assorted

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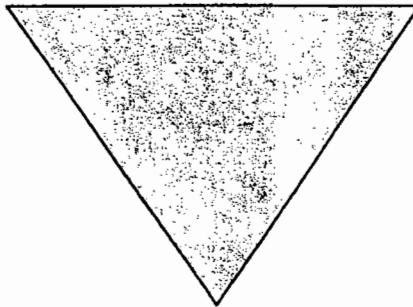
Exhibit B

1
2 EXHIBIT B
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4
5 PROP 65
6 WARNING
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8
9 Use of certain glass and ceramic products with colored
10 decorations on the exterior and use of certain tableware
11 for sale in this store will expose you to lead, a chemical
12 known to the State of California to
13 cause birth defects or other reproductive harm.
14

15 Products identified with this symbol:



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