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RALEY'S, INC.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF YOLO
14 UNLIMITED CIVIL JURISDICTION
15

16
17 RUSSELL BRIMER

18 Plaintiff,

19 v.

20 RALEY'S, INC.; and DOES 1 through 150,
inclusive,

21 Defendants.

Case No. CV-05-00000928

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

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer And Raley's**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter
4 "Brimer" or "Plaintiff") and defendant Raley's, (hereafter "Raley's" or "Defendant"), with Brimer
5 and Raley's collectively referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Raley's employs ten or more persons and is a person in the course of doing business for
12 purposes of Proposition 65.

13 **1.4 General Allegations**

14 Brimer alleges that Raley's has manufactured, distributed and/or sold in the State of
15 California certain shot glasses, mugs and other glassware with colored artwork or designs
16 (containing lead) on the exterior. Lead is listed pursuant to the Safe Drinking Water and Toxic
17 Enforcement Act of 1986, California Health & Safety Code §§25249.5 et seq. ("Proposition 65"),
18 as a chemical known to the State of California to cause birth defects and other reproductive harm.
19 Lead shall be referred to herein as the "Listed Chemical."

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: shot
22 glasses, mugs and other glassware with colored artwork or designs (containing lead) on the
23 exterior, limited to those manufactured or distributed by the vendors, manufacturers, and/or
24 distributors identified in Exhibit A to this consent judgment. All such shot glasses, mugs and
25 other glassware with colored artwork or designs (containing lead) on the exterior shall be referred
26 to herein as the "Products."

27 **1.6 Notices of Violation**

28 On or about October 14, 2004, Brimer served Raley's and various public enforcement

1 agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided
2 Raley's and such public enforcers with notice that alleged that Raley's was in violation of
3 California Health & Safety Code §25249.6 for failing to warn consumers and customers that the
4 Products that Raley's sold exposed users in California to the Listed Chemical.

5 **1.7 Complaint**

6 On January 6, 2005, Brimer, who is acting in the interest of the general public in
7 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the
8 Superior Court in and for the County of Marin against Raley's and Does 1 through 150, (*Brimer v.*
9 *Raley's, Inc.*, Marin County Superior Court Case No. CV-050081) alleging violations of Health &
10 Safety Code §25249.6 based on the alleged exposures to the Listed Chemical contained in the
11 Products sold by Raley's. On or about March 16, 2005, an order transferring the case was entered
12 by the Marin County Superior court, and the case was transferred to the Superior Court for the
13 County of Yolo (*Brimer v. Raley's, Inc.*, Yolo County Superior Court, Case No. CV-05-0000928).

14 **1.8 No Admission**

15 Raley's denies the material factual and legal allegations contained in Brimer's Notice and
16 Complaint and maintains that all products that it has sold and distributed in California, including
17 the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment
18 shall be construed as an admission by Raley's of any fact, finding, issue of law, or violation of
19 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
20 by Raley's of any fact, finding, conclusion, issue of law or violation of law, such being
21 specifically denied by Raley's. However, this Section shall not diminish or otherwise affect the
22 obligations, responsibilities and duties of Raley's under this Consent Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Raley's as to the allegations contained in the Complaint, that venue is proper in
26 the County of Yolo and that this Court has jurisdiction to enter and enforce the provisions of this
27 Consent Judgment.

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean August 6,
3 2007.

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

5 **2.1** After the Effective Date, Raley's shall not sell, ship or offer to be shipped for sale
6 in California Products containing the Listed Chemical unless such Products are sold or shipped
7 with the clear and reasonable warnings set out in Section 2.2 or comply with the Reformulation
8 Standards set forth in Section 2.3.

9 Any warning issued for Products pursuant to this Section 2.2 below shall be prominently
10 placed with such conspicuousness as compared with other words, statements, designs, or devices
11 as to render it likely to be read and understood by an ordinary individual under customary
12 conditions before purchase or, for Products shipped directly to an individual in California, before
13 use. Any warning issued pursuant to Section 2.2 shall be provided in a manner such that the
14 consumer or user understands to which specific product the warning applies, so as to minimize if
15 not eliminate the chance of an overwarning situation.

16 **2.2 Product Warnings**

17 **2.2.1** Clear and Reasonable Warnings. This Section describes Raley's options for
18 satisfying the warning obligations required by Section 2.1, depending, in part, on the manner of
19 sale:

20 **(a) Retail Store Sales**

21 **(i) Product Labeling.** From the Effective Date, a warning will
22 be affixed to the packaging, labeling or directly on the Product by Raley's or its agent, that states:

23 **WARNING:** The materials used as colored decorations
24 on the exterior of this product contain lead,
25 a chemical known to the State of California
26 to cause birth defects and other
27 reproductive harm.

26 **(ii) Point-of-Sale Warnings.** Raley's may perform its warning
27 obligations by insuring to the greatest extent possible that signs are posted at retail outlets in the
28 State of California where the Products are sold. Raley's must receive a written commitment from

1 each retailer to whom Raley's sells Products directly that it will post the warning signs.
2 Point-of-sale warnings shall be provided through one or more signs posted in close proximity to
3 the point of display of the Products that state:

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

9 **(b) Mail Order Catalog and Internet Sales.** Defendant shall satisfy
10 its warning obligations for Products that are sold by mail order catalog or from the internet to
11 California residents, by providing a warning: (a) in the mail order catalog and/or on the website;
12 or (b) with the Product when it is shipped to an address in California. Warnings given in the mail
13 order catalog or on the website shall identify the specific Product to which the warning applies as
14 further specified in Sections 2.2.1(b)(i), (ii) and/or (iii) as applicable:

15 **(i) Mail Order Catalog.** Any warning provided in a mail order
16 catalog must be in the same type size or larger as the product description text within the catalog.
17 The following warning shall be provided on the same page and in the same location as the display
18 and/or description of the Product:

19 **WARNING:** The materials used as colored decorations on
20 the exterior of this product contain lead, a
21 chemical known to the State of California to
22 cause birth defects and other reproductive
23 harm.

24 Where it is impracticable to provide the warning on the same page and in the same location as the
25 display and/or description of the Product, Raley's may utilize a designated symbol to cross
26 reference the applicable warning ("Designated Symbol") and shall provide the following language
27 on the inside of the front cover of the catalog or on the same page as any order form for the
28 Product(s):

WARNING: The materials used on as colored decorations
 on the exterior of certain products identified
 with this symbol [Designated Symbol] and
 offered for sale in this catalog contain lead, a
 chemical known to the State of California to
 cause birth defects and other reproductive
 harm.

1 The Designated Symbol (shown on Exhibit B attached hereto) must appear on the same
2 page and in close proximity to the display and/or description of the Product. On each page where
3 the Designated Symbol appears, Raley's must provide a header or footer directing the consumer to
4 the warning language and definition of the Designated Symbol.

5 If Defendant elects to provide warnings in the mail order catalog, then the warnings must
6 be included in all catalogs offering to sell one or more Products printed after August 6, 2007.

7 (ii) **Internet Web Sites and Pages.** A warning may be given in
8 conjunction with the sale of the Product via the internet, provided it appears either: (a) on the
9 same web page on which the Product is displayed; (b) on the same web page as the order form for
10 the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
11 displayed to a purchaser during the checkout process. The following warning statement shall be
12 used and shall appear in any of the above instances adjacent to or immediately following the
13 display, description, or price of the Product for which it is given in the same type size or larger as
14 the product description text:

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

18 Alternatively, the Designated Symbol may appear adjacent to or immediately following the
19 display, description or price of the Product for which a warning is being given, provided that the
20 following warning statement also appears elsewhere on the same web page:

21 **WARNING:** Products identified on this page with the
22 following symbol use materials as colored
23 decorations on their exterior that contain lead,
a chemical known to the State of California to
24 cause birth defects and other reproductive
harm: [show Designated Symbol]

25 (iii) **Package Insert or Label.** For all Products sold by catalog
26 or via the internet, a warning may be provided with the Product when it is shipped directly to an
27 individual in California, by either: (a) affixing the following warning language to the packaging,
28 labeling or directly to a specific Product; (b) inserting a warning card measuring at least 4" x 6" in

1 the shipping carton which contains the following warning language; or (c) by placing the
2 following warning statement on the packing slip or customer invoice on the line directly below the
3 description of the Product on the packing slip or customer invoice:

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

7 Alternatively, Raley's may place the following language on the packing slip or invoice and
8 specifically identifying the Product in lettering of the same size or larger as the description of the
9 Product:

10 **WARNING:** The materials used as colored decorations on
11 the exterior of the following product(s)
12 contain lead, a chemical known to the State of
 California to cause birth defects or other
 reproductive harm:

13 *[list products for which warning is given].*

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

18 **2.2.2 Exceptions**

19 The warning requirements set forth in Section 2.2.1 shall not apply to:

- 20 (i) Any Products shipped to a third party before the Effective Date;
- 21 (ii) Reformulated Products (as defined in Section 2.3 below);
- 22 (iii) any Covered Products supplied to Defendants by any other person in the
23 course of doing business who is subject to a final judgment in an action
24 brought by Brimer, Dr. Whitney Leeman or Michael DiPirro or a public
25 enforcer whose action was brought on behalf of the People of the State of
26 California addressing Proposition 65 warning obligations arising from
27 alleged exposures to lead from glassware with colored artwork, designs or
28 markings on the exterior surface.

1 **2.3 Reformulation Standards**

2 The following Products shall be deemed "Reformulated Products" and to comply with
3 Proposition 65 and be exempt from any Proposition 65 warning requirements under Sections 2.2:
4 The products must only utilize decorating materials that contain six one-hundredths of one percent
5 (0.06%) or less of lead by weight.

6 **2.4 Reformulation Commitment**

7 Raley's hereby commits that all Products covered by this consent judgment, as defined by
8 Section 1.5, that it acquires for sale in California after August 6, 2007, shall qualify as
9 Reformulated Products.

10 **3. MONETARY PAYMENTS**

11 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

12 The total settlement amount shall be \$2,000, which shall be paid by Raley's as set forth
13 herein. Pursuant to Health & Safety Code §25249.7(b), Raley's shall pay the the payment of
14 \$2,000 on or before July 25, 2007. Said payments shall be made payable to the "HIRST &
15 CHANLER LLP in Trust For Russell Brimer" and shall be delivered to plaintiff's counsel at the
16 following address:

17 HIRST & CHANLER LLP
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710-2565

22 **3.2 Apportionment of Penalties Received**

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

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

2 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 this fee issue to be resolved after the material terms of the agreement had been settled. Raley's
5 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
6 had been finalized. The Parties then attempted to (and did) reach an accord on the compensation
7 due to Brimer and his counsel under the private attorney general doctrine codified at California
8 Code of Civil Procedure §1021.5 for all work performed through the Court's approval of this
9 agreement. Under the private attorney general doctrine, Raley's shall reimburse Brimer and his
10 counsel for fees and costs incurred as a result of investigating, bringing this matter to Raley's
11 attention, litigating and negotiating a settlement in the public interest and seeking the Court's
12 approval of the settlement agreement. Raley's shall pay Brimer and his counsel \$12,000 for all
13 attorneys' fees, expert and investigation fees, litigation and related costs. The payment shall be
14 made payable to HIRST & CHANLER LLP and shall be delivered on or before July 25, 2007 at
15 the following address:

16 HIRST & CHANLER LLP
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710-2565

21 **5. RELEASE OF ALL CLAIMS**

22 **5.1 Release of Raley's and Downstream Customers**

23 In further consideration of the promises and agreements herein contained, and for the
24 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and
25 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
26 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
27 form of legal action and releases all claims, including, without limitation, all actions, and causes
28 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and
attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent

1 (collectively "Claims"), against Raley's and each of its downstream distributors, wholesalers,
2 licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers,
3 users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors,
4 attorneys, representatives, shareholders, agents, and employees, and sister and parent entities
5 (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65,
6 as such claims relate to Raley's alleged failure to warn about exposures to or identification of the
7 Listed Chemical contained in the Products covered by this consent judgment. Neither this release,
8 nor any additional liability under this Consent Judgment, shall extend to claims relating to the
9 presence of the Listed Chemical contained in other glassware products not covered by this
10 Consent Judgment.

11 The Parties further understand and agree that this release shall not extend upstream to any
12 entities that manufactured the Products or any component parts thereof, or any distributors or
13 suppliers who sold the Products or any component parts thereof to Raley's.

14 **5.2 Raley's Release of Brimer**

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

20 **6. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and
22 shall be null and void if, for any reason, it is not approved and entered by the Court within one
23 year after it has been fully executed by all Parties, in which event any monies that have been
24 provided to Plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be
25 refunded within fifteen (15) days after receiving written notice from Raley's that the one-year
26 period has expired.

27 **7. SEVERABILITY**

28 If, subsequent to court approval of this Consent Judgment, any of the provisions of this

1 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
2 provisions remaining shall not be adversely affected.

3 **8. ATTORNEYS' FEES**

4 In the event that, after Court approval: (1) a dispute arises with respect to any provision of
5 this Consent Judgment; or (2) either party takes reasonable and necessary steps to enforce the
6 terms of this Consent Judgment, the prevailing party shall be entitled to his reasonable attorneys'
7 fees and costs pursuant to CCP §1021.5.

8 **9. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and apply within the State of California. In the event that Proposition 65 is repealed or
11 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Raley's
12 shall provide written notice to Brimer of any asserted change in the law, and shall have no further
13 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
14 are so affected.

15 **10. NOTICES**

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

20 To Raley's:

21 General Counsel
22 Raley's Corporate Office
23 P.O. Box 15618
24 500 W. Capitol Ave.
25 Sacramento, CA 95852

26 To Brimer:

27 Proposition 65 Coordinator
28 HIRST & CHANLER LLP
29 2560 Ninth Street
30 Parker Plaza, Suite 214
31 Berkeley, CA 94710-2565

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

3 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

10 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

11 Brimer and Raley's agree to mutually employ their best efforts to support the entry of this
12 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
13 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a
14 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the
15 Plaintiff agrees to file a Motion to Approve the Agreement ("Motion"). Raley's shall have no
16 additional responsibility to Plaintiff's counsel pursuant to Code of Civil Procedure §1021.5 or
17 otherwise with regard to reimbursement of any fees and costs incurred with respect to the
18 preparation and filing of the Motion or with regard to Plaintiff's counsel appearing for a hearing
19 thereon.

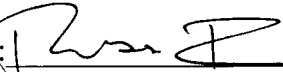
20 **14. MODIFICATION**

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

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1 **15. AUTHORIZATION**

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

<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>7.25.07</u></p> <p>By:  Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, RALEY'S, INC.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>7/25/2007</u></p> <p>HIRST & CHANLER LLP</p> <p>By:  Keith G. Adams Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>REED SMITH LLP</p> <p>By: _____ Thomas A. Evans Attorneys for Defendant RALEY'S, INC.</p>

19 **IT IS SO ORDERED.**

20 Date: _____

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JUDGE OF THE SUPERIOR COURT

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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>7/26/07</u></p> <p>By: <u>Jennifer Crabb</u> Defendant, RALEY'S, INC.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>HIRST & CHANLER LLP</p> <p>By: _____ Keith G. Adams Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>7/27/07</u></p> <p>REED SMITH LLP</p> <p>By: <u>T.A. Evans</u> Thomas A. Evans Attorneys for Defendant RALEY'S, INC.</p>

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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Exhibit A

- 1. Renaissance International Group
- 2. Alpine Glass and Ceramic

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Exhibit B

The Designated Symbol that Raley's will use to identify Products containing the Listed Chemical which are sold through its catalogs or on its website is:

