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21 Russell Brimer

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

20 RUSSELL BRIMER,
21 Plaintiff,
22 v.
23 THE BOELTER COMPANIES, et al.,
24 Defendants.

Case No. CGC-05-440811
**STIPULATION FOR ENTRY OF
JUDGMENT**

1 1. The following constitutes the knowing and voluntary election and stipulation of the
2 entity named below (“Company” or “Opt-In Defendant”) to join as a Settling Defendant under
3 the Consent Judgment previously entered by the Court in *Brimer v. The Boelter Companies,*
4 *Inc.*, San Francisco Superior Court Case No. CGC 05 -440811 (“Action”) and to be bound by
5 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 each of
9 the following categories of Covered Products, as defined in the Consent Judgment (section 1.4)
10 (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 “Covered
16 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 during the
18 Relevant Period or does not currently meet the Reformulation Standards set forth for that
19 category of Covered Products in section 2.3 of the Consent Judgment. The Company has not
20 provided compliant Proposition 65 warnings in conjunction with the sale or use of all such
21 Covered Products in California at all times during the Relevant Period.

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

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

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

- 10 (a) **Manufacturer** with combined sales in California of less than 350,000
11 consumer units in calendar year 2004
- 12 (a.1) **Low Volume Manufacturer** with combined sales in California of less
13 than 10,000 consumer units in calendar year 2004
- 14 (b) **Distributor and/or Importer** with combined sales in California of less than
15 350,000 consumer units in calendar year 2004
- 16 (b.1) **Low Volume Distributor and/or Importer** with combined sales in
17 California of less than 10,000 consumer units in calendar year 2004
- 18 (c) **Retailer and/or Amusement & Recreation Establishment**
- 19 (d) **Bar, Restaurant, Hotel, or Other Food/Beverage Service Defendant**
- 20 (e) **Opt-In Defendant with De Minimus Sales**, i.e., combined sales in
21 California of less than 500 consumer units in calendar year 2004 (attach
22 to this Stipulation a list of the names of all product lines (by narrative
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 description and, where available, UPC code) comprising these consumer
2 units of Covered Products).

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

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


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

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

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28 /////

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

3 IT IS HEREBY STIPULATED AND AGREED TO:

4
5 By: 
6 (signature)

7 Kathleen McElwee

8 _____
9 Name (printed/typed)

10 Senior Vice President
11 and Chief Financial Officer
12 VA Software Corporation

13 _____
14 Title (printed/typed)

15 On Behalf of:

16 VA Software Corporation and
17 its wholly owned subsidiaries
18 ThinkGeek, Inc. and OSTG, Inc.

19 _____
20 (Insert Company Name)

21 Opt-In Defendant

22 Dated: December 20, 2005

23 Dated: 
24 _____

1 **EXHIBIT C (Supplement)**
2 Contact Information for Purposes of Future Notice
3

4 Opt-In Party Name: VA Software Corporation on behalf of
5 itself and its wholly-owned subsidiaries
6 OSTG, Inc. and ThinkGeek, Inc.
7 _____

8
9 Contact Person: Rod Strickland
10 Wilson Sonsini Goodrich & Rosati
11 _____

12
13 Mailing address: 650 Page Mill Road
14 Palo Alto, CA 94304-1050
15 _____

16 Telephone: 650-320-4857
17 _____

18 Fax number: 650-565-5100
19 _____

20 Email address: rstrickland@wsgr.com
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