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11 New Canaan, CT 06840
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14 Attorneys for Plaintiff
15 RUSSELL BRIMER

ENDORSED
FILED
San Francisco County Superior Court

MAY - 1 2006

GORDON PARK-LI, Clerk
BY: PHILOMENA DIAS
Deputy Clerk

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE CITY AND COUNTY OF SAN FRANCISCO

18 RUSSELL BRIMER,)
19)
20 Plaintiff,)
21)
22 v.)
23)
24 McILHENNY COMPANY; and DOES 1)
25 through 150,)
26)
27 Defendants.)
28)

Case No. CGC-05-438956

~~PROPOSED~~ ORDER PURSUANT TO
TERMS OF CONSENT JUDGMENT

Date: May 1, 2006

Time: 9:30 A.M.

Dept: 302

Judge: Hon. Ronald Evans Quidachay

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

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

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

16 **IT IS SO ORDERED.**

RONALD E. QUIDACHAY

17 Dated: MAY - 1 2006

18 Hon. Ronald Evans Quidachay
19 JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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9 655 Redwood Highway, Suite 216
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12 Facsimile: (415) 380-9223

13 Attorneys for Plaintiff
14 Russell Brimer

15 JEFFREY B. MARGULIES, (State Bar No. 126002).
16 FULBRIGHT & JAWORSKI L.L.P.
17 555 S. Flower Street, 41st Floor
18 Los Angeles, California 90071
19 Telephone: (213) 892-9200
20 Facsimile: (213) 892-9494

21 Attorneys for Defendant
22 McIlhenny Company

23 SUPERIOR COURT OF THE STATE OF CALIFORNIA
24 COUNTY OF SAN FRANCISCO
25 UNLIMITED JURISDICTION

26 RUSSELL BRIMER,

27 Plaintiff,

28 v.

29 MCILHENNY COMPANY; and DOES 1
30 through 50,

31 Defendants.

Case No. CGC-05-438956

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 McIlhenny Company
4 (hereafter “Defendant” or “McIlhenny”), with Plaintiff and McIlhenny collectively referred to as
5 the “Parties” and Brimer and McIlhenny 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 McIlhenny has manufactured,
10 distributed and/or sold in the State of California certain mugs and other tableware with colored
11 artwork, designs or markings on the exterior surface which colored artwork, designs or markings
12 contain cadmium and/or lead, substances which are listed pursuant to the Safe Drinking Water
13 and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.*¹, also
14 known as Proposition 65, to cause birth defects and other reproductive harm. Lead and cadmium
15 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: mugs and other glass and ceramic tableware manufactured, distributed
18 and/or sold by McIlhenny with colored artwork, designs or markings on the exterior surface listed
19 at Exhibit A. Such products collectively are referred to herein as the “Products.”

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

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

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

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

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

21 2.1 **Warning Obligations for Products**

22 (a) **Required Warnings and Non-exempt Products.** After the Effective
23 Date, McIlhenny shall not transmit to any retailer to sell or otherwise offer for sale in California
24 any Products containing the Listed Chemicals, unless warnings are given in accordance with one
25 or more provisions in subsection 2.2 below. For purposes of this Consent Judgment, a Product is
26 "manufactured" at the time that the exterior decoration is fired onto (or otherwise affixed to) the
27 Product.
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1 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and
2 2.2 below shall not apply to:

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

10 2.2 **Clear and Reasonable Warnings.** When required under this Consent Judgment,
11 warnings shall be provided by one or more of the following methods:

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

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

18 **or**

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

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

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

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

3 (b) **Point-of-Sale Warnings.** McIlhenny may execute its warning
4 obligations, where applicable, through arranging for retailers that sell open stock Products (i) the
5 posting of signs at retail outlets in the State of California at which Products are sold, in
6 accordance with the terms specified in subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii), or (iv) the
7 placement of warning stickers directly on Products offered for sale on an open stock basis.

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

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

14 **or**

15 **WARNING: The materials used as colored decorations on the**
16 **exterior of the following products contain**
17 **chemicals known to the State of California to**
18 **cause birth defects or other reproductive harm:**

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

9 (iii) Any warning stickers applied to Products sold on an open stock
10 basis pursuant to Section 2.2(b) must meet the criteria of Section 2.2(a) for product labeling.

11 (iv) If McIlhenny intends to utilize point of sale signs or stickers to
12 comply with this Consent Judgment, it must provide notice to each retailer to whom McIlhenny
13 ships the Products for sale in California and obtain the written consent of such retailer that it will
14 comply with the warning requirements contained in this agreement before shipping the Products.
15 Such notice shall include any required warning materials (including, as appropriate, signs and/or
16 stickers). If McIlhenny has obtained the written consent of a retailer to comply with this Consent
17 Judgment's warning requirements, and has provided the requisite warning signs and/or stickers to
18 the retailer, McIlhenny shall not be found to have violated this Consent Judgment if the retailer
19 fails to comply with the warning requirements.

20 2.3 **Mail Order and Internet Sales.** McIlhenny shall not sell or distribute the
21 Products by mail order catalog or the Internet to California residents, unless warnings are
22 provided as set forth below.

23 For the Products that require a warning pursuant to this Agreement that are sold by
24 McIlhenny by mail order or from the Internet to California residents, a warning containing the
25 language in subsection 2.2 shall be included, at McIlhenny sole option, either: (a) in the mail
26 order catalog (if any) or on the website (if any) pursuant to subsection 2.3(a) or 2.3(b); or (b) with
27 the Products when any of them are shipped to an address in California pursuant to subsection
28 2.3(c) Any warnings given in the mail order catalogs or on the website shall identify the *specific*

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10 71 Elm Street, Suite 8
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13 Fax: (203) 801-5222

14 Attorneys for Plaintiff
15 RUSSELL BRIMER

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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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18 RUSSELL BRIMER,)
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1 Products to which the warning applies. If McIlhenny elects to provide warnings in the mail order
2 catalog, then such warnings (at a location designated in subsection 2.3(a)) shall be included in any
3 new galley prints of such catalogs that are sent to the printer at least ten (10) business days after
4 the Effective Date. Nothing in this subsection 2.3 shall require McIlhenny to provide warnings
5 for the Products ordered from a mail order catalog printed prior to ten (10) days after the
6 Effective Date.

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

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

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

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

25 (a) Products that use decorating materials containing less than 0.06% lead by
26 weight as measured, at a McIlhenny option, either before or after the material is fired onto (or
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1 otherwise affixed to) the Product³, using a sample size of the materials in question measuring
2 approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of
3 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 Area⁴ 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, McIlhenny hereby commits to undertake good faith efforts to ensure that as many of
14 its Products sold California after the Effective Date as reasonably possible 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 \$10,000 shall be due on or before
19 September 8, 2005. The second penalty payment of \$15,000 shall be paid on January 30, 2007.
20 The second penalty payment shall be waived in the event that Defendant certifies on or before
21 January 15, 2007, that ninety percent (90%) of the Products it intends to sell in California from
22 February 1, 2007 through December 31, 2007 will be Reformulated Products or otherwise exempt
23 from the warning requirements of this agreement. Said payment(s) shall be made payable to
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25 ³ 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 ⁴ “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 “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 McIlhenny then expressed a desire to resolve the fee and cost issue shortly after the other
24 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
25 the compensation due to Plaintiff and his counsel under the private attorney general doctrine
26 codified at Code of Civil Procedure §1021.5 for all work performed through the Effective Date of
27 the Agreement. Under the private attorney general doctrine codified at Code of Civil Procedure
28 §1021.5, McIlhenny shall reimburse Plaintiff and his counsel for fees and costs, incurred as a

1 result of investigating, bringing this matter to McIlhenny's attention, litigating and negotiating a
2 settlement in the public interest. McIlhenny shall pay Plaintiff and his counsel \$27,750 for all
3 attorneys' fees, expert and investigation fees, and litigation costs. The payment shall be made
4 payable to the "Chanler Law Group" and shall be delivered to Plaintiff's counsel on or before
5 September 8, 2005, at the following address:

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

11 Except as specifically provided in this Consent Judgment, McIlhenny shall have no further
12 obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the
13 Products covered in this Action.
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1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Plaintiff's Release of McIlhenny.** In further consideration of the promises and
3 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
4 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
5 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
6 participate in, directly or indirectly, any form of legal action and releases all claims, including,
7 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
8 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
9 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
10 unknown, fixed or contingent (collectively "Claims"), against McIlhenny and each of its
11 distributors, wholesalers, auctioneers, retailers, dealers, customers, owners, purchasers, users,
12 parent companies, corporate affiliates, subsidiaries and their respective officers, directors,
13 attorneys, representatives, shareholders, agents, and employees (collectively, "McIlhenny's
14 Releasees") arising under Proposition 65 related to McIlhenny's or McIlhenny's Releasees'
15 alleged failure to warn about exposures to, or identification of, Listed Chemicals contained in the
16 Products manufactured, distributed or sold by McIlhenny, and.

17 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
18 binding resolution of any violation of Proposition 65 that have been or could have been asserted
19 in the Complaint against McIlhenny for its alleged failure to provide clear and reasonable
20 warnings of exposure to, or identification of, Listed Chemicals in the Products sold by
21 McIlhenny.

22 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waives all rights
23 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims
24 against the McIlhenny Releasees arising under Proposition 65 related to each of the McIlhenny
25 Releasees' alleged failures to warn about exposures to or identification of Listed Chemicals
26 contained in the Products and for all actions or statements made by McIlhenny or its attorneys or
27 representatives, in the course of responding to alleged violations of Proposition 65 by McIlhenny.
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1 Provided however, Plaintiff shall remain free to institute any form of legal action to enforce the
2 provisions of this Consent Judgment.

3 It is specifically understood and agreed that the Parties intend that McIlhenny's
4 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in
5 the future (so long as McIlhenny complies with the terms of the Consent Judgment) concerning
6 McIlhenny and the McIlhenny Releasees' compliance with the requirements of Proposition 65 as
7 to the Listed Chemicals in the Products sold by McIlhenny.

8 **5.2 McIlhenny's Release of Plaintiff.** McIlhenny and the McIlhenny Releasees
9 waive all rights to institute any form of legal action against Plaintiff, or his attorneys or
10 representatives, for all actions taken or statements made by Plaintiff and his attorneys or
11 representatives, in the course of seeking enforcement of Proposition 65 in this Action.

12 **6. COURT APPROVAL**

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

18 **7. SALES DATA**

19 McIlhenny understands that the sales data that it provided to counsel for Russell Brimer
20 was a material factor upon which Russell Brimer has relied to determine the amount of civil
21 penalties made pursuant to Health & Safety Code §25249.7(b) in this Agreement. To the best of
22 McIlhenny's knowledge, the sales data provided by McIlhenny to counsel for Russell Brimer is a
23 full, complete, true and accurate reflection of any and all sales of the Products in California
24 during the relevant period.

25 **8. SEVERABILITY**

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

1 **9. ATTORNEYS' FEES**

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

6 **10. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California. In the event that Proposition 65 is repealed or
9 is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically,
10 then McIlhenny shall have no further obligations pursuant to this Consent Judgment with respect
11 to, and to the extent that, those Products are so affected.

12 **11. NOTICES**

13 All correspondence and notices required to be provided pursuant to this Consent Judgment
14 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
15 return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed
16 below. Either Party, from time to time, may specify a change of address to which all notices and
17 other communications shall be sent.

18 To McIlhenny:

19 McIlhenny Company
20 Avery Island, Louisiana, 70513
 Attention: Vice President, Administration

21 With a Copy to:

22 Jeffrey Margulies, Esq.
23 FULBRIGHT & JAWORSKI L.L.P.
24 555 S. Flower Street, 41st Floor
 Los Angeles, California 90071

25 To Plaintiff:

26 Clifford A. Chanler, Esq.
27 CHANLER LAW GROUP
 71 Elm Street, Suite 8
 New Canaan, CT 06840

28 Laralei S. Paras, Esq.

1 PARAS LAW GROUP
2 655 Redwood Highway, Suite 216
3 Mill Valley, CA 94941

4 **12. NO ADMISSIONS**

5 Nothing in this Consent Judgment shall constitute or be construed as an admission by
6 McIlhenny of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance
7 with this Consent Judgment constitute or be construed as an admission by McIlhenny of any fact,
8 finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by
9 McIlhenny. McIlhenny reserves all of its rights and defenses with regard to any claim by any
10 party under Proposition 65 or otherwise. However, this section shall not diminish or otherwise
11 affect McIlhenny's obligations, responsibilities and duties under this Consent Judgment.

12 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

24 **15. ADDITIONAL POST EXECUTION ACTIVITIES**

25 The Parties shall mutually employ their best efforts to support the entry of this Agreement
26 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
27 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
28 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which

1 McIlhenny's counsel shall prepare, within a reasonable period of time after the Execution Date
2 (*i.e.*, not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on
3 unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the
4 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed
5 pursuant to Section 4, and shall file the motion with the court and serve the parties and Attorney
6 General within a reasonable period of time after receipt of the draft from McIlhenny counsel (*i.e.*,
7 not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on
8 unanticipated circumstances). McIlhenny shall have no additional responsibility to Plaintiff's
9 counsel pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and
10 costs incurred with respect to the preparation and filing of the Joint Motion and its supporting
11 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings
12 thereon.

13 **16. MODIFICATION**

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

19 **17. AUTHORIZATION**

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

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AGREED TO:

AGREED TO:

Date: 8-31-05

Date: _____

By: [Signature]
Plaintiff Russell Brimer

By:
Defendant McIlhenny Company

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 9-2-05
PARAS LAW GROUP

Date: _____
FULBRIGHT & JAWORSKI LLP

By: [Signature]
Laralei S. Paras
Attorneys for Plaintiff
RUSSELL BRIMER

By:
Jeffrey B. Margulies
Attorneys for Defendant
MCILHENNY COMPANY

IT IS SO ORDERED.

Date: [Signature]
MAY - 9 2006

RONALD E. GUIDACHAY

JUDGE OF THE SUPERIOR COURT

Oct-10-05 04:14pm From

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AGREED TO:

AGREED TO:

Date: _____

Date: 10/16/05

By:
Plaintiff Russell Brimer

By: [Signature]
Defendant McIlhenny Company

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____
PARAS LAW GROUP

Date: 10/10/05
[Signature]
FULBRIGHT & JAWORSKI LLP

By:
Laralei S. Paras
Attorneys for Plaintiff
RUSSELL BRIMER

By:
Jeffrey B. Margulies
Attorneys for Defendant
MCILHENNY COMPANY

IT IS SO ORDERED.

Date: MAY - 1 2006

RONALD E. QUIDACHAY

JUDGE OF THE SUPERIOR COURT

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Exhibit A

Mugs and other glass and ceramic tableware with colored artwork or designs on the exterior including, but not limited to, Coffee Mug Gift Set, #9104 (#0 11210 08061 4)