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11 KINOKUNIYA BOOK STORES OF
AMERICA COMPANY LIMITED

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE CITY AND COUNTY OF SAN FRANCISCO

17 RUSSELL BRIMER,

18 Plaintiff,

19 vs.

20 KINOKUNIYA BOOK STORES OF
AMERICA COMPANY LIMITED; and
21 DOES 1-150, inclusive,

22 Defendants.

Case No. CGC-10-505856

**STIPULATION FOR ENTRY OF
JUDGMENT AS BETWEEN PLAINTIFF
RUSSELL BRIMER AND DEFENDANT
KINOKUNIYA BOOK STORES OF
AMERICA COMPANY LIMITED**

Complaint Filed: December 7, 2010

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Kinokuniya Book Stores of America Company Limited**

3 This Stipulation is entered into by and between Plaintiff Russell Brimer (hereinafter
4 “Brimer” or “Plaintiff”) and Defendant Kinokuniya Book Stores of America Company Limited
5 (hereinafter “Kinokuniya” or “Defendant”), with Brimer and Kinokuniya collectively referred
6 to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Kinokuniya is a California corporation which operates four retail bookstores in
13 California with ten or more employees. It asserts that it is not generally in the business of
14 selling products within the scope of the products at issue in the above-captioned civil action (the
15 “Action”), but rather printed material.

16 **1.4 General Assertions of the Parties**

17 Brimer alleges, *inter alia*, that Kinokuniya has manufactured, distributed, and/or sold in
18 the State of California decorated glassware and ceramic mugs containing lead paint on the
19 exterior (the “Products,” as further defined hereinafter) without clear and reasonable warnings.
20 Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
21 birth defects and other reproductive harm. Lead is referred to herein as the “Listed Chemical.”
22 Brimer asserts that Kinokuniya has thereby violated Proposition 65 during the relevant period
23 and that additional violations may be continuous through the date that this Stipulation is
24 mutually executed. He seeks both non-monetary and monetary relief in this action.

25 Kinokuniya avers and asserts, *inter alia*, that it is solely a retailer and has committed no
26 violations of law with respect to the sale or offer for sale of the Products. Kinokuniya further
27 asserts that it did not have knowledge of whether the Products contained the Listed Chemical
28 or, if they do, how much of each chemical is contained in the Products. Kinokuniya also asserts

1 that immediately upon learning of Brimer's allegations described above, Kinokuniya took the
2 precautionary step of posting warnings which it believes are contemplated by applicable law,
3 without knowledge that the warnings were actually required by such law. Kinokuniya
4 specifically asserts that the warnings so posted were the most immediate, truthful, and accurate
5 Proposition 65 warnings Kinokuniya could have made at the time of the warnings. Kinokuniya
6 has also asserted that some or all of Brimer's allegations and assertions against Kinokuniya
7 were made without proper evidentiary or legal basis and that, on that basis, Brimer and/or his
8 counsel are liable for some or all of the attorney fees and expenses which Kinokuniya has
9 incurred in the Action. Brimer and his counsel dispute such assertions.

10 **1.5 Product Description**

11 The Products that are covered by this Stipulation are all glassware and ceramic mugs
12 with colored artwork (containing lead paint) on the exterior, such as Drinking Glass, Otogicco,
13 # TG-24690, # 4527749246903, and Mug, Duck, #14220610, TK76701. This Stipulation and
14 the Judgment to be entered hereon expressly does not apply to any other goods or products.

15 **1.6 Notices of Violation**

16 On or about August 5, 2010, Brimer served Kinokuniya and various public agencies
17 with a "60-Day Notice of Violation" which alleged that Kinokuniya was in violation of
18 California Health & Safety Code Section 25249.6 for failing to warn consumers and customers
19 that the glassware described in subparagraph 1.5 above exposed users in California to lead.
20 Kinokuniya denies that it committed the violations alleged in that Notice. To the best of the
21 Parties' knowledge, no public enforcer has acted to prosecute the allegations set forth in the 60-
22 Day Notice of Violation ("Notice").

23 Additionally, on or about March 17, 2011, Brimer served Kinokuniya and various public
24 agencies with a "Supplemental 60-Day Notice of Violation" which alleged that Kinokuniya was
25 in violation of California Health & Safety Code Section 25249.6 for failing to warn consumers
26 and customers that the ceramic mugs described in subparagraph 1.5 above exposed users in
27 California to lead. Kinokuniya denies that it committed the violations alleged in that
28 supplemental notice. Upon expiration of the sixty-day period, and provided that no public

1 enforcer diligently prosecutes the allegations contained in the supplemental notice, the
2 Complaint will be deemed amended to include the allegations contained in the supplemental
3 notice.

4 **1.7 Complaint**

5 On or about December 7, 2010, Brimer, acting in the interest of the general public in
6 California, filed this civil action by way of a complaint in the Superior Court in and for the City
7 and County of San Francisco, alleging violations by Kinokuniya and various "Doe Defendants"
8 of Health & Safety Code Section 25249.6 for exposures to lead paint contained in the Products.
9 Kinokuniya filed its Answer on January 7, 2011, denying the material allegations of Brimer's
10 complaint and asserting various defenses.

11 **1.8 No Admission**

12 Neither of the parties admits any of the allegations, averments or assertions made
13 against him or it in this civil action, but both acknowledge that this Stipulation is made with due
14 and material consideration of the expense each side has already incurred and anticipates he or it
15 would continue to incur in order to litigate to a final, judicial determination those allegations,
16 averments and assertions.

17 **1.9 Consent to Jurisdiction and Venue**

18 For purposes of this Stipulation only, the parties agree that this Court has jurisdiction
19 over the parties as to the allegations contained in the Complaint and the averments and defenses
20 in the Answer, that venue for this action is properly laid in the Superior Court of the State of
21 California in and for the City and County of San Francisco, and that this Court has jurisdiction
22 and power to enforce the provisions of the Judgment to be entered on this Stipulation, pursuant
23 to Code of Civil Procedure Section 664.6.

24 **1.10 Effective Date**

25 For purposes of this Stipulation, the term "Effective Date" shall mean May 31, 2011.
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1 **2. COMMITMENT TO SELL ONLY "LEAD FREE" PRODUCTS**

2 **2.1 Definition of "Lead Free" and Kinokuniya's Commitment with Respect to**
3 **Non-Lead Free Products**

4 For purposes of this Stipulation, "Lead Free" Products shall mean Products containing
5 components that may be handled, touched or mouthed by a consumer, and which components
6 yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method
7 9100, and yield less than 90 parts per million ("ppm") lead when analyzed pursuant to EPA
8 testing methodologies 3050B and 6010B, or equivalent methodologies utilized by federal or
9 state agencies for the purpose of determining lead content in a sold substance. Further, the
10 definition of Lead Free shall mean that there is no decoration in the lip and rim area of the
11 product (i.e., the top 20 mm of the drinking vessel) or that such decoration contains no
12 detectable amount of lead. Kinokuniya agrees that as of June 30, 2011, it shall not sell any
13 Products in any of its California stores that are not Lead Free.

14 **2.2 Certification of Glassware Sold in the Future**

15 Kinokuniya agrees that before it sells any Products from any of its stores in California,
16 from and after the Judgment to be entered upon this Stipulation, it will obtain a certification
17 from the supplier of such glassware and ceramic mugs that the Product is "Lead Free."
18 Kinokuniya shall maintain records of all compliance correspondence, test results, or other
19 communications generated pursuant to this subsection for two years from the Effective Date,
20 and shall produce copies of such records upon a reasonable written request by Brimer.

21 **2.3 Interim Warning Commitment**

22 From the date of execution of this Stipulation until June 30, 2011, Kinokuniya shall
23 provide clear and conspicuous warning signs in the form below to its customers in California
24 directly on the Product and/or shall post the warning signs next to the offending Product itself
25 or in close proximity to the point of display of the Products such that consumers, under
26 customary conditions of purchase, can reasonably determine which Product is subject to the
27 warning.
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1 ratio as set forth in subsection 3.1.1 above):

2 (a) Kinokuniya may realize a \$10,000 reduction in the total penalty amount due under
3 subsection 3.1.1 above if, no later than twenty days of the Effective Date,
4 Kinokuniya provides to Plaintiff, care of his attorneys, a letter certification, signed
5 by a director or officer, confirming that, as of the date of the letter certification, no
6 Kinokuniya California store has custody, control or possession of any Products, and
7 Kinokuniya is in possession of letters, inventory reports or other individual written
8 store confirmation, demonstrating there are no Products remaining in the possession
9 of any California retail store or warehouse controlled, owned or operated by
10 Kinokuniya.

11 (b) Kinokuniya may realize a \$10,000 reduction in the total penalty amount due under
12 subsection 3.1.1 above if, no later than twenty days after the Effective Date, it
13 certifies, in a writing to counsel for Plaintiff that is signed by a director or officer
14 that, as of the Effective Date, it has implemented a purchasing protocol for all
15 Products to be purchased for sale in any of its California stores, which protocol
16 mandates that the manufacturer or seller of any Product test any exterior decoration
17 for the presence of the Listed Chemical and certifies in writing to Kinokuniya that
18 the Product is Lead Free.

19 **4. FEES AND COSTS**

20 **4.1 Attorney Fees and Costs**

21 After agreeing upon the injunctive relief provisions and civil penalties set forth above,
22 the Parties then attempted to (and did) reach an accord on the compensation due to Brimer and
23 his counsel under general contract principles and the private attorney general doctrine codified
24 at California Code of Civil Procedure Section 1021.5, for work performed through the mutual
25 execution of this Stipulation.. Kinokuniya shall reimburse Brimer and his counsel the total of
26 \$35,000 for fees and costs incurred as a result of investigating, bringing this matter to
27 Kinokuniya's attention, and litigating and negotiating a settlement in the public interest.
28 Kinokuniya shall pay and issue a separate Form 1099 for fees and costs (EIN: 94-3171522) in

1 the amount of \$35,000 and shall make the check payable to "The Chanler Group" and shall
2 deliver same within ten days of the Effective Date, to the following address:

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565

8 **5. RELEASE OF ALL CLAIMS AND COVENANT NOT TO SUE**

9 **5.1 Brimer's Release of Kinokuniya**

10 **5.1.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

11 This Consent Judgment is a full, final and binding resolution between Plaintiff, on
12 behalf of himself and the public, and Defendant, of any violation of Proposition 65 that was or
13 could have been asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated
14 entities that are under common ownership, directors, officers, employees, attorneys, and each
15 entity to whom Defendant directly or indirectly distributes or sells Products, including but not
16 limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
17 members, licensors, and licensees ("Releasees"), based on their failure to warn about alleged
18 exposures to the Listed Chemical contained in the Products that were sold by Defendant.

19 **5.1.2 Plaintiff's Public Release of Proposition 65 Claims.**

20 In further consideration of the promises and agreements herein contained, Plaintiff on
21 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
22 assignees, and in the interest of the general public, hereby waives all rights to institute or
23 participate in, directly or indirectly, any form of legal action and releases all claims, including,
24 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
25 demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not
26 limited to, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs
27 on appeal from the judgment to be entered on this Stipulation -- limited to and arising under
28 Proposition 65 with respect to the Listed Chemical in the Products sold by Defendant
(collectively "claims"), against Defendant and Releasees.

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5.1.3 Plaintiff’s Individual Release of Claims.

Plaintiff also, in his individual capacity only and not in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Listed Chemical in the Products manufactured, distributed or sold by Defendant.

5.2 Kinokuniya’s Release of Brimer

Kinokuniya hereby waives any and all claims against Brimer, his attorneys, and other representatives for any and all actions taken or statements made (or those alleged to have been taken or made) by Brimer and his attorneys and other representatives in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter with respect to the Products.

6. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

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

7. ADDITIONAL POST EXECUTION ACTIVITIES

The parties acknowledge that, pursuant to Health & Safety Code Section 25249.7, a noticed motion is required to obtain judicial approval of this Stipulation. In furtherance of obtaining such approval, Brimer and Kinokuniya and their respective counsel agree to mutually employ their best efforts to support the entry of this Stipulation as a Judgment and obtain approval of the Stipulation as a Judgment by the Court in a timely manner.

8. SEVERABILITY

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

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9. GOVERNING LAW

The terms of this Stipulation shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Kinokuniya shall provide written notice to Brimer of any asserted change in the law, and shall have no further obligations pursuant to this Stipulation or the Judgment to be entered hereon with respect to, and to the extent that, the Products are so affected.

Nothing in this Stipulation or any judgment entered thereon shall relieve Kinokuniya of its duty to comply with any other state or federal laws with respect to the Listed Chemical in the Products.

10. NOTICES

Unless otherwise specified herein, all correspondence and notices required to be provided pursuant to this Stipulation shall be in writing and sent by: (i) personal delivery; (ii) first-class registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

For Kinokuniya:

Kinokuniya Book Stores of America Co., Ltd.
Attn: Daikichi Mitake, Senior Vice President
1581 Webster St # 165
San Francisco, CA 94115-3640

with a copy to:

Nori Shimoda, Esq.
Squire, Sanders & Dempsey (US) LLP
275 Battery Street (Suite 2600)
San Francisco, CA 94111.

For Brimer:

Proposition 65 Controller
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

3 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Stipulation may be executed in counterparts and by facsimile, each of which shall
5 be deemed an original, and all of which, when taken together, shall constitute one and the same
6 document.

7 **12. AUTHORIZATION**

8 The undersigned are authorized to execute this Stipulation on behalf of their respective
9 parties and have read, understood, and agree to all of the terms and conditions hereof.

11 **AGREED TO:**

AGREED TO:

12
13 Date: 5-26-11

Date: _____

14
15 By:  _____
16 Russell Brimer

By: _____
Kinokuniya Book Stores of America
Company Limited

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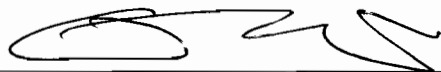
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11 **AGREED TO:**

AGREED TO:

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13 Date: _____

Date: 5/26/2011

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15 By: _____
16 Russell Brimer

By: 
Kinokuniya Book Stores of America
Company Limited

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