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

RUSSELL BRIMER,

Plaintiff,

v.

THE BOELTER COMPANIES, et al.

Defendants.

Case No. CGC-05-440811

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

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Defendant.** This Consent Judgment is entered into by and between
3 plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”) and The Boelter Companies (hereafter
4 “Boelter” or “Defendant”), with Brimer and Boelter collectively referred to as the “Parties” and
5 with Brimer and Boelter each being a “Party.”

6 **1.2 Plaintiff.** Brimer is an individual residing in Northern California who seeks to
7 promote awareness of exposures to toxic chemicals and improve human health by reducing or
8 eliminating hazardous substances contained in consumer products.

9 **1.3 Settling Defendants.** Settling Defendants are: (1) Boelter and (2) other
10 companies that have manufactured, decorated, imported, distributed, or offered for use or sale
11 Covered Products and that have become “Opt-In Defendants” as defined in and pursuant to
12 section 14 below.

13 **1.4 Covered Products.** The products that are covered by this Consent Judgment are
14 defined as follows:

15 (A) Glass beverageware and tableware products with colored artwork, designs
16 and/or markings on the exterior surface that are manufactured, decorated, imported, distributed or
17 offered for use or sale by Settling Defendants and that are purchased and/or used by individuals in
18 California for the storage, serving or consumption of food or beverages including, but not limited
19 to: glasses, pilsners, mugs, carafes, tumblers, bottles, condiment dispensers, bowls, cups, saucers,
20 plates, trays, pitchers, punch bowls, serving utensils, serving platters and other like items (herein
21 after collectively referred to as “Glassware Food/Beverage Products” or “Category A Products”);

22 (B) Ceramicware products with colored artwork, designs and/or markings on the
23 exterior surface that are manufactured, decorated, imported, distributed or offered for use or sale
24 by Settling Defendants and that are purchased and/or used by individuals in California for the
25 storage, serving or consumption of food or beverages, including but not limited to: mugs, steins,
26 carafes, bowls, drinking vessels, bottles, condiment dispensers, cups, saucers, plates, trays,
27 pitchers, punch bowls, serving utensils, serving platters and other like items (herein after
28 collectively referred to as “Ceramicware Food/Beverage Products” or “Category B Products”);

1 (C) Glassware household products with colored artwork, designs and/or markings
2 on the exterior surface that are manufactured, decorated, imported, distributed or offered for use
3 or sale by Settling Defendants and that are purchased and/or used by individuals in California
4 that: (i) appear to be suitable for food or beverage use but are labeled in accordance with
5 requirements described in 21 Code of Federal Regulations (“C.F.R.”) 109.16 for products not
6 intended for use with food or beverages; (ii) physically could not be used to store, serve or
7 consume foods or beverages; or (iii) are not reasonably used for the storage, serving or
8 consumption of food or beverages. Such products include, but are not limited to: vases, votive
9 holders, candleholders/candelabras, ashtrays, coasters, mirrors, napkin rings, centerpieces, trivets,
10 decorative tiles, holiday ornaments, keepsake/music boxes, pencil holders, desk sets, picture
11 frames, figurines, soap dispensers, toothbrush holders, soap dishes, tissue caddies, garden
12 ornaments, flower pots, plant holders, wall hangings, lamps, pet dishes, suncatchers, and other
13 like items (herein after collectively referred to as “Glassware Non-Food/Beverage Products” or
14 “Category C Products”);

15 (D) Ceramicware household products with colored artwork, designs and/or
16 markings on the exterior surface that are manufactured, decorated, imported, distributed, or
17 offered for use or sale by Settling Defendants, and that are purchased and/or used by individuals
18 in California that: (i) appear to be suitable for food or beverage use but are labeled in accordance
19 with requirements described in 21 C.F.R. 109.16 for products not intended for use with food or
20 beverages; (ii) physically could not be used to store, serve or consume foods or beverages; or (iii)
21 are not reasonably used for the storage, serving or consumption of foods or beverages. Such
22 products include, but are not limited to: vases, votive holders, ashtrays, coasters, napkin rings,
23 centerpieces, trivets, holiday ornaments, keepsake/music boxes, decorative tiles, pencil holders,
24 desk sets, picture frames, figurines, soap dispensers, toothbrush holders, soap dishes, tissue
25 caddies, garden ornaments, flower pots, plant holders, wall hangings, lamps, pet dishes,
26 suncatchers, and other like items (herein after collectively referred to as “Ceramicware Non-
27 Food/Beverage Products” or “Category D Products”).
28

1 Unless referred to separately by category, all of the products described in section 1.4
2 above shall be collectively referred to herein as "Covered Products." The categories of products
3 described above are Covered Products as to each Settling Defendant only to the extent each
4 category of Products has been specifically included in the 60-Day Notice of Violation to that
5 Settling Defendant.

6 **1.5 General Allegations.** Plaintiff alleges that the Settling Defendants have
7 manufactured, decorated, imported, distributed or offered for use or sale in the State of California
8 Covered Products with colored artwork, designs and/or markings on the exterior surface that
9 contain (and cause exposure to) cadmium and/or lead. Lead and cadmium are listed pursuant to
10 the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
11 §§ 25249.5 *et seq.*, also known as Proposition 65, as carcinogens and reproductive toxicants.
12 Lead, lead compounds and cadmium shall be referred to herein as the "Listed Chemicals."

13 **1.6 Notices of Violation.** Beginning on February 14, 2005, Brimer served Boelter and
14 various public enforcement agencies with documents, entitled "60-Day Notice of Violation"
15 ("Notice") that provided Boelter and the public enforcers with notice that Boelter was allegedly in
16 violation of Health & Safety Code § 25249.6 for failing to warn individuals that Category A
17 Products that it sold in California expose consumers to one or more of the Listed Chemicals
18 contained in the exterior decorations on the Covered Products. On or about May 31, 2005,
19 Brimer served Boelter and various public enforcement agencies with documents, entitled
20 "Supplemental Notice of Violation" ("Supplemental Notice") that provided Boelter and the public
21 enforcers with notice that Boelter was in violation of Health & Safety Code § 25249.6 for failing
22 to warn individuals that Category B Products that it sold expose individuals in California to one
23 or more of the Listed Chemicals contained in the exterior decorations on the Covered Products.

24 ////

25 ////

26 ////

27 ////

28 ////

1 **1.7 Complaint.** On April 16, 2005, Brimer, in the interest of the general public in
2 California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the
3 Superior Court for the City and County of San Francisco against Boelter and Does 1 through 150,
4 alleging violations of Health & Safety Code § 25249.6 based on alleged exposures to one or more
5 of the Listed Chemicals contained in Covered Products sold by Boelter. The Complaint against
6 Boelter shall be deemed amended to incorporate the noticed categories of Covered Products as of
7 the sixty-sixth (66th) day following the date of the Supplemental Notice provided that no public
8 enforcement authority designated under Health and Safety Code § 25249.7 has filed a complaint
9 against Boelter on behalf of the public interest with respect to those categories of Covered
10 Products.

11 **1.8 No Admission.** Settling Defendants deny the material factual and legal allegations
12 contained in Plaintiff’s Notices, Supplemental Notices, and Complaint and maintain that all
13 products that they have manufactured, decorated, imported, distributed or offered for use or sale
14 in California have been and are in compliance with all laws. Nothing in this Consent Judgment
15 shall be construed as an admission by Settling Defendants of any fact, finding, issue of law, or
16 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
17 an admission by Settling Defendants of any fact, finding, conclusion, issue of law or violation of
18 law. However, this section shall not diminish or otherwise affect the obligations, responsibilities
19 and duties of Settling Defendants under this Consent Judgment.

20 **1.9 Consent to Jurisdiction.** For purposes of this Consent Judgment only, Plaintiff
21 and Settling Defendants stipulate that this Court has jurisdiction over the allegations of violations
22 contained in the Notices, Supplemental Notices, and Complaint and personal jurisdiction over
23 Settling Defendants as to the acts alleged in the Complaint, that venue is proper in the County of
24 San Francisco, and that this Court has jurisdiction to enter this Consent Judgment and to enforce
25 the provisions thereof.

26 **1.10 Effective Date.** For purposes of this Consent Judgment, the “Effective Date” shall
27 be June 10, 2005.
28

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

2 **2.1 Warning Obligations for Products**

3 (a) **Required Warnings.** After the Effective Date, Settling Defendants shall
4 not manufacture, decorate, import, distribute or offer for use or sale any Covered Products
5 containing one or more of the Listed Chemicals (or supply any Covered Product containing one
6 or more of the Listed Chemicals to any entity) for distribution, sale or use in California, unless
7 clear and reasonable warnings are given in accordance with one or more provisions in
8 subsection 2.2 below.

9 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and
10 2.2 below shall not apply to:

- 11 (i) any Covered Products manufactured before September 1, 2005 as to
12 Boelter or, as to any other Settling Defendant, thirty (30) days
13 following entry of its Opt-In Stipulation pursuant to subsection 14.5
14 below;
- 15 (ii) Reformulated Products (as defined below in subsection 2.3 below); or
- 16 (iii) any Covered Products supplied to Settling Defendants by any other
17 person in the course of doing business who is subject to a final
18 judgment in an action brought by Brimer, Dr. Whitney Leeman or
19 Michael DiPirro or a public enforcer whose action was brought on
20 behalf of the People of the State of California addressing Proposition
21 65 warning obligations arising from alleged exposures to lead or
22 cadmium from glassware and/or ceramic products with colored
23 artwork, designs or markings on the exterior surface.

19 **2.2 Clear and Reasonable Warnings.** The methods and language outlined in the
20 following subsections describe the Settling Defendants' options for satisfying the warning
21 obligations described in section 2.1(a) depending, in part, on the manner of sale of the Covered
22 Product.

23 (a) **Retail Sales.** If the Covered Product is sold at a retail outlet in California,
24 the Settling Defendant must comply with its warning requirement in one of the two following
25 ways:

26 (i) **Product Labeling.** A warning may be given by affixing the
27 following language to the packaging, labeling or directly to a specific Covered Product by a
28

1 Settling Defendant, its agent, the manufacturer, the decorator, the importer, the distributor or the
2 retailer of the Covered Product that states:

3 **WARNING: The materials used as colored decorations on the**
4 **exterior of this product contain lead and/or**
5 **cadmium, chemicals known to the State of**
6 **California to cause birth defects or other**
7 **reproductive harm.**

8 Warnings issued for Covered Products pursuant to this subsection shall be prominently
9 placed with such conspicuousness as compared with other words, statements, designs, or devices
10 as to render it likely to be read and understood by an ordinary individual under customary
11 conditions prior to use or purchase. For purposes of this subsection, a warning statement or
12 sticker placed on the bottom of the product packaging is not an adequate warning. Similarly, for
13 purposes of this Consent Judgment, a warning insert that is placed inside the product packaging
14 that is not intended to be opened prior to leaving the retail establishment is deemed not
15 reasonably calculated to transmit the health hazard warning to the individual prior to purchase.

16 Any changes to the manner, delivery, language or format of the warning required by this
17 subsection shall only be made following: (1) written approval from the California Attorney
18 General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for
19 the opportunity to comment; or (2) Court approval.

20 **(ii) Point-of-Sale Warnings.** A Settling Defendant may satisfy its
21 warning obligations by arranging for signs to be posted at the retail outlets or other locations in
22 the State of California at which Covered Products are sold directly to individuals, in accordance
23 with the terms specified in subsections 2.2(a)(ii)(a), 2.2(a)(ii)(b) and 2.2(a)(ii)(c).

24 **(a) Point-of-sale warnings may be provided through a sign**
25 **posted at each point of sale or product display for each Covered Product that state:**

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

1 Where more than one Covered Product is sold in proximity to other like items or to
2 those that do not require a warning (e.g., Reformulated Products as defined in section 2.3), the
3 following statement must be used:¹

4
5 **WARNING: The materials used as colored decorations on the**
6 **exterior of the following products contain lead**
7 **and/or cadmium, chemicals known to the State of**
8 **California to cause birth defects or other**
9 **reproductive harm:**

10 ***[DISPLAY LIST OF EACH SPECIFIC PRODUCT FOR WHICH***
11 ***WARNING IS REQUIRED]***

12 (b) A point-of-sale warning provided pursuant to
13 subsection 2.2(a)(ii) shall be prominently placed with such conspicuousness as compared with
14 other words, statements, designs or devices as to render it likely to be read and understood by an
15 ordinary individual under customary conditions of purchase and shall be placed among other
16 products (especially when near any Reformulated Products as defined in section 2.3 below) in a
17 manner such that the consumer understands to which *specific* Covered Products the warnings
18 apply so as to minimize if not eliminate the chances that an overwarning situation will arise.

19 (c) If a Settling Defendant intends to utilize warnings described
20 in section 2.2(a)(ii) to comply with this Consent Judgment, it must provide notice as required by
21 this Consent Judgment to each entity to whom a Settling Defendant ships the Covered Products
22 for distribution or sale in California and obtain the written consent of such entity that it will
23 transmit the warning sign to its customers as required in section 2.2 herein before shipping the
24 Covered Products. Such notice shall include any required warning materials (including, as
25 appropriate, camera-ready signs and posting instructions).

26 (d) The Settling Defendant shall provide notice to each entity to
27 whom the Settling Defendant ships Covered Products for distribution or sale in California at
28

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

1 least once in each calendar year in which the Settling Defendant transacts business with that
2 entity unless such transactions do not concern Covered Products or exclusively concern
3 Reformulated Products as defined in section 2.3 below. If the Settling Defendant has obtained
4 the written consent of the entity to whom it ships the products that such entity will provide
5 warnings in the manner required by section 2.2 herein, Settling Defendant shall not be found to
6 have violated this Consent Judgment if it has complied with the terms of this Consent Judgment
7 and has proof that it transmitted the requisite warnings in the manner provided herein.

8 (e) Any changes to the language or format of the warning required
9 for Covered Products by this subsection shall only be made following: (1) written approval from
10 the California Attorney General's Office, provided that written notice of at least fifteen (15) days
11 is given to Plaintiff for the opportunity to comment; or (2) Court approval.

12 (b) **Mail Order and Internet Sales.** A Settling Defendant shall satisfy its
13 warning obligations for Covered Products that are sold by mail order catalog or from the internet
14 to California residents, by arranging for the provision of a warning containing the language in
15 subsection 2.2(a) to be included: (a) in the mail order catalog (if any) and on the website (if any);
16 or (b) with the Covered Product when it is shipped to an address in California. Any warnings
17 given in the mail order catalog or on the website shall identify the *specific* Covered Product to
18 which the warning applies as well as comply with subsections (i), (ii) and/or (iii) as applicable:

19 (i) **Mail Order Catalog.** The warning shall be provided within the
20 catalog, either (a) on the inside front cover of any catalog, provided that it is also referenced on
21 the page on which the Covered Product is displayed; (b) on the same page as any order form,
22 provided that the Covered Product to which the warning applies is also specifically referenced on
23 that page; or (c) on the same page and in the same location as the price for the Covered Product,
24 in the same type size as the product description text, with the same language and specificity
25 requirements found in subsection 2.2(a). If the seller elects to provide warnings in the mail order
26 catalog, then the warnings must be included in all catalogs sent to the printer after August 31,
27 2005 (or, in the case of a Settling Defendant other than Boelter, thirty (30) days or more
28

1 following entry of its Opt-In Stipulation pursuant to subsection 14.5 below), for all first,
2 subsequent or additional printings;

3 **(ii) Internet Web Sites and Pages.** The warning shall be provided
4 either (a) on the same web page on which a Covered Product is displayed; (b) on the same web
5 page as the order form for a Covered Product; (c) on the same page as the price for any Covered
6 Product; or (d) on one or more web pages displayed to a purchaser during the checkout and order
7 confirmation process for sale of a Covered Product. The warning shall be displayed in one or
8 more of these locations in a manner such that is calculated to ensure that it will be read and
9 understood by an ordinary individual under customary conditions of purchase of a Covered
10 Product prior to purchase, including through the use of the same language and adherence to the
11 specificity requirements that appear in subsection 2.2(a); and

12 **(iii) Package Insert or Label.** For all Covered Products sold by
13 catalog or via the internet, a warning may be provided with the Covered Product when it is
14 shipped directly to an individual in California, by either: (a) ensuring that the product is properly
15 labeled pursuant to subsection 2.2(a) above; (b) inserting a warning card or slip of paper
16 measuring at least 4" x 6" in the shipping carton which contains warning language identical to
17 subsection 2.2(a) above; or (c) including the required language set forth in subsection 2.2(a) on
18 the packing slip or customer invoice specifically identifying the Covered Product in lettering of
19 the same size as the description of the Covered Product. The seller shall also inform the
20 consumer that he or she may return the Covered Product for a full refund (including shipping
21 costs for both the receipt and the return of the Covered Product) within 30 days of his or her
22 receipt of the Covered Product.

23 **(c) Restaurants, Bars or other Food/Beverage Service Entities**

24 (i) Settling Defendants that are Restaurants, Bars, Amusement or Recreation
25 establishments, or other entities who distribute, serve or sell food or beverages in Covered
26 Products (herein after collectively referred to as "Food/Beverage Service Defendants") may
27 satisfy their warning obligations by posting copies of the warning sign contained in Exhibit A
28

1 hereto in a conspicuous location compared with other words, statements, designs or devices as to
2 render it likely to be read and understood by an ordinary individual under customary conditions of
3 use. The warning sign shall be placed in a manner such that the consumer understands to which
4 *specific* Products the warnings apply so as to minimize if not eliminate the chances that an
5 overwarning situation will arise.

6 (ii) For Settling Defendants that sell Covered Products to Food/Beverage
7 Service Defendants, a Settling Defendant may satisfy its warning obligations by sending via
8 certified mail to the central purchasing office (or its equivalent) for all restaurant/bar/food service
9 entity suppliers or to Food/Beverage Service Defendant with whom it transacts business for the
10 commercial use of Covered Products in California: (1) at least two copies of the warning sign
11 contained in Exhibit A; and (2) a letter identifying the specific Covered Product(s) requiring
12 warnings and explaining the warning program and providing posting instructions. The Settling
13 Defendant shall send these warning materials to the appropriate recipients at least once in any
14 calendar year in which the Settling Defendant transacts business with the establishment unless
15 such transactions do not concern Covered Products or exclusively concern Reformulated Products
16 as defined in section 2.3 below. A Settling Defendant that has obtained the written consent of a
17 restaurant/bar/food service supplier or entity to post warnings for Covered Products pursuant to
18 section 2.2(c)(i) shall not be found to have violated this Consent Judgment if it has complied with
19 the terms of this Consent Judgment and has proof that it transmitted the requisite warning
20 materials in the manner provided herein.

21 **2.3 Reformulation Standards.** The following section sets forth the specifications
22 which the Covered Products must meet in order to be sold without a Proposition 65 warning. For
23 purposes of this section, the following definitions apply:

24 “Children’s Product” is defined as any Covered Product
25 intended or marketed primarily for use by children such as:
26 Covered Products with designs on their exterior surface which are
27 affiliated with children’s toys or entertainment (*e.g.*, Sesame
28 Street, Looney Tunes, Barbie, and Winnie the Pooh); Covered

1 Products of a reduced size so as to be marketed primarily for
2 children (e.g., reduced-size juice glasses intended for use by
3 children); or Covered Products of a type or category (e.g., “piggy
4 banks”) which typically would be used by children, and all similar
5 items.

6 “Exterior Decorations” is defined as all colored artwork,
7 designs and/or markings on the exterior surface of the Covered
8 Product.

9 “Lip and Rim Area” is defined as the exterior top
10 20 millimeters of a hollowware Glassware or Ceramicware
11 Food/Beverage Product, as defined by American Society of
12 Testing and Materials Standard Test Method C927-99.

13 “No Detectable lead or cadmium” shall mean that neither
14 lead nor cadmium is detected at a level above two one-hundredths
15 of one percent (0.02%) of lead or eight one-hundredths of one
16 percent (0.08%) of cadmium by weight, respectively, using a
17 sample size of the materials in question measuring approximately
18 50-100 mg and a test method of sufficient sensitivity to establish a
19 limit of quantitation of less than 200 ppm.²

20 “Reformulated Product” refers to any Covered Product that
21 meets the reformulation standards described in section 2.3 as set
22 forth below.

23 **2.3.1 Glassware Reformulation Standards:**

24 A Glassware Food/Beverage Product is a Reformulated Product if it satisfies either the
25 standard outlined in subsection 2.3.1 (a) *or* (b), subject to the following qualifications:
26

27 ² If the decoration is tested after it is affixed to the Covered Product, the percentage of the
28 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).

1 All Children's Products must meet the Decorative Material Content-Based
2 standard outlined in subsection 2.3.1(b) to be considered a Reformulated Product.

3
4 If a Glassware Food/Beverage Product has Exterior Decorations in the Lip and
5 Rim Area, it must also satisfy subsection 2.3.1(c) to be considered a Reformulated
6 Product.

7 A Glassware Non-Food/Beverage Use Product may qualify as a Reformulated Product by
8 meeting the Glassware Food/Beverage standards outlined in 2.3.1(a) *or* (b) *or* the alternate
9 Glassware Non-Food/Beverage standard outlined in subsection (d) if applicable.

10 (a) **Wipe Test-Based Standard.** The Glassware Food/Beverage Product must
11 produce a test result no higher than 1.0 micrograms (ug) of lead or 8.0 ug of cadmium as
12 applied to the Exterior Decorations and performed as outlined in NIOSH method no. 9100.

13 (b) **Decorating Material Content-Based Standard.** The Exterior
14 Decorations, exclusive of the Lip and Rim Area, must only utilize decorating materials that
15 contain six one-hundredths of one percent (0.06%) of lead and forty-eight one-hundredths of one
16 percent (0.48%) of cadmium by weight or less as measured either before or after the material is
17 fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050B.³

18 (c) **Lip and Rim Area Decoration.** All Exterior Decorations that extend into
19 the Lip and Rim Area must only utilize decorating materials that contain No Detectable lead or
20 cadmium.

21 (d) **Alternative Non Food/Beverage Use Product Standard.** A Glassware
22 Non Food/Beverage Use Product qualifies as a Reformulated Product if it achieves a test result of
23 4.0 ug of lead and 32.0 ug of cadmium or less as applied to all of the decorated portions of all
24 surfaces of the Product performed as outlined in NIOSH method no. 9100. A Children's Product
25

26
27 ³ If the decoration is tested after it is affixed to the Covered Product, the percentage of the
28 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).

1 that is also a Glassware Non-Food/Beverage Use Product must nevertheless meet the standards
2 outlined in subsection 2.3.1(b) to be considered a Reformulated Product.

3 **2.3.2 Ceramicware Reformulation Standards**

4 A Ceramicware Food/Beverage Product is a Reformulated Product if it satisfies the
5 standards outlined in subsections 2.3.2(a) *or* (b) *or* (c), subject to the following qualifications:

6 All Children's Products must meet the Decorating Materials Content-Based
7 Standard outlined in subsection 2.3.2(b) to be considered a Reformulated Product.

8
9 If the Product is decorated in the Lip and Rim Area, it must also satisfy subsection
10 2.3.2(d) to be considered a Reformulated Product.

11 A Ceramicware Non-Food/Beverage Use Product may qualify as a Reformulated Product
12 by meeting the standards outlined in subsection 2.3.2(a), (b) *or* (c) or the alternate standard
13 outlined in subsection (e) below.

14 **(a) Wipe Test-Based Standard.** The Ceramicware Food/Beverage Product
15 must produce a test result no higher than 1.0 micrograms (ug) of lead or 8.0 ug of cadmium
16 applied on decorated portions of the surface of the Product performed as outlined in NIOSH
17 method no. 9100.

18 **(b) Decorating Material Content-Based Standard.** The Exterior
19 Decorations, exclusive of the Lip and Rim Area, must only utilize decorating materials that
20 contain six one-hundredths of one percent (0.06%) of lead by weight or less *and* forty-eight one-
21 hundredths of one percent (0.48%) of cadmium by weight or less, as measured either before or
22 after the material is fired onto (or otherwise affixed to) the Product, using EPA Test Method
23 3050B.⁴

24 **(c) Total Acetic-Acid Immersion Test Based Standard.** The Ceramicware
25 Food/Beverage Product must achieve a result of 0.99 ppm or less for lead and 7.92 ppm or less

26 _____
27 ⁴ If the decoration is tested after it is affixed to the Covered Product, the percentage of the
28 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 ceramicware substrate).

1 for cadmium after correction for internal volume when tested under the protocol attached hereto
2 as Exhibit B (the ASTM C927-99 test method, modified for total immersion with results
3 corrected for internal volume).⁵

4 (d) **Lip and Rim Area Exterior Decoration.** If the Ceramicware
5 Food/Beverage Product contains Exterior Decorations in the Lip and Rim Area:

6 (i) Any Exterior Decorations that extend into the Lip and Rim Area
7 must only utilize decorating materials that contain No Detectable lead or cadmium *or*

8 (ii) The Ceramicware Food/Beverage Product must yield a test result
9 showing a concentration level of 0.5 ug/ml or less of lead and a result of 4.0 ug/ml or less of
10 cadmium using ASTM method C 927-99.⁶

11 (e) **Alternative Non Food/Beverage Use Product Standard: A**
12 Ceramicware Non Food/Beverage Use Product qualifies as a Reformulated Product if it achieves
13 a test result of 4.0 ug or less of lead and 32.0 ug or less of cadmium as applied to all of the
14 decorated portions of all surfaces of the Product performed as outlined in NIOSH method
15 no. 9100. A Children's Product that is also a Ceramicware Non-Food/Beverage Use Product
16 must nevertheless meet the standards outlined in subsection 2.3.2(b) to be considered a
17 Reformulated Product.

18 **2.4 Reformulation Goal.** Each Settling Defendant hereby commits to undertake good
19 faith efforts to ensure that as many Covered Products as reasonably possible that it offers for sale
20 in California after January 1, 2006, shall either qualify as Reformulated Products or will
21 otherwise be exempt from the warning requirements of section 2.2, with the commitment that at
22 least eighty percent (80%) of the Covered Products manufactured on or after December 31, 2006
23 *and* reasonably likely to be sold in California will not require warnings pursuant to section 2.2,
24 with the further commitment to undertake all commercially reasonable efforts to sell one-hundred
25 percent (100%) Reformulated Products in California, after January 1, 2007.

26 _____
27 ⁵ Because this method requires correction for internal volume, this method and
subsections 2.3.2(c) and 2.3.2(d)(ii) are only appropriate for ceramic hollowware.

28 ⁶ This subsection 2.3.2(d)(ii) is only appropriate for ceramic hollowware.

1 **3. MONETARY PAYMENTS.**

2 **3.1** In settlement of all of the claims referred to in this Consent Judgment against
3 Boelter, Boelter shall pay \$21,000 in civil penalties to be apportioned by Plaintiff in accordance
4 with Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's
5 Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty
6 monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d).

7 Plaintiff shall bear all responsibility for apportioning and paying to the State of California the
8 appropriate civil penalties paid in accordance with this section.

9 **3.2 Payment Schedule.** The payment set forth in this paragraph shall be made
10 payable to "Chanler Law Group In Trust for Russell Brimer" on or before July 1, 2005, and be
11 delivered to Plaintiff's counsel at the following address:

12
13 CHANLER LAW GROUP
14 Attn: Clifford A. Chanler
15 71 Elm Street, Suite 8
16 New Canaan, CT 06840

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

18 **4.1** The Parties acknowledge that Plaintiff 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 Boelter 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 Plaintiff and his counsel under the private attorney general doctrine codified
24 at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date. Under
25 the private attorney general doctrine, Boelter shall reimburse Plaintiff and his counsel for fees and
26 costs, incurred as a result of investigating, bringing this matter to Boelter's attention, litigating
27 and negotiating a settlement in the public interest. Boelter shall pay Plaintiff and his counsel
28 \$58,000 for all attorneys' fees, expert and investigation fees, and litigation costs. The payment

1 shall be made payable to the "Chanler Law Group" and shall be delivered to Plaintiff's counsel
2 on or before July 1, 2005, at the following address:

3 CHANLER LAW GROUP
4 Attn: Clifford A. Chanler
5 71 Elm Street, Suite 8
6 New Canaan, CT 06840

7 Except as specifically provided in this Consent Judgment, Boelter shall have no further
8 obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the
9 Covered Products or this Action.

10 **5. RELEASE OF ALL CLAIMS**

11 **5.1 Plaintiff's Release of Settling Defendants.** In further consideration of the
12 promises and agreements herein contained, and for the payments to be made pursuant to
13 sections 3 and 4, Plaintiff, on behalf of himself, his past and current agents, representatives,
14 attorneys, successors and/or assignees, and in the interest of the general public, hereby waives all
15 rights to institute or participate in, directly or indirectly, any form of legal action and release all
16 claims, including, without limitation, all actions, causes of action, in law or in equity, suits,
17 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including,
18 but not limited to, investigation fees, expert fees and attorney's fees) of any nature whatsoever,
19 whether known or unknown, fixed or contingent (collectively "Claims"), against each Settling
20 Defendant and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers,
21 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries
22 and their respective officers, directors, attorneys, representatives, shareholders, agents, and
23 employees (collectively, "Settling Defendants' Releasees") arising under or derived from
24 Proposition 65, related to Settling Defendants or Settling Defendants' Releasees' alleged failure
25 to warn about exposures to or identification of one or more of the Listed Chemicals contained in
26 the exterior decorations on the Covered Products manufactured, decorated, imported, distributed
27 or offered for use or sale by any Settling Defendant.

28 //

//

1 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
2 binding resolution of any direct or derivative violation of Proposition 65, that has been or could
3 have been asserted in the Complaints against Settling Defendants for the Settling Defendants'
4 Releasees alleged failure to provide clear and reasonable warnings of exposure to or identification
5 of one or more of the Listed Chemicals in the exterior decorations on the Covered Products
6 manufactured, decorated, imported, distributed or offered for use or sale by any Settling
7 Defendant.

8 It is specifically understood and agreed that a Settling Defendant's compliance with the
9 terms of this Consent Judgment resolves all issues and liability, now and in the future (so long as
10 that Settling Defendant complies with the terms of the Consent Judgment) concerning that
11 Settling Defendant's and the Settling Defendant's Releasees' compliance with the requirements
12 of Proposition 65, as to the Listed Chemicals in the exterior decorations of the Covered Products
13 manufactured, decorated, imported, distributed or offered for use or sale by that Settling
14 Defendant.

15 The releases provided by Plaintiff in this subsection shall not extend upstream to the
16 Covered Product manufacturer or decorator or to any Product importer, distributor or supplier
17 from whom a Settling Defendant purchased any Covered Products, except insofar as such entity
18 itself is a Settling Defendant. This Agreement expressly does not release Settling Defendants for
19 exposures to the Listed Chemicals from sources other than the paints, pigments, decals, dyes and
20 other materials used as exterior decoration on the Covered Products. This release also expressly
21 excludes the potential liability of (1) Settling Defendants' Releasees for the use or sale of any
22 Covered Product not supplied to them by a Settling Defendant; (2) any units of Glassware
23 Food/Beverage Products that have been sold by a Settling Defendant directly or indirectly to J.C.
24 Penney Company, Inc. and which have, in turn, been sold or offered for sale by J.C. Penney
25 Company, Inc. to consumers in California, including any products that are the subject of the
26 *DiPirro v. J.C. Penney* (No. 407150) case which is presently pending in the San Francisco
27 Superior Court; and (3) the list of companies and/or cases listed on Exhibit F to this Consent
28 Judgment.

1 **5.2 Settling Defendants' Release of Plaintiff.** Each Settling Defendant waive all
2 rights to institute any form of legal action against Plaintiff, or his attorneys or representatives, for
3 all actions taken or statements made by Plaintiff and his attorneys or representatives, in the course
4 of investigating and/or seeking enforcement of Proposition 65, against them in this matter and/or
5 with respect to the Covered Products.

6 **6. COURT APPROVAL**

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

12 **7. SEVERABILITY**

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

16 **8. ATTORNEYS' FEES**

17 In the event that a dispute arises with respect to any provision of this Consent Judgment,
18 the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable
19 costs and attorneys' fees incurred in connection with such dispute.

20 **9. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of
22 California and apply within the State of California. In the event that Proposition 65 is repealed or
23 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products
24 specifically, then Settling Defendants and Settling Defendants' Releasees shall have no further
25 obligations pursuant to this Consent Judgment with respect to, and to the extent that, those
26 Covered Products are so affected.

1 **10. NOTICES**

2 All correspondence and notices required to be provided pursuant to this Consent Judgment
3 shall be in writing and personally delivered or sent by first-class, registered, certified mail, return
4 receipt requested or overnight courier to Plaintiff and the affected Settling Defendant(s) at the
5 addresses listed in Exhibit C (including as Exhibit C may be supplemented pursuant to section 14
6 below). Any Settling Defendant may specify a change of address to which all notices and other
7 communications shall be sent by providing such notice to Plaintiff and Boelter.

8 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

13 Plaintiff shall comply with the regulations promulgated under Health & Safety Code
14 § 25249.7(f) regarding the reporting of the Consent Judgment to the California Attorney
15 General's Office following its execution by all Parties. A noticed motion to enter the Consent
16 Judgment will then be served on the California Attorney General's Office at least forty-five (45)
17 days prior to the date a hearing is scheduled on such motion in the Superior Court for the City and
18 County of San Francisco unless the Court allows a shorter period of time.

19 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

20 Plaintiff and each Settling Defendant shall mutually employ their best efforts to support
21 the entry of this Agreement as a Consent Judgment and obtain approval of the Consent Judgment
22 by the Court in a timely manner. The Parties acknowledge that, pursuant to Health & Safety
23 Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent
24 Judgment. Accordingly, the Parties agree to file a Joint Motion to Approve the Agreement
25 ("Joint Motion"), the first draft of which Boelter's counsel shall prepare, within a reasonable
26 period of time after the Execution Date (*i.e.*, not to exceed fifteen (15) days unless otherwise
27 agreed to by the Parties' counsel based on unanticipated circumstances). Plaintiff's counsel shall
28 prepare a declaration in support of the Joint Motion which shall, *inter alia*, set forth support for

1 the fees and costs to be reimbursed pursuant to section 4 and section 14. Defendant's counsel
2 shall likewise prepare a declaration in support of the Joint Motion which shall, *inter alia*, set forth
3 support for any processing charges to be paid to Defendant's Counsel pursuant to section 14
4 below. Boelter shall have no additional responsibility to Plaintiff's counsel pursuant to Code of
5 Civil Procedure § 1021.5 or otherwise with regard to reimbursement of any fees and costs
6 incurred pursuant to section 14 below or with respect to the preparation and filing of the Joint
7 Motion and its supporting declaration or with regard to Plaintiff's counsel appearing for a hearing
8 or related proceedings thereon.

9 **14. OPT-IN PROCEDURE**

10 **14.1** This Consent Judgment is executed with the understanding that additional persons
11 and entities not Parties to this Consent Judgment may wish to be bound by the terms of this
12 Consent Judgment ("Opt-In Defendants"). These Opt-In Defendants must be able to represent
13 under penalty of perjury that they have: (1) employed ten or more persons at any time within the
14 Relevant Period⁷; (2) manufactured, imported, distributed, or offered for use or sale one or more
15 Covered Products that, during the Relevant Period, have not met or currently do not meet the
16 Reformulated Product standards set forth in subsection 2.3; and (3) sold and/or offered for use
17 such Covered Products in the State of California during the Relevant Period without "clear and
18 reasonable" Proposition 65 warnings as that term is defined under 22 California Code of
19 Regulations ("CCR") § 12601. At any time, either prior to the date of entry of this Consent
20 Judgment or within ninety (90) days thereafter, counsel for Boelter may provide Brimer with
21 names of additional Opt-In Defendants who are willing to confirm these representations by means
22 of executing the Stipulation for Entry of Judgment as provided in section 14.2 below. Counsel
23 for Boelter shall provide Brimer with the names and mailing addresses of all entities wishing to
24 "Opt-In" and all relevant information as required under this Consent Judgment ("Opt-in List")
25 following its receipt of such information and the payments required under Table 14.4 below.
26

27 ⁷ "Relevant Period" is defined in this agreement as the one year period prior to the
28 execution of the Opt-In Stipulation described in section 14.2.

1 **14.2** Each Opt-In Defendant shall execute a “Stipulation for Entry of Judgment” in the
2 general form appearing in Exhibit D hereto (“Opt-In Stipulation”) identifying whether the Opt-In
3 Defendant has manufactured, imported, distributed or offered for use or sale in California
4 Category A Products, Category B Products, Category C Products, and/or Category D Products
5 and attesting under penalty of perjury to the following facts: (1) the Opt-In Defendant has
6 employed ten or more persons at any time within the Relevant Period; (2) the Opt-In Defendant
7 manufactured, imported, distributed or offered for use or sale in California one or more items in
8 each of the identified categories of Covered Products without a “clear and reasonable”
9 Proposition 65 warning during the Relevant Period, (3) one or more items within one or more of
10 the product categories of such Covered Products identified by the Opt-In Defendant did not,
11 during the Relevant Period, comply with the Reformulation Standards in subsection 2.3 of this
12 Consent Judgment; (4) the Opt-In Defendant has not performed a risk or exposure assessment
13 establishing that all of the Covered Products in the categories in question did not require
14 Proposition 65 warnings; and (5) the Opt-In Defendant is otherwise unaware of evidence which
15 would establish a legally sustainable affirmative defense to an enforcement action under
16 Proposition 65 with respect to all items in the categories of the Covered Products identified by the
17 Opt-In Defendant. Opt-In Defendants shall reasonably cooperate with Brimer in providing
18 additional information or representations necessary to enable Brimer to issue a 60-day notice
19 (“Notice”) to the Opt-In Defendant with a certificate of merit in support thereof with respect to
20 the categories of Covered Products which shall be made subject to this Consent Judgment.
21 Brimer shall be excused from a failure to provide such Notice within thirty (30) days with respect
22 to an Opt-In Defendant if that Opt-In Defendant fails to timely cooperate with Brimer in
23 providing such additional information or representations.

24 **14.3** Not later than thirty (30) days after Brimer receives an Opt-in List, Brimer shall
25 send Notices pursuant to California Health & Safety Code § 25249.7(d) to each Opt-In Defendant
26 on the Opt-In List at the addresses provided, to the California Attorney General’s Office, to every
27 California district attorney, and to every city attorney required to receive such a notice pursuant to
28

1 D. Bars & Restaurants, Hotels, Other
2 Food Service Establishments:

A total of \$25,000, consisting of:

- 3 (1) \$ 7,500 Civil Penalties⁸;
4 (2) \$12,500 Plaintiff's Attorneys' Fees⁹; and
5 (3) \$ 5,000 Settlement Related Costs.

6 (a) For purposes of this section and Table 14.4, the following definitions apply:

7 A "Manufacturer" is a business entity that produces, packages, creates, or
8 otherwise makes a Covered Product or contracts with an entity to produce,
9 package, create or otherwise make a Covered Product.

10 An "Importer" is the first business entity with employees within the
11 Customs Territory of the United States which receives Covered Products
12 produced in other countries for the purpose of supplying them to
13 distributors or purchasers within the United States.

14 A "Distributor" is a business, other than a Manufacturer or Importer, which
15 supplies Covered Products to other distributors, retailers or other non-
16 consumer entities.

17 (b) Any entity which has conducted activities that comprise more than one of the
18 categories of business listed in A through D above shall be deemed to be a Manufacturer if 15%
19 or more of its sales of Covered Products in California were the result of its Manufacturing of
20 Covered Products. If the entity is not a Manufacturer under the preceding criteria, that entity
21 shall be deemed to be a Distributor/Importer if 15% or more of its sales of Covered Products in
22 California were the result of its Distributing/Importing of Covered Products. Any retailer that
23 acquires, designs and/or markets Covered Products under their own brand name shall be deemed
24 to be an "Apparent Manufacturer" pursuant to the terms of this Consent Judgment and shall be
25 treated as a Manufacturer for all such Covered Products for purposes of the 15% calculation
26 herein above.

27 (c) To be eligible to complete an Opt-In Stipulation, Manufacturers, Importers or
28 Distributors wishing to participate as Opt-In Defendants must attest to the fact, under penalty of
perjury, that their sales of Covered Products destined for California in the calendar year 2004
amounted to less than 350,000 consumer units. This restriction does not apply to retailers,
amusement and recreation establishments, bars, restaurants, hotels, or other Food/Beverage

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1 Service Defendants. Manufacturers, Decorators, Importers or Distributors with sales of Covered
2 Products destined for California in the calendar year 2004 amounting to 350,000 or more
3 consumer units may agree to comply with the injunctive relief terms provided in section 2 of this
4 Consent Judgment in a separately negotiated settlement with Plaintiff which may be entered as a
5 consent judgment with the subsequent approval of the Court following opportunity for review by
6 the Attorney General as required in Health and Safety Code § 25249.7(f).

7 **14.5** Once more than sixty-five (65) days has run from the date specified in a Notice
8 sent to an Opt-In Defendant and provided that no public prosecutor of Proposition 65 has filed a
9 lawsuit against that Opt-In Defendant with respect to the Covered Products, Plaintiff shall, within
10 fourteen (14) days, file in this Court any executed Opt-In Stipulation it has received pursuant to
11 the above and serve notice thereof on the Opt-In Defendant and Boelter's counsel. At the time
12 any executed Opt-In Stipulation is filed, the Complaint shall be deemed to have been amended to
13 specifically name the Opt-in Defendant that executed the Opt-In Stipulation as a named defendant
14 in this Action and each such Opt-In Defendant shall be deemed to have become a full Settling
15 Defendant under this Consent Judgment and will likewise assume all obligations set forth under
16 Section 2.

17 **15. MODIFICATION**

18 This Consent Judgment may be modified, including pursuant to section above, only by:
19 (1) written agreement of the Parties and upon entry of a modified Consent Judgment by the Court
20 thereon; or (2) motion of any Party as provided by law and upon entry of a modified Consent
21 Judgment by the Court. The Attorney General shall be served with notice of any proposed
22 modification to this Consent Judgment at least fifteen (15) days in advance of its consideration by
23 the Court.

24 ////

25 ////

26 ////

27 ////

28 ////

1 **16. AUTHORIZATION**

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

5
6 **AGREED TO:**

AGREED TO:

7
8 Date: _____

Date: 6-13-05

9 By: _____

By: *Rich Boelter*

10 Plaintiff Russell Brimer

Defendant The Boelter Companies, Inc.

11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12
13 Date: _____

Date: 6-9-05

14 **CHANLER LAW GROUP**

MORRISON & FOERSTER LLP

15
16 By: _____

By: *Robert L. Falk*

17 Clifford A. Chanler
18 Attorneys for Plaintiff
RUSSELL BRIMER

Robert L. Falk
Attorneys for Defendant
THE BOELTER COMPANIES, INC.

19 **IT IS SO ORDERED.**

20
21 Date: _____

JUDGE OF THE SUPERIOR COURT

22
23
24
25
26
27
28

16. 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.

6	AGREED TO:	AGREED TO:
7	Date: <u>6-8-05</u>	Date: _____
8	By: <u><i>Russell Brimer</i></u>	By: _____
9	Plaintiff Russell Brimer	Defendant The Boelter Companies, Inc.

11	APPROVED AS TO FORM:	APPROVED AS TO FORM:
12	Date: <u>6-13-2005</u>	Date: _____
13	CHANLER LAW GROUP	MORRISON & FOERSTER LLP
14	By: <u><i>Cliff A. Chanler</i></u>	By: _____
15	Clifford A. Chanler	Robert L. Falk
16	Attorneys for Plaintiff	Attorneys for Defendant
17	RUSSELL BRIMER	THE BOELTER COMPANIES, INC.

IT IS SO ORDERED.
Date: _____

JUDGE OF THE SUPERIOR COURT

28

EXHIBIT A

PROP 65

WARNING

The materials used as colored decorations on the exterior of glassware products used or sold in this establishment contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

EXHIBIT B

TESTING PROTOCOL

For purposes of the Reformulation Standards in this Consent Judgment, the method on the attached pages, ASTM C 927-80 (reapproved in 1999 and 2004), shall be modified for total immersion of the Covered Products.

As modified, carefully add 4% acetic acid leaching solution from a graduated cylinder to each container containing a sample until the sample is fully immersed in solution. Record the volume of solution used. The container must comply with the diameter requirements specified in the protocol, while being large enough to fully immerse the product.

The remainder of the protocol should be followed as set forth in the attached document.



Standard Test Method for Lead and Cadmium Extracted from the Lip and Rim Area of Glass Tumblers Externally Decorated with Ceramic Glass Enamels¹

This standard is issued under the fixed designation C 927; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ϵ) indicates an editorial change since the last revision or reapproval.

1. Scope

1.1 This test method covers the determination of lead and cadmium extracted by acetic acid from the lip and rim area of glassware used for drinking and which is exteriorly decorated with ceramic glass enamels. The procedure of extraction may be expected to accelerate the release of lead and cadmium from the decorated area and to serve, therefore, as a severe test that is unlikely to be matched under the actual conditions of usage of such glassware. This test method is specific for lead and cadmium.

NOTE 1—For additional information see Test Method C 738.

1.2 The values stated in acceptable metric units are to be regarded as the standard. The values given in parentheses are for information only.

1.3 *This standard may involve hazardous materials, operations, and equipment. This standard does not purport to address all of the safety concerns associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

2. Referenced Documents

2.1 ASTM Standards:²

C 738 Test Method for Lead and Cadmium Extracted from Glazed Ceramic Surfaces

3. Terminology

3.1 Definitions:

¹ This test method is under the jurisdiction of ASTM Committee C14 on Glass and Glass Products and is the direct responsibility of Subcommittee C14.10 on Glass Decoration. It was developed jointly by ASTM Committee C-14 and C-21 on Ceramic Whitewares and Related Products, the Society of Glass Decorators A-20 Subcommittee on Ceramic Enamelled Decorated Glass Tumblers, and an Inter-agency Task Force consisting of FDA, EPA, and CPSC of the U.S. Government.

Current edition approved Oct. 1, 2004. Published October 2004. Originally approved in 1980. Last previous edition C 927 - 80 (1999).

² For referenced ASTM standards, visit the ASTM website, www.astm.org, or contact ASTM Customer Service at service@astm.org. For *Annual Book of ASTM Standards* volume information, refer to the standard's Document Summary page on the ASTM website.

3.1.1 *ceramic glass decorations*—ceramic glass enamels fused to glassware at temperatures above 425°C (800°F) to produce a decoration.

3.1.2 *ceramic glass enamels (also ceramic enamels or glass enamels)*—predominately colored, silicate glass fluxes used to decorate glassware.

3.1.3 *lip and rim area*—that part of a drinking vessel which extends 20 mm below the rim on the outside of the specimen.

4. Summary of Test Method

4.1 Lead and cadmium are extracted from the lip and rim area of the article under test by leaching with a 4 % acetic acid solution at 20 to 24°C (68 to 75°F) for 24 h and are measured by atomic absorption spectrophotometry using specific hollow cathode or electrodeless discharge lamps for lead and cadmium respectively. Results are reported as micrograms per millilitre (ppm) extracted relative to the internal volume of the glass article.

5. Significance and Use

5.1 The heavy metals, lead and cadmium, are known to cause serious health effects in man if consumed in excess. It is, therefore, important to measure the amount that may be extracted from an area of the glass drinking vessel in contact with the lip. Even though the amount of lead and cadmium extracted by this test method is in no way representative of the amount of the metals extracted by actual lip contact, the relative magnitude of metals extracted from one test specimen in relation to another test specimen provides an effective tool for discrimination.

6. Interferences

6.1 Since specific hollow cathode lamps or electrodeless discharge lamps for lead and cadmium are used, there are no interferences.

7. Apparatus

7.1 *Atomic Absorption Spectrophotometer (AAS)*, equipped with a 102-mm (4-in.) single slot or Boling burner head and digital concentration readout attachment (DCR) if available. This instrument should have a sensitivity of about 0.5 µg/mL of

lead for 1 % absorption and a sensitivity of about 0.025 µg/mL of cadmium for 1 % absorption. Use the operating conditions as specified in the instrument manufacturer's analytical methods manual.

7.2 *Hollow Cathode or Electrodeless Discharge Lead Lamp*, set at 283.3 nm.

7.3 *Hollow Cathode or Electrodeless Discharge Cadmium Lamp*, set at 228.8 nm.

7.4 *Glassware* of chemically resistant borosilicate glass for use in preparing and storing reagents and solutions, and for use as test specimen containers.

7.5 Detection limits of lead and cadmium shall be determined and reported for individual instruments. In this test method, the detection limit shall be defined as twice the mean noise level at 0 µg/mL. Representative detection limits would be approximately 0.01 to 0.03 µg/mL for lead and 0.0005 to 0.0010 µg/mL for cadmium.

8. Reagents

8.1 *Purity of Reagents*—Reagent grade chemicals shall be used in all tests. Unless otherwise indicated, it is intended that all reagents shall conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available.³ Other grades may be used provided it is first ascertained that the reagent is of sufficiently high purity to permit its use without lessening the accuracy of the determination. Analyze each new batch of reagents for lead and cadmium.

8.2 *Purity of Water*—Unless otherwise indicated, references to water shall be understood to mean distilled or deionized water.

8.3 *Acetic Acid (4 volume %)*—Mix 1 volume of glacial acetic acid with 24 volumes of water.

8.4 *Cadmium Standard Stock Solution (1000 µg/mL of cadmium)*—Dissolve 0.9273 g of anhydrous cadmium sulfate in 250 mL of 1 % HCl (8.6) and dilute to 500 mL with 1 % HCl. Commercially available standard cadmium solutions may also be used.

8.5 *Detergent Rinse*—Add 2 mL of hand dishwashing detergent to 1 L of lukewarm tap water.

8.6 *Hydrochloric Acid (1 weight %)*—Mix 1 volume of concentrated hydrochloric acid (HCl, sp gr 1.19) with 37 volumes of water.

8.7 *Lead Standard Stock Solution (1000 µg/mL)*—Dissolve 1.598 g of lead nitrate (Pb(NO₃)₂) in 4 % acetic acid and dilute to 1 L with 4 % acetic acid. Commercially available standard lead solutions may also be used.

9. Sampling

9.1 *Continuous Process*—Since the amount of metal released from a decoration can be affected by the firing conditions, which may not be uniform across the width of thelehr,

a minimum of six samples should be taken representing both sides and the center of thelehr.

9.2 *Load or Pile*—A minimum of six samples should be randomly selected from throughout the load.

10. Preparation of Standards

10.1 *Lead Standard Working Solutions*—Dilute lead nitrate solution (8.7) with acetic acid (8.3) to obtain working standards having final lead concentrations of 0, 5, 10, 15, and 20 µg/mL.

10.2 *Cadmium Standard Working Solutions*—Dilute cadmium stock solution (8.4) with acetic acid (8.3) to obtain working standards having final cadmium concentrations of 0.0, 0.3, 0.5, 1, 1.5, and 2.0 µg/mL.

10.3 Fresh working solutions should be prepared daily.

11. Procedure

11.1 *Preparation of Sample*—Take six identical units and cleanse each with a detergent rinse. Then rinse with tap water followed by distilled water followed by air drying. Mark each unit 7 mm below the rim. Record the internal volume of each article in millilitres by filling from a graduated cylinder to approximately 6 to 7 mm (¼ in.) of overflowing. Mark each article, in a nondecorated area (if possible), 20 mm below the rim on the outside. Invert the article in an appropriate laboratory glassware container whose diameter is a minimum of 1.25 times and a maximum of 2.0 times the diameter of the test specimen at the rim. Carefully add 4 % acetic acid leaching solution from a graduated cylinder to the 20-mm mark. Record the volume of solution used. Cover the glassware containers, if possible, to prevent evaporation and to protect them from contamination. Let stand for 24 h at room temperature (20 to 24°C) in the dark. Remove the article after the 24-h leaching period and determine the lead and cadmium by atomic absorption. Record the lead and cadmium found in micrograms per millilitre.

NOTE 2—The possibility of a significant amount of evaporation exists. The analyst should determine whether the acetic acid leaching is noticeably below the 20-mm mark before removing the article. If it is, sufficient acetic acid solution should be added to restore the leaching solution to the 20-mm mark.

11.2 *Determination of Lead*—Set the instrument (7.1) for maximum signal at 283.3 nm using the lead hollow cathode lamp (7.2) (Note 3) and air/acetylene (C₂H₂) flow rates recommended by the manufacturer. Stir the sample (leaching) solution and pour off a portion into a clean flask or aspirate from the extraction container if suitable. Flush the burner with water and check zero point between readings. Determine lead from a standard curve of absorbance against µg/mL of lead or calibrate the direct concentration reading (DCR) unit in the concentration mode with lead working solutions (11.1) and read and record the sample concentration directly. Bracket the sample solution with the next higher and lower working solutions. Dilute samples containing more than 20 µg/mL of lead with 4 % acetic acid and reanalyze.

NOTE 3—Electrodeless discharge lamps may be substituted for hollow cathode lamps.

³ *Reagent Chemicals, American Chemical Society Specifications*, American Chemical Society, Washington, DC. For suggestions on the testing of reagents not listed by the American Chemical Society, see *Analar Standards for Laboratory Chemicals*, BDH Ltd., Poole, Dorset, U.K., and the *United States Pharmacopeia and National Formulary*, U.S. Pharmacopoeial Convention, Inc. (USPC), Rockville, MD.

11.3 *Determination of Cadmium*—Proceed as in 11.2 using the cadmium hollow cathode lamp (7.3) and cadmium standards (10.2). If the sample (leaching) solution contains more than 2 µg/mL of cadmium, dilute with 4 % acetic acid and reanalyze.

12. Calculation

12.1 Use the following equations to calculate the total amount of lead or cadmium metal released from the lip and rim area of the article expressed (1) in total micrograms and (2) parts per million of lead or cadmium metal leached relative to the internal volume of the article.

12.1.1 Determine lead or cadmium, *A*, in micrograms as follows:

$$A = C \times V_1 \quad (1)$$

12.1.2 Determine lead or cadmium, *A*, in parts per million as follows:

$$A = \frac{C \times V_1}{V_2} \quad (2)$$

where:

C = concentration of lead or cadmium in leaching solution, µg/mL;

*V*₁ = volume of leaching solution, mL; and

*V*₂ = internal volume of article, mL (Note 4).

NOTE 4—The internal volume of the article expressed in millilitres of water closely approximates its weight in grams. Therefore, in this instance microgram per millilitre equals microgram per gram which equals parts per million.

13. Report

13.1 A suggested report form is given in Fig. 1.

14. Precision and Bias

14.1 Precision for the analytical method for single or multiple operator within a single laboratory is within the sensitivity of the AAS used and as specified is about 0.5 µg/mL for lead and 0.25 µg/mL for cadmium.

14.2 The accuracy and between-laboratory precision are dependent upon the ability to obtain representative samples for the statistical universe being sampled.

15. Keywords

15.1 atomic absorption; cadmium; ceramic glass enamels; glaze; heavy metals; lead

LABORATORY TEST DATA

Lead and Cadmium Released from Lip and Rim Area of Drinking Glassware Decorated Externally with Ceramic Glass Enamels

Date _____

Manufacturer _____ Laboratory _____

Pattern _____

Detection Limit Lead _____ Reagent Blank Lead _____

 Cadmium _____ Cadmium _____

Internal Volume, mL _____

Sample	Volume of Leaching Solution, mL	Concentration, µg/mL Lead,	Total µg	ppm Relative to Internal Volume
1				
2				
3				
4				
5				
6				
Avg				
		Cadmium		
1				
2				
3				
4				
5				
6				
Avg				

FIG. 1 Report Form

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EXHIBIT C

PARTIES TO WHOM NOTICE IS TO BE GIVEN*

FOR PLAINTIFF

CHANLER LAW GROUP
Attn: Clifford A. Chanler
71 Elm Street, Suite 8
New Canaan, CT 06840

FOR SETTLING DEFENDANTS

Robert L. Falk
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

with copies to

Rick Boelter
The Boelter Companies, Inc.
N22W23685 Ridgeview Parkway West
Waukeshaw, WI 53188

*This document may be supplemented pursuant to section 14 of the Consent Judgment to include the proper name and address of any Opt-In Defendant.

EXHIBIT D

1 Clifford A. Chanler, State Bar No. 135534
CHANLER LAW GROUP
2 71 Elm Street, Suite 8
3 New Canaan, CT 06840
Telephone: (203) 966-9911
4 Facsimile: (203) 801-5222

5 Daniel Bornstein, State Bar No. 181711
Laralie S. Paras, State Bar No. 203319
6 PARAS LAW GROUP
7 655 Redwood Highway, Suite 216
Mill Valley, CA 94941
Telephone: (415) 380-9222
8 Facsimile: (415) 380-9223

9 Christopher Martin, State Bar No. 186021
10 MARTIN LAW GROUP
23 N. Lincoln, Suite 204
11 Hinsdale, IL 60521
Telephone: (630) 789-6998
12 Facsimile: (630) 214-0979

13 Attorneys for Plaintiff
Russell Brimer
14

15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF SAN FRANCISCO
18 UNLIMITED JURISDICTION
19

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).

27
28

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, it is a (check only one)¹:

- 9 **(a) Manufacturer**
10 **(b) Distributor and/or Importer**
11 **(c) Retailer and/or Amusement & Recreation Establishment**
12 **(d) Bar, Restaurant, Hotel, or Other Food/Beverage Service Defendant**

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

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

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

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

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

9 IT IS HEREBY STIPULATED AND AGREED TO:
10

11 By: _____
12 (signature)

By: _____

13 On Behalf of Plaintiff Russell Brimer

14 _____
15 Name (printed/typed)

16 _____
17 Title (printed/typed)

18 On Behalf of:

19 _____
20 (Insert Company Name)

21 Opt-In Defendant

22 Dated: _____

Dated: _____

23
24
25
26
27
28

EXHIBIT E

OPT-IN PAYMENT INSTRUCTIONS

The instructions below outline the steps a company needs to take to participate in the Opt-In program and how to submit proper settlement payments as an Opt-In Defendant.

As a preliminary matter, in order to participate in the Opt-In program, if you are a Manufacturer, Distributor or Importer (as defined below), your company's sales of Covered Products destined for California in the calendar year 2004 must equal less than 350,000 consumer units. (This limitation does not apply to the entities covered in Class C or Class D below unless that entity is operating as a Manufacturer, Distributor, or Importer as defined below.) The meaning of "consumer unit" may be new to your company. A consumer unit reflects the individual product as marketed to the ultimate purchaser. For example, a boxed set of 4 glasses packaged to be sold as one unit or an individual mug may each be considered one "consumer unit."

STEP ONE: Determine the company's appropriate settlement classification. In order to determine the proper payment amount, you must determine which of the following categories describes your company's business in accordance with the definitions in the Consent Judgment.

A	Manufacturer. A business entity that produces, packages, creates, or otherwise makes a Covered Product or contracts with an entity to produce, package, create or otherwise make a Covered Product. (Further information regarding Distributors, Importers, Retailers and other companies that are "Apparent Manufacturers" and may be included within this category on this basis is provided below.)
B	Distributor. A business, other than a Manufacturer or Importer, which supplies Covered Products to other distributors, retailers or other non-consumer entities. Importer. The first business entity with employees within the Customs Territory of the United States which receives Covered Products produced in other countries for the purpose of supplying them to distributors or purchasers within the United States.
C	Retailer / Amusement & Recreation establishment. These businesses are not specifically defined in the Consent Judgment, but include all retail sellers of Covered Products that do not qualify as Class A or Class B opt-in Defendants, as well as entities such as amusement/aquatic parks, professional/amateur sports organizations, theatrical and musical performance organizations and other similar establishments. Further information regarding retailers that may be deemed "Apparent Manufacturers" is provided below.

D

Bar & Restaurant, Hotel, Other Food/Beverage Service Defendant.

These businesses also are not specifically defined in the Consent Judgment, but include all businesses and establishments that sell and/or serve food or drinks, as well as all lodging establishments that do not qualify as A, B or C opt-in Defendants.

Multiple Activities: If your company engages in more than one class of activity, such as the manufacture (Class A) and importation (Class B) of Covered Products, your company is properly qualified as a “Class A” Settling Defendant if 15% or more of your company’s gross sales of Covered Products in California were the result of the manufacture of Covered Products.

If your company is not a Manufacturer or an Apparent Manufacturer, defined below, under the preceding criteria, your company shall be deemed to be a Class B Settling Defendant if 15% or more of its sales of Covered Products in California were the result of distribution or importation of Covered Products. Otherwise, your company will qualify as a “Class C” or “Class D” Settling Defendant, depending on the nature of the organization.

Apparent Manufacturers: Any Distributor, Importer, Retailer or other company that acquires, designs and/or markets Covered Products under its own brand name shall be deemed to be an “Apparent Manufacturer” pursuant to the terms of this Consent Judgment and shall be treated as a Manufacturer for all such Covered Products for purposes of the applicable 15% calculation above.

STEP TWO: Determine the appropriate payment amount. Once your company has determined its appropriate settlement classification, it must then determine the appropriate settlement payment amount. Generally, the payments are set forth in Table 14.4 of the Consent Judgment and reproduced below. However, there are two exceptions that may increase the amount of your company’s settlement payments:

(1) If Plaintiff has already issued a 60-Day Notice to your company related to Covered Products, your company is responsible for reimbursing a portion of Plaintiff’s attorneys’ fees and costs related to the 60-Day Notice. In this event, you would need to increase the amount shown for “Plaintiff’s Attorneys’ Fees” on Table 14.4 by an additional **\$4,000**. For example, a Manufacturer in this situation would pay \$49,000 (rather than \$45,000) in Plaintiff’s Attorneys’ Fees; however, its

Civil Penalties and Settlement Related Cost payments would remain the same as shown on Table 14.4.

(2) If a Plaintiff has already filed a Complaint against your Company related to Covered Products (after the expiration of the sixty-day notice period), your company is responsible for reimbursing the Plaintiff's attorneys' fees and costs by an additional **\$12,000** above the amount in Table 14.4. This supplemental amount includes the 60-Day Notice charge discussed in STEP TWO (1) above.

TABLE 14.4

TYPE OF ENTITY	MONETARY CONTRIBUTION
A. Manufacturers:	A total of \$95,000 , consisting of: (1) \$45,000 Civil Penalties (2) \$45,000 Plaintiff's Attorneys' Fees* and (3) \$ 5,000 Settlement Related Costs.
B. Distributors / Importers:	A total of \$50,000 , consisting of: (1) \$22,500 Civil Penalties; (2) \$22,500 Plaintiff's Attorneys' Fees;* and (3) \$ 5,000 Settlement Related Costs.
C. Retailers / Amusement & Recreation establishments:	A total of \$35,000 , consisting of: (1) \$11,000 Civil Penalties (2) \$19,000 Plaintiff's Attorneys' Fees;* and (3) \$ 5,000 Settlement Related Costs.
D. Bars & Restaurants, Hotels, Other Food/Beverage Service Defendants:	A total of \$25,000 , consisting of: (1) \$ 7,500 Civil Penalties; (2) \$12,500 Plaintiff's Attorneys' Fees;* and (3) \$ 5,000 Settlement Related Costs.

* Add \$4,000 if a 60-Day Notice has already been issued. Add \$12,000 if a Notice was issued *and* a Complaint has already been filed.

STEP THREE: Prepare and transmit the Opt-In Stipulation and the Settlement Payments.

Once you have determined the proper amount, the final step is to transmit the necessary documents and the checks constituting the settlement payments. The settlement payments must be made by three (3) *separate* checks (described below) and must be accompanied by the Settling Defendant's *originally* executed Opt-In Stipulation.¹ All documents must be sent via Express Mail, Certified Mail / Return Receipt Requested or other trackable delivery service to:

GLASS/CERAMIC OPT-IN PROGRAM
c/o Morrison & Foerster LLP
425 Market Street, 35th Floor
San Francisco, California 94105

Each Opt-In Defendant will receive written confirmation of receipt of its executed Opt-In Stipulation and checks either via electronic mail or by U.S. Mail.

Settlement Checks: Three *separate* checks will be required as described below. All drafts/checks must be issued in U.S. Dollars. For the "Civil Penalty" amount, the draft for the entire civil penalty amount should be made out to "THE CHANLER LAW GROUP IN TRUST FOR RUSSELL BRIMER."² For the "Plaintiff's Attorneys' Fees" amount, the draft for the entire attorneys' fees amount (including any relevant supplement if a 60-Day Notice was already issued or a Complaint already filed) should be made out to "THE CHANLER LAW GROUP." For the "Settlement Related Costs" amount, the five thousand dollar draft should be made out to "MORRISON & FOERSTER LLP." Please reference "Matter 59117/2" on this draft.

¹ Note: The Stipulation will be presented to and entered by the San Francisco Superior Court, which could impose sanctions if untruthful statements are made.

² Upon court approval of the settlement, seventy-five percent (75%) of this payment will be forwarded by Plaintiff's counsel to the California Office of Environmental Health Hazard Assessment in accordance with Proposition 65. Plaintiffs Russell Brimer, Whitney R. Leeman, Ph.D. and Michael DiPirro have each sought to protect individuals in California from exposure to the Listed Chemicals from the Covered Products in this Consent Judgment. The twenty-five percent (25%) of civil penalties recovered from Opt-In Defendants which may be retained by Plaintiffs pursuant to the provisions of Proposition 65 shall be apportioned among these plaintiffs with 59% (of the 25%) going to Russell Brimer, 26% (of the 25%) going to Whitney R. Leeman, Ph.D. and 15% (of the 25%) going to Michael DiPirro.

Tax identification information that can be used for purposes of drawing these checks will be provided upon request. (Completed W-9s will also be provided if you provide a self-addressed envelope, postage pre-paid, with your settlement checks and Opt-In Stipulation.)

EXHIBIT F

EXCLUDED CASES

Brimer v. Carlton Cards Retail, Inc.; *et al.* (Case No. HG-05-212732).
Brimer v. Dave & Buster's, Inc. (Case No. 105-CV-034242).
Brimer v. Drug Emporium, Inc.; *et al.* (Case No. HG-04-183355).
Brimer v. Enesco Group, Inc. (Case No. CGC-05-440239).
Brimer v. Home Depot USA, Inc.; *et al.* (Case No. CGC-04-436839).
Brimer v. Island Heritage; *et al.* (Case No. CGC-05-439568).
Brimer v. McCaulou's Department Store (Case No. RG-05-203616).
Brimer v. Paramount Parks Inc.; *et al.* (Case No. 104-CV-032112).
Brimer v. The May Department Stores Company, *et al.* (Case No. CGC-05-439669).
Brimer v. Wells Mfg USA Inc.; *et al.* (Case No. CGC-04-435221).
Brimer v. House of Blues; *et al.* (Case No. CGC-05-438712).
DiPirro v. J.C. Penney Company, Inc.; *et al.* (Case No. 407150).
Leeman v. Signature Housewares, Inc. (Case No. CGC-04-436929).
Leeman v. TJX Companies, Inc.; *et al.* (Case No. CGC-04-436838).

EXCLUDED COMPANIES

Sakura, Inc.
Evergreen Enterprises, Inc.
Evergreen/Cypress Enterprises, Inc.