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9 PROGRESSIVE SPECIALTY GLASS

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO  
12 UNLIMITED JURISDICTION

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 BUBBA GUMP SHRIMP CO. RESTAURANTS,  
17 INC.; HARD ROCK CAFÉ, HARD ROCK  
18 CAFÉ INTERNATIONAL; PROGRESSIVE  
19 SPECIALTY GLASS; and DOES 3 through 150,

20 Defendants.

Case No. CGC-04-436429

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

21 **1. INTRODUCTION**

22 1.1 **Plaintiff and Settling Defendants.** This Consent Judgment is entered into by and  
23 between plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”) and Progressive Specialty  
24 Glass (hereafter “Progressive”), Hard Rock Café, Hard Rock Café International (hereafter “Hard  
25 Rock”), Bubba Gump Shrimp Co. Restaurants, Inc. (hereafter “Bubba Gump”), with Progressive,  
26 Hard Rock, and Bubba Gump collectively referred to as “Defendants” and with Plaintiff and  
27 Progressive, Hard Rock, and Bubba Gump collectively referred to as the “Parties” or individually  
28 referred to as a “Party.”

1           1.2     **Plaintiff.** Russell Brimer, an individual residing in California, seeks to promote  
2 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating  
3 hazardous substances contained in consumer and industrial products.

4           1.3     **General Allegations.** Plaintiff alleges that Defendants have manufactured,  
5 distributed and/or sold in the State of California certain glassware products (including, but not  
6 limited to products listed in Exhibit A) that contain lead (and/or lead compounds) and cadmium  
7 that are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986,  
8 California Health & Safety Code §§25249.5 *et seq.*, also known as Proposition 65, as causing  
9 cancer and birth defects and other reproductive harm. Lead (and/or lead compounds) and  
10 cadmium shall be referred to herein as “Listed Chemicals.”

11           1.4     **Product Descriptions.** The products that are covered by this Consent Judgment  
12 are defined as follows: all glass, plastic, ceramic, resin, vacuum metalizing, dolomite, and/or  
13 metal beverage containers intended for the consumption of beverage products, with colored  
14 artwork, designs or markings on the exterior surface, and heat transfer, silkscreen or decal  
15 applications intended for the exterior of the beverageware, manufactured, sold and/or distributed  
16 by Defendants, including, by way of example and without limitation, products contained in the  
17 items listed in Exhibit A. Such products collectively are referred to herein as the “Products.”

18           1.5     **Notices of Violation.** On November 24, 2004, and September 2, 2004, Brimer  
19 served Progressive, Hard Rock and Bubba Gump, and various public enforcement agencies with  
20 documents, entitled “60-Day Notice of Violation” (“Notice”) that provided Progressive, Hard  
21 Rock and Bubba Gump and such public enforcers with notice alleging Progressive, Hard Rock  
22 and Bubba Gump were in violation of Health & Safety Code §25249.6 for failing to warn  
23 purchasers that certain products sold by Defendants exposed users in California to lead, lead  
24 compounds and cadmium.

25           1.6     **Complaints.** On November 18, 2004, in the interest of the general public in  
26 California, Brimer initiated this action by filing a complaint (hereafter referred to as the  
27 “Complaint” or the “Action”) in the Superior Court for the City and County of San Francisco  
28 against Bubba Gump and Does 1 through 150, alleging violations of Health & Safety Code

1 § 25249.6 based on the alleged exposure to one or more of the Listed Chemicals contained in  
2 certain products sold by Bubba Gump. In January 2005, Brimer amended the Complaint to  
3 identify Does 1 and 2 as Hard Rock and Progressive.

4 1.7 **No Admission.** Progressive, Hard Rock and Bubba Gump deny the material  
5 factual and legal allegations contained in Plaintiff's Notices and Complaint, and maintain that all  
6 products that Defendants have sold and distributed in California, including the Products, have  
7 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as  
8 an admission by Defendants of any fact, finding, issue of law, or violation of law, nor shall  
9 compliance with this Consent Judgment constitute or be construed as an admission by Defendants  
10 or any of them of any fact, finding, conclusion, issue of law or violation of law. However, this  
11 section shall not diminish or otherwise affect the obligations, responsibilities and duties of  
12 Defendants under this Consent Judgment.

13 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties  
14 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
15 Complaint and personal jurisdiction over the Defendants as to the acts alleged in the Complaint,  
16 that venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter  
17 this Consent Judgment and to enforce the provisions thereof.

18 1.9 **Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall be  
19 February 15, 2005.

20 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS AND**  
21 **REFORMULATION**

22 **2.1 WARNING OBLIGATIONS FOR NON-REFORMULATED PRODUCTS**

23 (a) **Required Warnings.** After February 15, 2005, Progressive and Hard  
24 Rock shall not ship or cause to be shipped or sell any Products containing any of the Listed  
25 Chemicals to any person or entity in California, unless warnings are given in accordance with one  
26 or more provisions in Subsection 2.2 below. In lieu of providing warnings, Bubba Gump agrees  
27 to purchase, resell and/or distribute only Products which meet the reformulation standards set  
28 forth in Section 2.3 below. Accordingly, the warning obligations for non-reformulated Products

1 shall not apply to Bubba Gump. Progressive will fulfill its commitment under this Section with  
2 respect to Bubba Gump by selling Bubba Gump Reformulated Products only.

3 (b) **Exceptions.** The obligations set forth in subsections 2.1(a) and 2.2 below  
4 shall not apply to:

- 5 (i) any Products manufactured on or before March 15, 2005;  
6 (ii) Reformulated Products; or  
7 (iii) Any Product achieving a result of .29 parts per million (“ppm”) or  
8 less for lead and cadmium when tested under the ASTM C927-99 test method (modified for total  
9 immersion and comparison to internal volume) for Products manufactured between March 15,  
10 2005 and December 15, 2005 *only*.

11 **2.2 CLEAR AND REASONABLE WARNINGS**

12 (a) **Product Labeling.** A warning shall be affixed to the packaging, labeling  
13 or directly to or on the Products which states:

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

18 or,

19 **WARNING: The materials used as colored decorations on the**  
20 **exterior of the following products contain lead**  
21 **and/or cadmium, chemicals known to the State**  
**of California to cause birth defects or other**  
**reproductive harm.**

22 Warnings issued for the Products pursuant to this subsection shall be prominently placed  
23 with such conspicuousness as compared with other words, statements, designs, or devices as to  
24 render it likely to be read and understood by an ordinary individual under customary conditions of  
25 use or purchase. Any changes to the language or format of the warning required by this  
26 subsection shall only be made following: (1) approval of Plaintiff; (2) approval from the  
27  
28

1 California Attorney General's Office, provided that written notice of at least fifteen (15) days is  
2 given to Plaintiff for the opportunity to comment; or (3) Court approval.

3 (b) **Point-of-Sale Warnings.** The Defendants may execute their warning  
4 obligations, where applicable, through arranging for the posting of signs at retail outlets in the  
5 State of California at which the Products are sold, in accordance with the terms specified in  
6 subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii).

7 (i) If point-of-sale warnings are to be provided through one or more  
8 signs posted at or near the point of sale or display of the Products, the warning must state:

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

14 or

15 **WARNING: The materials used as colored decorations on the**  
16 **exterior of the following glassware products sold**  
17 **in this store contain lead and/or cadmium,**  
18 **chemicals known to the State of California to**  
19 **cause birth defects or other reproductive harm.**

20 (ii) Warnings issued for the Products pursuant to this subsection shall  
21 be prominently placed with such conspicuousness as compared with other words, statements,  
22 designs, or devices as to render it likely to be read and understood by an ordinary individual  
23 under customary conditions of use or purchase and shall be placed or written in a manner such  
24 that the consumer understands to which *specific* Products the warnings apply so as to minimize if  
25 not eliminate the chances that an overwarning situation will arise. Any changes to the language  
26 or format of the warning required for the Products by this subsection shall only be made  
27 following: (1) approval of Plaintiff; (2) approval from the California Attorney General's Office,  
28 provided that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to  
comment; or, (3) Court approval.

(iii) If Progressive intends to utilize point-of-sale warnings for sales  
made to retail outlets to comply with this Consent Judgment, it must provide notice as required by

1 this Consent Judgment to each retailer to whom the Products are shipped for sale in California  
2 and obtain the written consent of such retailer before shipping the Products. Such notice shall  
3 include a copy of this Consent Judgment and any required warning materials (including, as  
4 appropriate, signs and/or stickers). If Progressive has obtained the written consent of a retailer  
5 and transmitted the requisite warnings as provided herein, Progressive shall not be found to have  
6 violated this Consent Judgment if it has complied with the terms of this Consent Judgment.

7 (c) **Warnings for Restaurants, Bars and Other Food Service Entities.**

8 Progressive, when selling Products to restaurants, bars, or other food service entities, may execute  
9 its warning obligations when required hereunder by sending via certified mail to the central  
10 purchasing office for all restaurant/bar/food service entity suppliers or each restaurant, bar or  
11 other food service entity with whom it transacts business for the commercial use of Products in  
12 California: (1) at least two copies of the warning signs attached as Exhibit "B" and (2) a letter  
13 explaining the warning program and providing posting instructions.<sup>1</sup> Progressive shall send these  
14 warning materials to the recipients at least once in each calendar year in which Progressive  
15 transacts business with the establishment and receive the written consent of each such  
16 establishment before shipping the Products. If Progressive has obtained the written consent of a  
17 restaurant/bar/food service supplier or entity and transmitted the requisite warnings as provided  
18 herein, Progressive shall not be found to have violated this Consent Judgment.

19 2.3 **REFORMULATION STANDARDS:** Products satisfying the conditions of  
20 Section 2.3(a) and 2.3(b) are referred to as "Reformulated Products," which are defined as  
21 follows:

22 (a) If the colored artwork, designs or markings on the exterior surface of the  
23 Product does not extend within the top 20 millimeters of the ware (*i.e.*, below the exterior portion  
24 of the lip and rim area as defined by American Society of Testing and Materials Standard Test  
25

26 <sup>1</sup> The posting instructions shall instruct that the sign is intended for use only where the  
27 recipient establishment uses or sells non-Reformulated Products and that if the establishment uses  
28 both Reformulated Products and non-Reformulated Products, a sign delineating the names of the  
*specific* Products for which the warning is being given will need to be indicated on the sign.

1 Method C927-99, hereinafter the "Lip and Rim Area"), and produces a test result no higher than  
2 1.0 micrograms (ug) of lead and cadmium using a Ghost Wipe™ test applied on all the decorated  
3 portions of the surface of the Product performed as outlined in NIOSH method no. 9100; or

4 (b) If the Product utilizes paints for all colored artwork, designs or markings  
5 containing six one-hundredths of one percent (0.06%) lead and cadmium by weight or less as  
6 measured at Progressive's option, either before or after the material is fired onto (or otherwise  
7 affixed to) the Product, using a sample size of the materials in question measuring approximately  
8 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation (as  
9 distinguished from detection) of less than 600 ppm (such as EPA Test Method 3050B), such  
10 Product is a Reformulated Product.

11 2.4 **REFORMULATION COMMITMENT.** By entering into this Stipulation and  
12 Consent Judgment, Progressive hereby commits that as a continuing matter of corporate policy,  
13 Progressive intends to undertake good faith efforts, taking into consideration Progressive's  
14 operational and product licensing restrictions, to ensure that as many Products as reasonably  
15 possible shall qualify as Reformulated Products. To that end, Progressive makes the following  
16 commitments:

17 (a) Progressive will undertake good faith efforts, taking into account  
18 operational and product licensing restrictions to ensure that as many of Progressive's existing  
19 designs of Products manufactured after February 15, 2005, will be reformulated as quickly as  
20 possible, with the firm commitment that 90% of its Products will be reformulated on or before  
21 December 15, 2005. The percentage of Products shall be measured by the quantity of patterns  
22 sold in California during the preceding calendar year in question, rather than the quantity of  
23 individual units sold.

24 (b) Progressive will undertake good faith efforts to convert all remaining  
25 existing Products to become Reformulated Products, within the standards set forth in §2.3 (a) and  
26 (b) above, by July 15, 2006.

27 **3. MONETARY PAYMENTS.**

1           3.1     **Penalties Pursuant to Health & Safety Code §25249.7(b).** Pursuant to Health &  
2 Safety Code Section 25249.7(b), Progressive, on behalf of itself and Defendants, shall pay Forty  
3 Thousand Dollars (\$40,000) in civil penalties. The penalty payment shall be made payable to  
4 “Chanler Law Group in Trust For Russell Brimer,” and shall be delivered to Plaintiff’s counsel on  
5 or before February 15, 2005 at the following address:

6  
7                           CHANLER LAW GROUP  
8                           Attn: Clifford Chanler  
9                           71 Elm Street, Suite 8  
                              New Canaan, CT 06840

10                   (a)     In the event that Progressive, Hard Rock or Bubba Gump pay any penalty  
11 and the Consent Judgment is not thereafter approved and entered by the Court, Brimer shall  
12 return any penalty funds paid under this Consent Judgment within fifteen (15) days of receipt of a  
13 written request from Progressive, Hard Rock and Bubba Gump following notice of the issuance  
14 of the Court’s decision.

15           3.2     **Apportionment of Penalties Received.** After Court approval of this Consent  
16 Judgment pursuant to Section 6, all penalty monies received shall be apportioned by Plaintiff in  
17 accordance with Health & Safety Code § 25192, with 75% of these funds remitted to the State of  
18 California’s Office of Environmental Health Hazard Assessment and the remaining 25% of these  
19 penalty monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d).  
20 Plaintiff shall bear all responsibility for apportioning and paying to the State of California the  
21 appropriate civil penalties paid in accordance with this Section.

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

23           4.1     The Parties acknowledge that Plaintiff and his counsel offered to resolve this  
24 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
25 leaving this fee issue to be resolved after the material terms of the Consent Judgment had been  
26 settled. Progressive then expressed a desire to resolve the fee and cost issue shortly after the  
27 other settlement terms had been finalized. The Parties then attempted to (and did) reach an  
28



1 accord on the compensation due to Plaintiff and his counsel under the private attorney general  
2 doctrine codified at Code of Civil Procedure § 1021.5 for all work performed through the  
3 Effective Date of the Consent Judgment. Under the private attorney general doctrine codified at  
4 Code of Civil Procedure § 1021.5, Progressive, on behalf of itself and Defendants, shall  
5 reimburse Plaintiff and his counsel for fees and costs, incurred as a result of investigating,  
6 bringing this matter to Defendants' attention, litigating and negotiating a settlement in the public  
7 interest. Progressive, on behalf of itself and Defendants, shall pay Plaintiff and his counsel for all  
8 attorneys' fees, expert and investigation fees, and litigation costs in the amount of Seventy-nine  
9 Thousand Dollars (\$79,000). The payment shall be made payable to the "Chanler Law Group,"  
10 and shall be delivered to Plaintiff's counsel on or before February 15, 2005, at the following  
11 address:

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

16 Except as specifically provided in this Consent Judgment, Progressive, Hard Rock, and  
17 Bubba Gump shall have no further obligation with regard to reimbursement of Plaintiff's fees or  
18 costs incurred with regard to the Products.

19 **5. RELEASE OF ALL CLAIMS**

20 **5.1 Plaintiff's Release of Progressive, Hard Rock and Bubba Gump.** In further  
21 consideration of the promises and agreements herein contained, and for the payments to be made  
22 pursuant to sections 3 and 4, Plaintiff, on behalf of himself, his past and current agents,  
23 representatives, attorneys, successors and/or assignees, and in the interest of the general public,  
24 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
25 action, and releases all claims, including, without limitation, all actions, causes of action, in law  
26 or in equity, suits, liabilities, demands, obligations, damages, judgments, costs, fines, penalties,  
27 losses and/or expenses (including, but not limited to, investigation fees, expert fees and attorneys'  
28 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively

1 “Claims”), against Progressive, Hard Rock and Bubba Gump and each of their respective  
2 decorators, suppliers, distributors, manufacturers, wholesalers, licensors, licensees, retailers,  
3 dealers, customers, owners, purchasers, users, corporate subsidiaries and affiliates, partners,  
4 members, successors, and assignees, and each of their respective officers, directors, attorneys,  
5 representatives, shareholders, agents, and employees (collectively, “Defendants’ Releasees”),  
6 arising under Proposition 65, Business & Professions Code §§ 17200 *et seq.* and Business &  
7 Professions Code §§ 17500 *et seq.*, related to Defendants’ or Defendants’ Releasees’ alleged  
8 failure to warn about exposures to or identify Listed Chemicals contained in the Products sold by  
9 one or more of the Defendants.

10 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and  
11 binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200  
12 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, that have been or could have been  
13 asserted in the Complaint against Progressive, Hard Rock or Bubba Gump for their alleged failure  
14 to provide clear and reasonable warnings of exposure to or identification of Listed Chemicals in  
15 the Products sold by one or more of the Defendants.

16 In addition, Plaintiff, on behalf of himself, his past and current agents, representatives,  
17 attorneys, successors and/or assignees, waives all rights to institute or participate in, directly or  
18 indirectly, any form of legal action and releases all Claims against the Defendants’ Releasees  
19 arising under Proposition 65, Business & Professions Code §§ 17200 *et seq.* and Business &  
20 Professions Code §§ 17500 *et seq.*, related to each of the Defendants’ Releasees’ alleged failures  
21 to warn about exposures to or identify Listed Chemicals contained in the Products, and for all  
22 actions or statements made by Defendants or their attorneys or representatives, in the course of  
23 responding to alleged violations of Proposition 65, Business & Professions Code §§ 17200 *et seq.*  
24 or Business & Professions Code §§ 17500 *et seq.* Provided however, Plaintiff shall remain free to  
25 institute any form of legal action to enforce the provisions of this Consent Judgment.

26 It is specifically understood and agreed that the Parties intend that Defendants’  
27 compliance with the terms of this Consent Judgment resolves all issues and liability for all  
28 Defendants and Defendants’ Releasees, now and in the future (so long as Defendants comply with

1 the terms of the Consent Judgment) concerning Defendants and the Defendants' Releasees'  
2 compliance with the requirements of Proposition 65, Business and Professions Code §§ 17200 et.  
3 seq. and Business & Professions Code §§ 17500 *et seq.*, as to the Listed Chemicals in the  
4 Products sold by one or more of the Defendants.

5       **5.2 Progressive, Hard Rock and Bubba Gump's Release of Plaintiff.** Progressive,  
6 Hard Rock and Bubba Gump waive all rights to institute any form of legal action against Plaintiff,  
7 or his attorneys or representatives, for all actions taken or statements made by Plaintiff and his  
8 attorneys or representatives, in the course of seeking enforcement of Proposition 65, Business &  
9 Professions Code §§ 17200 *et seq.* or Business & Professions Code §§ 17500 *et seq.* in this  
10 Action.

## 11 **6. COURT APPROVAL**

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

## 17 **7. SEVERABILITY**

18       If, subsequent to the Court's approval of this Consent Judgment, any of the provisions of  
19 this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
20 provisions remaining shall not be adversely affected.

## 21 **8. ATTORNEYS' FEES**

22       In the event that a dispute arises with respect to any provision(s) of this Consent  
23 Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover  
24 reasonable and necessary costs and reasonable attorneys' fees incurred in connection with the  
25 resolution of such dispute.

## 26 **9. GOVERNING LAW**

27       The terms of this Consent Judgment shall be governed by the laws of the State of  
28 California and apply within the State of California. In the event that Proposition 65 is repealed or  
1-LA/809901.16

1 is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically,  
2 then Defendants shall have no further obligations pursuant to this Consent Judgment with respect  
3 to, and to the extent that, those Products are so affected.

4 **10. NOTICES**

5 All correspondence and notices required to be provided pursuant to this Consent Judgment  
6 shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail,  
7 return receipt requested or (ii) overnight courier on any Party by any other at the addresses listed  
8 in Exhibit E. Any Party, from time to time, may specify by written notice to the other parties a  
9 change of address to which all notices and other communications shall be sent.

10 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

15 Plaintiff agrees to comply with the reporting form requirements referenced in Health &  
16 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall  
17 present this Consent Judgment to the California Attorney General's Office within two (2) days  
18 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment  
19 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date  
20 a hearing is scheduled on such motion in the Superior Court for the City and County of  
21 San Francisco, unless the Court allows a shorter period of time.

22 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

23 The Parties shall mutually employ their best efforts to support the entry of this Agreement  
24 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
25 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed  
26 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties  
27 agree to file a Joint Motion to Approve and Enter the Consent Judgment ("Joint Motion"), the  
28 first draft of which any of the Defendant's counsel shall prepare, within a reasonable period of

1 time after the Effective Date (*i.e.*, not to exceed fourteen (14) days unless otherwise agreed to by  
2 the Parties' counsel based on unanticipated circumstances). Plaintiff's counsel shall prepare a  
3 declaration in support of the Joint Motion which shall, inter alia, set forth support for the fees and  
4 costs to be reimbursed pursuant to Section 4. Defendants shall have no additional responsibility  
5 to Plaintiff's counsel pursuant to Code of Civil Procedure § 1021.5 or otherwise with regard to  
6 reimbursement of any fees and costs incurred with respect to the preparation and filing of the  
7 Joint Motion and its supporting declaration or with regard to Plaintiff's counsel appearing for a  
8 hearing or related proceedings thereon.

9 **14. MODIFICATION**

10 This Consent Judgment may be modified by: (1) written agreement of the Parties and  
11 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as  
12 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney  
13 General shall be served with notice of any proposed modification to this Consent Judgment at  
14 least fifteen (15) days in advance of its consideration by the Court.

15 **15. AUTHORIZATION**

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

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FROM : PROGRESSIVE SPECIALTY GLASS C. PHONE NO. : 3055387907

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Dated: February 7, 2005

By: Dean Row

for PROGRESSIVE SPECIALTY  
GLASS

Dated: February \_\_, 2005

By: \_\_\_\_\_

for HARD ROCK CAFE, HARD  
ROCK CAFE INTERNATIONAL

Dated: February \_\_, 2005

By: \_\_\_\_\_

for BUBBA GUMP SHRIMP CO.  
RESTAURANTS, INC.

Dated: February \_\_, 2005

By: \_\_\_\_\_

Russell Brimer

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Dated: February \_\_, 2005

By: \_\_\_\_\_

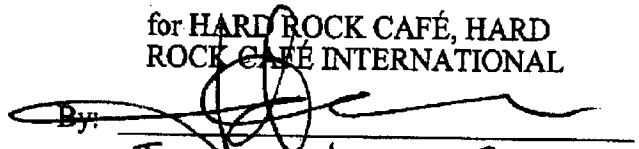
for PROGRESSIVE SPECIALTY  
GLASS

Dated: February \_\_, 2005

By: \_\_\_\_\_

for HARD ROCK CAFÉ, HARD  
ROCK CAFÉ INTERNATIONAL

Dated: February 8, 2005

By: 

James W. Homann Esq  
Sr. Dir. Business Affairs  
for BUBBA GUMP SHRIMP CO.  
RESTAURANTS, INC.

Dated: February \_\_, 2005

By: \_\_\_\_\_

Russell Brimer

1 Dated: February \_\_, 2005

By: \_\_\_\_\_

for PROGRESSIVE SPECIALTY  
GLASS

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4 Dated: February \_\_, 2005

By: \_\_\_\_\_

for HARD ROCK CAFE, HARD  
ROCK CAFE INTERNATIONAL

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7 Dated: February 7, 2005

By: *Karen E. Janesin*  
Karen E. Janesin

Assistant Secretary of the Corporation

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for BUBBA GUMP SHRIMP CO.  
RESTAURANTS, INC.

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11 Dated: February \_\_, 2005

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

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1 Dated: January \_\_, 2005

By: \_\_\_\_\_

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for PROGRESSIVE SPECIALTY  
GLASS

4 Dated: January \_\_, 2005

By: \_\_\_\_\_

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for HARD ROCK CAFE, HARD  
ROCK CAFE INTERNATIONAL

7 Dated: January \_\_, 2005

By: \_\_\_\_\_

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for BUBBA GUMP SHRIMP CO.  
RESTAURANTS, INC.

10 Dated: January 1, 2005  
*FEI*

By: *Russell Brimer*  
Russell Brimer

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1 As to form:

2 Dated: February 8, 2005

3 ANDREA SHERIDAN ORDIN  
4 TERESA MACDONALD  
5 MORGAN, LEWIS & BOCKIUS LLP

6 By: 

7 Attorneys for Defendant  
8 PROGRESSIVE SPECIALTY GLASS

9 Dated: February 8, 2005

10 By: 

11 James W. Humann, Esq.  
12 Sr. Dir. Business Affairs  
13 Attorneys for Defendant  
14 HARD ROCK CAFÉ, HARD ROCK  
15 CAFÉ INTERNATIONAL

16 Dated: February \_\_, 2005

17 THOMAS M. DONNELLY  
18 HELLER EHRMAN WHITE &  
19 MCAULIFFE, LLP

20 By: \_\_\_\_\_

21 Attorneys for Defendant  
22 BUBBA GUMP SHRIMP CO.  
23 RESTAURANTS, INC.

24 Dated: February \_\_, 2005

25 CLIFFORD A. CHANLER  
26 CHANLER LAW GROUP

27 By: \_\_\_\_\_

28 Attorneys for Plaintiff  
RUSSELL BRIMER

1 As to form:

2 Dated: February \_\_, 2005

ANDREA SHERIDAN ORDIN  
TERESA MACDONALD  
MORGAN, LEWIS & BOCKIUS LLP

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By: \_\_\_\_\_

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Attorneys for Defendant  
PROGRESSIVE SPECIALTY GLASS

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Attorneys for Defendant  
HARD ROCK CAFE, HARD ROCK  
CAFE INTERNATIONAL

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THOMAS M. DONNELLY  
HELLER EHRMAN WHITE &  
MCAULIFFE, LLP

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17

Attorneys for Defendant  
BUBBA GUMP SHRIMP CO.  
RESTAURANTS, INC.

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20 Dated: February \_\_, 2005

CLIFFORD A. CHANLER  
CHANLER LAW GROUP

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Attorneys for Plaintiff  
RUSSELL BRIMER

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1 As to form:

2 Dated: January \_\_, 2005

ANDREA SHERIDAN ORDIN  
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Dated: January \_\_, 2005

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CAFÉ INTERNATIONAL

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Dated: January \_\_, 2005

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By: \_\_\_\_\_

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Attorneys for Defendant  
BUBBA GUMP SHRIMP CO.  
RESTAURANTS, INC.

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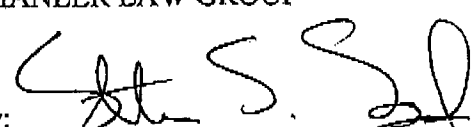
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Dated: <sup>February 11,</sup> ~~January~~ \_\_, 2005

CLIFFORD A. CHANLER  
CHANLER LAW GROUP

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By:  \_\_\_\_\_

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Attorneys for Plaintiff  
RUSSELL BRIMER

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**EXHIBIT A**

The products that are covered by this Consent Judgment are defined as follows: all glass, plastic, ceramic, resin, vacuum metalizing, dolomite, and/or metal beverage containers intended for the consumption of beverage products, with colored artwork, designs or markings on the exterior surface, and heat transfer, silkscreen or decal applications intended for the exterior of the beverageware, manufactured, sold and/or distributed by Defendants, including, by way of example and without limitation, products contained in the items listed in this Exhibit A.

<b>Customer Number</b>	<b>Product</b>
4815	25 oz. Plastic Yard
08-0083599	25 oz. Plastic Yard
08-83673	23 oz. Plastic Bubble Pilsner
5344	46 oz. Plastic Yard with Rings
08-0085141	California Street 32 oz. Plastic Yard with Rings
08-0086691	18 oz. Plastic Yard
08-0086781	15 oz. Plastic Hurricane
08-0086815	15 oz. Plastic Hurricane
08-0086848	23 oz. Bubble Pilsner
2611	26 oz. Plastic Hurricane Plastic Football Cup
1855	15 oz. Plastic Hurricane
1615	15 oz. Plastic Hurricane
08-0082776	25 oz. Plastic Yards
2411	23 oz. Bubble Pilsners
08-0085002	18 oz. Plastic Yard 21 oz. Celebration Glass 23 oz. Glass Pilsner
08-0083201 / 08-0085018	21 oz. Celebration Glass 23 oz. Glass Pilsner 18 oz. Plastic Yard
08-83201 / 08-0085023	21 oz. Celebration Glass 23 oz. Glass Pilsner 18 oz. Plastic Yard
833	23 oz. Bubble Pilsner 23 oz. Glass Pilsner 23 oz. Glass Hurricane 2.5 oz. Glass Cordial 2 oz. Whiskey Shot Glass 16 oz. Mixing Glass
08-0086331	15 oz. Old Fashioned Glass
08-0083493	You're # 1 23 oz. Glass Pilsner

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Customer Number	Product
08-0080690	1.5 oz. Clear Shot Glass Plastic Hanging Shot Plastic Martini Shot
08-0082034	Hurricane Shot Glass Flashing Shot Glass Rack Glass
08-0082005	5" Plastic Test Tube 6" Plastic Test Tube Glass Hurricane
08-0086842	Plastic Cocktail Shaker
08-0083350	Plastic Cordial Plastic Hurricane Plastic Hurricane with Rings 15 oz. Plastic Hurricane
11285	23 oz. Glass Hurricane 20 oz. Glass Pilsner 20 oz. Frosted Glass Pilsner 2.5 oz. Glass Cordial 2 oz. Shot Glass 6.75 oz. Martini Glass
11385	23 oz. Glass Hurricane 20 oz. Glass Pilsner 20 oz. Frosted Glass Pilsner 2.5 oz. Glass Cordial 2 oz. Shot Glass 6.75 oz. Martini Glass
11387	23 oz. Glass Hurricane 20 oz. Glass Pilsner 20 oz. Frosted Glass Pilsner 2.5 oz. Glass Cordial 2 oz. Shot Glass 6.75 oz. Martini Glass
11490	23 oz. Glass Hurricane 20 oz. Glass Pilsner 20 oz. Frosted Glass Pilsner 2.5 oz. Glass Cordial 2 oz. Shot Glass 6.75 oz. Martini Glass
11570	23 oz. Glass Hurricane 20 oz. Glass Pilsner 20 oz. Frosted Glass Pilsner 2.5 oz. Glass Cordial 2 oz. Shot Glass 6.75 oz. Martini Glass
11205	23 oz. Glass Hurricane 20 oz. Glass Pilsner

Customer Number	Product
	20 oz. Frosted Glass Pilsner 2.5 oz. Glass Cordial 2 oz. Shot Glass 6.75 oz. Martini Glass
11390	23 oz. Glass Hurricane 20 oz. Glass Pilsner 20 oz. Frosted Glass Pilsner 2.5 oz. Glass Cordial 2 oz. Shot Glass 6.75 oz. Martini Glass
11000	23 oz. Glass Hurricane 20 oz. Glass Pilsner 20 oz. Frosted Glass Pilsner 2.5 oz. Glass Cordial 2 oz. Shot Glass 6.75 oz. Martini Glass
1737	23 oz. Glass Hurricane
4947	23 oz. Glass Pilsner
3953	23 oz. Glass Hurricane
2625	45 oz. Super Bowl Glass
08-0083749	1.75 oz. Spirit Glass Hurricane Shot Glass 2 oz. Whiskey Shot Glass 2.5 oz. Glass Cordial 15 oz. Glass Hurricane 21 oz. Celebration Glass 23 oz. Pilsner Glass Grand Celebration Glass
2607	20 oz. Glass Pilsner
34017	23 oz. Glass Pilsner
17508	20 oz. Glass Pilsner 23 oz. Glass Hurricane
08-0086686	23 oz. Glass Hurricane 2.5 oz. Glass Cordial 23 oz. Glass Pilsner
08-0086683	23 oz. Glass Hurricane 23 oz. Glass Pilsner 2.5 oz. Glass Cordial
08-0086682	23 oz. Glass Hurricane 23 oz. Glass Pilsner
08-0086681	23 oz. Glass Hurricane 23 oz. Glass Pilsner 2.5 oz. Glass Cordial
08-0086680	23 oz. Glass Hurricane 23 oz. Glass Pilsner 2.5 oz. Glass Cordial

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<b>Customer Number</b>	<b>Product</b>
525 / 833	2.5 oz. Glass Cordial 23 oz. Glass Long Stem Hurricane 23 oz. Glass Pilsner 2 oz. Glass Whiskey Shot
1612	23 oz. Glass Pilsner 15 oz. Glass Hurricane
11585	23 oz. Glass Hurricane 20 oz. Glass Pilsner 2.5 oz. Glass Cordial 6.75 Martini Glass
4170	Regal Glass Two-tone Port Glass 2.5 oz. Glass Cordial Glass Tumbler 19 oz. Fish Glass 14 oz. Old Fashioned Glass Sealife Tumbler Glass 16 oz. Sunburst Glass Colored Mug 2 oz. Whiskey Shot Glass 13 oz. Mug Shot Glass Tropical Mug
3439	15 oz. Glass Hurricane in assorted colors 20 oz. Glass Pilsner in assorted colors Hurricane Shot Glass in assorted colors 23 oz. Long Stem Gold Hurricane Glass 45 oz. Pink Super Bowl Glass 45 oz. Blue Super Bowl Glass 45 oz. Green Super Bowl Glass 45 oz. Super Bowl Glass 45 oz. Frosted Super Bowl Glass
5089	21 oz. Celebration Glass
08-0086803	25 oz. Plastic Yard
08-0086628	2 oz. Whiskey Shot Glass
08-0086690	Hurricane Shot Glass Plastic Football Cup



**EXHIBIT B**

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# **PROP 65**

# **WARNING**

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**The materials used as colored decorations on the exterior of the following glassware products used or sold in this establishment contain lead and/or cadmium, chemicals known to the State of California to cause birth defects or other reproductive harm:**

# **PROP 65**

# **WARNING**

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**The materials used as colored decorations on the exterior of glassware products used or sold in this establishment contain lead and/or cadmium, chemicals known to the**

**State of California to cause birth defects  
or other reproductive harm.**