

1 Clifford A. Chanler, State Bar No. 135534
D. Joshua Voorhees, State Bar No. 241436
2 Aparna L. Reddy, State Bar No. 242895
HIRST & CHANLER LLP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
RUSSELL BRIMER

7 Michael J. Hassen, State Bar No. 124823
8 J. T. Wells Blaxter, State Bar No. 190222
JEFFER, MANGELS, BUTLER & MARMARO LLP
9 Two Embarcadero Center, Fifth Floor
San Francisco, California 94111-3824
10 Telephone: (415) 398-8080
Facsimile: (415) 398-5584

11 Attorneys for Defendants
12 WHOLE FOODS MARKET, CALIFORNIA, INC.;
WHOLE FOODS MARKET, INC.; and
13 HERMAN DODGE & SON, INC.

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

18 RUSSELL BRIMER,

19 Plaintiff,

20 v.

21 WHOLE FOODS MARKET, CALIFORNIA,
22 INC.; WHOLE FOODS MARKET, INC.;
HERMAN DODGE & SONS, INC.; and DOES
23 1 through 150, inclusive.

CASE NO. CGC-06-457886

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

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer ("Brimer" or
4 "plaintiff") and Whole Foods Market, California, Inc., Whole Foods Market, Inc. and Herman
5 Dodge & Son, Inc., ("defendants"), with Brimer and defendants 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 exposures
9 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
10 contained in consumer products.

11 **1.3 Defendants**

12 Defendants (except for Whole Foods Market, Inc.), and their wholly owned subsidiaries
13 Mrs. Gooch's Natural Food Markets, Inc., Hues 'N Brews and Royal Patrician, each employ ten or
14 more persons and are each a person in the course of doing business for purposes of Proposition 65.

15 **1.4 General Allegations**

16 Brimer alleges that defendants have manufactured, distributed and/or sold in the State of
17 California certain ceramicware and glassware intended for the consumption of food or beverages
18 with colored artwork or designs containing lead on the exterior. Lead is listed pursuant to the Safe
19 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.6 *et*
20 *seq.* ("Proposition 65"), as a chemical known to the State of California to cause birth defects and
21 other reproductive harm. Lead shall be referred to herein as the "Listed Chemical."

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are defined as follows: mugs and
24 other ceramicware, such as plates, intended for the consumption of food or beverages with colored
25 artwork or designs (containing lead) on the exterior including, but not limited to, *Infuser Mug*
26 *Oriental 10 oz, #124-380 (#7 94283 10445 5), Kimono Black Mug, #57215 (#8 81448 57215 7),*
27 *Kimono Bright Mug #57213 (#8 81448 57213 3), Mug (Whole Foods Market Logo) #18, ("Ceramic*
28 *Products"),* and bottles and other glassware intended for the consumption or containment of food or

1 beverages with colored artwork or designs (containing lead) on the exterior, including, but not
2 limited to, *Salad Dressing Shaker*, #20712 (#8 81448 20712 7), *Indaba Pinotage 2005* (#7 55738
3 00033 3) ("Glass Products"). All such ceramicware and glassware shall be referred to herein as the
4 "Products."

5 **1.6 Notices of Violation**

6 On September 9, 2005, Brimer served Whole Foods Market, Inc. and Whole Foods Market,
7 California, Inc. and various public enforcement agencies with a document entitled "60-Day Notice
8 of Violation" ("Notice") that provided Whole Foods Market, Inc. and Whole Foods Market,
9 California, Inc. and such public enforcers with notice alleging that Whole Foods Market, Inc. and
10 Whole Foods Market, California, Inc. were in violation of California Health & Safety Code
11 §25249.6 for failing to warn consumers and customers that Glass Products sold by defendants
12 exposed users in California to the Listed Chemical. On August 11, 2006, Brimer served defendants
13 and various public enforcement agencies with Notice that provided Defendants and such public
14 enforcers with notice that alleged that defendants were in violation of California Health & Safety
15 Code §25249.6 for failing to warn consumers and customers with regard to the Ceramic Products
16 sold by defendants, which allegedly exposed users in California to the Listed Chemical. Brimer
17 issued an additional Notice to Whole Foods Market, Inc. and Whole Foods Market, California, Inc.
18 on March 30, 2007, that provided public enforcers, Whole Foods Market, Inc. and Whole Foods
19 Market, California, Inc. with notice of additional violations with respect to certain Ceramic
20 Products and Glass Products.

21 **1.7 The Complaints**

22 Plaintiff, allegedly acting in the interest of the general public in California, on November 14,
23 2006, filed a complaint ("Complaint I" or "Action I") in the Superior Court in and for the City and
24 County of San Francisco against Whole Foods Market California, Inc.; Whole Foods Market, Inc.;
25 Herman Dodge & Son, Inc.; and Does 1 through 150, entitled *Brimer v. Whole Foods Market, Inc.,*
26 *et al.*, San Francisco Superior Court Case No. CGC-06-457886, alleging violations of California
27 Health & Safety Code §25249.6 based on the alleged exposures to the Listed Chemical contained in
28 the Ceramic Products sold by defendants. The Complaint I shall be deemed amended: (1) to allege

1 exposure to lead as described in the March 30, 2007, Notice; (2) to add as named defendants the
2 wholly owned subsidiaries of defendants – Mrs. Gooch's Natural Food Markets, Inc., Hues 'N
3 Brews and Royal Patrician; and (3) to dismiss as a named defendant Whole Foods Market, Inc. as it
4 does not have any employees or conduct any business in the State of California and therefore is not
5 a proper party to the Actions, as that term is defined below.

6 Plaintiff, allegedly acting in the interest of the general public in California, on August 23,
7 2007, filed a complaint ("Complaint II" or "Action II") in the Superior Court in and for the City and
8 County of San Francisco against Whole Foods Market California, Inc. and Does 1 through 150,
9 entitled *Brimer v. Whole Foods Market, California, Inc.*, San Francisco Superior Court Case No.
10 CGC-07-466501, alleging violations of California Health & Safety Code §25249.6 based on the
11 alleged exposures to the Listed Chemical contained in the Products sold by Whole Foods Market
12 California, Inc. Complaint II shall be dismissed without prejudice within seven days of the
13 execution of this Agreement. (Complaint I and Complaint II shall collectively be referred to as the
14 "Complaints" and Action I and Action II shall collectively be referred to as the "Actions.")

15 **1.8 No Admission**

16 Defendants deny the material factual and legal allegations contained in Brimer's Notices and
17 Complaints and maintain that all products that they have sold and distributed in California,
18 including the Ceramic Products and Glass Products, have been and are in compliance with all laws.
19 Nothing in this Consent Judgment shall be construed as an admission by defendants of any fact,
20 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
21 constitute or be construed as an admission by defendants of any fact, finding, conclusion, issue of
22 law or violation of law, such being specifically denied by defendants. However, this Section shall
23 not diminish or otherwise affect the obligations, responsibilities and duties of defendants under this
24 Consent Judgment.

25 **1.9 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the parties, save and except for Whole Foods
27 Market, Inc., stipulate that this Court has jurisdiction over defendants as to the allegations contained
28 in the Complaints, that venue is proper in the City and County of San Francisco and that this Court

1 has jurisdiction to enter and enforce the provisions of this Consent Judgment. Defendants aver that
2 the Court has no jurisdiction over Whole Foods Market, Inc., and this entity shall be dismissed
3 pursuant to Section 1.7, above.

4 **1.10 Effective Date and Compliance Date**

5 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date of
6 Court approval. The term "Compliance Date" shall mean 45 days after the Effective Date.

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

8 **2.1 Product Warnings**

9 After the Compliance Date, defendants shall not sell, ship, or offer to be shipped for sale in
10 California Products containing more of the Listed Chemical than allowed by law unless such
11 Products are sold or shipped with the clear and reasonable warning set out in this Section 2.1,
12 comply with the reformulation standards set forth in Section 2.3 or are otherwise exempt pursuant
13 to Section 2.2.

14 Any warning issued for Products pursuant to Sections 2.1(a)-(b) shall be prominently placed
15 with such conspicuousness as compared with other words, statements, designs, or devices as to
16 render it likely to be read and understood by an ordinary individual under customary conditions
17 before purchase. Any warning issued pursuant to Sections 2.1(a)-(b) shall be provided in a manner
18 such that the consumer or user understands to which Product the warning applies, so as to minimize
19 if not eliminate the chance that an overwarning situation will arise.

20 Sections 2.1(a)-(b) describe defendants' options for satisfying their warning obligations
21 depending, in part, on the manner of sale. The following warnings will be applicable when the
22 Product is sold either to consumers or in a business-to-business transaction:

23 **(a) Retail Store Sales**

24 **(i) Product Labeling.** From the Compliance Date, a warning may be
25 affixed to the packaging, labeling or directly on the Product by defendants or their agent, that states:

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

1 (ii) **Point-of-Sale Warnings.** Defendants may perform their warning
2 obligations by insuring to the extent possible that signs are posted at retail outlets in the State of
3 California where the Products are sold. In order to avail itself of the point-of-sale option, non-
4 retailer defendant, Herman Dodge & Son, Inc., and its wholly owned subsidiaries Hues 'N Brews
5 and Royal Patrician, shall provide a written notice, via certified mail, to each retailer or sub-
6 distributor to whom they sell or transfer the Products directly, informing such retailers or sub-
7 distributors that point-of-sale warnings are required for the Products. Herman Dodge & Son, Inc.,
8 Hues 'N Brews and Royal Patrician shall include a copy of the warning signs and posting
9 instructions with such notice. Point-of-sale warnings shall be provided through signs posted in
10 close proximity to the point of display of the Products that state:

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

15 Where more than one Product is sold in proximity¹ to other like items or to those that do not
16 require a warning (e.g. Reformulated Products as defined in Section 2.3), the following statement
17 must be used:

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

22 *[list products for which warning is given]*

23 (b) **Mail Order Catalog and Internet Sales.** Defendants shall satisfy their warning
24 obligations for Products that are sold by mail order catalog or from the Internet to California
25 residents, by providing a warning in the mail order catalog and/or on the website. Warnings given in
26 the mail order catalog or on the website shall identify the Product to which the warning applies as
27 further specified in Sections 2.1(b)(i) or (ii) as applicable:
28

¹ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer under customary conditions could not reasonably determine which of the two products is subject to the warning sign.

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

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

9 Where it is impracticable to provide the warning on the same page and in the same location
10 as the display and/or description of the Product, defendants may utilize a designated symbol,
11 attached hereto as Exhibit A, to cross reference the applicable warning (designated symbol) and
12 shall define the term "designated symbol" with the following language on the inside of the front
13 cover of the catalog or on the same page as any order form for the Product:

14 **WARNING: The materials used as colored decorations on the**
15 **exterior of certain products identified with this symbol**
16 **▼ and offered for sale in this catalog contain lead, a**
17 **chemical known to the State of California to cause**
18 **birth defects and other reproductive harm.**

19 The designated symbol must appear on the same page and in close proximity to the display
20 and/or description of the Product. On each page where the designated symbol appears, defendants
21 must provide a header or footer directing the consumer to the warning language and definition of
22 the designated symbol.

23 If defendants elect to provide warnings in the mail order catalog, then the warnings must be
24 included in all catalogs offering to sell one or more Products printed after the Effective Date.

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

1 the Product description text:

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

6 Alternatively, the designated symbol may appear adjacent to or immediately following the
7 display, description or price of the Product for which a warning is being given, provided that the
8 following warning statement also appears elsewhere on the same web page:

9 **WARNING: Products identified on this page with the following**
10 **symbol use materials that contain lead, a chemical**
11 **known to the State of California to cause birth defects**
12 **and other reproductive harm: ▼.**

13 **2.2 Exceptions To Warning Requirements**

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

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

18 **2.3 Reformulation Standards**

19 Reformulated Products are defined as follows: any glassware or ceramicware with exterior
20 decorations containing less than or equal to six one-hundredths of one percent (0.06%) of lead by
21 weight, as measured either before or after the material is fired onto (or otherwise affixed to) the
22 Products using EPA test methodology 3050B.² Products with decorations within the lip-and-rim
23 area³ must *also* contain less than or equal to two one-hundredths of one percent (0.02%) of lead by
24 weight using a sample size of the material in question measuring approximately 50-100 mg and a
25 test method of sufficient sensitivity to establish a limit of quantitation of less than 200 parts per
26 million.

27 **2.4 Reformulation Goal and Objectives**

28 Defendants hereby commit to undertake commercially reasonable and good faith efforts to

² If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by weight must relate only to the decorating material and must not include any quantity attributable to non-decorating material (*e.g.*, the glass substrate).

³ Lip-and-rim area is defined as the exterior top 20 millimeters of a hollowware food or beverage Product.

1 ensure that as many Products as possible that they distribute and/or offer for sale in California, shall
2 either qualify as Reformulated Products or will otherwise be exempt from the warning requirements
3 of Section 2.1. Within four months of the Compliance Date, each defendant shall schedule a
4 compliance hearing to take place within five months of the Compliance Date and file with the Court
5 a report, not to be less than 5 pages, but no more than 10 pages, of the reformulation efforts
6 undertaken in connection with this Section. The report shall contain sufficient detail of the steps
7 taken between the date this Consent Judgment is mutually executed and continuing through three
8 months of the Compliance Date, as to allow the Court to assess that each defendant's reformulation
9 efforts were undertaken in a commercially reasonable and good faith manner. The report shall be
10 signed by an officer of the defendant and served on plaintiff along with notice of the compliance
11 hearing in accordance with CCP §1010.

12 **3. MONETARY PAYMENTS**

13 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

14 The total civil penalty amount shall be \$40,000, which shall be paid by defendants, pursuant
15 to Health & Safety Code §25249.7(b), within 2 business days after the Effective Date. Said
16 payments shall be made payable to the "HIRST & CHANLER LLP in Trust for Russell Brimer"
17 and shall be delivered to plaintiff's counsel at the following address:

18 HIRST & CHANLER LLP
19 Attn: Proposition 65 Controller
20 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

21 It is hereby understood and agreed, however, that \$10,000 of this civil penalty shall be
22 waived and refunded to defendants if the Court approves the report referenced in Section 2.4.
23 HIRST & CHANLER LLP, therefore, shall not disburse but shall hold in trust \$10,000 of the civil
24 penalty, and shall refund those monies to defendants by check made payable to "JEFFER,
25 MANGELS, BUTLER & MARMARO LLP in Trust for Whole Foods and Herman Dodge" within
26 2 business days after oral or written approval by the court, whichever occurs first, of the reports
27 submitted in accordance with Section 2.4.

28

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 Office
4 of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies
5 retained by Brimer as provided by Health & Safety Code §25249.12(d). Brimer shall bear all
6 responsibility for apportioning and paying to the State of California the appropriate civil penalties
7 paid in accordance with this Section.

8 **4. ENFORCEMENT**

9 Brimer (or any other private citizen seeking to enforce the terms of this Consent Judgment)
10 ("Enforcer") may, by motion or application for an order to show cause before this Court, enforce
11 the terms and conditions contained in this Consent Judgment against Whole Foods Market,
12 California, Inc., Herman Dodge & Son, and their wholly owned subsidiaries Mrs. Gooch's Natural
13 Food Markets, Inc., Hues 'N Brews and Royal Patrician, subject to the following:

14 **4.1 General Enforcement Provisions**

15 In the event that, any time within three years following the Effective Date, the Enforcer
16 identifies one or more Products that he believes, in good faith, does not comply with this Consent
17 Judgment, he may, within 30 days of discovery of the alleged violation, issue a Notice to Cure
18 pursuant to this section ("Notice to Cure").

19 **4.2 Service and Supporting Documentation**

20 Each Notice to Cure shall be served on any defendant that the Enforcer knows offered the
21 Product for retail sale in California. The Notice to Cure shall, at a minimum, set forth for each
22 Product: (a) the date(s) the alleged violation(s) was observed; (b) the location at which the Product
23 was offered for sale; (c) a description of the Product giving rise to the alleged violation; and (d) any
24 test data obtained regarding the Product. The Enforcer shall promptly make available for inspection
25 and/or copying all of the aforementioned documents, as well as all exemplar Products he claims
26 violated this Consent Judgment.

27 **4.3 Notice of Election and Response**

28 No more than 30 days after receiving a Notice to Cure, defendant shall provide written

1 notice whether it elects to contest the allegations contained in the Notice to Cure ("Notice of
2 Election"). If a Notice to Cure is contested, the Notice of Election shall include all then-available
3 documentary evidence regarding the alleged violation, including all test data, if any. If the Notice
4 to Cure is not contested, the Notice of Election shall include a description of the defendant's
5 corrective action.

6 **4.4 Meet and Confer**

7 If a Notice to Cure is contested, all parties shall meet and confer to attempt to resolve their
8 dispute. If no informal resolution of the Notice to Cure results, the Enforcer or defendant may, by
9 motion or order to show cause, before the San Francisco County Superior Court, seek to enforce the
10 terms and conditions of this Consent Judgment. In any such proceeding, the prevailing party may
11 seek fees and costs associated with that proceeding.

12 **5. REIMBURSEMENT OF FEES AND COSTS**

13 Defendants shall pay Brimer and his counsel \$122,500 for all attorneys' fees, expert and
14 investigation fees, litigation and related costs. The payment shall be made payable to "HIRST &
15 CHANLER, LLP" and shall be delivered within 2 business days after the Effective Date, at the
16 following address:

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

22 **6. RELEASE OF ALL CLAIMS**

23 **6.1 Release of Defendants 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 limitation, all actions, and causes of
action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees)

1 of any nature whatsoever, whether known or unknown, fixed or contingent that arise under
2 Proposition 65 (collectively "Claims"), against defendants and each of their downstream
3 distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers,
4 owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective
5 officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and
6 parent entities including, but not limited to, Mrs. Gooch's Natural Food Markets, Inc., Hues 'N
7 Brews and Royal Patrician (collectively "Releasees"). This release is limited to those claims that
8 arise under Proposition 65, as such Claims relate to defendants' alleged failure to warn about
9 consumer or occupational exposures to or identification of the Listed Chemical contained in the
10 Products and does not release common law claims including, but not limited to, personal injury.

11 The parties further understand and agree that this release shall not extend upstream to any
12 entities that manufactured the Products or any component parts thereof, or any distributors or
13 suppliers who sold the Products or any component parts thereof to defendants.

14 **6.2 Defendants' Release of Brimer**

15 Defendants waive any and all claims against Brimer, his attorneys and other representatives,
16 for any and all actions taken or statements made (or those that could have been taken or made) by
17 Brimer and his attorneys and other representatives, whether in the course of investigating claims or
18 otherwise seeking enforcement of Proposition 65 against them in this matter.

19 **7. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and
21 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
22 after it has been fully executed by all parties, in which event any monies that have been provided to
23 plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within
24 fifteen (15) days after receiving written notice from defendants that the one-year period has expired.

25 In the event an appeal is taken from the Consent Judgment and any portion of the appeal is
26 successful, then any monies that have been provided to plaintiff, or his counsel pursuant to Section
27 3 and/or Section 4 above, shall be refunded within fifteen (15) days after the remittitur issues from
28 the appellate court. All monies, be it penalties or attorney fees and costs, paid by defendants

1 hereunder shall be maintained by plaintiff's counsel in a trust account until court approval of the
2 Consent Judgment hereof becomes final.

3 **8. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of California
5 and apply within the State of California. In the event that Proposition 65 is amended or repealed or
6 otherwise rendered inapplicable, by reason of law generally, or as to the Products, then defendants
7 shall provide written notice to Brimer of any asserted change in the law, and shall have no further
8 obligations pursuant to this Consent Judgment beyond those imposed by law.

9 **9. NOTICES**

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

14 To defendants:

15 Michael J. Hassen, Esq.
16 JEFFER, MANGELS, BUTLER &
17 MARMARO LLP
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111-3824

18 To Brimer:

19 Proposition 65 Coordinator
20 HIRST & CHANLER LLP
21 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
22

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

25 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. COMPLIANCE WITH HEALTH & SAFETY (CODE § 25249.7(f))

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

12. ADDITIONAL POST EXECUTION ACTIVITIES

Brimer and defendants agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, plaintiff agrees to file a Motion to Approve the Agreement ("Motion"). Defendants shall have no additional responsibility to plaintiff's counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of the Motion or with regard to plaintiff's counsel appearing for a hearing thereon.

13. AUTHORIZATION

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

AGREED TO:

Date: 9-11-07
By: [Signature]
Plaintiff, RUSSELL BRIMER

AGREED TO:

Date: [Signature]
By: General Counsel, V.P. of Legal Affairs
Defendant, WHOLE FOODS MARKET, INC.

AGREED TO:

Date: [Signature]
By: Vice President
Defendant, WHOLE FOODS MARKET,
CALIFORNIA, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Date: 9/13/07

By: [Signature]
Defendant, HERMAN DODGE & SON, INC.

APPROVED AS TO FORM:

Date: 9/11/07

HIRST & CHANLER LLP
By: [Signature]
D. Joshua Voorhees
Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: 9/17/07

JEFFER, MANGELS, BUTLER & MARMARO LLP
By: [Signature]
Michael J. Hassen
Attorney for Defendants
WHOLE FOODS MARKET, INC.; WHOLE
FOODS MARKET CALIFORNIA, INC.; and
HERMAN DODGE & SON, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

If defendants elects to use the warning symbol system set forth in Sections 2.1(b)(i) or (ii), defendants will use the following designated symbol [Yellow Triangle] to identify Products containing the Listed Chemical which are sold through their catalogs or on their website:

