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8 Attorneys for Plaintiff
9 RUSSELL BRIMER

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE CITY AND COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,
15 Plaintiff,
16 vs.
17 CIRCLE IMPORTS, INC.; TJX COMPANIES,
18 INC.; HOMEGOODS, INC.; and DOES 1
through 150,
19 Defendants.

ENDORSED
FILED
San Francisco County Superior Court

JUN 20 2005

GORDON PARK-LI, Clerk
BY: S. PENG
Deputy Clerk

Case No. CGC-04-435209

**[PROPOSED] ORDER PURSUANT TO
TERMS OF STIPULATION AND
[PROPOSED] ORDER RE: CONSENT
JUDGMENT**

Date: June 20, 2005
Time: 9:30 a.m.
Dept: 301
Judge: Hon. James L. Warren


1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant CIRCLE
2 IMPORTS ("Defendant"), having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the Consent Judgment entered into by the above-referenced parties and
4 attached hereto as **Exhibit A**; and after consideration of the papers submitted and the arguments
5 presented, the Court finds that the settlement agreement set out in the attached Consent Judgment
6 meets the criteria established by Senate Bill 471, in that:

- 7 1. The health hazard warning that is required by the Consent Judgment complies with
8 Health & Safety Code section 25249.7 (as amended by Senate Bill 471);
- 9 2. The reimbursement of fees and costs to be paid pursuant to the parties' Consent
10 Judgment is reasonable under California law; and
- 11 3. The civil penalty amount to be paid pursuant to the parties' Consent Judgment is
12 reasonable,

13 IT IS HEREBY ORDERED that judgment be entered in this case, in accordance with the
14 terms of the Consent Judgment, attached hereto as **Exhibit A**.

15 IT IS SO ORDERED.

16 Dated: JUN 20 2005



Hon. James L. Warren
JUDGE OF THE SUPERIOR COURT

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15 RUSSELL BRIMER

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18 INC.; HOMEGOODS, INC.; and DOES 1
19 through 150,

20 Defendants.

Case No. CGC-04-435209

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

21
22
23 **1. INTRODUCTION**

24 **1.1 Plaintiff and Settling Defendant** This Consent Judgment is entered into by and
25 between plaintiff RUSSELL BRIMER (hereafter "Mr. Brimer," "Brimer" or "Plaintiff") and
26 CIRCLE IMPORTS, INC. (hereafter "Circle Imports"), with Plaintiff and Circle Imports collectively
27 referred to as the "Parties" and Mr. Brimer and Circle Imports each being a "Party."
28

1 **1.2 Plaintiff** Mr. Brimer is an individual residing in Alameda, California who seeks to
2 promote awareness of exposures to toxic chemicals and improve human health by reducing or
3 eliminating hazardous substances contained in consumer and industrial products.

4 **1.3 General Allegations** Plaintiff alleges that Circle Imports has distributed and/or sold
5 in the State of California tumblers and other glassware with colored designs and/or artwork on the
6 exterior surface that contain lead (and/or lead compounds) that are listed pursuant to the Safe
7 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5, *et*
8 *seq.*, also known as Proposition 65, to cause cancer and birth defects and other reproductive harm.
9 Lead (and/or lead compounds) shall be referred to herein as “Listed Chemicals.” Circle Imports
10 denies Plaintiff’s allegations.

11 **1.4 Product Descriptions** The products that are covered by this Consent Judgment are
12 defined as follows: all tumblers and other glassware with colored designs and/or artwork (containing
13 lead) on their exterior surface. Such products collectively are referred to herein as the “Products.”

14 **1.5 Notices of Violation** On July 30, 2004, Mr. Brimer alleges that he served Circle
15 Imports and various public enforcement agencies with documents, entitled “60-Day Notice of
16 Violation” (“Notice”) that provided Circle Imports and such public enforcers with notice that alleged
17 that Circle Imports was in violation of Health & Safety Code §25249.6 for failing to warn purchasers
18 that certain products that it sold expose users in California to lead and lead compounds.

19 **1.6 Complaint** On October 5, 2004, Mr. Brimer, who asserts that he is acting in the
20 interest of the general public in California, filed a complaint (hereafter referred to as the
21 “Complaint” or the “Action”) in the Superior Court for the City and County of San Francisco against
22 Circle Imports, the TJX Companies, Inc. (“TJX”), HomeGoods, Inc. (“HomeGoods”), and Does 1
23 through 150, alleging violations of Health & Safety Code §25249.6 based on the alleged exposures
24 to one or more of the Listed Chemicals contained in certain products sold by Circle Imports. On or
25 about November 30, 2004, Circle Imports (and TJX and HomeGoods) filed Answers to the
26 Complaint.

27 **1.7 No Admission** Circle Imports denies the material factual and legal allegations
28 contained in Plaintiff’s Notice and Complaint and maintains that all products that it has sold and

1 distributed in California including the Products have been and are in compliance with all laws.
2 Nothing in this Consent Judgment shall be construed as an admission by Circle Imports, or any other
3 defendant, of any fact, finding, issue of law, or violation of law, nor shall compliance with this
4 Agreement constitute or be construed as an admission by Circle Imports, or any other defendant, of
5 any fact, finding, conclusion, issue of law or violation of law. However, this section shall not
6 diminish or otherwise affect the obligations, responsibilities and duties of Circle Imports under this
7 Consent Judgment.

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

13 **1.9 Effective Date** For purposes of this Consent Judgment, "Effective Date" shall be
14 January 31, 2005.

15 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS AND REFORMULATION**

16 **2.1 Warning Obligations For Non-Reformulated Products**

17
18 **2.1.A. Required Warnings and Non-exempt Products** After January 31, 2005,
19 Circle Imports shall not sell or offer for sale in California any Non-exempt Products containing the
20 Listed Chemicals, unless warnings are given in accordance with one or more provisions in
21 subsection 2.2 below. As used in this Consent Judgment, "Non-exempt Products" shall mean all
22 Products sold in California except those excluded in subsection 2.1.B below.

23 **2.1.B. Exceptions** The warning requirements set forth in subsections 2.1.A and 2.2
24 below shall not apply to:

- 25 i. any Products manufactured before January 31, 2005,
26 ii. Reformulated Products, or
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- iii. any Products manufactured by any other person in the course of doing business who is subject to a final judgment addressing Proposition 65 warning obligations arising from alleged exposures to tumblers and other glassware with colored artwork, designs or markings on the exterior surface.

2.2 Clear And Reasonable Warnings

2.2.A. Product Labeling A warning is affixed to the packaging, labeling or directly to or on a Non-exempt Product by Circle Imports or its agent, that states:

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

WARNING: The materials used as colored decorations on the exterior of these products contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.¹
or

WARNING: The materials used as colored decorations on the exterior of the following products contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.
or

WARNING: The exterior handpaint used on this product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Wash hands after handling to minimize exposure.

Warnings issued for Non-exempt Products pursuant to this subsection shall be prominently placed with such conspicuousness as compared with other words, statements, designs, and 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.

2.2.B. Point-of-Sale Warnings Circle Imports may execute its warning obligations, where applicable, through arranging for the posting of signs at retail outlets in the State of California at which Non-exempt Products are sold, in accordance with the terms specified in subsections

¹ This formulation of the warning may only be used with respect to Products when sold as a set.

1 2.2.B.1, and 2.2.B.2, so long as Circle Imports receives a written commitment from each retailer that
2 it will post the warning signs.

3 **2.2.B.1.** Point of Sale warnings may be provided through one or more
4 signs posted at or near the point of sale or display of the Non-exempt Products that state:

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

10 **WARNING:** The materials used as colored decorations on the exterior of
11 tumblers and other glassware products sold in this store
12 contain lead, a chemical known to the State of California to
13 cause birth defects or other reproductive harm.²
14 or

15 **WARNING:** The materials used as colored decorations on the exterior of
16 the following tumbler and other glassware products sold in
17 this store contain lead, a chemical known to the State of
18 California to cause birth defects or other reproductive
19 harm.
20 or

21 **WARNING:** The exterior handpaint used on this product contains lead,
22 a chemical known to the State of California to cause birth
23 defects or other reproductive harm. Wash hands after
24 handling to minimize exposure.

25 **2.2.B.2.** A point of sale warning provided pursuant to subsection
26 2.2.B.1 shall be prominently placed with such conspicuousness as compared with other words,
27 statements, designs, or devices as to render it likely to be read and understood by an ordinary
28 individual under customary conditions of use or purchase and shall be placed or written in a manner
such that the consumer understands to which specific Non-exempt 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 Non-exempt Products by this subsection shall only be
made following: (1) approval of Plaintiff; (2) approval from the California Attorney General's

² This formulation of the warning may only be used where the store in which the Non-exempt Products are sold sells only Non-exempt Products, which are not included in Section 2.3.

1 Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for the
2 opportunity to comment; or (3) Court approval.

3 **2.3 Reformulation Standards and Commitment:** Products satisfying the conditions of
4 section 2.3.A, 2.3.B, 2.3.C, and/or 2.3.D are referred to as “Reformulated Products.” The warnings
5 required pursuant to sections 2.1.A and 2.2 above shall not be required for Reformulated Products,
6 defined as follows:

7 **2.3.A.** If the colored artwork, designs or markings on the exterior surface of the
8 Product does not extend into the top 20 millimeters of the ware (i.e., only appears below the exterior
9 portion of the lip and rim area as defined by American Society of Testing and Materials Standard
10 Test Method C927-99, hereinafter the “Lip and Rim Area”), produce a test result no higher than 1.0
11 micrograms (ug) of lead using a Ghost Wipe™ test applied on painted portions of the surface of the
12 Product performed as outlined in NIOSH method no. 9100, such Product is a Reformulated Product;
13 or

14 **2.3.B.** If the Product is a ceramic mug and achieves a result of .20 parts per million
15 (“ppm”) or less for lead when tested under the ASTM 738-81 test method modified for total
16 immersion and comparison to internal volume, such Product is a Reformulated Product; or

17 **2.3.C.** If the Product utilizes paints for all colored artwork, designs or markings
18 containing six one-hundredths of one percent (0.06%) lead by weight or less as measured at Circle
19 Import’s option, either before or after the material is fired onto (or otherwise affixed to) the Product,
20 using a sample size of the materials in question measuring approximately 50-100 mg and a test
21 method of sufficient sensitivity to establish a limit of quantitation (as distinguished from detection)
22 of less than 600 ppm, such Product is a Reformulated Product.

23 **2.3.D.** Should any court enter a final judgment in a case brought by Mr. Brimer or
24 the People of the State of California involving tumblers and other glassware with colored artwork,
25 designs or markings allegedly containing lead which sets forth standards defining when Proposition
26 65 warnings will or will not be required (“Alternative Standards”), Circle Imports shall be entitled to
27 seek a modification of this Consent Judgment pursuant to section 15 herein, so as to be able to utilize
28 and rely on such Alternative Standards in lieu of those set forth in sections 2.3 of this Consent

1 Judgment; Mr. Brimer shall not unreasonably contest any proposed application to effectuate such a
2 modification provided that the Products for which such a modification are sought are substantially
3 similar in type and function to those for which the Alternative Standards apply.

4 **2.3.E.** Circle agrees to use its best efforts to reformulate all of its products so they
5 meet the standards set forth in this paragraph.

6 **3. MONETARY PAYMENTS**

7 **3.1 Penalties Pursuant To Health & Safety Code §25249.7(b)** Pursuant to Health &
8 Safety Code §25249.7(b), Circle Imports shall pay a total of \$20,000 in civil penalties to be paid no
9 later than February 15, 2005, and made payable to “Chanler Law Group in Trust for Russell
10 Brimer.”

11 **3.1.A.** In the event that Circle Imports pays any penalty and the Consent Judgment is
12 not thereafter approved and entered by the Court, Mr. Brimer shall return any penalty funds paid
13 under this agreement within fifteen (15) days of receipt of a written request from Circle Imports
14 following notice of the issuance of the Court’s decision.

15 **3.2 Apportionment of Penalties Received** After Court approval of this Consent
16 Judgment pursuant to section 6, all penalty monies received shall be apportioned by Plaintiff in
17 accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of
18 California’s Office of Environmental Health Hazard Assessment and the remaining 25% of these
19 penalty monies retained by Plaintiff as provided by Health & Safety Code §25249.12(d) Plaintiff
20 shall bear all responsibility for apportioning and paying to the State of California the appropriate
21 civil penalties paid in accordance with this section.

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

23 **4.1** The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
24 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
25 this fee issue to be resolved after the material terms of the agreement had been settled. Circle
26 Imports then expressed a desire to resolve the fee and cost issue shortly after the other settlement
27 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
28 compensation due to Plaintiff and his counsel under the private attorney general doctrine codified at

1 California Code of Civil Procedure §1021.5 for all work performed through the Effective Date of the
2 Agreement. Under the private attorney general doctrine, Circle Imports shall reimburse Plaintiff and
3 his counsel for fees and costs, incurred as a result of investigating, bringing this matter to Circle
4 Import's attention, litigating and negotiating a settlement in the public interest. Circle Imports shall
5 pay Plaintiff and his counsel \$50,000 for all attorneys' fees, expert and investigation fees, and
6 litigation costs. The payment shall be made payable to the "Chanler Law Group" and shall be
7 delivered to Plaintiff's counsel in two installments. The first payment shall be made on or before
8 February 15, 2005, in the amount of \$15,000. The second payment shall be made on or before
9 March 15, 2005, in the amount of \$35,000. Payment shall be delivered to Plaintiff's counsel at the
10 following address:

11
12 CHANLER LAW GROUP
13 Attn: Clifford A. Chanler, Esq.
14 71 Elm Street, Suite 8
15 New Canaan, CT 06840

16 Except as specifically provided in this Consent Judgment, Circle Imports shall have
17 no further obligation with regard to reimbursement of Plaintiff's attorneys' fees and costs with
18 regard to the Products covered in this Action.

19 **5. RELEASE OF ALL CLAIMS**

20 **5.1 Plaintiff's Release of Circle Imports And Its Retailers** In further consideration of
21 the promises and agreements herein contained, and for the payments to be made pursuant to sections
22 3 and 4, Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys,
23 successors and/or assignees, and in the interest of the general public, hereby waives all rights to
24 institute or participate in, directly or indirectly, any form of legal action and release all claims,
25 including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities,
26 demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited
27 to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
28 unknown, fixed or contingent (collectively "Claims"), against Circle Imports and each of its retailers
(and specifically including TJX Companies, Inc., HomeGoods, Inc., Marshalls, TJ Maxx, and Bed
Bath & Beyond, Inc.), licensors, licensees, auctioneers, dealers, customers, owners, purchasers,

1 users, parent companies, corporate affiliates, subsidiaries and their respective officers, directors,
2 attorneys, representatives, shareholders, agents, and employees (collectively, "Circle Imports'
3 Releasees") arising under Proposition 65, Business & Professions Code §17200, *et seq.* and Business
4 & Professions Code §17500, *et seq.*, related to Circle Imports' or Circle Imports' Releasees' alleged
5 failure to warn about exposures to or identification of Listed Chemicals contained in the Products.

6 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
7 binding resolution of any violation of Proposition 65, Business & Professions Code §§17200, *et seq.*
8 and Business & Professions Code §§17500, *et seq.*, that have been or could have been asserted in the
9 Complaints against Circle Imports and Circle Imports' Releasees for their alleged failure to provide
10 clear and reasonable warnings of exposure to or identification of Listed Chemicals in the Products.

11 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waive all rights to
12 institute or participate in, directly or indirectly, any form of legal action and releases all Claims
13 against the Circle Imports' Releasees arising under Proposition 65, Business & Professions Code
14 §§17200, *et seq.* and Business & Professions Code §§17500, *et seq.*, related to each of the Circle
15 Imports' Releasees' alleged failures to warn about exposures to or identification of Listed Chemicals
16 contained in the Products and for all actions or statements made by Circle Imports or its attorneys or
17 representatives, in the course of responding to alleged violations of Proposition 65, Business &
18 Professions Code §§17200 or Business & Professions Code §§17500 by Circle Imports. Provided
19 however, Plaintiff shall remain free to institute any form of legal action to enforce the provisions of
20 this Consent Judgment.

21 It is specifically understood and agreed that the Parties intend that Circle Imports'
22 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in the
23 future (so long as Circle Imports complies with the terms of the Consent Judgment) concerning
24 Circle Imports' and the Circle Imports' Releasees' compliance with the requirements of Proposition
25 65, Business and Professions Code §§17200, *et seq.* and Business & Professions Code §§ 17500, *et*
26 *seq.*, as to the Listed Chemicals in the Products.

27 **5.2 Circle Imports' Release of Plaintiff** Circle Imports and Circle Imports' Releasees
28 waive all rights to institute any form of legal action against Plaintiff, or their attorneys or

1 representatives, for all actions taken or statements made by Plaintiff and his attorneys or
2 representatives, in the course of seeking enforcement of Proposition 65, Business & Professions
3 Code §§17200, *et seq.* or Business & Professions Code §§17500, *et seq.* in this Action.

4 **6. COURT APPROVAL**

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

10 **7. SEVERABILITY**

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

14 **8. ATTORNEYS' FEES**

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

18 **9. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of California
20 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
21 rendered inapplicable by reason of law generally, or as to the Products specifically, then Circle
22 Imports shall have no further obligations pursuant to this Consent Judgment with respect to, and to
23 the extent that, those Products are so affected.

24 **10. NOTICES**

25 All correspondence and notices required to be provided pursuant to this Consent Judgment
26 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
27 return receipt requested or (ii) overnight courier on either Party by the others at the following
28 addresses.

1 To Circle Imports:

2 Ellie Elman, President
3 Circle Imports, Inc.
4 1065 Shepard Avenue
5 Brooklyn, New York 11208

6 With a copy to:

7 Donald M. Carley, Esq.
8 SONNENSCHN NATH & ROSENTHAL LLP
9 685 Market Street, 6th Floor
10 San Francisco, California 94105

11 To Plaintiff:

12 Clifford A. Chanler, Esq.
13 Chanler Law Group
14 71 Elm Street, Suite 8
15 New Canaan, CT 06840

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

18 **11. NO ADMISSIONS**

19 Nothing in this Consent Judgment shall constitute or be construed as an admission by Circle
20 Imports, or any other defendant, of any fact, finding, conclusion, issue of law, or violation of law,
21 nor shall compliance with this Consent Judgment constitute or be construed as an admission by
22 Circle Imports, or any other defendant, of any fact, finding, conclusion, issue of issue of law, or
23 violation of law, such being specifically denied by Circle Imports. Circle Imports reserves all of its
24 rights and defenses with regard to any claim by any party under Proposition 65 or otherwise.
25 However, this section shall not diminish or otherwise affect Circle Imports' obligations,
26 responsibilities and duties under this Consent Judgment.

27 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **13. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(F)**

2 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
3 Safety Code §25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
4 present this Consent Judgment to the California Attorney General's Office within two (2) days after
5 receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment will then
6 be served on the Attorney General's Office at least forty-five (45) days prior to the date a hearing is
7 scheduled on such motion in the Superior Court for the City and County of San Francisco unless the
8 Court allows a shorter period of time.

9 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

10 The Parties shall mutually employ their best efforts to support the entry of this Agreement as
11 a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
12 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is
13 required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties agree to file
14 a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which Plaintiff's
15 counsel shall prepare, within a reasonable period of time after the Execution Date (*i.e.*, not to exceed
16 fourteen (14) days unless otherwise agreed to by the Parties' counsel based on unanticipated
17 circumstances). Plaintiff's counsel shall prepare a declaration in support of the Joint Motion that
18 shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to Section 4,
19 within a reasonable period of time after the Execution Date (*i.e.*, not to exceed twenty-one (21) days
20 unless otherwise agreed to by the Parties' counsel based on unanticipated circumstances). Circle
21 Imports shall have no additional responsibility to Plaintiff's counsel pursuant to Code of Civil
22 Procedure §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with
23 respect to the preparation and filing of the Joint Motion and its supporting declaration or with regard
24 to Plaintiff's counsel appearing for a hearing or related proceedings thereon.

25 **15. DISMISSAL**

26 Within fifteen (15) days of Entry of Order by the Court approving the Joint Motion to
27 Approve the Agreement, Plaintiff shall file a Request for Dismissal dismissing defendants TJX
28 Companies, Inc. and HomeGoods, Inc. without prejudice from this case.

1 **16. MODIFICATION**

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

7 **17. AUTHORIZATION**

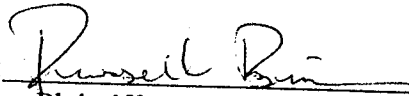
8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Parties and have read, understood and agree to all of the terms and conditions of this
10 Consent Judgment.

11 **AGREED TO:**

AGREED TO:

12
13 Date: 2-1-05

Date: _____

14
15 By: 
16 Plaintiff Russell Brimer

By: _____
Defendant Circle Imports, Inc.

17 **APPROVED AS TO FORM:**

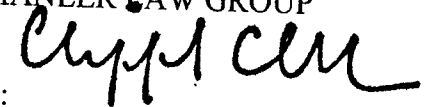
APPROVED AS TO FORM:

18
19 Date: 2-10-05

Date: _____

20 CHANLER LAW GROUP

SONNENSCHN NATH & ROSENTHAL LLP

21
22 By: 
23 Clifford A. Chanler
24 Attorneys for Plaintiff
25 RUSSELL BRIMER

By: _____
Donald M. Carley
Attorneys for Defendant
CIRCLE IMPORTS, INC.

26 **IT IS SO ORDERED.**

27 Date: _____

JUDGE OF THE SUPERIOR COURT

16. MODIFICATION

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

17. 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.

AGREED TO:

AGREED TO:

Date: _____

Date: 2/1/05

By: _____
Plaintiff Russell Brimer

By: Julia Goldberg CEO
Defendant Circle Imports, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: 2/4/05

CHANLER LAW GROUP

SONNENSCHN NATH & ROSENTHAL LLP

By: _____
Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

By: Donald M. Carley
Attorneys for Defendant
CIRCLE IMPORTS, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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10

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

14 RUSSELL BRIMER,

15 Plaintiff,

16 vs.

17 CIRCLE IMPORTS, INC.; TJX COMPANIES,
18 INC.; HOMEGOODS, INC.; and DOES 1
through 150,

19 Defendants.
20

ENDORSED
FILED
San Francisco County Superior Court

JUN 20 2005

GORDON PARK-LI, Clerk
BY: S. PENG
Deputy Clerk

Case No. CGC-04-435209

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF STIPULATION AND
ORDER RE: CONSENT JUDGMENT**

Date: June 20, 2005
Time: 9:30 a.m.
Dept: 301
Judge: Hon. James L. Warren

1 In the above-entitled action, Plaintiff Russell Brimer and Defendant CIRCLE IMPORTS,
2 having agreed through their respective counsel that judgment be entered pursuant to the terms of the
3 Consent Judgment entered into by the parties, and after issuing an Order Approving Proposition 65
4 Settlement Agreement and Consent Judgment on June 20, 2005.

5
6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to
7 Code of Civil Procedure section 664.5, judgment is entered in accordance with the terms of the
8 Order Approving Proposition 65 Settlement Agreement and Consent Judgment, between the parties.

9 **IT IS SO ORDERED.**

10 JUN 20 2005
11 Dated: _____, 2005

JAMES L. WARREN

12 Hon. James L. Warren
13 JUDGE OF THE SUPERIOR COURT