



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Christopher M. Martin, State Bar No. 186021
HIRST & CHANLER LLP
566 W. Adams, Suite 450
Chicago, IL 60661
Telephone: (312) 376-1801
Facsimile: (312) 376-1804

Attorneys for Plaintiff
RUSSELL BRIMER

FILED
ALAMEDA COUNTY

JUN 13 2008

CLERK OF THE SUPERIOR COURT
Vicki Daybell

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,

v.

DFI (SAN JOSE) INC.; and DOES 1 through
150, inclusive,

Defendants.

Case No. RG-06-302793

~~[PROPOSED]~~ ORDER PURSUANT
TO TERMS OF STIPULATION AND
ORDER RE: SETTLEMENT
AGREEMENT

Date: February 20, 2008
Time: 9:00 A.M.
Dept.: 31
Judge: ~~Hon. Winifred Y. Smith~~
Hon. Frank Roesch
Reservation # 756018

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant DFI (SAN JOSE) INC. have agreed through their respective counsel that judgment be entered pursuant to the terms of the Consent Judgment entered into by the above-referenced parties and attached hereto as Exhibit A. After consideration of the papers submitted and the arguments presented, the Court finds that the settlement in the attached Consent Judgment meets the criteria established by Senate Bill 471, in that:

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

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

IT IS SO ORDERED.

Dated: 2/20/08

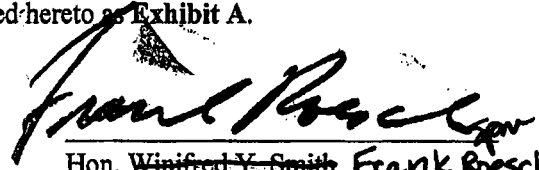

 Hon. ~~Winifred Y. Smith~~ Frank Roesch
 JUDGE OF THE SUPERIOR COURT

Exhibit A

1 Christopher M. Martin, State Bar No. 186021
2 D. Joshua Voorhees, State Bar No. 241436
3 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

11 Joanne Carlson, State Bar No. 160898
12 BURISS LAW FIRM
13 Old Mill Office Center
14 201 San Antonio Circle, Suite 160
15 Mountain View, CA 94040
16 Telephone: (650) 948-7127
17 Facsimile: (650) 941-6709

18 Attorneys for Defendant
19 DFI (SAN JOSE) INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF ALAMEDA COUNTY
22 UNLIMITED CIVIL JURISDICTION

23 RUSSELL BRIMER,

24 Plaintiff,

25 v.

26 DFI (SAN JOSE) INC.; and DOES 1 through
27 150, inclusive,

28 Defendants.

Case No. RG-06-302793

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

STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Russell Brimer (Brimer or plaintiff) and defendant DFI (San Jose) Inc., (defendant or DFI), with Brimer and DFI referred to as the "parties."

1.2 Plaintiff

Brimer is an individual residing in Alameda County in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Defendant

DFI is a California corporation located in Hayward, California. From October 2005 through October 2006, DFI employed ten or more persons and was a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (Proposition 65).

1.4 General Allegations

Plaintiff alleges that defendant has manufactured, distributed, and/or sold motherboards with solder containing lead in the State of California without the requisite health hazard warnings. Lead is a substance known to cause birth defects and other reproductive harm and is listed pursuant to Proposition 65. Lead shall be referred to hereinafter as the "listed chemical."

1.5 Product Description

The products that are covered by this Consent Judgment are defined as follows: motherboards with lead-containing solder, such as the *DFI NF4X Infinity Motherboard (# 8 46976 00026 8)*, and components utilized with motherboards that contain lead solder. Examples of forms

1 of solder include, but are not limited to, solder, solder balls, solder spheres, solder paste, wave
2 solder, solder joints, die bumps, and flip-chip bumps. All such motherboards with lead-containing
3 solder, and components utilized with such motherboards that contain lead solder, shall be referred
4 to hereinafter as "products." Products that are integrated into a desktop computer system as a
5 component thereof, prior to the sale or acquisition of the computer system, shall be referred to
6 hereinafter as "integrated products." Products that are sold individually and not as a component
7 integrated into a computer system shall be referred to hereinafter as "non-integrated products."
8

9
10 **1.6 Notices of Violation**

11 On October 13, 2006, Brimer served defendant and various public enforcement agencies
12 with a document entitled "60-Day Notice of Violation" (Notice) that provided defendant and such
13 public enforcers with notice that alleged that defendant was in violation of California Health &
14 Safety Code §25249.6 for failing to warn consumers, workers and others that the products that
15 defendant sold exposed users in California to the listed chemical.
16

17 **1.7 Complaint**

18 On December 18, 2006, Brimer, who is acting in the interest of the general public in
19 California, filed a complaint (Complaint or Action) in the Superior Court of Alameda County
20 against DFI (San Jose) Inc., and Does 1 through 150, *Brimer v. DFI (San Jose) Inc.; and DOES 1*
21 *through 150, inclusive, Alameda Superior Court Case No. RG-06-302793*, alleging violations of
22 California Health & Safety Code §25249.6, based on the alleged exposures to the listed chemical
23 contained in the products defendant sold.
24

25 **1.8 No Admission**

26 Defendant denies the material factual and legal allegations contained in Brimer's Notice
27 and Complaint, denies any and all liability under Proposition 65, and maintains that all products
28

1 that it has sold and distributed in California have been and are in compliance with all laws.
2 Nothing in this Consent Judgment shall be construed as an admission by defendant of any fact,
3 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
4 constitute or be construed as an admission by defendant of any fact, finding, conclusion, issue of
5 law, or violation of law, such being specifically denied by defendant. However, this Section shall
6 not diminish or otherwise affect defendant's obligations, responsibilities and duties under this
7 Consent Judgment.
8

9 **1.9 Consent to Jurisdiction**

10 For purposes of this Consent Judgment only, the parties stipulate that this Court has
11 jurisdiction over defendant as to the allegations contained in the Complaint, that venue is proper in
12 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
13 this Consent Judgment.
14

15 **1.10 Effective Date**

16 For purposes of this Consent Judgment, the term "effective date" shall mean July 25, 2007.
17

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

19 **2.1 Product Warnings**

20 After the effective date, defendant shall not sell, ship, or offer to be shipped for sale in
21 California products containing the listed chemical unless such products are sold or shipped with
22 the clear and reasonable warning set out in this Section 2.1, comply with the reformulation
23 standards set forth in Section 2.3 or are otherwise exempt pursuant to Section 2.2.
24

25 Any warning issued for products pursuant to this Section 2.1 shall be prominently placed
26 with such conspicuousness as compared with other words, statements, designs, or devices as to
27 render it likely to be read and understood by an ordinary individual under customary conditions
28

1 before purchase or, for products shipped directly to an individual in California or used in the
2 workplace, before use. Any warning issued pursuant to this Section 2.1 shall be provided in a
3 manner such that the consumer or user understands to which *specific* product the warning applies,
4 so as to minimize if not eliminate the chance that an overwarning situation will arise. Since
5 November 1, 2006, DFI has employed fewer than ten persons and hence is no longer a "person"
6 under Proposition 65. DFI has no plans to increase the number of its employees. As a company
7 with fewer than 10 employees, DFI is not currently subject to the requirements of Proposition 65,
8 and agrees to provide warnings required by this Consent Judgment as a matter of compromise and
9 cooperation.
10

11
12 Sections 2.1(a)-(c) describe defendant's options for satisfying its warning obligations
13 depending, in part, on the manner of sale. The warning requirement of Section 2.1(d) shall apply
14 regardless of the manner of sale. The following warnings will be applicable when the product is
15 sold either to consumers or in a business-to-business transaction:
16

17 (a) **Retail Store Sales of Non-Integrated Products**

18 (i) **Product Labeling.** From the effective date, a warning will be
19 affixed to packaging, labeling, or directly on each non-integrated product sold in retail outlets by
20 defendant or its agents, that states:

21 **WARNING:** The solder used in this product contains lead, a
22 chemical known to the State of California to
23 cause cancer and birth defects and other
24 reproductive harm.

25 (ii) **Point-of-Sale Warnings.** Alternatively, defendant may perform its
26 warning obligations by directing that signs are posted at retail outlets in the State of California
27 where the non-integrated products are sold. In order to avail itself of the point-of-sale option,
28

1 defendant shall provide a written notice in the first quarter of each calendar year or at the time of
2 the first sale in a calendar year to each retailer or distributor to whom defendant sells or transfers
3 the non-integrated products directly, which informs such retailers or distributors that point-of-sale
4 warnings are required at each retail location in the State of California. Defendant shall include a
5 copy of the warning signs and posting instructions with such notice. Further, defendant shall
6 maintain a written record of the written notices provided herein, and shall make those records
7 available to Brimer upon written request. Point-of-sale warnings shall be provided through one or
8 more signs posted in close proximity to the point of display of the non-integrated products that
9 states:
10

11
12 **WARNING:** The solder used in this product contains lead, a
13 chemical known to the State of California to
14 cause cancer and birth defects and other
reproductive harm.

15 **(b) Mail Order Catalog and Internet Sales of Non-Integrated Products.**

16 DFI does not at the present sell products by mail order or via the Internet and has no plans
17 to do so. However, in the unlikely event that DFI at some future date does sell non-integrated
18 products by mail order catalog or via the Internet to California residents it agrees to provide a
19 warning: (i) in the mail order catalog; (ii) on the website; and/or (iii) with the product when it is
20 shipped to an address in California. Warnings given in the mail order catalog or on the website
21 shall identify the specific product to which the warning applies as further specified in Sections
22 2.1(b)(i), (ii), and/or (iii) as applicable:
23

24 **(i) Mail Order Catalog Warning.** Any warning provided in a mail
25 order catalog must be in the same type size or larger as the non-integrated product description text
26
27
28

1 within the catalog. The following warning shall be provided on the same page and in the same
2 location as the display and/or description of the non-integrated product:

3 **WARNING:** The solder used in this product contains lead, a
4 chemical known to the State of California to
5 cause cancer and birth defects and other
6 reproductive harm.

7 Where it is impracticable to provide the warning on the same page and in the same location
8 as the display and/or description of the non-integrated product, defendant may utilize the
9 designated symbol attached hereto as Exhibit A to cross reference the applicable warning and
10 shall define the term "designated symbol" with the following language on the inside of the front
11 cover of the catalog or on the same page as any order form for the non-integrated product(s):

12 **WARNING:** The solder used in certain products identified
13 with this symbol ▼ and offered for sale in this
14 catalog contain lead, a chemical known to the
15 State of California to cause cancer and birth
 defects and other reproductive harm.

16 The designated symbol must appear on the same page and in close proximity to the display
17 and/or description of the non-integrated product. On each page where the designated symbol
18 appears, defendant must provide a header or footer directing the consumer to the warning
19 language and definition of the designated symbol.
20

21 If defendant elects to provide warnings in the mail order catalog, then the warnings must
22 be included in all catalogs offering to sell one or more non-integrated products printed after July
23 25, 2007.

24 (ii) **Internet Website Warning.** A warning may be given in
25 conjunction with the sale of the non-integrated product via the Internet, provided it appears either:
26 (a) on the same web page on which the non-integrated product is displayed; (b) on the same web
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WARNING: The solder used in this product contains lead, a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

Alternatively, defendant may place the following language on the packing slip or invoice and specifically identify the non-integrated product in lettering of the same size or larger as the description of the product:

WARNING: The solder used in the following product(s) contain(s) lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

[list products for which warning is given].

Defendant shall, in any of these instances, in conjunction with providing the warning, also inform the consumer, in a conspicuous manner, that he or she may return the non-integrated product for a full refund (including shipping costs for both the receipt and the return of the product) within thirty (30) days of his or her receipt of the product.

(c) Sales to Known Integrators

Where defendant sells products to individuals or entities it knows to be in the business of integrating its products into computer systems for resale ("integrator(s)"), defendant shall provide the integrator with written instructions in the first quarter of each calendar year that inform such integrators of the requirements of Proposition 65 and instruct such integrators to attach appropriate sticker warnings, as required by Proposition 65, to any item which contains a DFI product containing lead solder as an integrated component, prior to the resale of the integrated product. Further, defendant shall maintain a written record of the written instructions provided herein, and shall make those records available to Brimer upon written request.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(d) Manual Warnings

On or before July 25, 2007, defendant shall include the following warning in twelve point font or greater on the inside front cover of its product user manuals shipped with any non-reformulated product and available for viewing on its website, if so provided, and where defendant otherwise warns or informs its customers of the content of its products:

WARNING: The solder used in this product contains lead, a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

2.2 Exceptions To Warning Requirements

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

- (i) Any product received in inventory before the effective date, subject to Section 2.5;
- (ii) Reformulated products (as defined in Section 2.3 below); or
- (iii) Any product in which the listed chemical is embedded in a manner that a consumer or worker would not come into contact with the listed chemical under any reasonably anticipated use.

2.3 Reformulation Standards

Reformulated products are defined as follows: any product containing less than or equal to one-tenth of one percent (0.1%) lead by weight in each solder material, including all forms of solder as identified in Section 1.5, unless that material is embedded in a manner that a consumer or worker ordinarily would not come into contact with the lead under any reasonably anticipated

1 use.¹ The warnings required pursuant to Section 2.1 above shall not be required for reformulated
2 products.

3 **2.4 Reformulation Commitment**

4 Defendant hereby commits that all desktop products that it offers for sale in California
5 after December 31, 2007, shall qualify as reformulated products or be exempt from the warning
6 requirements of Section 2.1 pursuant to Section 2.2. Further, defendant commits to use
7 commercially reasonable efforts to reformulate all products in addition to those used for desktop
8 computers (e.g., motherboards used for servers) to eliminate the presence of lead, except for those
9 instances outlined in Section 2.2(iii), on or before December 31, 2008.
10

11 **2.5 Public Information Commitment**

12 In a good faith effort to inform the public about the risk of exposure to lead in defendant's
13 products sold before December 31, 2007, defendant hereby commits to provide the following
14 warning on its main products web page for a period of three years:
15

16 **WARNING:** Certain desktop motherboards sold in California
17 prior to December 31, 2007, contain lead solder.
18 Lead is a chemical known to the State of
19 California to cause cancer and birth defects and
20 other reproductive harm.

21 Immediately following the above warning, defendant shall provide a hyperlink titled "List of
22 Motherboards That May Contain Lead Solder" which will link to a web page that defendant shall
23 create and maintain for a period of three years. On that page, defendant shall provide the
24 following warning:

25 ///

26 _____
27 ¹For purposes of this consent judgment, the lead by weight standard shall not apply to ingredient components
28 of solder, such as glass and ceramic additives, but shall apply to the final solder materials used in the products.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WARNING: The following desktop motherboards sold in California prior to December 31, 2007, may contain lead solder. Lead is a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

Immediately following that warning, defendant shall list all products that contain lead solder which defendant sold in California before December 31, 2007. Defendant shall identify each product by name and model number.

3. MONETARY PAYMENTS

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

Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be \$25,000, which shall be apportioned as follows:

- (a) Defendant shall receive a credit of \$8,000 in light of its prompt cooperation with Brimer in resolving this matter and its commitment to sell only reformulated products in California;
- (b) Defendant shall pay \$5,000 in civil penalties by sending payment via certified mail to the address provided below on or before July 23, 2007;
- (c) Defendant shall pay \$6,000 in civil penalties on or before February 1, 2008. This payment will be waived provided that defendant complies with the public information commitment on or before January 1, 2008, as set forth in Section 2.5 and submits a compliant web link to Brimer for his review; and
- (d) Defendant shall pay the remaining \$6,000 in civil penalties on or before February 1, 2008. This payment will be waived provided that defendant submits a report to Brimer on or before January 1, 2008, which sets forth, in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

sufficient detail, its efforts to remove lead from its motherboards not intended for use in desktop computers.

All payments made pursuant to this Section 3.1 shall be payable to the "HIRST & CHANLER LLP in Trust For Russell Brimer" and shall be delivered to plaintiff's counsel at the following address:

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

3.2 Apportionment of Penalties Received

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

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Brimer and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Defendant then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then reached an accord on the compensation due to Brimer and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 for all work performed through the Court's approval of this agreement. Under the private

1 attorney general doctrine, defendant shall reimburse Brimer and his counsel for fees and costs
2 incurred as a result of investigating, bringing this matter to defendant's attention, litigating, and
3 negotiating a settlement in the public interest and seeking the Court's approval of the settlement
4 agreement. Defendant shall pay Brimer and his counsel \$23,000 for all attorneys' fees, expert and
5 investigation fees, litigation, and related costs. The payment shall be made payable to HIRST &
6 CHANLER LLP and shall be sent by certified mail on or before July 23, 2007, to the following
7 address:
8

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

13 **5. RELEASE OF ALL CLAIMS**

14 **5.1 Release of Defendant and Downstream Customers**

15 In further consideration of the promises and agreements herein contained, and for the
16 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and
17 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
18 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
19 form of legal action and releases all claims, including, without limitation, all actions, and causes
20 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
21 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
22 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
23 (collectively "claims"), against defendant and each of its downstream wholesalers, licensors,
24 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent
25 companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,
26
27
28

1 representatives, shareholders, agents, and employees, sister and parent entities, and original
2 equipment manufacturers and distributors (collectively "releasees"). This release is limited to
3 those claims that arise under Proposition 65, as such claims relate to defendant's alleged failure to
4 warn about exposures to the listed chemical contained in the products.
5

6 The parties further understand and agree that this release shall not extend upstream to any
7 entities that manufactured the products or any component parts thereof, or any distributors or
8 suppliers who sold the products or any component parts thereof to defendant. This settlement
9 does not release any downstream party (including integrators and retailers) that either caused
10 exposure to lead from components not supplied by defendant or, as to the future, alters the product
11 purchased from defendant in such a way as to cause it to violate the reformulation standards or
12 fails to transmit the requisite warnings provided by defendant in paragraph 2.1 set forth in this
13 Consent Judgment.
14

15 **5.2 Defendant's Release of Brimer**

16 Defendant waives any and all claims against Brimer, his attorneys, and other
17 representatives for any and all actions taken or statements made (or those that could have been
18 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
19 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
20 and/or with respect to the products.
21

22 **6. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and
24 shall be null and void if, for any reason, it is not approved and entered by the Court within one
25 year after it has been fully executed by all parties, in which event any monies that have been
26 provided to plaintiff or his counsel, pursuant to Section 3 and/or Section 4 above, shall be
27
28

1 refunded within fifteen (15) days after receiving written notice from defendant that the one-year
2 period has expired.

3
4 **7. SEVERABILITY**

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

8 **8. ATTORNEYS' FEES**

9 In the event that, after Court approval: (1) Defendant or any third party seeks modification
10 of this Consent Judgment pursuant to Section 14 below; or (2) Brimer takes reasonable and
11 necessary steps to enforce the terms of this Consent Judgment, Brimer shall be entitled to his
12 reasonable attorneys' fees and costs pursuant to CCP §1021.5.
13

14 **9. GOVERNING LAW**

15 The terms of this Consent Judgment shall be governed by the laws of the State of
16 California and apply within the State of California. In the event that Proposition 65 is repealed or
17 is otherwise rendered inapplicable by reason of law generally, or as to the products, then
18 defendant shall provide written notice to Brimer of any asserted change in the law, and shall have
19 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
20 products are so affected.
21

22 **10. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant to
24 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
25 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
26 other party at the following addresses:
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

To Defendant:

Joanne Carlson
BURISS LAW FIRM
Old Mill Office Center
201 San Antonio Circle, Suite 160
Mountain View, CA 94040

To Brimer:

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

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

11. COUNTERPARTS; FACSIMILE SIGNATURES

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.

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

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

13. ADDITIONAL POST EXECUTION ACTIVITIES

Brimer and defendant agree to mutually employ their best efforts to support the entry of this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the parties agree to file a Motion to Approve the Agreement (motion). Defendant shall have no

1 additional responsibility to plaintiff's counsel pursuant to Code of Civil Procedure §1021.5 or
2 otherwise with regard to reimbursement of any fees and costs incurred with respect to the
3 preparation and filing of the motion or with regard to plaintiff's counsel appearing for a hearing
4 thereon.
5

6 **14. MODIFICATION**

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

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///



26 ///

27 ///

28

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 align="center">AGREED TO:</p> <p>Date: <u>7.19.07</u></p> <p>By: <u></u> Plaintiff, RUSSELL BRIMER</p>	<p align="center">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, DFI (SAN JOSE) INC.</p>
<p align="center">APPROVED AS TO FORM:</p> <p>Date: <u>7/17/07</u> HIRST & CHANLER LLP</p> <p>By: <u></u> Christopher M. Martin Attorneys for Plaintiff RUSSELL BRIMER</p>	<p align="center">APPROVED AS TO FORM:</p> <p>Date: _____ BURISS LAW FIRM</p> <p>By: _____ Joanne Carlson Attorneys for Defendant DFI (SAN JOSE) INC.</p>

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>7/17/07</u></p> <p>By: <u><i>Daniel C. F.</i></u> Defendant, DFI (SAN JOSE) INC.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____ HIRST & CHANLER LLP</p> <p>By: _____ Christopher M. Martin Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>7/19/2007</u> BURISS LAW FIRM</p> <p>By: <u><i>Joanne Carlson</i></u> Joanne Carlson Attorneys for Defendant DFI (SAN JOSE) INC.</p>

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

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

