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19 BACARDI U.S.A., INC

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
22 UNLIMITED CIVIL JURISDICTION

23 RUSSELL BRIMER )

24 Plaintiff, )

25 v. )

26 BACARDI U.S.A., INC; and DOES 1 through )  
27 150, inclusive, )

28 Defendants. )  
\_\_\_\_\_ )

**CASE NO. CGC-06-453355**

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

1       **1. INTRODUCTION**

2               **1.1 Russell Brimer And Bacardi U.S.A.**

3               This Consent Judgment is entered into by and between plaintiff Russell Brimer  
4 (hereinafter "Brimer" or "Plaintiff") and defendant Bacardi U.S.A., Inc. (hereafter "Bacardi" or  
5 "Defendant"), with Brimer and Bacardi collectively referred to as the "Parties."

6               **1.2 Plaintiff**

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

10              **1.3 Defendant**

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

13              **1.4 General Allegations**

14              Brimer alleges that Bacardi has manufactured, distributed and/or sold in the State of  
15 California certain glassware with exterior decorations that contain lead and/or cadmium. Lead  
16 and cadmium are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986,  
17 California Health & Safety Code §§25249.5 *et seq.* ("Proposition 65"), as chemicals known to the  
18 State of California to cause birth defects and other reproductive harm. Lead and cadmium shall  
19 be referred to herein as the "Listed Chemicals."

20              **1.5 Product Description**

21              The products that are covered by this Consent Judgment are defined as follows: glassware  
22 intended for the consumption of food or beverages with colored artwork or designs (containing  
23 lead and/or cadmium) on the exterior and that Bacardi sells or offers for sale or distribution in  
24 California. All such glassware and any set or combination pack containing such glassware shall  
25 be referred to herein as the "Products."

26              **1.6 Notices of Violation**

27              On January 13, 2006, Brimer served Bacardi and various public enforcement agencies  
28 with documents entitled "60-Day Notice of Violation" (the "Notice") that provided Bacardi and

1 such public enforcers with notice that alleged that Bacardi was in violation of California Health &  
2 Safety Code §25249.6 for failing to warn consumers and customers that the Products that Bacardi  
3 sold exposed users in California to lead. On or about August 11, 2006, Brimer will have served  
4 Defendant and various public enforcement agencies with documents, entitled "Supplemental  
5 Notice of Violation" ("Supplemental Notice") that will have provided Defendant and the public  
6 enforcers with notice that Defendant was allegedly in violation of Health & Safety Code §25249.6  
7 for failing to warn individuals that Products that Defendant sold expose individuals in California  
8 to cadmium.

9 **1.7 Complaint**

10 On June 20, 2006, Brimer, who is acting in the interest of the general public in California,  
11 filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the Superior Court  
12 in and for the City and County of San Francisco against Bacardi U.S.A., Inc. and Does 1 through  
13 150, (*Brimer v. Bacardi U.S.A., Inc.*, Case No. CGC-06-453355) alleging violations of Health &  
14 Safety Code §25249.6 based on the alleged exposures to the lead contained in the Products sold  
15 by Bacardi. The Complaint shall be deemed amended to allege exposures to cadmium from the  
16 Products, as described in the Supplemental Notice, as of the sixty-sixth (66<sup>th</sup>) day following the  
17 date of the Supplemental Notice, provided that no public enforcement authority designated under  
18 Health & Safety Code §25249.7 has filed a complaint against the Defendant on behalf of the  
19 public interest with respect to those new allegations set forth in the Supplemental Notice.

20 **1.8 No Admission**

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

1                   **1.9 Consent to Jurisdiction**

2                   For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
3 jurisdiction over Bacardi as to the allegations contained in the Complaint, that venue is proper in  
4 the County of San Francisco and that this Court has jurisdiction to enter and enforce the  
5 provisions of this Consent Judgment.

6                   **1.10 Effective Date**

7                   For purposes of this Consent Judgment, the term "Effective Date" shall mean October 1,  
8 2006.

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

10                  **2.1** After the Effective Date, Bacardi shall not sell in California, ship to California for  
11 sale, or offer to ship for sale in California, Products containing the Listed Chemicals unless such  
12 Products are sold or shipped with the clear and reasonable warnings set out in Section 2.2 or  
13 comply with the Reformulation Standards as set forth in Section 2.3 or are otherwise exempt from  
14 the warning requirements of Section 2.2 ("Exempt Products") by virtue of their being covered by  
15 other Consent Judgments, as described in Section 2.2.2(iii).

16                  Any warning issued for Products pursuant to this Section 2.2 below shall be prominently  
17 placed with such conspicuousness as compared with other words, statements, designs, or devices  
18 as to render it likely to be read and understood by an ordinary individual under customary  
19 conditions before purchase or, for Products shipped directly to an individual consumer in  
20 California, before use.

21                  **2.2 Product Warnings**

22                  **2.2.1** Clear and Reasonable Warnings. This Section describes Bacardi's options  
23 for satisfying the warning obligations required by Section 2.1, depending, in part, on the manner  
24 of sale:

25                               **(a) Retail Store Sales**

26                                       **(i) Product Labeling.** From the Effective Date, a warning will  
27 be affixed to the packaging, labeling or directly on the Product by or on behalf of Bacardi, that  
28 states:

1                   **WARNING:** The colored artwork or designs used on  
2   this product contains lead and/or  
3   cadmium, chemicals known to the State of  
4   California to cause birth defects and other  
5   reproductive harm.

6   **(ii) Point-of-Sale Warnings.** Bacardi may perform its warning  
7   obligations by point-of-sale warning signs posted at retail outlets in the State of California where  
8   the Products are sold in the manner described below. Bacardi shall provide written instructions to  
9   each retailer or distributor to whom Bacardi sells Products directly, which instruct that the retailer  
10    must post the appropriate warnings, or must inform such retailers or distributors of this warning  
11    obligation by other reasonable means. Bacardi's instructions must specify that point-of-sale  
12    warnings shall be provided through one or more signs posted in close proximity to the point of  
13    display of the Products that state:

14    **WARNING:** The colored artwork or designs used on  
15   this product contains lead and/or  
16   cadmium, chemicals known to the State of  
17   California to cause birth defects and other  
18   reproductive harm.

19    The instructions must further specify that any point-of-sale warning shall be provided in a  
20    manner such that the consumer may reasonably be expected to understand to which specific  
21    Products the warning applies.

22    **(b) Mail Order Catalog and Internet Sales.** Defendant shall satisfy its  
23    warning obligations for Products that it sells by mail order catalog or from the internet to  
24    California residents, by providing a warning: (a) in the mail order catalog and/or on the website;  
25    or (b) with the Product when it is shipped to an address in California. Warnings given in the mail  
26    order catalog or on the website shall identify the specific Product to which the warning applies as  
27    further specified in Sections 2.2.1(b)(i), (ii) and/or (iii) as applicable:

28    **(i) Mail Order Catalog.** Any warning provided in a mail order  
  catalog must be in the same type size or larger as the product description text within the catalog.  
  The following warning shall be provided on the same page and in the same location as the display

1 and/or description of the Product:

2 **WARNING:** The colored artwork or designs used on this  
3 product contains lead and/or cadmium,  
4 chemicals known to the State of California to  
5 cause birth defects and other reproductive  
6 harm.

7 Where it is impracticable to provide the warning on the same page and in the same location as the  
8 display and/or description of the Product, Bacardi may utilize a designated symbol to cross  
9 reference the applicable warning ("Designated Symbol") and shall provide the following language  
10 on the inside of the front cover of the catalog or on the same page as any order form for the  
11 Product(s):

12 **WARNING:** The colored artwork or designs used on  
13 certain products identified with this symbol  
14 ∇ and offered for sale in this catalog contain  
15 lead and/or cadmium, chemicals known to  
16 the State of California to cause birth defects  
17 and other reproductive harm.

18 The Designated Symbol (shown on Exhibit A attached hereto) must appear on the same  
19 page and in close proximity to the display and/or description of the Product. On each page where  
20 the Designated Symbol appears, Bacardi must provide a header or footer directing the consumer  
21 to the warning language and definition of the Designated Symbol.

22 If Defendant elects to provide warnings in the mail order catalog, then the warnings must  
23 be included in all catalogs offering to sell one or more Products printed after the Effective Date.

24 (ii) **Internet Web Sites and Pages.** A warning may be given in  
25 conjunction with Bacardi's sale of the Product via the internet, provided it appears either: (a) on  
26 the same web page on which the Product is displayed; (b) on the same web page as the order form  
27 for the Product; (c) on the same page as the price for any Product; or (d) on one or more web  
28 pages displayed to a purchaser during the checkout process. The following warning statement  
shall be used and shall appear in any of the above instances adjacent to or immediately following  
the display, description, or price of the Product for which it is given in the same type size or larger  
as the product description text:

1                   **WARNING:** The colored artwork or designs used on  
2   this product contains lead and/or  
3   cadmium, chemicals known to the State  
   of California to cause birth defects and  
   other reproductive harm.

4                   Alternatively, the Designated Symbol may appear adjacent to or immediately following  
5                   the display, description or price of the Product for which a warning is being given, provided that  
6                   the following warning statement also appears elsewhere on the same web page:

7                   **WARNING:** Products identified on this page with the  
8   following symbol use colored artwork or  
9   designs that contains lead and/or cadmium,  
10    chemicals known to the State of California  
  to cause birth defects and other reproductive  
  harm: ▽

11   **(iii) Package Insert or Label.** For all Products Bacardi sells by  
12                   catalog or via the internet, a warning may be provided with the Product when it is shipped directly  
13                   to an individual in California, by either: (a) affixing the following warning language to the  
14                   packaging, labeling or directly to a specific Product; (b) inserting a warning card measuring at  
15                   least 4" x 6" in the shipping carton which contains the following warning language; or (c) by  
16                   placing the following warning statement on the packing slip or customer invoice on the line  
17                   directly below the description of the Product on the packing slip or customer invoice:

18                   **WARNING:** The colored artwork or designs used on  
19   this product contains lead and/or  
20   cadmium, chemicals known to the State  
   of California to cause birth defects and  
   other reproductive harm.

21                   Alternatively, Bacardi may place the following language on the packing slip or invoice and  
22                   specifically identifying the Product in lettering of the same size or larger as the description of the  
23                   Product:

24                   **WARNING:** The colored artwork or designs used on the  
25   following product(s) contains lead and/or  
26   cadmium, chemicals known to the State of  
27   California to cause birth defects or other  
   reproductive harm: *[list products for which*  
   *warning is given].*

1                                   **2.2.2 Exceptions**

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

- 3                   (i)   Any Products shipped to a third party before the Effective Date;
- 4                   (ii)   Reformulated Products (as defined in Section 2.3 below); or
- 5                   (iii) any Products supplied to Bacardi by any other person in the course of doing
- 6                   business who is subject to a final judgment in an action brought by Brimer, Dr.
- 7                   Whitney Leeman or Michael DiPirro or a public enforcer whose action was
- 8                   brought on behalf of the People of the State of California addressing Proposition
- 9                   65 warning obligations arising from alleged exposures to lead or cadmium from
- 10                  glassware with colored artwork, designs or markings on the exterior surface.

11                                   **2.3 Reformulation Standards**

12           The following Reformulated Products shall be deemed to comply with Proposition 65 and

13           be exempt from any Proposition 65 warning requirements under Sections 2.2:

14                               **2.3.1(A) Content-Based Standard** Products with exterior decorations that

15                               contain six one-hundredths of one percent (0.06%) of lead by weight or less as measured either

16                               before or after the material is fired onto (or otherwise affixed to) the Product using a test method

17                               of sufficient sensitivity to establish a limit of quantification of less than 600 parts per million

18                               (“ppm”)<sup>1</sup> and forty-eight one-hundredths of one percent (0.48%) of cadmium by weight or less as

19                               measured either before or after the material is fired onto or otherwise affixed to the Product using

20                               a test method of sufficient sensitivity to establish a limit of quantification of less than 4800 ppm.

21                               **2.3.1(B) Standard for “Lip and Rim Area.”** Products with decorations within

22                               the “Lip and Rim Area”<sup>2</sup> that contain two one-hundredths of one percent (0.02%) of lead by

23                               weight or less as measured either before or after the material is fired onto (or otherwise affixed to)

24                               the Product, using a sample size of the material in question measuring approximately 50-100 mg

25 \_\_\_\_\_

26           <sup>1</sup>If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by

27           weight must relate only to the decorating material and must not include any quantity attributable to non-

28           decorating material (e.g., the glass substrate).

<sup>2</sup>“Lip and Rim Area” is defined as the exterior top 20 millimeters of a hollowware glassware food

          or beverage Product.



1 and a test method of sufficient sensitivity to establish a limit of quantitation of less than 200 ppm<sup>3</sup>  
2 and eight one hundredths of one percent (0.08%) of cadmium by weight or less as measured either  
3 before or after the material is fired onto (or otherwise affixed to) the Product, using a sample size  
4 of the material in question measuring approximately 50-100 mg and a test method of sufficient  
5 sensitivity to establish a limit of quantification of less than 800 ppm.

6 **2.3.2 Wipe Test-Based Standard.** Products that provide a test result no higher  
7 than 1.0 microgram (µg) of lead and no higher than 8.0 µg of cadmium as applied to the exterior  
8 decoration and performed in accordance with NIOSH method no. 9100.

9 **2.4 Reformulation Commitment**

10 Bacardi hereby commits to the following regarding Reformulated Products:

11 2.4.1 Bacardi shall undertake good faith efforts to ensure that as many Products as  
12 reasonably possible that it offers for sale in California after the Effective Date shall qualify  
13 as either Reformulated Products or Exempt Products.

14 2.4.2 At least 80 percent (80%) of the Products Bacardi offers for sale in  
15 California after February 28, 2007, will be either Reformulated Products or Exempt Products.

16 2.4.3 Bacardi will undertake commercially reasonable efforts to sell one hundred  
17 percent (100%) Reformulated Products or Exempt Products in California after March 1, 2007.

18 **3. MONETARY PAYMENTS**

19 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

20 Pursuant to Health & Safety Code §25249.7(b), Bacardi shall pay \$33,000 in civil  
21 penalties, with the penalty payment on or before September 1, 2006. Said payments shall be  
22 made payable to the "HIRST & CHANLER LLP in Trust For Russell Brimer" and shall be  
23 delivered to plaintiff's counsel at the following address:

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

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<sup>3</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 non-decorating material (e.g., the glass substrate).

1                   **3.2 Apportionment of Penalties Received**

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

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

9                   The Parties acknowledge that Brimer and his counsel offered to resolve their differences  
10                  in this dispute on the merits prior to reaching terms on the amount of fees and costs to be  
11                  reimbursed to them, thereby leaving this fee issue to be resolved only after the material terms of  
12                  the agreement had been settled. Bacardi then expressed a willingness to resolve the fee and cost  
13                  issue after the other settlement terms had been finalized. The Parties then attempted to (and did)  
14                  reach an accord on the compensation due to Brimer and his counsel under the private attorney  
15                  general doctrine codified at California Code of Civil Procedure §1021.5 for all work performed  
16                  through the Court's approval of this agreement. Under the private attorney general doctrine,  
17                  Bacardi shall reimburse Brimer and his counsel for fees and costs incurred as a result of  
18                  investigating, bringing this matter to Bacardi's attention, litigating and negotiating a settlement in  
19                  the public interest and seeking the Court's approval of the settlement agreement. Bacardi shall  
20                  pay Brimer and his counsel \$57,000 for all attorneys' fees, expert and investigation fees, litigation  
21                  and related costs. The payment shall be made payable to HIRST & CHANLER LLP and shall be  
22                  delivered on or before September 1, 2006 at the following address:

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

28                   **5. RELEASE OF ALL CLAIMS**

**5.1 Release of Bacardi and Downstream Customers**

                    In further consideration of the promises and agreements herein contained, and for the

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

15 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and  
16 binding resolution of any direct or derivative violation of Proposition 65, that has been or could  
17 have been asserted in the Complaint against Bacardi for Bacardi's Releasees' alleged failure to  
18 provide clear and reasonable warnings of exposure to or identification of one or more of the Listed  
19 Chemicals in the exterior decorations on the Products manufactured, decorated, imported,  
20 distributed or offered for use or sale by Bacardi.

21 It is specifically understood and agreed that Bacardi's compliance with the terms of this  
22 Consent Judgment resolves all issues and liability, now and in the future (so long as Bacardi  
23 complies with the terms of the Consent Judgment) concerning Bacardi and Bacardi's Releasees'  
24 compliance with the requirements of Proposition 65, as to the Listed Chemicals in the exterior  
25 decorations of the Products manufactured, decorated, imported, distributed or offered for use or  
26 sale by Bacardi.

27 The Parties further understand and agree that this release shall not extend upstream to any  
28 entities that manufactured the Products or any component parts thereof, or any distributors or

1 suppliers who sold the Products or any component parts thereof to Bacardi. The Parties  
2 recognize, however, that such upstream entities may be parties to, or covered by, other Consent  
3 Judgments relating to the subject matter of this action.

4 **5.2 Bacardi's Release of Brimer**

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

10 **6. COURT APPROVAL**

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

17 **7. SEVERABILITY**

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

21 **8. ATTORNEYS' FEES**

22 In the event that, after Court approval: (1) a dispute arises with respect to any provision of  
23 this Consent Judgment; (2) Bacardi or any third party seeks modification of this Consent  
24 Judgment pursuant to Section 14 below; or (3) Brimer takes reasonable and necessary steps to  
25 enforce the terms of this Consent Judgment, Brimer shall be entitled to his reasonable attorneys'  
26 fees and costs pursuant to CCP §1021.5.

27 **9. GOVERNING LAW**

28 The terms of this Consent Judgment shall be governed by the laws of the State of

1 California and apply within the State of California. In the event that Proposition 65 is repealed or  
2 is otherwise rendered inapplicable by reason of law generally (including judicial decision), or as  
3 to the Products, then Bacardi shall provide written notice to Brimer of any asserted change in the  
4 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and  
5 to the extent that, the Products are so affected.

6 **10. NOTICES**

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

11 To Bacardi:

12 General Counsel  
13 Bacardi U.S.A., Inc.  
2100 Biscayne Boulevard  
Miami, FL 33137

14 To Brimer:

15 Proposition 65 Controller  
16 HIRST & CHANLER LLP  
2560 Ninth Street  
17 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

20 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

27 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

28 Brimer and Bacardi agree to mutually employ their best efforts to support the entry of this

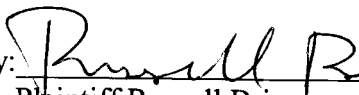
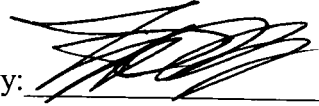
1 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
2 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a  
3 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the  
4 Parties agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of  
5 which Bacardi's counsel shall prepare, within a reasonable period of time after the Execution  
6 Date (i.e., not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based  
7 on unanticipated circumstances). Bacardi shall have no additional responsibility to Plaintiff's  
8 counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement  
9 of any fees and costs incurred with respect to the preparation and filing of the Joint Motion and its  
10 supporting declaration or with regard to Plaintiff's counsel appearing for a hearing thereon.

11 **14. MODIFICATION**

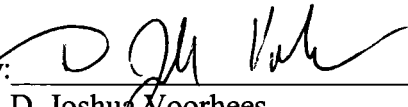
12 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
13 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
14 of any Party and entry of a modified Consent Judgment by the Court. The Attorney General shall  
15 be served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

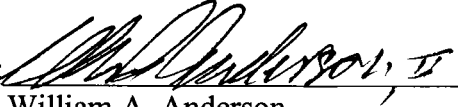
17 **15. AUTHORIZATION**

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

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: <u>8/10/06</u>	Date: <u>8/8/06</u>
By: <u></u> Plaintiff Russell Brimer	By: <u></u> Sr. Vice President Defendant Bacardi U.S.A., Inc.

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**APPROVED AS TO FORM:**  
Date: 8/10/06  
HIRST & CHANLER LLP  
By:   
D. Joshua Voorhees  
Attorneys for Plaintiff  
RUSSELL BRIMER

**APPROVED AS TO FORM:**  
Date: 8/9/2006  
WILLIAMS MULLEN PC  
By:   
William A. Anderson  
William W. Belt  
Attorneys for Defendant  
Bacardi U.S.A., INC.

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

**Exhibit A**

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

