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17 Attorneys for Defendants  
18 UNCOMMONGOODS, LLC

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

22 RUSSELL BRIMER,

23 Plaintiff,

24 v.

25 UNCOMMONGOODS, LLC ; and DOES 1  
26 through 150, inclusive

27 Defendant.

28 Case No. CGC-05-445626

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

1       **1. INTRODUCTION**

2               **1.1 Parties to the Settlement Agreement**

3               This Settlement Agreement is entered into by and between Russell Brimer acting in the  
4 public interest on behalf of the General Public of the State of California pursuant to the provisions  
5 of Proposition 65 (hereafter “Brimer”) and UncommonGoods, LLC (“UncommonGoods”), with  
6 Brimer and UncommonGoods collectively referred to as the “Parties” and individually referred to  
7 as a “Party”, where appropriate.

8               **1.2 Brimer**

9               Brimer is a citizen of the State of California, who seeks to promote awareness of exposures  
10 to toxic chemicals and improve human health by reducing or eliminating hazardous substances  
11 contained in consumer and industrial products.

12               **1.3 UncommonGoods**

13               UncommonGoods is a New York limited liability company operating an Internet based  
14 business that sells, among other things, glassware to consumers in California.

15               **1.4 General Contentions**

16               Brimer has contended that UncommonGoods has distributed and/or sold in the State of  
17 California certain Products (as defined below) with colored artwork or designs (allegedly  
18 containing lead) on the exterior. Lead is listed pursuant to the Safe Drinking Water and Toxic  
19 Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), to  
20 cause birth defects and other reproductive harm. Lead shall be referred to herein as the “Listed  
21 Chemical.”

22               **1.5 Products Descriptions**

23               The products that are covered by this Settlement and Release are: glassware intended for  
24 the consumption of food and beverages with colored artwork or designs (containing lead) on their  
25 exterior; mugs and other ceramic containers intended for the consumption of food or beverages with  
26 colored artwork or designs (containing lead) on the exterior; and glass candle containers with  
27 colored artwork or designs (containing lead) on the exterior, including but not limited to those  
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1 products listed on Exhibit A. Said products are referred to herein as the "Products." Products shall  
2 not include those items that contain less than 0.06% lead by weight in the decoration as measured  
3 either before or after the decoration is applied to the Product, using a test method of sufficient  
4 sensitivity to establish a limit of quantification of less than 600 parts per million ("ppm").<sup>1</sup>

5 **1.6 Notices of Violations**

6 On or about August 5, 2005, Brimer served UncommonGoods and various public  
7 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice")  
8 alleging the sale by UncommonGoods of glassware intended for the consumption of food and  
9 beverages with colored artwork or designs (containing lead) on their exterior. On or about May 9,  
10 2006, Brimer will have served Defendant and various public enforcement agencies with documents,  
11 entitled "Supplemental Notice of Violation" ("Supplemental Notice") that provided Defendant and  
12 the public enforcers with notice that Defendant was allegedly in violation of Health & Safety Code  
13 § 25249.6 for failing to warn individuals that Products that Defendant sold which were not within  
14 the categories identified in the original Notices expose individuals in California to the Listed  
15 Chemical.

16 **1.7 No Admission**

17 UncommonGoods denies the material factual and legal allegations contained in the Notice,  
18 Supplemental Notice and First Amended Complaint and maintains that the Products that it has sold  
19 and distributed in California were not sold in violation of Proposition 65. Nothing in this  
20 Settlement Agreement shall be construed as an admission by UncommonGoods of any fact finding,  
21 conclusion of law, or violation of law, nor shall compliance with this Settlement Agreement  
22 constitute or be construed as an admission by UncommonGoods of any fact, finding, conclusion,  
23 issue of law or violation of law, such being specifically denied by UncommonGoods.  
24 UncommonGoods is entering into this agreement in order to buy its peace and avoid the costs, time,  
25 and burden of litigation.

26  
27  
28 <sup>1</sup> The percentage of the Listed Chemical by weight must relate only to the decorating material and must not include any quantity attributed to non-decorating material (e.g., the glassware substrate).

1           **1.8    Consent to Jurisdiction**

2           For purposes of this Settlement Agreement only, the Parties stipulate that the Superior Court  
3 of the State of California for the City and County of San Francisco has jurisdiction to enforce the  
4 provisions of this Settlement Agreement.

5           **1.9    Effective Date**

6           For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 10th,  
7 2006.

8           **2.    INJUNCTIVE RELIEF**

9           **2.1**    After June 1, 2006, UncommonGoods shall not sell or offer for sale the Products in  
10 violation of Proposition 65 without a clear and reasonable warning pursuant to Section 2.2 or 2.3.

11           **2.2    Product Warnings**

12           Section 2.2 and 2.3 describe UncommonGoods’ options for satisfying the warning  
13 obligations required by Section 2.1, depending, in part, on the manner of sale:

14                   **2.2.1   Warning on the Products or Product Packaging Sold in Retail Stores**

15           A warning is affixed to the packaging, labeling or directly onto the Products by the  
16 manufacturer, importer, retailer or distributor of the Product, unless UncommonGoods  
17 consents, in writing, to provide the warning itself that states:

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

22           Warnings issued for the Products pursuant to this subsection shall be prominently  
23 placed with such conspicuousness as compared with other words, statements, designs, or  
24 devices so as to render it likely to be read and understood by an ordinary individual under  
25 customary conditions of purchase. Any material changes to the language of the warning  
26 required by this subsection shall only be made with the written approval of Brimer.

26                   **2.2.2   Point of Sale**

27           At its discretion, UncommonGoods may satisfy its warning obligations under this  
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1 Settlement Agreement by arranging for the placement of sign(s), the wording of which shall  
2 be in accordance with the wording of subsection 2.2.1 above, to be posted in its California  
3 retail outlets at which the Products are sold directly to consumers. The signs shall be placed  
4 in such reasonable locations such that they are likely to be read and understood at the point  
5 of display for the Products by the ordinary California consumer exercising reasonable  
6 purchasing behavior.

7 **2.3 Mail Order and Internet Sales**

8 Subject to subsections 2.3.3, after June 1, 2006, UncommonGoods shall not sell or distribute  
9 the Products by mail order catalog or the Internet to California residents, unless warnings are  
10 provided as set forth below.

11 For the Products that require a warning pursuant to this Settlement Agreement that are sold  
12 by UncommonGoods by mail order or from the Internet to California residents, a warning  
13 containing the language in Section 2.2 shall be included, at UncommonGoods' sole option, either:  
14 (a) in the mail order catalog (if any) or on the website (if any) pursuant to subsection 2.3.1 or 2.3.2;  
15 or (b) with the Products when any of them are shipped to an address in California pursuant to  
16 subsection 2.3.3. Any warnings given in the mail order catalogs or on the website shall identify the  
17 *specific* Products to which the warning applies so as to significantly minimize, if not eliminate, the  
18 chances that an overwarning situation will arise. Nothing in this Section 2.3 shall require  
19 UncommonGoods to provide warnings in mail order Catalogs already printed or for the Products  
20 ordered from a mail order catalog printed prior to June 1, 2006.

21 **2.3.1 Mail Order Catalog**

22 The warning message shall be stated to California consumers within the catalog sent  
23 to California on the inside front cover or either: (i) on the same page as any order form; or  
24 (ii) on the same page as the price, in the same size as the surrounding, non-heading text,  
25 with the same language as that appearing in Section 2.2.

26 **2.3.2 Internet Web Sites**

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

### 10 **2.3.3 Package Insert or Label**

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

## 19 **3. MONETARY PAYMENTS**

### 20 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

21 Pursuant to Health & Safety Code section 25249.7(b), UncommonGoods shall pay \$1,600 in  
22 civil penalties on or before July 1, 2006, to be sent by overnight delivery, with the penalty payment  
23 made payable to "Hirst & Chanler LLP in Trust for Russell Brimer", to:

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

In the event Defendant fails to provide the civil penalties, Plaintiff shall be entitled to

1 recover interest accrued at a rate of 10% per annum on the principle amount.

2 **3.2 Apportionment of Penalties Received**

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

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

10 The Parties have reached an accord on plaintiff's and his counsel claims for attorneys fees  
11 pursuant to California Code of Civil Procedure §1021.5 for work performed through the Effective  
12 Date of the Settlement Agreement. On or before July 1, 2006, UncommonGoods shall pay Brimer  
13 and his counsel \$16,400 dollars for all attorneys' fees and costs. The check made payable to "Hirst  
14 & Chanler LLP" shall be delivered to Brimer's counsel at:

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

20 In the event Defendant fails to provide the attorneys' fees and costs, Plaintiff shall be  
21 entitled to recover interest accrued at a rate of 10% per annum on the principle amount.

22 **5. RELEASE OF ALL CLAIMS**

23 **5.1 Release of UncommonGoods and Downstream Customers**

24 In further consideration of the promises and agreements herein contained, and for the  
25 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and  
26 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
27 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form  
28 of legal action and releases all claims, including, without limitations, all actions, causes of action, in  
law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or

1 expenses (including, but not limited to, investigation fees, experts fees and attorneys' fees) of any  
2 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against  
3 UncommonGoods and each of its vendors, suppliers, distributors, wholesalers, licensors, licensees,  
4 auctioneers, retailers, manufacturers, franchisees, dealers, customers, owners, purchasers, users,  
5 patent companies, corporate affiliates, subsidiaries, related companies and their respective officers,  
6 directors, attorneys, representatives, shareholders, agents, and employees (collectively "Releasees")  
7 arising under Proposition 65, Business & Professions Code §17200 *et seq.* and Business &  
8 Professions Code §17500 *et seq.*, related to UncommonGoods' alleged failures to warn about  
9 exposures to or identification of Listed Chemical contained in the Products subject to this  
10 Settlement Agreement. This release does not extend to Products sold by such Releasees to other  
11 entities other than UncommonGoods.

12 The Parties further agree and acknowledge that this Settlement Agreement is a full, final and  
13 binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200 *et*  
14 *seq.* and Business & Professions Code §§ 17500 *et seq.*, that have been or could have been asserted  
15 against UncommonGoods for its alleged failure to provide clear and reasonable warnings of  
16 exposure to or identification of Listed Chemical in the specific Products which are the subject of  
17 this Settlement Agreement. Notwithstanding any other provision of this Agreement, both parties  
18 may bring appropriate actions enforce the provisions of this Settlement Agreement.

19 It is specifically understood and agreed that the Parties intend that this Settlement  
20 Agreement resolves all issues and liability, now and in the future concerning UncommonGoods'  
21 compliance with the requirements of Proposition 65, Business & Professions Code §§17200 *et seq.*  
22 and Business & Professions Code §§17500 *et seq.*, as to the Listed Chemical in the specific  
23 Products which are the subject of this Settlement Agreement and, when the Consent Judgment is  
24 entered by the Court, it shall have binding *res judicata* and collateral estoppel effect on the General  
25 Public of the State of California as to the Listed Chemical in the specific Products which are the  
26 subject of this Settlement Agreement.



1                   **5.2 UncommonGoods' Release of Brimer**

2                   UncommonGoods waives all rights to institute any form of legal action against Brimer, his  
3 attorneys or representatives, for all actions taken or statements made by Brimer or his attorneys or  
4 representatives, in the course of seeking enforcement herein of Proposition 65, Business &  
5 Professions Code §§17200 *et seq.*, or Business & Professions Code §§17500 *et seq.* against  
6 UncommonGoods and its affiliates.

7                   **6. COURT APPROVAL**

8                   This Consent Judgment is not effective until it is approved and entered by the Court and  
9 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
10 after it has been fully executed by all Parties, in which event any monies that have been provided to  
11 Plaintiff or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within  
12 fifteen (15) days. In the event Plaintiff fails to provide the required refund, Defendant shall be  
13 entitled to recover interest accrued at a rate of 10% per annum on the principle amount. Upon  
14 signing this agreement the parties shall cooperate to stay pending motions, deposition, and  
15 discovery responses to await the outcome of the Court approval hearing.

16                   **7. SEVERABILITY**

17                   If any of the provisions of this Settlement Agreement are held by a court to be  
18 unenforceable, the ability of the enforceable provisions shall not be adversely affected.

19                   **8. ATTORNEYS' FEES**

20                   Except as stated herein each party shall bear their own costs and attorneys fees.

21                   **9. GOVERNING LAW**

22                   The terms of this Settlement Agreement shall be governed by the laws of the State of  
23 California and apply within the State of California. In the event that Proposition 65 is repealed or is  
24 otherwise rendered inapplicable by reason of law generally, or as to the specific Products subject to  
25 this Settlement Agreement, then UncommonGoods shall have no further obligations pursuant to this  
26 Settlement Agreement with respect to, and to the extent that, the Products are so affected.

1     **10.    NOTICES**

2           Unless specified herein, all correspondence and notices required to be provided pursuant to  
3 this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class,  
4 registered or certified mail, return receipt requested or (ii) overnight courier to any Party by the  
5 others at the following addresses and with a copy sent via Facsimile to the following facsimile  
6 numbers:

7           **To Russell Brimer:**

8           Proposition 65 Controller  
9           HIRST & CHANLER LLP  
10          2560 Ninth Street  
11          Parker Plaza, Suite 214  
12          Berkeley, CA 94710-2565  
13          Telephone: (510) 848-8880  
14          Facsimile: (510) 848-8118

15          **To UncommonGoods, LLC:**

16          Ira P. Rothken, Esq.  
17          ROTHKEN LAW FIRM LLP  
18          3 Hamilton Landing, Suite 224  
19          Novato, California 94949-8248  
20          Telephone: (415) 924-4250  
21          Facsimile: (415) 924-2905

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

24     **11.    COUNTERPARTS: FACSIMILE SIGNATURES**

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

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

          Brimer agrees to comply with the reporting form requirements referenced in Health &  
Safety Code §25249.7(f). Pursuant to regulations promulgated under that section, Brimer shall  
present this Settlement Agreement to the California Attorney General's Office within two (2) days

1 after receiving all of the necessary signatures, with courtesy notice of such presentation sent to  
2 UncommonGoods counsel via facsimile. A noticed motion to enter the Consent Judgment will then  
3 be served on the Attorney General's Office at least forty-five (45) days prior to the date a hearing is  
4 scheduled on such motion in the Superior Court for the City and County of San Francisco unless the  
5 Court allows a shorter period of time.

6 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

7 The Parties shall mutually employ their best efforts to support the entry of this Settlement  
8 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
9 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a  
10 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the  
11 Parties agree to file a Motion to Approve the Settlement Agreement ("Motion"), the first draft of  
12 which Defendants shall prepare, within a reasonable period of time after the Effective Date.  
13 Plaintiff's counsel shall finalize the Motion to Approve and prepare a declaration in support of the  
14 Joint Motion which shall, inter alia, set forth support for the fees and costs to be reimbursed  
15 pursuant to Section 4. UncommonGoods shall have no additional responsibility to Plaintiff's  
16 counsel pursuant to Code of Civil Procedure § 1021.5 or otherwise with regard to reimbursement of  
17 any fees and costs incurred with respect to the preparation and filing of the Joint Motion and its  
18 supporting declaration or with regard to Plaintiff's counsel appearing for a hearing or related  
19 proceedings thereon.

20 **14. MODIFICATION**

21 This Settlement Agreement may be modified only by written agreement of the Parties. The  
22 Attorney General shall be served with notice of any proposed modification to this Settlement  
23 Agreement.

24 **15. AUTHORIZATION**

25 The undersigned are authorized to execute this Settlement Agreement on behalf of their  
26 respective Parties and have read and agree to all of the terms and conditions of this Settlement  
27 Agreement.  
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MAY-11-2006 19:50 From: UncommonGoods

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AGREED TO:

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

RUSSELL BRIMER

By: \_\_\_\_\_  
Plaintiff Russell Brimer

APPROVED AS TO FORM:

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

HIRST & CHANLER LLP

By: \_\_\_\_\_  
D. Joshua Voorhees  
Attorneys for Plaintiff  
RUSSELL BRIMER

**IT IS SO ORDERED.**

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

AGREED TO:

Date: 5/11/06


UNCOMMONGOODS, LLC.

By:   
David Bolotsky, CEO

APPROVED AS TO FORM:

Date: 5/11/2006

ROTHKEN LAW FIRM LLP

By:   
Ira P. Rothken  
Attorneys for Defendants  
UNCOMMONGOODS, LLC.

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JUDGE OF THE SUPERIOR COURT

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Date: 5-11-06

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

RUSSELL BRIMER

UNCOMMONGOODS, LLC.

By:   
Plaintiff Russell Brimer

By: \_\_\_\_\_  
David Bolotsky, CEO

APPROVED AS TO FORM:

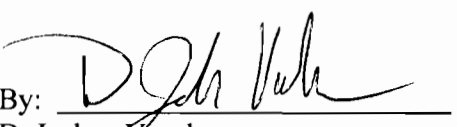
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Date: May 11, 2006

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

HIRST & CHANLER LLP

ROTHKEN LAW FIRM LLP

By:   
D. Joshua Voorhees  
Attorneys for Plaintiff  
RUSSELL BRIMER

By: \_\_\_\_\_  
Ira P. Rothken  
Attorneys for Defendants  
UNCOMMONGOODS, LLC.

**IT IS SO ORDERED.**

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

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JUDGE OF THE SUPERIOR COURT

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**EXHIBIT A**

<u>Product Name</u>	<u>Item Number</u>
Holy Cow Set of 2 Glasses	13119000001
Smart Women Mugs	13038000000
Sweet Pea and Vanilla Candle	14208000001
Writers Shot Glass	13017000000