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THE VERNON COMPANY

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION

16
17 RUSSELL BRIMER,
18 Plaintiff,
19 v.
20 ETS EXPRESS, INC.; THE VERNON
COMPANY; and DOES 1 through 150, inclusive,
21 Defendants.
22

Case No. CGC 06-454813
STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer And The Vernon Company**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer
4 (hereinafter “Brimer” or “Plaintiff”) and defendant The Vernon Company (hereafter “Vernon” or
5 “Defendant”), with Brimer and Vernon 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 Vernon employs ten or more persons and is a person in the course of doing
12 business for purposes of Proposition 65.

13 **1.4 General Allegations**

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

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows:
23 ceramicware intended for the consumption of food or beverages with colored artwork or designs
24 (containing lead) on the exterior, limited to the products manufactured and/or distributed by the
25 entities identified in Exhibit A to this Consent Judgment (hereinafter referred to as the
26 “Products”).

27
28

1 **1.6 Notices of Violation**

2 On or about May 24, 2006, Brimer served Vernon and various public enforcement
3 agencies with a document entitled “60 Day Notice of Violation” (the “Notice”) that provided
4 Vernon and such public enforcers with notice that alleged that Vernon was in violation of
5 California Health & Safety Code § 25249.6 for failing to warn consumers and customers that
6 ceramicware that Vernon sold exposed users in California to the Listed Chemical.

7 **1.7 Complaint**

8 On August 3, 2006, Brimer, who is acting in the interest of the general public in
9 California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the
10 Superior Court in and for the City and County of San Francisco against ETS Express, Inc., The
11 Vernon Company and Does 1 through 150, (*Brimer v. ETS Express, Inc., The Vernon Company*,
12 Case No. CGC 06-454813) alleging violations of Health & Safety Code § 25249.6 based on the
13 alleged exposures to the Listed Chemical contained in the Products sold by Vernon.

14 **1.8 No Admission**

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

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court
26 has jurisdiction over Vernon as to the allegations contained in the Complaint, that venue is
27 proper in the County of San Francisco and that this Court has jurisdiction to enter and enforce
28 the provisions of this Consent Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean
3 December 8, 2006.

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

5 **2.1** After the Effective Date, Vernon 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
10 prominently placed with such conspicuousness as compared with other words, statements,
11 designs, or devices as to render it likely to be read and understood by an ordinary individual
12 under customary conditions before purchase or, for Products shipped directly to an individual in
13 California, before use.

14 **2.2 Product Warnings**

15 **2.2.1 Clear and Reasonable Warnings.** This Section describes Vernon’s
16 options for satisfying the warning obligations required by Section 2.1, depending, in part, on the
17 manner of sale:

18 **(a) Retail Store Sales**

19 **(i) Product Labeling.** From the Effective Date, a warning
20 will be affixed to the packaging, labeling or directly on the Product by Vernon, its agent, the
21 manufacturer, the decorator, the importer, the distributor, or the retailer of the Product with
22 language that is identical or substantially similar¹ to the following:

23 **WARNING:** The materials used as colored decorations on the
24 exterior of this product contain lead, a chemical

25 _____
26 ¹ “Substantially similar” shall mean the warning identifies “lead” as the toxin and listed chemical; the exterior
27 colored artwork or designs as the source of the lead; and birth defects and reproductive harm as the known health
28 hazard. No qualifiers, or other language indicating uncertainty as to the presence of the Listed Chemical, such as the
 word “may” are to be used in the warning, and the warning must be at least as informative and definitive as that
 contained within this consent judgment in order to be considered “substantially similar.”

1 known to the State of California to cause birth
2 defects and other reproductive harm.

3 (ii) **Point of Sale Warnings.** Vernon may perform its warning
4 obligations by insuring to the greatest extent possible that signs are posted at retail outlets in the
5 State of California where the Products are sold. Vernon must receive a written commitment from
6 each retailer to whom Vernon sells Products directly that it will post the warning signs. Point of
7 sale warnings shall be provided through one or more signs posted in close proximity to the point
8 of display of the Products that state:

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

12 A point of sale warning shall be provided in a manner such that the consumer
13 understands to which specific Products the warning applies.

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

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

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

27 Where it is impracticable to provide the warning on the same page and in the
28 same location as the display and/or description of the Product, Vernon may utilize a designated

1 symbol to cross reference the applicable warning (“Designated Symbol”) and shall define the
2 term Designated Symbol with the following language on the inside of the front cover of the
3 catalog or on the same page as any order form for the Product(s):

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

8 The Designated Symbol (shown on Exhibit B attached hereto) must appear on the
9 same page and in close proximity to the display and/or description of the Product. On each page
10 where the Designated Symbol appears, Vernon must provide a header or footer directing the
11 consumer to the warning language and definition of the Designated Symbol.

12 If Defendant elects to provide warnings in the mail order catalog, then the
13 warnings must be included in all catalogs offering to sell one or more Products printed after
14 December 31, 2006.

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

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

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

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

7 **(iii) Package Insert or Label.** For all Products sold by catalog
8 or via the internet, a warning may be provided with the Product when it is shipped directly to an
9 individual in California, by either: (a) affixing the following warning language to the packaging,
10 labeling or directly to a specific Product; (b) inserting a warning card measuring at least 4” x 6”
11 in the shipping carton which contains the following warning language; or (c) by placing the
12 following warning statement on the packing slip or customer invoice on the line directly below
13 the description of the Product on the packing slip or customer invoice:

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

18 Alternatively, Vernon may place the following language on the packing slip or
19 invoice and specifically identifying the Product in lettering of the same size or larger as the
20 description of the Product:

21 **WARNING:** The materials used as colored decorations on the
22 exterior of the following product(s) contain lead, a
23 chemical known to the State of California to cause
24 birth defects or other reproductive harm: *[list*
25 *products for which warning is given].*

26 **2.2.2 Exceptions**

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

- 28 (i) Any Products shipped to a third party before the Effective Date; or
- (ii) Reformulated Products (as defined in Section 2.3 below).

1 **2.3 Reformulation Standards**

2 Products satisfying the conditions of subsections 2.3 (a) or 2.3 (b), below, qualify
3 as Reformulated Products” and are deemed to comply with Proposition 65 and are exempt from
4 any Proposition 65 warning requirements under Section 2.2:

5 (a) Products with decorations that contain six one-hundredths of one percent
6 (0.06%) of lead or less, as measured either before or after the material is fired onto (or otherwise
7 affixed to) the Products using a test method of sufficient sensitivity to establish a limit of
8 quantification of less than 600 parts per million (“ppm”).²

9 (b) Products with colored artwork, designs, or markings on their exterior
10 surface that do not extend into the top 20 millimeters of the ware (*i.e.*, only appear below the
11 exterior portion of the lip and rim area as defined by American Society of Testing and Materials
12 Standard Test Method C 927-99, hereinafter the “Lip and Rim Area”) and produce a test result
13 no higher than 1.0 micrograms of lead using a Ghost WipeTM test applied on the decorated
14 portions of the surface of the Products performed as outlined in NIOSH Method No. 9100.

15 **2.4 Reformulation Commitment**

16 Vernon hereby commits to undertake good faith efforts to ensure that as many
17 Products as reasonably possible that it offers for sale in California shall qualify as Reformulated
18 Products after July 1, 2007.

19 **2.4.1 Letter of Notice**

20 Vernon shall distribute a Letter of Notice (hereinafter “Letter”) by December 31,
21 2006, to its suppliers of the Products offered for sale in California that Vernon will no longer
22 accept decorated ceramicware containing lead that do not either (1) qualify as Reformulated
23 Products under this Consent Judgment or (2) comply with the warning requirements under
24 Section 2.2. of this Consent Judgment. The Letter will also serve notice that Vernon will not
25 accept decorated ceramicware containing lead that do not qualify as Reformulated Products after

26 _____
27 ² If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by weight must
28 relate only to the decorating material and must not include any quantity attributable to non-decorating material.

1 July 1, 2007. The Letter shall require the suppliers of the Products offered for sale in California
2 to acknowledge receipt of the Letter and commit to making the Products qualify as Reformulated
3 Products by July 1, 2007. A sample Letter is attached as Exhibit C.

4 **2.4.2 Additional Notice**

5 Vernon shall provide additional notice to its suppliers of the Products offered for
6 sale in California on or before June 1, 2007 that Vernon will not accept decorated ceramicware
7 products containing lead that do not qualify as Reformulated Products after July 1, 2007.

8 **2.4.3 Notice to Vernon Sales Representatives**

9 Vernon shall distribute copies of the Letter to all of its sales representatives in
10 order to communicate Vernon's policies regarding the sale of decorated ceramicware products
11 containing lead in California, namely, that as of December 31, 2006, Vernon will no longer
12 accept decorated ceramicware products containing lead that do not either (1) qualify as
13 Reformulated Products under this Consent Judgment or (2) comply with the warning
14 requirements under Section 2.2. of this Consent Judgment; additionally, as of July 1, 2007,
15 Vernon will not accept decorated ceramicware products containing lead that do not qualify as
16 Reformulated Products.

17 **2.4.4 Vernon's Acceptance of Products**

18 After December 31, 2006, Vernon shall not accept decorated ceramicware
19 products for sale in California that do not either (1) qualify as Reformulated Products under this
20 consent judgment or (2) comply with the warning requirements under Section 2.2 of this Consent
21 Judgment. After July 1, 2007, Vernon shall not accept decorated ceramicware products for sale
22 in California that do not qualify as Reformulated Products under this consent judgment.

23 **3. MONETARY PAYMENTS**

24 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b)**

25 The total settlement amount shall be \$20,000, which shall be paid by Vernon as
26 set forth herein. The first payment of \$7,000 shall be payable on or before December 18, 2006.
27 The second payment of \$13,000 shall be payable on or before September 4, 2007. The second
28 payment shall be waived in the event that Vernon certifies in writing under penalty of perjury

1 with supporting facts and documentation, not later than August 30, 2007, that it has complied
2 with the Reformulation Commitment set forth in Section 2.4.

3 Said payments shall be made payable to “HIRST & CHANLER LLP in Trust For
4 Russell Brimer” and shall be delivered to plaintiff’s counsel at the following address:

5 HIRST & CHANLER LLP
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710-2565

10 **3.2 Apportionment of Penalties Received**

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

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

18 The Parties acknowledge that Brimer and his counsel offered to resolve this
19 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
20 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
21 Vernon then expressed a desire to resolve the fee and cost issue shortly after the other settlement
22 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
23 compensation due to Brimer and his counsel under the private attorney general doctrine codified
24 at California Code of Civil Procedure § 1021.5 for all work performed through the Court’s
25 approval of this agreement. Under the private attorney general doctrine, Vernon shall reimburse
26 Brimer and his counsel for fees and costs incurred as a result of investigating, bringing this
27 matter to Vernon’s attention, litigating and negotiating a settlement in the public interest and
28 seeking the Court’s approval of the settlement agreement. Vernon shall pay Brimer and his
counsel \$26,000 for all attorneys’ fees, expert and investigation fees, litigation and related costs.

1 The payment shall be made payable to HIRST & CHANLER LLP and shall be delivered on or
2 before December 18, 2006 at the following address:

3 HIRST & CHANLER LLP
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Release of Vernon and Downstream Entities**

10 In further consideration of the promises and agreements herein contained, and for
11 the payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and
12 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
13 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
14 form of legal action and releases all claims, including, without limitation, all actions, and causes
15 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
16 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and
17 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
18 (collectively "Claims"), against Vernon and each of its downstream distributors, wholesalers,
19 licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers,
20 users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors,
21 attorneys, representatives, shareholders, agents, and employees, and sister and parent entities
22 (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65,
23 as such claims relate to Vernon's alleged failure to warn about exposures to or identification of
24 the Listed Chemical contained in the Products.

25 The Parties further understand and agree that this release shall not extend
26 upstream to any entities that manufactured the Products or any component parts thereof, or any
27 distributors or suppliers who sold the Products or any component parts thereof to Vernon.

28 **5.2 Vernon's Release of Brimer**

Vernon waives any and all claims against Brimer, his attorneys and other
representatives, for any and all actions taken or statements made (or those that could have been

1 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
2 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
3 and/or with respect to the Products.

4 **6. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the
6 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
7 within one year after it has been fully executed by all Parties, in which event any monies that
8 have been provided to Plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall
9 be refunded within fifteen (15) days after receiving written notice from Vernon that the one year
10 period has expired.

11 **7. SEVERABILITY**

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

15 **8. ATTORNEYS' FEES**

16 In the event that, after Court approval: (1) a dispute arises with respect to any
17 provision of this Consent Judgment; (2) Vernon or any third party seeks modification of this
18 Consent Judgment pursuant to Section 14 below; or (3) Brimer takes reasonable and necessary
19 steps to enforce the terms of this Consent Judgment, Brimer shall be entitled to his reasonable
20 attorneys' fees and costs pursuant to CCP § 1021.5.

21 **9. GOVERNING LAW**

22 The terms of this Consent Judgment 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
24 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
25 Vernon shall provide written notice to Brimer of any asserted change in the law, and shall have
26 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
27 the Products are so affected.

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1 **10. NOTICES**

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

6 To Vernon:

7 The Vernon Company
8 c/o Trent Norris
9 BINGHAM McCUTCHEN LLP
Three Embarcadero Center
San Francisco, CA 94111

10 To Brimer:

11 Proposition 65 Controller
12 HIRST & CHANLER LLP
13 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710 2565

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

16 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

20 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

23 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

24 Brimer and Vernon agree to mutually employ their best efforts to support the
25 entry of this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by
26 the Court in a timely manner. The Parties acknowledge that, pursuant to Health & Safety Code
27 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment.
28 Accordingly, the Plaintiff agrees to file a Motion to Approve the Agreement (“Motion”). Vernon

1 shall have no additional responsibility to Plaintiff's counsel pursuant to Code of Civil Procedure
2 § 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect
3 to the preparation and filing of the Motion or with regard to Plaintiff's counsel appearing for a
4 hearing thereon.

5 **14. MODIFICATION**

6 This Consent Judgment may be modified only: (1) by written agreement of the
7 Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a
8 successful motion of any Party and entry of a modified Consent Judgment by the Court. The
9 Attorney General shall be served with notice of any proposed modification to this Consent
10 Judgment at least fifteen (15) 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
3 their respective Parties and have read, understood and agree to all of the terms and conditions of
4 this Consent Judgment.

5 **AGREED TO:**

AGREED TO:

6 Date: 12.06.06

Date: _____

7
8 By: 
9 Plaintiff, RUSSELL BRIMER

By: _____
Defendant, THE VERNON COMPANY

10 **APPROVED AS TO FORM:**


APPROVED AS TO FORM:

11 Date: 12/6/2006

Date: _____

12 HIRST & CHANLER, LLP

BINGHAM McCUTCHEN LLP

13 By: 
14 Keith G. Adams
15 Attorneys for Plaintiff
RUSSELL BRIMER

By: _____
Amy C. Teng
Attorneys for Defendant
THE VERNON COMPANY

16 **IT IS SO ORDERED.**

17 Date: _____

JUDGE OF THE SUPERIOR COURT

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1 **15. AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

6 Date: 12.06.06

Date: 12/8/06

7
8 By: 
9 Plaintiff, RUSSELL BRIMER

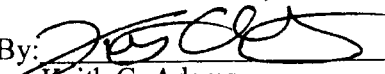
By: 
Defendant, THE VERNON COMPANY

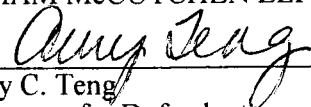
10 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

11 Date: 12/6/2006

Date: 12/12/06

12 HIRST & CHANLER, LLP
13 By: 
14 Keith G. Adams
15 Attorneys for Plaintiff
RUSSELL BRIMER

BINGHAM McCUTCHEN LLP
By: 
Amy C. Teng
Attorneys for Defendant
THE VERNON COMPANY

16 **IT IS SO ORDERED.**

17 Date: _____

JUDGE OF THE SUPERIOR COURT

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Exhibit A

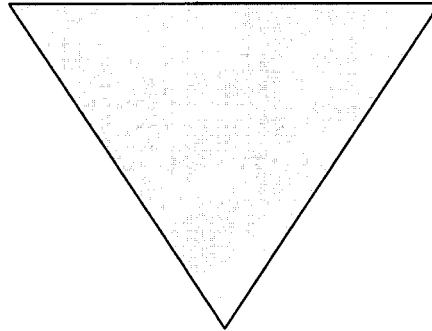
- 1
- 2 1. Custom Printing Amaco
- 3 2. Edwards Industries
- 4 3. ETS Express, Inc.
- 5 4. Hit Promotional Products
- 6 5. Mid-American Wholesale
- 7 6. Radio Cap Company, Inc.
- 8 7. TJ Promotions Corp.
- 9 8. WB Enterprises
- 10 9. World Wide Art Studio

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Exhibit B

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



1
2 **Exhibit C**

3 [DATE]

4 [SUPPLIER NAME]
5 [SUPPLIER ADDRESS]

6 Dear [SUPPLIER]:
7

8 This correspondence serves to provide notice of the Vernon Company's
9 ("Vernon's") policies regarding the sale of decorated ceramicware containing lead in California.
10 Effective immediately, Vernon will no longer accept decorated ceramicware containing lead that
11 do not either: (a) provide a Proposition 65 warning similar or identical to this warning:

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

15 or (b) qualify as Reformulated Products, defined as:

16 (1) Products with decorations that contain six one-hundredths of one percent
17 (0.06%) of lead or less, as measured either before or after the material is fired onto (or otherwise
18 affixed to) the products using a test method of sufficient sensitivity to establish a limit of
19 quantification of less than 600 parts per million ("ppm")¹; or

20 (2) Products with colored artwork, designs, or markings on their exterior
21 surface that do not extend into the top 20 millimeters of the ware (*i.e.*, only appear below the
22 exterior portion of the lip and rim area as defined by American Society of Testing and Materials
23 Standard Test Method C 927-99, hereinafter the "Lip and Rim Area") and produce a test result
24 no higher than 1.0 micrograms of lead using a Ghost WipeTM test applied on the decorated
25 portions of the surface of the Products performed as outlined in NIOSH Method No. 9100.

26 _____
27 ¹ If the decoration is tested after it is affixed to the ceramicware, the percentage of the lead by weight must relate
28 only to the decorating material and must not include any quantity attributable to non-decorating material.

1 As of July 1, 2007, Vernon will not accept decorated ceramicware containing lead
2 that do not qualify as Reformulated Products.

3 By signing below, you acknowledge receipt of the Letter and commit to making
4 your decorated ceramicware qualify as Reformulated Products by July 1, 2007.

5 Very truly yours,

6

7 THE VERNON COMPANY

8

9 **AGREED TO:**

10 Date: _____

11

12 By: _____

13

SUPPLIER

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