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RUSSELL BRIMER

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San Luis Obispo, CA 93401  
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Attorneys for Defendant  
APPLE FARM COLLECTIONS-SLO, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN LUIS OBISPO  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
APPLE FARM; and DOES 1 through 150, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV060570  
**STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT**

1       **1. INTRODUCTION**

2               **1.1 Russell Brimer And Apple Farm Collections-SLO, Inc.**

3               This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter  
4       “Brimer” or “Plaintiff”) and defendant Apple Farm Collections-SLO, Inc. (sued as “Apple Farm,”  
5       hereafter “Apple Farm” or “Defendant”), with Brimer and Apple Farm collectively referred to as  
6       the “Parties.”

7               **1.2 Plaintiff**

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

11              **1.3 Defendant**

12              Apple Farm employs ten or more persons and is a person in the course of doing business for  
13       purposes of Proposition 65.

14              **1.4 General Allegations**

15              Brimer alleges that Apple Farm has manufactured, distributed and/or sold in the State of  
16       California certain bowls and other ceramic containers intended for the consumption of food or  
17       beverages with colored artwork or designs on the food contact surface and/or on the exterior  
18       containing lead. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of  
19       1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical known  
20       to the State of California to cause birth defects and other reproductive harm. Lead shall be referred  
21       to herein as the “Listed Chemical.”

22              **1.5 Product Description**

23              The products that are covered by this Consent Judgment are defined as follows: bowls and  
24       other ceramic containers intended for the consumption of food or beverages with colored artwork or  
25       designs on the food contact surface or on the exterior including, but not limited to, the products  
26       identified in Exhibit A to this Consent Judgment. All such bowls and other ceramic containers  
27       intended for the consumption of food or beverages with colored artwork or designs on the food  
28       contact surface and/or on the exterior shall be referred to herein as the “Products.”

1           **1.6 Notices of Violation**

2           On or about January 9, 2006, Brimer served Apple Farm and various public enforcement  
3 agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Apple  
4 Farm and such public enforcers with notice that alleged that Apple Farm was in violation of  
5 California Health & Safety Code §25249.6 for failing to warn consumers and customers that the  
6 Products that Apple Farm sold exposed users in California to the Listed Chemical. On or before  
7 December 15, 2006, Brimer will have served Apple Farm and various public enforcement agencies  
8 with documents entitled “Supplemental 60-Day Notice of Violation” expanding Brimer’s prior  
9 allegations concerning the products to include exposures to lead from glassware and ceramicware  
10 with colored artwork and designs on the exterior (the “Supplemental Notice”).

11           **1.7 Complaint**

12           On March 21, 2006, Brimer, who is acting in the interest of the general public in California,  
13 filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the Superior Court in  
14 and for the [City and] County of San Francisco against Apple Farm Collections-SLO, Inc. and Does  
15 1 through 150 (*Brimer v. Apple Farm*, CGC-06-450510) alleging violations of Health & Safety  
16 Code §25249.6 based on the alleged exposures to the Listed Chemical contained in Products sold  
17 by Apple Farm. On or about June 8, 2006, an order transferring the case was entered by the San  
18 Francisco Superior Court, and the case was transferred to the Superior Court for the County of San  
19 Luis Obispo (*Brimer v. Apple Farm*, San Luis Obispo County Superior Court, Case No.  
20 CV060570). Upon the running of the sixty-day notice period associated with the Supplemental  
21 Notice, and provided that no authorized public enforcer of Proposition 65 initiates an action against  
22 Apple Farm based on the additional allegations therein contained in the interim, the definition of  
23 “Products” as used in both the Complaint and this Consent Judgment shall be deemed to be  
24 expanded to include ceramicware with colored artwork and designs (containing lead) on the exterior  
25 as well as ceramicware with colored artwork and designs (containing lead) on the food contact  
26 surface.

27           **1.8 No Admission**

28           Apple Farm denies the material factual and legal allegations contained in Brimer’s Notice

1 and Complaint and maintains that all products that it has sold and distributed in California,  
2 including the Products, have been and are in compliance with all laws. Nothing in this Consent  
3 Judgment shall be construed as an admission by Apple Farm of any fact, finding, issue of law, or  
4 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
5 admission by Apple Farm of any fact, finding, conclusion, issue of law or violation of law, such  
6 being specifically denied by Apple Farm. However, this Section shall not diminish or otherwise  
7 affect the obligations, responsibilities and duties of Apple Farm under this Consent Judgment.

8 **1.9 Consent to Jurisdiction**

9 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
10 jurisdiction over Apple Farm as to the allegations contained in the Complaint, that venue is proper  
11 in the County of San Luis Obispo and that this Court has jurisdiction to enter and enforce the  
12 provisions of this Consent Judgment.

13 **1.10 Effective Date**

14 For purposes of this Consent Judgment, the term "Effective Date" shall mean December 1,  
15 2006.

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

17 **2.1** After the Effective Date, Apple Farm shall not sell, ship or offer to be shipped for  
18 sale in California Products containing the Listed Chemical unless such Products are sold or shipped  
19 with the clear and reasonable warnings set out in Section 2.2 or comply with the Reformulation  
20 Standards set forth in Section 2.3.

21 Any warning issued for Products pursuant to this Section 2.2 below shall be  
22 prominently placed with such conspicuousness as compared with other words, statements, designs,  
23 or devices as to render it likely to be read and understood by an ordinary individual under  
24 customary conditions before purchase or, for Products shipped directly to an individual in  
25 California, before use. Any warning issued pursuant to Section 2.2 shall be provided in a manner  
26 such that the consumer or user understands to which *specific* product the warning applies, so as to  
27 minimize if not eliminate the chance of an overwarning situation.

28 ///



1 placed on the product.

2 **2.2.2 Exceptions**

3 The warning requirements set forth in Section 2.2.1 shall not apply to:

- 4 (i) Any Products manufactured and shipped to a third party before the Effective  
5 Date; or  
6 (ii) Reformulated Products (as defined in Section 2.3 below).

7 **2.3 Reformulation Standards**

8 The following Products shall be deemed to be “Reformulated Products” and to comply with  
9 Proposition 65 and be exempt from any Proposition 65 warning requirements under Sections 2.2:

- 10 (a) With respect to products containing colored artwork or decorations on the food  
11 contact surface, all products that contain no detectable lead. “No Detectable lead”  
12 shall mean that lead is not detected at a level above two one-hundredths of one  
13 percent (0.02%) by weight.  
14 (b) With respect to products containing colored artwork or designs on the exterior,  
15 products that utilize decorating materials that contain six one hundredths of one  
16 percent (0.06%) or less of lead by weight; and there must be no detectable lead in  
17 the lip and rim area.

18 **2.4 Reformulation Goal**

19 Apple Farm hereby commits to ensure that as many products as reasonably possible that it  
20 offers for sale in California after February 1, 2007, shall qualify as Reformulated Products, with the  
21 commitment that at least 80% of the Products that it sells in California after June 1, 2007, will be  
22 Reformulated Products as defined in Section 2.3. Thereafter Apple Farm shall undertake  
23 commercially reasonable efforts to ensure that the remaining Products that it sells are reformulated  
24 products.

25 **3. MONETARY PAYMENTS**

26 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

27 The total settlement amount shall be \$5,000, which shall be paid by Apple Farm as set forth  
28 herein. Pursuant to Health & Safety Code §25249.7(b), Apple Farm shall pay the \$5,000 in civil

1 penalties in two installments. The first payment of \$2,000 shall be made on or before January 15,  
2 2007. The second payment of \$3,000 shall be payable February 23, 2007. The second payment  
3 shall be waived in the event that Apple Farm certifies in writing under penalty of perjury with  
4 supporting facts and documentation, not later than February 16, 2007, that it has complied with the  
5 Reformulation Commitment set forth in Section 2.4. Said payments shall be made payable to the  
6 “HIRST & CHANLER LLP in Trust For Russell Brimer” and shall be delivered to plaintiff’s  
7 counsel at the following address:

8 HIRST & CHANLER LLP  
9 Attn: Proposition 65 Controller  
10 2560 Ninth Street  
11 Parker Plaza, Suite 214  
12 Berkeley, CA 94710-2565

11 **3.2 Apportionment of Penalties Received**

12 All penalty monies received shall be apportioned by Brimer in accordance with Health &  
13 Safety Code §25192, with 75% of these funds remitted by Brimer to the State of California’s Office  
14 of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies  
15 retained by Brimer as provided by Health & Safety Code §25249.12(d). Brimer shall bear all  
16 responsibility for apportioning and paying to the State of California the appropriate civil penalties  
17 paid in accordance with this Section.

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

19 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
21 issue to be resolved after the material terms of the agreement had been settled. Apple Farm then  
22 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
23 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
24 Brimer and his counsel under the private attorney general doctrine codified at California Code of  
25 Civil Procedure §1021.5 for all work performed through the Effective Date of this Consent  
26 Judgment. Under the private attorney general doctrine, Apple Farm shall reimburse Brimer and his  
27 counsel for fees and costs incurred as a result of investigating, bringing this matter to Apple Farm’s  
28 attention, litigating and negotiating a settlement in the public interest and seeking the Court’s

1 approval of the settlement agreement. Apple Farm shall pay Brimer and his counsel \$22,000 for all  
2 attorneys' fees, expert and investigation fees, litigation and related costs. The payment shall be  
3 made payable to HIRST & CHANLER LLP and shall be delivered on or before January 15, 2007 at  
4 the following address:

5 HIRST & CHANLER LLP  
6 Attn: Proposition 65 Controller  
7 2560 Ninth Street  
8 Parker Plaza, Suite 214  
9 Berkeley, CA 94710-2565

8  
9 **5. RELEASE OF ALL CLAIMS**

10 **5.1 Release of Apple Farm and Downstream Customers**

11 In further consideration of the promises and agreements herein contained, and for the  
12 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and  
13 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
14 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form  
15 of legal action and releases all claims, including, without limitation, all actions, and causes of  
16 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,  
17 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees)  
18 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"),  
19 against Apple Farm and each of its downstream distributors, wholesalers, licensors, licensees,  
20 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,  
21 corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,  
22 shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This  
23 release is limited to those claims that arise under Proposition 65, as they relate to Apple Farm's  
24 alleged failure to warn about exposures to or identification of the Listed Chemical contained in the  
25 Products.

26 The Parties further understand and agree that this release shall not extend upstream to any  
27 entities that manufactured the Products or any component parts thereof, or any distributors or  
28 suppliers who sold the Products or any component parts thereof to Apple Farm.



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**5.2 Apple Farm's Release of Brimer**

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

**6. COURT APPROVAL**

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

**7. SEVERABILITY**

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

**8. ATTORNEYS' FEES**

In the event that, after Court approval: (1) any party or third party seeks modification of this Consent Judgment pursuant to Section 14 below; or (2) Brimer takes reasonable and necessary steps to enforce the terms of this Consent Judgment, Brimer shall be entitled to reasonable attorneys' fees and costs pursuant to CCP §1021.5.

**9. GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws 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 by reason of law generally, or as to the Products, then Apple Farm shall provide written notice to Brimer of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products

1 are so affected.

2 **10. NOTICES**

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

7 To Apple Farm:

8 FREDERICK K. GLICK, ESQ.  
9 1315 Santa Rosa Street  
San Luis Obispo, CA 93401

10 To Brimer:

11 Proposition 65 Coordinator  
12 HIRST & CHANLER LLP  
13 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

16 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

23 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

24 Brimer and Apple Farm agree to mutually employ their best efforts to support the entry of  
25 this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court  
26 in a timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a  
27 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the  
28

1 plaintiff agrees to file a Motion to Approve the Agreement (“Motion”) within a reasonable period of  
2 time after the Execution Date. Apple Farm shall have no additional responsibility to Plaintiff’s  
3 counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of  
4 any fees and costs incurred with respect to the preparation and filing of the Motion and its  
5 supporting declaration or with regard to Plaintiff’s counsel appearing for a hearing thereon.

6 **14. MODIFICATION**

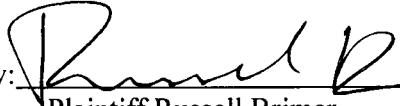
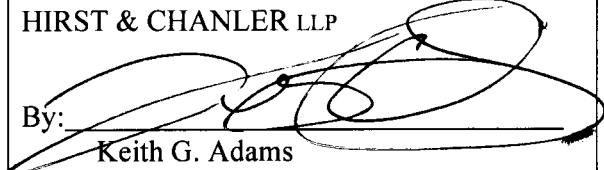
7 This Consent Judgment may be modified only by: (1) written agreement of the Parties and  
8 upon entry of a modified Consent Judgment by the Court thereon; or (2) motion of any Party as  
9 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney  
10 General shall be served with notice of any proposed modification to this Consent Judgment at least  
11 fifteen (15) days in advance of its consideration by the Court.

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**15. AUTHORIZATION**

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

<p><b>AGREED TO:</b></p> <p>Date: <u>11-27-06</u></p> <p>By:  Plaintiff Russell Brimer</p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant Apple Farm Collections-SLO, Inc.</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>11/27/2006</u></p> <p>HIRST &amp; CHANLER LLP</p> <p>By:  Keith G. Adams Attorneys for Plaintiff RUSSELL BRIMER</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>Frederick K. Glick</p> <p>By: _____ Frederick K. Glick Attorneys for Defendant APPLE FARM</p>

**IT IS SO ORDERED.**

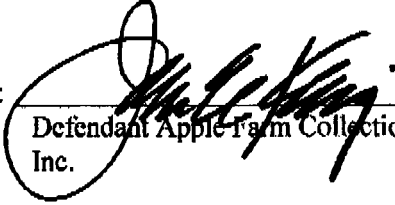
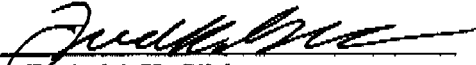
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JUDGE OF THE SUPERIOR COURT

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**15. AUTHORIZATION**

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

<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Plaintiff Russell Brimer</p>	<p><b>AGREED TO:</b></p> <p>Date: <u>12-1-06</u></p> <p>By:  Defendant Apple Farm Collections-SLO, Inc.</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: _____ Keith G. Adams Attorneys for Plaintiff RUSSELL BRIMER</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>12/1/06</u></p> <p>Frederick K. Glick</p> <p>By:  Frederick K. Glick Attorneys for Defendant APPLE FARM</p>

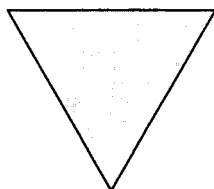
**IT IS SO ORDERED.**

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

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JUDGE OF THE SUPERIOR COURT

**Exhibit A**

The Designated Symbol that Defendant will use to identify Products containing the Listed Chemical which are sold through its catalogs or on its website is:



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