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11 Attorneys for Defendants  
12 SHUN FAT SUPERMARKET, INC. and  
SF SUPERMARKET, INC.  
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE CITY AND COUNTY OF SACRAMENTO  
16 UNLIMITED CIVIL JURISDICTION  
17

18  
19 RUSSELL BRIMER,

20 Plaintiff,

21 v.

22 SHUN FAT SUPERMARKET, INC.; SF  
SUPERMARKET, INC.; and DOES 1 through  
150, inclusive,

23 Defendants.  
24  
25  
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Case No. 06AS04218

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

1       **1. INTRODUCTION**

2               **1.1 Russell Brimer, Shun Fat Supermarket, Inc. and SF Supermarket, Inc.**

3               This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter  
4 "Brimer" or "Plaintiff") and defendants Shun Fat Supermarket, Inc. and SF Supermarket, Inc.,  
5 (hereinafter "Shun Fat" or "Defendants"), with Brimer and Shun Fat collectively referred to as the  
6 "Parties."

7               **1.2 Plaintiff**

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

11              **1.3 Defendants**

12              Shun Fat Supermarket, Inc. and SF Supermarket, Inc. each employ ten or more persons and  
13 are both a person in the course of doing business for purposes of Proposition 65.

14              **1.4 General Allegations**

15              Brimer alleges that Shun Fat has manufactured, distributed and/or sold in the State of  
16 California certain rice bowls and other ceramic containers with colored artwork or designs on the  
17 exterior and/or food contact surface intended for the consumption of food or beverages containing  
18 lead as well as liquor bottles and other glassware containers intended for the consumption of food  
19 or beverages with colored artwork or designs on the exterior containing lead. Lead is listed  
20 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
21 Safety Code §§25249.6 *et seq.* (hereinafter, "Proposition 65"), as a chemical known to the State of  
22 California to cause cancer, birth defects and other reproductive harm. Lead shall be referred to  
23 herein as the "Listed Chemical."

24              **1.5 Product Description**

25              The products that are covered by this Consent Judgment fall into two categories and are  
26 defined as follows: Category #1: rice bowls and other ceramic containers intended for the  
27 consumption of food or beverages with colored artwork or designs on the exterior (*e.g.*, including  
28 but not limited to teacups, saucers, bowls, plates, mugs, teapots, spoons and ladles); and rice bowls

1 and other ceramic containers intended for the consumption of food or beverages with colored  
2 artwork or designs on the food contact surface (*e.g.*, including but not limited to teacups, saucers,  
3 bowls, plates, mugs, teapots, spoons and ladles). All such ceramic products that contain the Listed  
4 Chemical shall be referred to herein as the "Ceramic Products." Category #2: liquor bottles and  
5 other glassware containers intended for the consumption of food or beverages with colored  
6 artwork or designs painted directly onto the exterior of the liquor bottle or glassware container (as  
7 opposed to colored artwork or designs printed on labels). All such liquor bottles and glassware  
8 containers with painted decorations on the exterior that contain the Listed Chemical shall be  
9 referred to herein as the "Liquor Products." The Ceramic Products and Liquor Products include  
10 but are not limited to, the products identified in Exhibit A to this Consent Judgment.

11 **1.6 Notices of Violation**

12 On November 23, 2005, Brimer served Shun Fat and various public enforcement agencies  
13 with a document entitled "60-Day Notice of Violation" that alleged that Shun Fat was in violation  
14 of California Health & Safety Code §25249.6 for failing to warn consumers, customers, employees  
15 and others that rice bowls and other ceramic containers intended for the consumption of food or  
16 beverages with colored artwork or designs (containing lead) on the exterior that Shun Fat sold in  
17 California contained the Listed Chemical. On June 27, 2006, Brimer served Shun Fat and various  
18 public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation"  
19 that alleged that Shun Fat was in violation of California Health & Safety Code §25249.6 for failing  
20 to warn consumers, customers, employees and others that rice bowls and other ceramic containers  
21 intended for the consumption of food or beverages with colored artwork or designs (containing  
22 lead) on the food contact surface that Shun Fat sold in California contained the Listed Chemical.  
23 On November 7, 2006, Brimer served Shun Fat and various public enforcement agencies with a  
24 document entitled "Second Supplemental 60-Day Notice of Violation" that alleged that Shun Fat  
25 was in violation of California Health & Safety Code §25249.6 for failing to warn consumers,  
26 customers, employees and others that liquor bottles and other glassware containers intended for the  
27 consumption of food or beverages with colored artwork or designs (containing lead) on the  
28 exterior sold in California contained the Listed Chemical. The foregoing three notices shall be

1 referred to collectively herein as the "Notices."

2 **1.7 Complaint and First Amended Complaint**

3 On February 15, 2006, Brimer filed a private enforcement action in the Superior Court in  
4 and for the City and County of San Francisco against Shun Fat Supermarket, Inc., SF Supermarket,  
5 Inc. and Does 1 through 150, (*Brimer v. Shun Fat Supermarket, Inc. and SF Supermarket, Inc.*,  
6 Case No. CGC 06-449467) alleging violations of Health & Safety Code §25249.6 based on the  
7 alleged exposures to the Listed Chemical contained in the Products sold by Shun Fat. On October  
8 16, 2006, the case was transferred to the Superior Court in and for the County of Sacramento,  
9 (*Brimer v. Shun Fat Supermarket, Inc. and SF Supermarket, Inc.*, Case No. 06AS04218). On  
10 November 15, 2006, the complaint was amended to include the products noticed in the  
11 Supplemental 60-Day Notice of Violation served on June 27, 2006. The First Amended  
12 Complaint shall be deemed amended to allege exposures to lead from the Liquor Products, as  
13 described in the Second Supplemental 60-Day Notice of Violation, as of the sixty-sixth (66<sup>th</sup>) day  
14 following the date of the Second Supplemental 60-Day Notice, provided that no public  
15 enforcement authority designated under Health & Safety Code §25249.7 has filed a complaint  
16 against the Defendants on behalf of the public interest with respect to those new allegations set  
17 forth in the Second Supplemental 60-Day Notice. The foregoing shall hereafter be collectively  
18 referred to as the "Complaint" or the "Action."

19 **1.8 No Admission**

20 Shun Fat denies the material factual and legal allegations contained in Brimer's Notices and  
21 Complaint and maintains that all products that it has sold and distributed in California, including  
22 the Ceramic Products and Liquor Products, have been and are in compliance with all laws.  
23 Nothing in this Consent Judgment shall be construed as an admission by Shun Fat of any fact,  
24 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
25 constitute or be construed as an admission by Shun Fat of any fact, finding, conclusion, issue of  
26 law or violation of law, such being specifically denied by Shun Fat. However, this Section shall  
27 not diminish or otherwise affect the obligations, responsibilities and duties of Shun Fat under this  
28 Consent Judgment.

1           **1.9    Consent to Jurisdiction**

2           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
3 jurisdiction over Shun Fat as to the allegations contained in the Complaint and Notices, that venue  
4 is proper in the County of Sacramento and that this Court has jurisdiction to enter and enforce the  
5 provisions of this Consent Judgment.

6           **1.10   Effective Date**

7           For purposes of this Consent Judgment, the term "Effective Date" shall mean January 5,  
8 2006.

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

10          After the Effective Date, Shun Fat shall not sell, ship or offer to be shipped for sale in  
11 California the Ceramic and the Liquor Products unless such Ceramic Products and Liquor  
12 Products are: sold or shipped with the clear and reasonable warnings set out in Section 2.1; exempt  
13 pursuant to Section 2.2; or in compliance with the Reformulation Standards set forth in Section  
14 2.3. Shun Fat satisfies its obligations under this Consent Judgment by compliance with any one of  
15 these options as to the Ceramic Products and any one of these options as to the Liquor Products.

16          **2.1    Product Warnings**

17          Any warning issued pursuant to this Section shall be prominently placed with such  
18 conspicuousness as compared with other words, statements, designs, or devices so as to render it  
19 likely to be read and understood by an ordinary individual under customary conditions before  
20 purchase or, for Ceramic Products or Liquor Products shipped directly to an individual in  
21 California, before use. Any warning issued pursuant to this Section shall be provided in a manner  
22 such that a reasonable consumer or user would understand to which *specific* product or  
23 category/type of products the warning applies, so as to minimize the chance that an overwarning  
24 situation will arise.

25          Section 2.1(a) describes Shun Fat's options for satisfying its warning obligations. Shun  
26 Fat may satisfy its warning obligations by product labeling or point-of-sale warnings as set forth in  
27 sections (i) and (ii) below.

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**(a) Retail Store Sales**

**(i) Product Labeling.** From the Effective Date, a warning will be affixed to the packaging, labeling or directly on the Ceramic Product or Liquor Product, that states the following or substantially similar language<sup>1</sup>:

**WARNING:** The painted artwork or designs used on this product contain lead, a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

**(ii) Point-of-Sale Warnings.** Shun Fat may perform its warning obligations by insuring to the greatest extent possible that signs are posted at its retail outlets in the State of California where the Ceramic Products or Liquor Products are sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the Ceramic Products or Liquor Products that state the following or substantially similar language<sup>2</sup>:

**WARNING:** The painted artwork or designs used on the products in this section contain lead, a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

**2.2 Exemptions**

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

- (i) Any Ceramic Products or Liquor Products shipped to a third party before the Effective Date; or
- (ii) Reformulated Ceramic Products or Liquor Products (as defined in Section

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<sup>1</sup> Substantially similar language” shall mean the warning unconditionally identifies lead as a toxin; the colored artwork as a source of lead; and birth defects and other reproductive harm as health hazards.

<sup>2</sup> See Footnote 1.

1 2.3 below).

2 **2.3 Reformulation Standards**

3 The following Products shall be deemed "Reformulated Products" and to comply with  
4 Proposition 65 and be exempt from any Proposition 65 warning requirements under Section 2.1:  
5 [t]he products must only utilize decorating materials that contain six one-hundredths of one  
6 percent (0.06%) or less of lead by weight; and there must be no detectable lead in either the  
7 "lip-and-rim area"<sup>3</sup> or in the area of the product that a reasonable consumer or user would consider  
8 to be the food contact surface area.

9 **2.4 Reformulation Goal**

10 Shun Fat hereby commits to exercise reasonable care to ensure that either: (a) at least  
11 eighty percent (80% ) of all Ceramic Products it offers for sale in California six months after the  
12 Effective Date, will be Reformulated Products as defined in Section 2.3 or (b) at least eighty  
13 percent (80%) of all Ceramic Products that are not Reformulated Products as defined in Section  
14 2.3 will no longer be sold.

15 **3. MONETARY PAYMENTS**

16 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

17 Pursuant to Health & Safety Code §25249.7(b), Shun Fat shall pay \$10,000 in civil  
18 penalties in two installments. The first payment of \$5,000 shall be made on or before the Effective  
19 Date. The second payment of \$5,000 shall be payable on or before one month after the Effective  
20 Date. Said payments shall be made payable to "HIRST & CHANLER LLP in Trust For Russell  
21 Brimer" and shall be delivered to plaintiff's counsel at the following address:

22 HIRST & CHANLER LLP  
23 Attn: Proposition 65 Controller  
24 2560 Ninth Street  
25 Parker Plaza, Suite 214  
26 Berkeley, CA 94710-2565

27 ///

28 \_\_\_\_\_  
<sup>3</sup>"Lip-and-Rim Area" is defined as the exterior top twenty (20) millimeters of a hollowware food or beverage Product.

1           **3.2    Apportionment of Penalties Received**

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

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

9           The Parties acknowledge that Brimer and his counsel offered to resolve this dispute  
10   without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
11   this fee issue to be resolved after the material terms of the agreement had been settled. The Parties  
12   attempted to (and did) reach an accord on the compensation due to Brimer and his counsel under  
13   the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 for all  
14   work performed through the Court's approval of this agreement. Under the private attorney  
15   general doctrine, Shun Fat shall reimburse Brimer and his counsel for fees and costs incurred as a  
16   result of investigating, bringing this matter to Shun Fat's attention, litigating and negotiating a  
17   settlement in the public interest and seeking the Court's approval of the settlement agreement.  
18   Shun Fat shall pay Brimer and his counsel \$45,000 for all attorneys' fees, expert and investigation  
19   fees, litigation and related costs in two installments. The first payment of \$22,500 shall be made  
20   on or before the Effective Date. The second payment of \$22,500 shall be payable on or before one  
21   month after the Effective Date. These payments shall be made payable to HIRST & CHANLER  
22   LLP and shall be delivered on or before the above-referenced dates at the following address:

23           HIRST & CHANLER LLP  
24           Attn: Proposition 65 Controller  
25           2560 Ninth Street  
26           Parker Plaza, Suite 214  
27           Berkeley, CA 94710-2565

28           **5.       RELEASE OF ALL CLAIMS**

**5.1    Release of Shun Fat and Downstream Customers**

          In further consideration of the promises and agreements herein contained, and for the



1 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and  
2 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
3 general public, hereby waive all rights to institute or participate in, directly or indirectly, any form  
4 of legal action and releases all claims, including, without limitation, all complaints, 60-Day Notice  
5 of Violations, actions, and causes of action, in law or in equity, suits, liabilities, demands,  
6 obligations, damages, controversies, costs, fines, penalties, losses or expenses (including, but not  
7 limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether  
8 known or unknown, fixed or contingent (collectively "Claims"), against Shun Fat and each of its  
9 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees,  
10 dealers, customers, owners, members, shareholders, purchasers, users, parent companies, affiliated  
11 entities, related entities, named entities, subsidiaries, and their respective officers, directors,  
12 attorneys, representatives, shareholders, agents, and employees, and sister and parent entities,  
13 whether or not named in the Notices or Complaint (collectively "Releasees"). This release is  
14 limited to those claims that arise under Proposition 65, as such claims relate to the Releasees'  
15 alleged failure to warn about exposures to or identification of the Listed Chemical or any other  
16 substances contained in each of the products or types of products identified in the Notices, and any  
17 additional claims arising out of or in connection with the Ceramic Products, Liquor Products  
18 and/or the facts relating to or alleged in the Action or Notices.

19 The Parties further understand and agree that this release shall not extend upstream to any  
20 entities that manufactured the Products or any component parts thereof, or any distributors or  
21 suppliers who sold the Products or any component parts thereof to Shun Fat.

## 22 **5.2 Shun Fat's Release of Brimer**

23 Shun Fat waives any and all claims against Brimer, his attorneys and other representatives,  
24 for any and all actions taken or statements made (or those that could have been taken or made) by  
25 Brimer and his attorneys and other representatives in the course of investigating claims or  
26 otherwise seeking enforcement of Proposition 65 against Shun Fat in this Action.

## 27 **6. COURT APPROVAL**

28 This Consent Judgment is not effective until it is approved and entered by the Court and

1 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
2 year after it has been fully executed by all Parties, in which event any monies that have been  
3 provided to Plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be  
4 refunded to Shun Fat within fifteen (15) days after receiving written notice from Shun Fat that the  
5 one-year period has expired.

6 **7. SEVERABILITY**

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

10 **8. INTEGRATION**

11 This Stipulation And Order Re: Consent Judgment is intended by the Parties as the final  
12 expression of their agreement and therefore incorporates all their negotiations and is their entire  
13 agreement. The Parties acknowledge that they are not relying on any written or oral agreement,  
14 representation, warranty, or understanding of any kind except for the agreements set forth herein.

15 **9. GOVERNING LAW**

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

22 **10. NOTICES**

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

27 To Shun Fat:

28 Shun Fat Supermarket, Inc.

1 c/o Audrey C. Fong  
2 IVIE, MCNEILL & WYATT, PC  
3 Citigroup Center  
444 S. Flower Street, 18<sup>th</sup> Floor  
Los Angeles, CA 90071

4 To Brimer:

5 Proposition 65 Coordinator  
6 HIRST & CHANLER LLP  
7 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

10 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

17 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

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

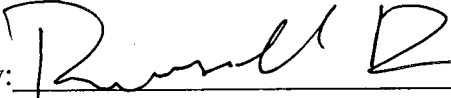
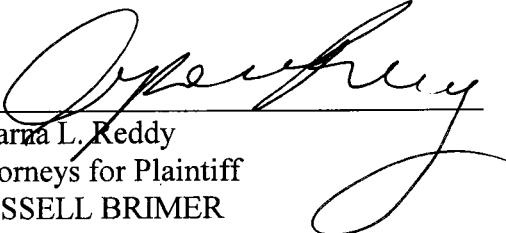
26 **14. MODIFICATION**

27 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
28 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion

1 of any Party and entry of a modified Consent Judgment by the Court. The Attorney General shall  
2 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)  
3 days in advance of its consideration by the Court.

4 **15. AUTHORIZATION**

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

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>1-4-07</u></p> <p>By: <u></u> Plaintiff Russell Brimer</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant Shun Fat Supermarket, Inc.</p> <p>Date: _____</p> <p>By: _____ Defendant SF Supermarket, Inc.</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>1/4/07</u></p> <p>HIRST &amp; CHANLER LLP</p> <p>By: <u></u> Aparna L. Reddy Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>IVIE, MCNEILL &amp; WYATT, P.C.</p> <p>By: _____ Audrey C. Fong Attorneys for Defendant SHUN FAT SUPERMARKET, INC. and SF SUPERMARKET, INC.</p>

27 **IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1 of any Party and entry of a modified Consent Judgment by the Court. The Attorney General shall  
 2 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)  
 3 days in advance of its consideration by the Court.

4 **15. AUTHORIZATION**

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

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____          Plaintiff Russell Brimer</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>12/26/06</u></p> <p>By: <u>[Signature]</u>          Defendant Shun Fat Supermarket, Inc.</p> <p>Date: <u>12/26/06</u></p> <p>By: <u>[Signature]</u>          Defendant SF Supermarket, Inc.</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: _____          Aparna L. Reddy          Attorneys for Plaintiff          RUSSELL BRIMER</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>12/28/06</u></p> <p>IVIE, MCNEILL &amp; WYATT, P.C.</p> <p>By: <u>[Signature]</u>          Audrey C. Fong          Attorneys for Defendant          SHUN FAT SUPERMARKET, INC. and          SF SUPERMARKET, INC.</p>

27 **IT IS SO ORDERED.**

28 Date: \_\_\_\_\_ JUDGE OF THE SUPERIOR COURT

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**Exhibit A**

The Products that are covered by this Consent Judgment include, but are not limited to:

1. *Rice Bowl, Japan*
2. *Bowl, Flowers*
3. *Han Imported Vodka (# 8 57796 00013 0)*