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FILED
San Francisco County Superior Court

OCT 29 2005

GORDON PARK-LL Clerk
BY: _____ Deputy Clerk

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71 Elm Street, Suite 8
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Attorneys for Plaintiff
RUSSELL BRIMER

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

RUSSELL BRIMER,)
)
Plaintiff,)
)
v.)
)
KOHL'S CORPORATION; and DOES 1)
through 150)
Defendants)

No. CCG 05-438954

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

Date: November 29, 2005
Time: 9:30 A.M.
Dept.: 302
Judge: Hon. Ronald E. Quidachay

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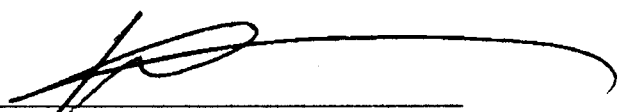
In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant KOHL'S CORPORATION, ("Defendant"), having agreed through their respective counsel that judgment be entered pursuant to the terms of the Consent Judgment entered into by the above-referenced parties and attached hereto as **Exhibit A**; and after consideration of the papers submitted and the arguments presented, the Court finds that the settlement agreement set out 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' Consent Judgment 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: November 29, 2005



Hon. Ronald Evans Quidachay
JUDGE OF THE SUPERIOR COURT

1 **EXHIBIT A**

1 CLIFFORD A. CHANLER (State Bar No. 135534)
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3 New Canaan, CT 06840
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9 Attorneys for Plaintiff
Russell Brimer

10 JEFFREY B. MARGULIES, ESQ. (State Bar No. 126002)
FULBRIGHT & JAWORSKI L.L.P.
11 555 S. Flower Street, 41st Floor
12 Los Angeles, California 90071
Telephone: (213) 892-9200
13 Facsimile: (213) 892-9494

14 Attorneys for Defendant
Kohl's Corporation

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

KOHL'S CORPORATION; and DOES 1
through 50,

Defendants.

Case No. CGC-05-438954

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

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and
3 between plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”) and Kohl’s Corporation
4 (hereafter “Kohl’s” or “Defendant”), with Plaintiff and Kohl’s collectively referred to as the
5 “Parties” and Brimer and Kohl’s each being a “Party.”

6 **1.2 Plaintiff.** Brimer is an individual residing in Northern California who seeks to
7 promote awareness of exposures to toxic chemicals and improve human health by reducing or
8 eliminating hazardous substances contained in consumer and industrial products.

9 **1.3 General Allegations.** Plaintiff alleges that Kohl’s has manufactured, distributed
10 and/or sold in the State of California certain glass containers intended to hold beverages with
11 colored artwork, designs or markings on the exterior surface which colored artwork, designs or
12 markings contain cadmium and/or lead, substances which are listed pursuant to the Safe Drinking
13 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.*,¹
14 also known as Proposition 65, to cause cancer and birth defects and other reproductive harm.
15 Lead and cadmium shall be referred to herein as “Listed Chemicals.”

16 **1.4 Product Descriptions.** The products that are covered by this Consent Judgment
17 are defined as follows: glassware products manufactured, sold and/or distributed by Kohl’s with
18 colored artwork, designs or markings on the exterior surface listed at Exhibit A. Such products
19 collectively are referred to herein as the “Products.”

20 **1.5 Notices of Violation.** Beginning on November 24, 2004, Brimer served Kohl’s
21 and various public enforcement agencies with documents, entitled “60-Day Notice of Violation”
22 (“Notice”) that provided Kohl’s and such public enforcers with notice that alleged that Kohl’s
23 was in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain
24 products that it sold expose users in California to cadmium and lead.

25 **1.6 Complaint.** On February 16, 2005, Brimer, in the interest of the general public in
26 California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the

27 _____
28 ¹ All statutory and regulatory references in this agreement are to California Law.

1 Superior Court for the City and County of San Francisco against Kohl's alleging violations of
2 Health & Safety Code § 25249.6 based on the alleged exposures to one or more of the Listed
3 Chemicals contained in certain products sold by Kohl's.

4 1.7 **No Admission.** Kohl's denies the material factual and legal allegations contained
5 in Plaintiff's Notice and Complaint and maintains that all products that it has manufactured,
6 distributed and/or sold in California including the Products have been and are in compliance with
7 all laws. Nothing in this Consent Judgment shall be construed as an admission by Kohl's of any
8 fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement
9 constitute or be construed as an admission by Kohl's of any fact, finding, conclusion, issue of law
10 or violation of law. However, this section shall not diminish or otherwise affect the obligations,
11 responsibilities and duties of Kohl's under this Consent Judgment.

12 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
13 stipulate that this Court has jurisdiction over the allegations of violations contained in the
14 Complaint and personal jurisdiction over Kohl's as to the acts alleged in the Complaint, that
15 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
16 Consent Judgment and to enforce the provisions thereof.

17 1.9 **Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall
18 mean August 29, 2005.

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

20 **2.1 Warning Obligations for Products**

21 (a) **Required Warnings and Non-exempt Products.** After the Effective
22 Date, Kohl's shall not sell or otherwise offer for sale in California any Products manufactured
23 after the Effective Date that contain the Listed Chemicals, unless warnings are given in
24 accordance with one or more provisions in subsection 2.2 below. For purposes of this Consent
25 Judgment, a Product is "manufactured" at the time that the exterior decoration is fired onto (or
26 otherwise affixed to) the Product.

27 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and
28 2.2 below shall not apply to:

- 1 (i) Reformulated Products, as defined in Paragraph 2.4;
2 (ii) Products manufactured before the Effective Date;
3 (iii) Products manufactured by any other person in the course of doing
4 business who is subject to a final judgment addressing Proposition 65 warning obligations arising
5 from alleged exposures to the Listed Chemicals from glassware products with colored artwork,
6 designs or markings on the exterior surface including, but not limited to, Dansk International
7 Designs, Inc., Mikasa, Inc., Pfaltzgraff, Inc. and Salton, Inc.

8 2.2 **Clear and Reasonable Warnings.** When required under this Consent Judgment,
9 warnings shall be provided by one or more of the following methods:

- 10 (a) **Product Labeling.** A warning affixed to the packaging, labeling or
11 directly to or on a Product that states:

12 **WARNING: The materials used as colored decorations on the**
13 **exterior of this product contain chemicals**
14 **known to the State of California to cause birth**
15 **defects or other reproductive harm.**

16 or

17 **WARNING: The materials used as colored decorations on the**
18 **exterior of these products contain chemicals**
19 **known to the State of California to cause birth**
20 **defects or other reproductive harm.²**

21 Warnings issued for Products pursuant to this subsection shall be prominently placed with
22 such conspicuousness as compared with other words, statements, designs, or devices on the
23 packaging, labeling or Product, as applicable, so as to render it likely to be read and understood
24 by an ordinary individual under customary conditions of purchase. Any changes to the language
25 or format of the warning required by this subsection shall only be made following: (1) approval
26 of Plaintiff; (2) approval from the California Attorney General's Office, provided that written
27 notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or
28 (3) Court approval.

² This warning is to be used only where the products are sold as a set.

1 (b) **Point-of-Sale Warnings.** Kohl's may execute its warning obligations,
2 where applicable, through the posting of signs at retail outlets in the state of California at which
3 the Products are sold, in accordance with the terms specified in subsections 2.2(b)(i), 2.2(b)(ii)
4 and 2.2(b)(iii).

5 (i) Point of sale warnings may be provided through one or more signs
6 posted at or near the point of sale or display of the Products that state:

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

11 or

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

16 [*List Each Product by Brand Name and Description*]

17 (ii) In lieu of displaying warning signs with the language set forth
18 above, Kohl's may elect to combine any point-of-sale warning signs required under this Consent
19 Judgment with any warnings it provides for ceramic tableware (as defined in the Consent
20 Judgment in *People v. Josiah Wedgwood & Sons, Inc.*) or lead crystal (as defined in the Consent
21 Judgment in *Mateel Environmental Justice Foundation v. T.J. Maxx*), through use of warning
22 signs in substantially the same form of Exhibits B or C. If Kohl's elects to provide combined
23 warnings through use of Exhibit B, then it shall place the Designated Symbol (the yellow triangle
24 shown in Exhibit B) next to each display of Products, ceramic tableware, and lead crystal for
25 which a warning is to be given. If Kohl's elects to provide combined warnings through use of
26 Exhibit C, then the Products for which the warning is to be given shall be identified by
27 manufacturer and pattern in the warning sign,³ and Designated Symbols need not be displayed. If
28 Kohl's elects to combine its warnings for ceramic tableware, and lead crystal, and the Products

³ The total number of manufacturers and patterns to be identified on a sign in the form of Exhibit C shall not exceed six (6).

1 under this subsection, display of warnings for ceramic tableware, leaded crystal, and the Products
2 in the manner set forth in this subsection shall constitute compliance with Proposition 65 for all
3 such products.

4 (iii) A point of sale warning shall be prominently placed with such
5 conspicuousness as compared with other words, statements, designs, or devices as to render it
6 likely to be read and understood by an ordinary individual under customary conditions of
7 purchase, and shall be placed or written in a manner such that the consumer understands to which
8 specific Products the warning applies. Any changes to the language or format of the warning
9 required for Products by this subsection shall only be made following: (1) approval of Plaintiff;
10 (2) approval from the California Attorney General's Office, provided that written notice of at
11 least fifteen (15) days is given to Plaintiff for the opportunity to comment; or (3) Court approval.

12 **2.3 Mail Order and Internet Sales.** Kohl's shall not sell or distribute the Products
13 by mail order catalog or the Internet to California residents, unless warnings are provided as set
14 forth below.

15 For the Products that require a warning pursuant to this Agreement that are sold by Kohl's
16 by mail order or from the Internet to California residents, a warning containing the language in
17 subsection 2.2 shall be included, at Kohl's sole option, either: (a) in the mail order catalog (if
18 any) or on the website (if any) pursuant to subsection 2.3.1 or 2.3.2; or (b) with the Products
19 when any of them are shipped to an address in California pursuant to subsection 2.3.2. Any
20 warnings given in the mail order catalogs or on the website shall identify the *specific* Products to
21 which the warning applies. If Kohl's elects to provide warnings in the mail order catalog, then
22 such warnings (at a location designated in subsection 2.3.1) shall be included in any new galley
23 prints of such catalogs that are sent to the printer at least ten (10) business days after the Effective
24 Date. Nothing in this subsection 2.3 shall require Kohl's to provide warnings for the Products
25 ordered from a mail order catalog printed prior to ten (10) days after the Effective Date.

26 (a) **Mail Order Catalog.** The warning message in subsection 2.2(b) shall be
27 stated within the catalog, either (a) on the inside front cover of any catalog, (b) on the same page
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1 as any order form, or (c) on the same page as the price, in the same type size as the surrounding,
2 non-heading text, with the same language as that appearing in subsection 2.2(b).

3 (b) **Internet Web Sites.** The warning text, or a link to a page containing the
4 warning text, shall be displayed either (a) on the same page on which the Products are displayed,
5 (b) on the same page as any order form for the Products, (c) on the same page as the price for the
6 Products, (d) on one or more pages displayed to a purchaser over the Internet or via electronic
7 mail during the checkout and order confirmation process for sale of the Products, or (e) in any
8 manner such that is likely to be read and understood by an ordinary individual under customary
9 conditions of purchase of the Products, including the same language as that appearing in
10 subsection 2.2(b). If a link is used, it shall state "Warning Information for California Residents"
11 and shall be of a size equal to the size of other links on the page.

12 (c) **Package Insert or Label.** Alternatively, a warning may be provided with
13 the Products when any of them are shipped directly to a consumer in California, by (a) Product
14 labeling pursuant to subsection 2.2(a), above, (b) inserting a card or slip of paper measuring at
15 least 4" x 6" in the shipping carton, or (c) including the warning on the packing slip or customer
16 invoice identifying the Products in lettering of the same size as the description of the Products.
17 The warning shall include the language appearing in subsection 2.2(a) and shall inform the
18 consumer that he or she may return the Product(s) for a full refund within thirty (30) days of
19 receipt.

20 2.4 **Reformulation Standards.** Products satisfying the conditions of section 2.4(a)
21 and 2.4(b) are referred to as "Reformulated Products." The warnings required pursuant to
22 sections 2.1(a) and 2.2 above shall not be required for Reformulated Products, defined as follows:

23 (a) Products that use decorating materials containing less than six one-
24 hundredths of one percent (0.06%) lead and twenty four one-hundredths of one percent (0.24%)
25 cadmium by weight as measured, at a Kohl's option, either before or after the material is fired
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27
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1 onto (or otherwise affixed to) the Products⁴, using a sample size of the materials in question
2 measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit
3 of quantitation of less than 600 ppm.

4 (b) Products that are used to consume beverages and have 60 or more
5 millimeters of decorating area below the external Lip and Rim Area⁵ must use decorated
6 materials containing "no detectable lead or cadmium" within the exterior Lip and Rim Area of the
7 Product. For purposes of this subsection, "no detectable lead or cadmium" shall mean that neither
8 lead nor cadmium is detected at a level above two one-hundredths of one percent (0.02%) for lead
9 or eight one-hundredths of one percent (0.08%) for cadmium by weight, respectively, using a
10 sample size of the materials in question measuring approximately 50-100 mg and a test method of
11 sufficient sensitivity to establish a limit of quantitation of less than 200 ppm.

12 2.5 **Reformulation Commitment.** By entering into this Stipulation and Consent
13 Judgment, Kohl's hereby commits that it will undertake good faith efforts to ensure that as many
14 of its Products sold California as reasonably possible after the Effective Date shall qualify as
15 Reformulated Products.

16 3. **MONETARY PAYMENTS.**

17 3.1 **Penalties.** Pursuant to Health & Safety Code §25249.7(b), Defendant shall pay
18 the sum of \$25,000 in civil penalties. The first payment of \$11,000 shall be due on or before
19 September 8, 2005. The second penalty payment of \$14,000 shall be paid on January 30, 2007.
20 The second penalty payment shall be waived in the event that Defendant certifies in writing, on or
21 before January 15, 2007, that ninety percent (90%) of the Products it intends to sell in California
22 from February 1, 2007 through December 31, 2007 will be Reformulated Products or otherwise
23 exempt from the warning requirements of this agreement. Said payment(s) shall be made payable
24

25 ⁴ If the decoration is tested after it is affixed to the Product, the Percentage of the Listed Chemical by weight
26 must related only to the other portions of the decorating material and not include any calculation of non-decorating
material, *e.g.* the ceramic substrate

27 ⁵ "Lip and Rim Area" is defined as the exterior top 20 millimeters of a hollowware glassware or
28 ceramicware product, as defined by the American Society of Testing and Materials Standard Test Method C927-99.

1 to "Chanler Law Group in Trust For Russell Brimer" and delivered to Plaintiff's counsel at the
2 following address:

3 CHANLER LAW GROUP
4 Attn: Clifford A. Chanler
5 71 Elm Street, Suite 8
6 New Canaan, CT 06840

7 3.2. In the event that Defendant pays any penalty and the Consent Judgment is not
8 thereafter approved and entered by the Court within one year of the Effective Date of this
9 agreement, Mr. Brimer shall return any penalty funds paid under this agreement within fifteen
10 (15) days of receipt of a written request from Defendant following notice of the issuance of the
11 Court's decision.

12 3.3 After Court approval of this Consent Judgment pursuant to section 6, all penalty
13 monies received shall be apportioned by Plaintiff in accordance with Health & Safety Code
14 §25192, with 75% of these funds remitted to the State of California's Office of Environmental
15 Health Hazard Assessment and the remaining 25% of these penalty monies retained by Plaintiff
16 as provided by Health & Safety Code §25249.12(d). Plaintiff shall bear all responsibility for
17 apportioning and paying to the State of California the appropriate civil penalties paid in
18 accordance with this section.

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

20 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
21 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
22 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
23 Kohl's then expressed a desire to resolve the fee and cost issue shortly after the other settlement
24 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
25 compensation due to Plaintiff and his counsel under the private attorney general doctrine codified
26 at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date of the
27 Agreement. Under the private attorney general doctrine codified at Code of Civil Procedure
28 § 1021.5, Kohl's shall reimburse Plaintiff and his counsel for fees and costs, incurred as a result

1 of investigating, bringing this matter to Kohls' attention, litigating and negotiating a settlement in
2 the public interest. Kohl's shall pay Plaintiff and his counsel \$29,000 for all attorneys' fees,
3 expert and investigation fees, and litigation costs. The payment shall be made payable to the
4 "Chanler Law Group" and shall be delivered to Plaintiff's counsel on or before September 8,
5 2005, at the following address:

6 CHANLER LAW GROUP
7 Attn: Clifford A. Chanler
8 71 Elm Street, Suite 8
9 New Canaan, CT 06840

10 Except as specifically provided in this Consent Judgment, Kohl's shall have no further
11 obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the
12 Products covered in this Action.

13 **5. RELEASE OF ALL CLAIMS**

14 **5.1 Plaintiff's Release of Kohl's.** In further consideration of the promises and
15 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
16 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
17 and/or assignees, and in the public interest, hereby waives all rights to institute or participate in,
18 directly or indirectly, any form of legal action and release all claims, including, without
19 limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands, obligations,
20 damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation
21 fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed
22 or contingent (collectively "Claims"), against Kohl's and each of its distributors, wholesalers,
23 auctioneers, retailers, dealers, customers, owners, purchasers, users, parent companies, corporate
24 affiliates, subsidiaries and their respective officers, directors, attorneys, representatives,
25 shareholders, agents, and employees (collectively, "Kohl's Releasees") arising under
26 Proposition 65 related to Kohls' or Kohl's Releasees' alleged failure to warn about exposures to
27 or identification of Listed Chemicals contained in the Products sold by Kohl's.

28 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
binding resolution of any violation of Proposition 65 that have been or could have been asserted

1 in the Complaints against Kohl's for its alleged failure to provide clear and reasonable warnings
2 of exposure to or identification of Listed Chemicals in the Products sold by Kohl's.

3 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waives all rights
4 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims
5 against the Kohl's Releasees arising under Proposition 65 related to each of the Kohl's Releasees'
6 alleged failures to warn about exposures to or identification of Listed Chemicals contained in the
7 Products and for all actions or statements made by Kohl's or its attorneys or representatives, in
8 the course of responding to alleged violations of Proposition 65 by Kohl's. Provided however,
9 Plaintiff shall remain free to institute any form of legal action to enforce the provisions of this
10 Consent Judgment.

11 It is specifically understood and agreed that the Parties intend that Kohls' compliance with
12 the terms of this Consent Judgment resolves all issues and liability, now and in the future (so long
13 as Kohl's complies with the terms of the Consent Judgment) concerning Kohl's and the Kohl's
14 Releasees' compliance with the requirements of Proposition 65 as to the Listed Chemicals in the
15 Products sold by Kohl's.

16 The releases provided by Plaintiff in this subsection shall not extend upstream to the
17 Product manufacturer or decorator or to any Product importer, distributor or supplier from whom
18 Kohl's purchased any of the Products.

19 **5.2 Kohls' Release of Plaintiff.** Kohl's and Kohl's Releasees waive all rights to
20 institute any form of legal action against Plaintiff, or their attorneys or representatives, for all
21 actions taken or statements made by Plaintiff and his attorneys or representatives, in the course of
22 seeking enforcement of Proposition 65 in this Action.

23 **6. COURT APPROVAL**

24 The motion to approve this settlement must be filed with the Court and served on the
25 Attorney General's Office no later than thirty (30) days from the Effective Date of this
26 agreement. This Consent Judgment is not effective until it is approved and entered by the Court
27 and shall be null and void if, for any reason, it is not approved and entered by the Court within
28 one year after it has been fully executed by all Parties, in which event any monies that have been

1 provided to Plaintiff or his counsel pursuant to section 3 and/or section 4 above, shall be refunded
2 within fifteen (15) days.

3 **7. SALES DATA**

4 Kohl's understands that the sales data that it respectively provided to counsel for Russell
5 Brimer was a material factor upon which Russell Brimer has relied to determine the amount of
6 civil penalties made pursuant to Health & Safety Code Section 25249.7(b) in this Agreement. To
7 the best of Kohl's' knowledge, the sales data provided by Kohl's to counsel for Russell Brimer is
8 a full, complete, true and accurate reflection of any and all sales of the Products in California
9 during the relevant period.

10 **8. 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
13 provisions remaining shall not be adversely affected.

14 **9. ATTORNEYS' FEES**

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

19 **10. GOVERNING LAW**

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

25 **11. ENFORCEMENT OF CONSENT JUDGMENT**

26 11.1 Before moving to enforce the terms and conditions of Section 2 of this Consent
27 Judgment against Kohl's with respect to an alleged violation occurring at a retail store located in
28

1 California, Plaintiff and others must follow the procedures set forth in subsections 11.2 through
2 11.4.

3 11.2 In the event that Plaintiff and/or his attorneys, agents, assigns, or any other person
4 acting in the public interest under Health & Safety Code § 25249.7(d), (hereinafter “Notifying
5 Person”) identify one or more retail stores in California owned and operated by Kohl’s at which
6 Products are sold (hereinafter “retail outlet”) for which the warnings for those Products required
7 under this Consent Judgment are not being given, such Notifying Person shall notify Kohl’s, in
8 writing, of such alleged failure to warn (the “Notice of Breach”). The Notice of Breach shall be
9 sent by first class mail, with proof of service, to the person(s) identified in Paragraph 12, and
10 must be served within sixty (60) days of the date the alleged violation was observed. The Notice
11 of Breach shall identify the date the alleged violation was observed and the retail outlet in
12 question, and reasonably describe the nature of the alleged violation with sufficient detail to allow
13 Kohl’s to determine the basis of the claim being asserted and the identities of the Products to
14 which those assertions apply.

15 11.3 In the event that the Notifying Person identifies a specific retail outlet, other than
16 the specific one identified in subsection 11.2 of this Consent Judgment, not giving warnings for
17 Products as required under this Consent Judgment, such Notifying Person shall serve Kohl’s with
18 another Notice of Breach in the manner described in subsection 11.2 and provide the information
19 required in subsection 11.2.

20 11.4 The Notifying Person shall take no further action against Kohl’s unless the
21 Notifying Person discovers, at least thirty (30) days after service of the Notices of Breach served
22 pursuant to subsections 11.2 and 11.3, another failure to warn for any Product whether or not the
23 alleged failure to warn is at the same retail outlet(s) identified in the Notices of Breach served
24 pursuant to subsections 11.2 and 11.3.

25 12. NOTICES

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

1 below. Either Party, from time to time, may specify a change of address to which all notices and
2 other communications shall be sent.

3 To Kohl's:

4 Steven J. Thomas
5 Vice President, Risk Management & Litigation
6 KOHL'S CORPORATION
7 Corporate Offices
8 N56 W1700 Ridgewood Drive
9 Menomonee Falls, Wisconsin 53051

10 With a Copy to:

11 Jeffrey B. Margulies, Esq.
12 FULBRIGHT & JAWORSKI L.L.P.
13 555 S. Flower Street, 41st Floor
14 Los Angeles, California 90071

15 To Plaintiff:

16 Clifford A. Chanler, Esq.
17 CHANLER LAW GROUP
18 71 Elm Street, Suite 8
19 New Canaan, CT 06840

20 Laralei S. Paras, Esq.
21 PARAS LAW GROUP
22 655 Redwood Highway, Suite 216
23 Mill Valley, CA 94941

24 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

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

28 **14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

1 **15. ADDITIONAL POST EXECUTION ACTIVITIES**

2 The Parties shall mutually employ their best efforts to support the entry of this Agreement
3 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
4 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
5 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
6 agree to file a Joint Motion to Approve the Agreement (“Joint Motion”), the first draft of which
7 Kohls’ counsel shall prepare, within a reasonable period of time after the Execution Date (*i.e.*, not
8 to exceed thirty (30) days unless otherwise agreed to by the Parties’ counsel based on
9 unanticipated circumstances). Plaintiff’s counsel shall prepare a declaration in support of the
10 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed
11 pursuant to Section 4, and shall file the motion with the court and serve the parties and Attorney
12 General within a reasonable period of time after receipt of the draft from Kohl’s counsel (*i.e.*, not
13 to exceed thirty (30) days unless otherwise agreed to by the Parties’ counsel based on
14 unanticipated circumstances). Kohl’s shall have no additional responsibility to Plaintiff’s counsel
15 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs
16 incurred with respect to the preparation and filing of the Joint Motion and its supporting
17 declaration or with regard to Plaintiff’s counsel appearing for a hearing or related proceedings
18 thereon.

19 **16. MODIFICATION**

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

1 17. **AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

6
7 Date: _____

Date: 8/26/05

8 By:
9 Plaintiff Russell Brimer

By: [Signature] 8/26/05
10 Defendant Kohl's Corporation Steven J. Thomas, VP, Developmental Counsel

11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12 Date: _____
13 CHANLER LAW GROUP

Date: 8/29/05
14 [Signature]
15 FULBRIGHT & JAWORSKI LLP

16 By:
17 Clifford A. Chanler
18 Attorneys for Plaintiff
19 RUSSELL BRIMER

By: [Signature]
20 Jeffrey B. Margulies
21 Attorneys for Defendant
22 KOHL'S CORPORATION

23 **IT IS SO ORDERED.**

24 Date: _____

25 _____
26 JUDGE OF THE SUPERIOR COURT

1 17. AUTHORIZATION

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

5 AGREED TO:

6 AGREED TO:

7 Date: 8-31-05

8 Date: _____

9 By: [Signature]
Plaintiff Russell Brimer

By:
Defendant Kohl's Corporation

10 APPROVED AS TO FORM:

11 APPROVED AS TO FORM:

12 Date: 8/31/05
CHANLER LAW GROUP

13 Date: _____
FULBRIGHT & JAWORSKI LLP

14 By: [Signature]
Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

15 By:
Jeffrey B. Margulies
Attorneys for Defendant
KOHL'S CORPORATION

16
17 IT IS SO ORDERED.

18
19 Date: _____

20 _____
JUDGE OF THE SUPERIOR COURT

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Exhibit A

All glass containers intended to hold beverages with colored designs and/or artwork on the exterior including, but not limited to:

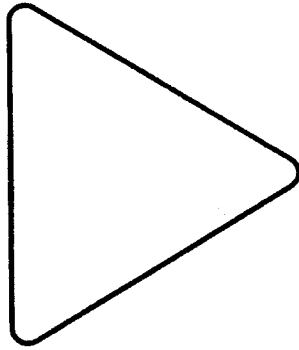
Sonoma Color Fest Set of 4 Highball Glasses (#4 00266 16193 2)

EXHIBIT B

PROP 65 WARNING

Consuming foods or beverages that have been kept or served in leaded crystal products, or in certain ceramic tableware products, or certain glassware products with colored decorations on the exterior will expose you to lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

The products for which this warning is given are identified with this symbol:



displayed on or next to the product.

EXHIBIT C

PROP 65 WARNING

Use of the following ceramic tableware products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm: [List each manufacturer and pattern name for which a warning is given].

The materials used as colored decorations on the exterior of the following glassware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm: [List each manufacturer and pattern name for which a warning is given].

Consuming foods or beverages that have been kept or served in leaded crystal products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. [If any of the following products are sold, include: "This warning does not apply to Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots."]