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21 Russell Brimer

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

25 RUSSELL BRIMER,
26 Plaintiff,
27 v.
28 THE BOELTER COMPANIES, et al.,
Defendants.

Case No. CGC-05-440811

**STIPULATION FOR ENTRY OF
JUDGMENT**

1 1. The following constitutes the knowing and voluntary election and stipulation
2 of the entity named below (“Company” or “Opt-In Defendant”) to join as a Settling
3 Defendant under the Consent Judgment previously entered by the Court in *Brimer v.*
4 *The Boelter Companies, Inc.*, San Francisco Superior Court Case No. CGC 05 -440811
5 (“Action”) and to be bound by the terms of that Consent Judgment.

6 2. At any time during the one-year period prior to the filing of this Stipulation
7 (“Relevant Period”), the Company has employed ten (10) or more part-time or full-time
8 persons and has manufactured, distributed, offered for use or sold one or more items in
9 each of the following categories of Covered Products, as defined in the Consent
10 Judgment (section 1.4) (check all that apply):

- 11 **Glassware Food/Beverage Products** (“Category A Products”)
- 12 **Glassware Non-Food/Beverage Products** (“Category C Products”)
- 13 **Ceramicware Food/Beverage Products** (“Category B Products”)
- 14 **Ceramicware Non-Food/Beverage Products** (“Category D Products”)

15 3. The categories of products identified above are hereafter designated
16 “Covered Products” in the Action with respect to the Company.

17 4. At least one of the items in each of the categories checked above did not
18 during the Relevant Period or does not currently meet the Reformulation Standards set
19 forth for that category of Covered Products in section 2.3 of the Consent Judgment.
20 The Company has not provided compliant Proposition 65 warnings in conjunction with
21 the sale or use of all such Covered Products in California at all times during the
22 Relevant Period.

23 5. The Company has not conducted a risk or exposure assessment for all
24 Covered Products within each separate category checked above firmly establishing that
25 the use of such Covered Products will result in an exposure in an amount less than that
26 deemed permissible in 22 Cal. Code Regs. §12805(b) (i.e., less than 0.5 micrograms of
27 lead per day and/or less than 4.1 micrograms of cadmium per day).

1 6. To the extent the Consent Judgment applies to the categories of Covered
2 Products checked above, the Company agrees to be bound by the injunctive relief
3 provisions of the Consent Judgment as it relates to each such category of Covered
4 Products.

5 7. In conjunction with the execution of this Stipulation, the Company has
6 provided the payments applicable to it as set forth in Table 14.4 of the Consent
7 Judgment in the manner described in Exhibit E to the Consent Judgment. In this regard,
8 the Company hereby represents and warrants that under the criteria set forth in
9 subsections 14.4(a), (b), and (c) of the Consent Judgment, with respect to the Covered
10 Products applicable to it pursuant to the categories checked in Paragraph 2 of this
11 Stipulation, it is a (check only one)¹:

- 12 **(a) Manufacturer** with combined sales in California of less than 350,000
13 consumer units in calendar year 2004
- 14 **(a.1) Low Volume Manufacturer** with combined sales in California of
15 less than 10,000 consumer units in calendar year 2004
- 16 **(b) Distributor and/or Importer** with combined sales in California of less
17 than 350,000 consumer units in calendar year 2004
- 18 **(b.1) Low Volume Distributor and/or Importer** with combined sales in
19 California of less than 10,000 consumer units in calendar year 2004
- 20 **(c) Retailer and/or Amusement & Recreation Establishment**
- 21 **(d) Bar, Restaurant, Hotel, or Other Food/Beverage Service**
- 22 **Defendant**

23
24
25 ¹ Any entity which has conducted activities which comprise more than one of the
26 categories of business listed in (a)-(d) below shall be deemed to be a Manufacturer if 15% or
27 more of its sales of Covered Products in California were the result of its Manufacturing of
28 Covered Products; any entity otherwise in categories (c) or (d) shall be deemed to be a
Distributor/Importer if 15% or more of its sales of Covered Products in California were the result
of its Distributing/Importing of Covered Products.

- 1 □ **(e) Opt-In Defendant with De Minimus Sales**, i.e., combined sales in
2 California of less than 500 consumer units in calendar year 2004 (attach
3 to this Stipulation a list of the names of all product lines (by narrative
4 description and, where available, UPC code) comprising these consumer
5 units of Covered Products).

6 8. At least 65 days prior to the submissions of this Stipulation to the Court for
7 entry, provided that it has been mailed to the address shown in Exhibit C attached
8 hereto, the Company agrees to be deemed to have accepted service of a 60-day notice
9 letter from Russell Brimer (“Brimer”) alleging certain violations of Proposition 65 with
10 respect to sales of the Covered Products identified herein.

11 9. The Company hereby stipulates to be deemed to have voluntarily accepted
12 service of the summons and complaint in this Action upon the filing of this Stipulation
13 and agrees to be subject to the jurisdiction of the Court for purposes of the Consent
14 Judgment.

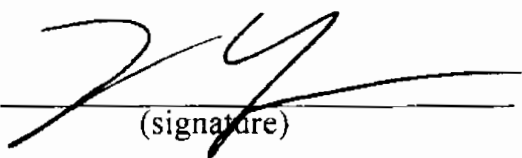
15 10. Future notices concerning this Stipulation and the Consent Judgment shall be
16 provided to the Company at the address shown in Exhibit C as attached hereto. If the
17 Company desires to change the individual and/or address designated to receive notice
18 on its behalf, the Company shall provide notice to Brimer and Boelter’s counsel at the
19 addresses for them listed in Exhibit C to the Consent Judgment.

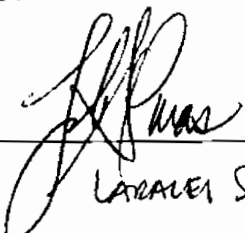
20 11. The undersigned have read, and the person and/or entity named below
21 knowingly and voluntarily agree to be bound by, all terms and conditions of this
22 Stipulation and the Consent Judgment as previously approved and entered by the San
23 Francisco County Superior Court in this Action.

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12. The undersigned have full authority to make the written representations above and to enter into this Stipulation for the person/entity on behalf of which he/she is signing.

IT IS HEREBY STIPULATED AND AGREED TO:

By: 
(signature)

By: 
LORRAINE S. PRATTS
On Behalf of Plaintiff Russell Brimer

Larry Chaplin

Administrative Vice President

On Behalf of:

Southern Wine & Spirits of America, Inc.,
its dba's, wholly owned subsidiaries, and
affiliates

(Insert Company Name)

Opt-In Defendant

Dated: 3/17/06

Dated: April 12, 2006

1 **EXHIBIT C (Supplement)**
2 Contact Information for Purposes of Future Notice

3 Opt-In Party Name: Southern Wine & Spirits of America,
4 Inc., its dba's, wholly owned
5 subsidiaries and affiliates
6

7 Contact Person: Larry Chaplin, Administrative Vice-
8 President _____
9

10 Mailing address: 2400 SW 145th Avenue
11 Suite 300
12 Miramar, FL 33027
13

14 Telephone: 954-252-7863 _____
15 Fax number: 954-252-7409 _____
16

17 Email address: LarryChaplin@Southernwine.com
18

19 With copies to:
20

21 Richard C. Jacobs
22 Howard Rice Nemerovski Canady Falk & Rabkin
23 3 Embarcadero Center, 7th Floor
24 San Francisco, CA 94111
25
26

1
2 Tel: 415-434-1600

3 Fax: 415-217-5910

4 Email address: RJacobs@howardrice.com

5
6 and

7
8 Clement J. Kong

9 Korshak, Kracoff, Kong & Sugano

10 2430 J Street

11 Sacramento, CA 95816

12
13 Tel: 916-445-6255

14 Fax: 916-448-8435

15 Email address: Clement@KKKS.com