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8 Attorneys for Plaintiff
9 Russell Brimer

ENDORSED
FILED
San Francisco County Superior Court

DEC 14 2005

GORDON PARK-LI, Clerk
BY: PHILOMENA DIAS
Deputy Clerk

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION
14

15 RUSSELL BRIMER,
16 Plaintiff,
17 v.
18 HOUSE OF BLUES; HOB ENTERTAINMENT,
INC.; and DOES 1 through 150,
19 Defendants.
20
21

Case No. CGC-05-438712

**[PROPOSED] ORDER PURSUANT
TO TERMS OF CONSENT
JUDGMENT**

Date: December 14, 2005
Time: 9:30 A.M.
Dept.: 302
Judge: Ronald E. Quidachay

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant HOB
2 ENTERTAINMENT, INC., having agreed through their respective counsel that judgment be
3 entered pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment
4 ("Consent Judgment") entered into by the above-referenced parties and attached hereto as Exhibit
5 A; and after consideration of the papers submitted and the arguments presented, the Court finds
6 that the settlement agreement set out in the attached Consent Judgment meets the criteria
7 established by Senate Bill 471, in that:

- 8 1. The health hazard warning that is required by the Consent Judgment complies with
9 Health & Safety Code §25249.7 (as amended by Senate Bill 471);
- 10 2. The reimbursement of fees and costs to be paid pursuant to the parties' Consent
11 Judgment is reasonable under California law; and
- 12 3. The civil penalty amount to be paid pursuant to the parties' Consent Judgment is
13 reasonable,

14 IT IS HEREBY ORDERED that judgment be entered in this case, in accordance with the
15 terms of the Consent Judgment, attached hereto as Exhibit A.

16 IT IS SO ORDERED.

17 Dated: December 14, 2005

RONALD E. QUIDACHAY

Hon. Ronald E. Quidachay
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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9 Attorneys for Plaintiff
Russell Brimer

10
11 Preston W. Brooks (State Bar No. 152439)
Stuart I. Block (State Bar No. 160688)
12 COX, CASTLE & NICHOLSON LLP
555 Montgomery Street, 15th Floor
13 San Francisco, CA 94111
Telephone: (415) 392-4200
14 Facsimile: (415) 392-4250

15 Attorneys for Defendant
HOB Entertainment, Inc.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF SAN FRANCISCO
19 UNLIMITED JURISDICTION
20

21 RUSSELL BRIMER,

22 Plaintiff,

23 v.

24 HOUSE OF BLUES; HOB
25 ENTERTAINMENT, INC.; and DOES 1
through 50,

26 Defendants.
27
28

Case No. CGC-05-438712

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

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Settling Defendant.** This Consent Judgment is entered into by
3 and between plaintiff Russell Brimer (hereafter "Brimer" or "Plaintiff") and HOB Entertainment,
4 Inc. (hereafter "HOB" or "Defendant"), with Plaintiff and HOB collectively referred to as the
5 "Parties" and Brimer and HOB 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 and industrial products.

9 **1.3 General Allegations.** Plaintiff alleges that HOB has manufactured, distributed
10 and/or sold in the State of California certain shot glasses, mugs and other glassware and
11 ceramicware with colored artwork or designs on the exterior which contain lead and/or cadmium,
12 substances which are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of
13 1986, California Health & Safety Code §§ 25249.5 *et seq.*, also known as Proposition 65, to cause
14 cancer and birth defects and other reproductive harm. Lead and cadmium shall be referred to
15 herein as "Listed Chemicals."

16 **1.4 Product Descriptions.** The products that are covered by this Agreement are
17 glassware and ceramicware with colored artwork and/or designs (containing lead and/or
18 cadmium) including but not limited to the products listed at Exhibit A. Such products
19 collectively are referred to herein as the "Product(s)."

20 **1.5 Notices of Violation.** On or about November 24, 2004, Brimer served HOB and
21 various public enforcement agencies with documents, entitled "60-Day Notice of Violation"
22 ("Notice") that provided HOB and such public enforcers with notice that HOB allegedly was in
23 violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain glassware
24 products with colored artwork and designs on the exterior that it sold expose users in California to
25 lead and cadmium. On or before July 30, 2005, Brimer will be serving a supplemental notice on
26 HOB and all required public enforcers expanding Plaintiff's prior allegations concerning the
27 Products to include exposures to lead and cadmium from ceramicware with colored artwork and
28 designs on the exterior ("Supplemental Notice").

1 1.6 **Complaint.** On February 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 HOB alleging violations of
4 Health & Safety Code § 25249.6 based on the alleged exposures to one or more of the Listed
5 Chemicals contained in certain products sold by HOB. Upon the running of the 60-day period
6 associated with the issuance of the Supplemental Notice, and provided that no authorized public
7 enforcer of Proposition 65 initiates an action against the Noticed Parties based on the additional
8 allegations therein contained in the interim, the above captioned Complaints and this Consent
9 Judgment shall be deemed such that the definition of "Products" as used herein shall be likewise
10 expanded to include ceramicware with colored artwork and designs (containing lead and/or
11 cadmium) on the exterior.

12 1.7 **No Admission.** HOB denies the material factual and legal allegations contained in
13 Plaintiff's Notice, Supplemental Notice and Complaint and maintains that all products that it has
14 sold and/or distributed in California including the Products have been and are in compliance with
15 all laws. Nothing in this Consent Judgment shall be construed as an admission by HOB of any
16 fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement
17 constitute or be construed as an admission by HOB of any fact, finding, conclusion, issue of law
18 or violation of law. However, this section shall not diminish or otherwise affect the obligations,
19 responsibilities and duties of HOB under this Consent Judgment.

20 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
21 stipulate that this Court has jurisdiction over the allegations of violations contained in the
22 Complaint and personal jurisdiction over HOB as to the acts alleged in the Complaint, that venue
23 is proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
24 Judgment and to enforce the provisions thereof.

25 1.9 **Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall
26 mean July 15, 2005.
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28

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

2 2.1 **Warning Obligations for Products**

3 (a) **Required Warnings and Non-exempt Products.** Forty-five (45) days
4 after the Effective Date, HOB shall not transmit to any retailer to sell or otherwise offer for sale in
5 California any Products containing the Listed Chemicals, unless warnings are given in accordance
6 with one or more provisions in subsection 2.2 below.

7 (b) **Exception.** The warning requirements set forth in subsections 2.1(a) and
8 2.2 below shall not apply to Reformulated Products.

9 2.2 **Clear and Reasonable Warnings**

10 (a) **Product Labeling.** A warning is affixed to the packaging, labeling or
11 directly to or on a Product by HOB, its agent, or the manufacturer, importer, or distributor of the
12 Product that states:

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

16 or

17 **WARNING: The materials used as colored decorations on the**
18 **exterior of these products contain lead and/or**
19 **cadmium, chemicals known to the State of**
California to cause birth defects or other
reproductive harm.¹

20 Warnings issued for Products pursuant to this subsection shall be prominently placed with
21 such conspicuousness as compared with other words, statements, designs, or devices as to render
22 it likely to be read and understood by an ordinary individual under customary conditions of
23 purchase. Any changes to the language or format of the warning required by this subsection shall
24 only be made following: (1) approval of Plaintiff; (2) approval from the California Attorney
25 General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for
26 the opportunity to comment; or (3) Court approval.

27 _____
28 ¹ This formulation of the warning may only be used with respect to Products sold as a set.

1 (b) **Point-of-Sale Warnings.** HOB may execute its warning obligations
2 through arranging for the posting of signs at retail outlets in the State of California at which
3 Products are sold, in accordance with the terms specified in subsections 2.2(b)(i)-(iii).

4 (i) Point of Sale warnings may be provided through one or more signs
5 posted at the point of sale or display of the Product that state:

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

11 or

12 **WARNING: The materials used as colored decorations on the**
13 **exterior of the following products sold in this**
14 **store contain lead and/or cadmium, a chemical**
15 **known to the State of California to cause birth**
16 **defects or other reproductive harm:**

17 *[List Each Product by Brand Name/Manufacturer and*
18 *Description]*

19 (ii) A point of sale warning provided pursuant to subsection 2.2(b)(i)
20 shall be prominently placed with such conspicuousness as compared with other words,
21 statements, designs, or devices as to render it likely to be read and understood by an ordinary
22 individual under customary conditions of purchase and shall be placed or written in a manner
23 such that the consumer understands to which *specific* Product the warnings apply so as to
24 minimize if not eliminate the chances that an over-warning situation will arise. Any changes to
25 the language or format of the warning required for Products by this subsection shall only be made
26 following: (1) approval of Plaintiff; (2) approval from the California Attorney General's Office,
27 provided that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to
28 comment; or (3) Court approval.

 (iii) Where food or beverages are sold in the Products or where the
Products are sold through a restaurant or bar menu ("Menu"), HOB may satisfy its warning
obligations by: (a) posting copies of either the warning sign contained in Exhibit B hereto or a
warning sign containing language set forth as the second option in section 2.2(b)(i) above in a

1 conspicuous location compared with other words, statements, designs or devices as to render it
2 likely to be read and understood by an ordinary individual under customary conditions of use.
3 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; or (b) providing a warning in the Menu pursuant to subsection
6 2.3(a).

7 (iv) If HOB intends to utilize point of sale warnings to comply with this
8 Consent Judgment, it must provide notice as required by this Consent Judgment to each entity to
9 whom HOB ships the Products for sale in California and obtain the written consent of such entity
10 before shipping the Products. Such notice shall include a copy of this Consent Judgment and any
11 required warning materials (including, as appropriate, signs and/or stickers). If HOB has
12 obtained the written consent of an entity to whom it ships the products that such entity will
13 provide warnings in the manner required by sections 2.1 and 2.2 herein, HOB shall not be found
14 to have violated this Consent Judgment if it has complied with the terms of this Consent
15 Judgment and has proof that it transmitted the requisite warnings in the manner provided herein.

16 2.3 **Mail Catalog and Internet Sales.** Subject to Section 2.4, forty-five (45) days
17 after the Effective Date, HOB shall not sell or distribute the Products by mail order or the Internet
18 to California residents, unless warnings are provided as set forth below.

19 For the Products that require a warning pursuant to this Agreement that are sold by HOB
20 by mail order or from the Internet to California residents, a warning containing the language in
21 subsection 2.2 shall be included, at HOB's sole option, either: (1) in the mail order catalog (if
22 any) or on the website (if any) pursuant to subsection 2.3(a) or 2.3(b); or (2) with the Products
23 when any of them are shipped to an address in California pursuant to subsection 2.3(c). Any
24 warnings given in the mail order catalogs or on the website shall identify the *specific* Product so
25 as to minimize, if not eliminate, the chances that an over-warning situation will arise. If HOB
26 elects to provide warnings in the mail order catalog, then such warnings (at a location designated
27 in subsection 2.3(a)) shall be included in any new galley prints of such catalogs sent to the printer
28 forty five (45) days after the Effective Date.

1 (a) **Mail Order Catalog or Restaurant and/or Bar Menu.** For warnings
2 provided in a mail order catalog or Menu, the warning message in subsection 2.2(b) shall be
3 stated within the catalog or Menu, either (a) on the inside front cover of any catalog or Menu (b)
4 on the same page as any order form, if applicable, or (c) on the same page as the price for the
5 Products, in the same type size as the surrounding, non-heading text, with the same language as
6 that appearing in subsection 2.2(b).

7 (b) **Internet Web Sites.** For warnings provided by internet display, the
8 warning text, or a link to a page containing the warning text, shall be displayed either (a) on the
9 same page on which the Products are displayed, (b) on the same page as any order form for the
10 Products, (c) on the same page as the price for the Products, (d) on one or more pages displayed
11 to a purchaser over the Internet or via electronic mail during the checkout and order confirmation
12 process for sale of the Products, or (e) in any manner such that is likely to be read and understood
13 by an ordinary individual under customary conditions of purchase of the Products, including the
14 same language as that appearing in subsection 2.2(b). If a link is used, it shall state "Warning
15 Information for California Residents," and shall be of a size equal to the size of other links on the
16 page.

17 (c) **Package Insert or Label.** As an alternative to sections 2.3(a) and 2.3(b)
18 as such sections pertain to Products sold through mail order catalogs or the Internet, above, a
19 warning may be provided with the Products when any of them are shipped directly to a consumer
20 in California, by (a) Product labeling pursuant to subsection 2.2(a), above, (b) inserting a card or
21 slip of paper measuring at least 4" x 6" in the shipping carton, or (c) including the warning on the
22 packing slip or customer invoice identifying the Products in lettering of the same size as the
23 description of the Products. The warning shall include the language appearing in subsection
24 2.2(a) and shall inform the consumer that he or she may return the Product(s) for a full refund of
25 the purchase price, any sales tax, and any shipping costs associated with the purchase and/or
26 return of the Product, within thirty (30) days of receipt.

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1 2.4 **Reformulation Standards.** Products satisfying the conditions set forth in sections
2 2.4.1 and 2.4.2 below qualify as "Reformulated Products."

3 2.4.1 **Glassware Reformulation Standards**

4 (a) The Product must produce a test result no higher than 1.0 micrograms (ug)
5 of lead and 8.0 ug of cadmium using a Ghost Wipe™ test applied to the colored decorations on
6 the exterior surface of the Product, performed as outlined in NIOSH method no. 9100, OR

7 (b) The colored artwork, designs or markings on the exterior surface of the
8 Product must only utilize decorating materials containing six one-hundredths of one percent
9 (0.06%) of lead by weight or less and twenty-four one-hundredths of one percent (0.24%) of
10 cadmium by weight or less as measured at Defendant's option, either before or after the material
11 is fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050b,² AND

12 (c) If the colored artwork, designs or markings on the exterior surface of the
13 Product extends into the top 20 millimeters of the ware (*i.e.*, the exterior portion of the lip and rim
14 area as defined by American Society of Testing and Materials Standard Test Method C927-99,
15 hereinafter the "Lip and Rim Area"), the Product must produce test results acceptable under
16 section 2.4.1(a) or 2.4.1(b) above, and the decorative materials used in the Lip and Rim Area of
17 the Products must contain no detectable lead or cadmium with the following exception: a Product
18 that has less than a total of sixty (60) millimeters of decorating area below the external rim and is
19 not "intended or marketed primarily for use by children" (e.g., shot glasses) is only required to
20 meet the standard outlined in section 2.4.1(b) to be considered a reformulated product.³

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22
23 ² If the Defendant tests any decoration in the Products, using EPA Test Method 3050b,
24 after it is affixed to the Product, the percentage of lead by weight and the percentage of cadmium
25 by weight must relate only to the other portions of the decorating material and not include any
calculation of non-decorating material.

26 ³ For purposes of this subsection, "no detectable lead or cadmium" shall mean that lead is
27 not detected at a level above two one-hundredths of one percent (0.02%) by weight and cadmium
28 is not detected at a level above eight one-hundredths of one percent (0.08%), respectively, using a
sample size of the materials in question measuring approximately 50-100 mg and a test method of
sufficient sensitivity to establish a limit of quantitation of less than 200 ppm.

1 2.4.2 **Ceramic Reformulation Standards**

2 (a) The Product must produce a test result no higher than 1.0 micrograms (ug)
3 of lead and 8.0 ug of cadmium using a Ghost Wipe™ test applied to the colored decorations on
4 the exterior surface of the Product, performed as outlined in NIOSH method no. 9100, OR

5 (b) The colored artwork, designs or markings on the exterior surface of the
6 Product must only utilize decorating materials containing six one-hundredths of one percent
7 (0.06%) of lead by weight or less and twenty-four one-hundredths of one percent (0.24%) of
8 cadmium by weight or less as measured at Defendant's option, either before or after the material
9 is fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050b,⁴ OR

10 (c) The Product must achieve a result of 0.99 ppm or less for lead and 7.92
11 ppm or less for cadmium after correction for internal volume when tested under the protocol
12 attached hereto as Exhibit C (the ASTM C927-99 test method, modified for total immersion with
13 results corrected for internal volume); AND

14 (d) If the colored artwork, designs or markings on the exterior surface of the
15 Product extends into the Lip and Rim Area, the Product must produce test results acceptable
16 under section 2.4.2(a), (b) or (c) above, and the decorative materials used in the Lip and Rim Area
17 of the Products must contain no detectable lead or cadmium.⁵

18 2.5 **Reformulation Commitment.** By entering into this Stipulation and Consent
19 Judgment, Defendants hereby commit that as a continuing matter of corporate policy, Defendants
20 intend to undertake good faith efforts, taking into consideration Defendants' operational and
21 product licensing restrictions, to ensure that as many Products as reasonably possible shall qualify

22
23 ⁴ If the Defendant tests any decoration in the Products, using EPA Test Method 3050b,
24 after it is affixed to the Product, the percentage of lead by weight and the percentage of cadmium
25 by weight must relate only to the other portions of the decorating material and not include any
calculation of non-decorating material.

26 ⁵ For purposes of this subsection, "no detectable lead or cadmium" shall mean that lead is
27 not detected at a level above two one-hundredths of one percent (0.02%) by weight and cadmium
28 is not detected at a level above eight one-hundredths of one percent (0.08%), respectively, using a
sample size of the materials in question measuring approximately 50-100 mg and a test method of
sufficient sensitivity to establish a limit of quantitation of less than 200 ppm.

1 as Reformulated Products, with the commitment to reach 80% (eighty percent) or more
2 Reformulated Products for Products manufactured, licensed, designed, distributed or offered for
3 sale by Defendants on or after December 31, 2006 and the commitment to make commercially
4 reasonable efforts thereafter to reach 100% (one-hundred percent) Reformulated Products.
5 Defendants may demonstrate that a Product qualifies as a Reformulated Product for purposes of
6 this Consent Judgment by receiving from the manufacturer of such Product a written certification
7 that the Product complies with the Reformulation Standards set forth in section 2.4 above.

8 **3. MONETARY PAYMENTS.**

9 **3.1 Payment in lieu of Penalties.** In settlement of all of the claims referred to in this
10 Consent Judgment against the Settling Defendant, HOB shall pay \$8,000 in civil fines to be
11 apportioned by Plaintiff in accordance with Health & Safety Code § 25192, with 75% of these
12 funds remitted to the State of California's Office of Environmental Health Hazard Assessment
13 and the remaining 25% of these penalty monies retained by Plaintiff as provided by Health &
14 Safety Code § 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to
15 the State of California the appropriate civil penalties paid in accordance with this section; and

16 **3.2 Payment Schedule.** The payment to Mr. Brimer shall be made on or before
17 August 15, 2005, and be delivered to Plaintiff's counsel at the following address:

18 CHANLER LAW GROUP
19 Attn: Clifford A. Chanler
20 71 Elm Street, Suite 8
New Canaan, CT 06840

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

22 **4.1** The Parties acknowledge that Plaintiff and his counsel offered to resolve this
23 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
24 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
25 HOB then expressed a desire to resolve the fee and cost issue shortly after the other settlement
26 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
27 compensation due to Plaintiff and his counsel under the private attorney general doctrine codified
28 at Code of Civil Procedure § 1021.5 for all work performed in connection with this Agreement.

1 Under the private attorney general doctrine codified at Code of Civil Procedure § 1021.5, HOB
2 shall reimburse Plaintiff and his counsel for fees and costs, incurred as a result of investigating,
3 bringing this matter to HOB's attention, litigating and negotiating a settlement in the public
4 interest. HOB shall pay Plaintiff and his counsel \$32,000 for all attorneys' fees, expert and
5 investigation fees, and litigation costs. The payment shall be made payable to the "Chanler Law
6 Group" and shall be delivered to Plaintiff's counsel on or before August 15, 2005, at the
7 following address:

8 CHANLER LAW GROUP
9 Attn: Clifford A. Chanler
10 71 Elm Street, Suite 8
11 New Canaan, CT 06840

12 Except subject to the terms of section 9 below, HOB shall have no further obligation with
13 regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the Products
14 covered in this Action.

14 5. RELEASE OF ALL CLAIMS

15 5.1 **Plaintiff's Release of HOB.** In further consideration of the promises and
16 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
17 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
18 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
19 participate in, directly or indirectly, any form of legal action and release all claims, including,
20 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
21 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
22 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
23 unknown, fixed or contingent (collectively "Claims"), against HOB and each of its distributors,
24 wholesalers, licensors, licensees, auctioneers, retailers, dealers, customers, owners, purchasers,
25 users, parent companies, corporate affiliates, subsidiaries and their respective officers, directors,
26 attorneys, representatives, shareholders, agents, and employees (collectively, "HOB's Releasees")

1 arising under Proposition 65 and/or related to HOB or HOB's Releasees' alleged failure to warn
2 about exposures to or identification of Listed Chemicals contained in the Products sold by HOB.

3 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
4 binding resolution of any violation of Proposition 65 that have been or could have been asserted
5 in the Complaints against HOB for its alleged failure to provide clear and reasonable warnings of
6 exposure to or identification of Listed Chemicals in the Products sold by HOB.

7 It is specifically understood and agreed that the Parties intend that HOB's compliance
8 with the terms of this Consent Judgment resolves all issues and liability, now and in the future (so
9 long as HOB complies with the terms of the Consent Judgment) concerning HOB and the HOB
10 Releasees' compliance with the requirements of Proposition 65 as to the Listed Chemicals in the
11 Products sold by HOB.

12 5.2 **HOB's Release of Plaintiff.** HOB waives all rights to institute any form of legal
13 action against Plaintiff, or their attorneys or representatives, for all actions taken or statements
14 made by Plaintiff and his attorneys or representatives, in the course of seeking enforcement of
15 Proposition 65 in this Action.

16 6. **COURT APPROVAL**

17 This Consent Judgment is not effective until it is approved and entered by the Court,
18 including with respect to the Products identified in the Supplemental Notice, and shall be null and
19 void if, for any reason, it is not approved and entered by the Court within one year after it has
20 been fully executed by all Parties, in which event any monies that have been provided to Plaintiff
21 or his counsel pursuant to section 3 and/or section 4 above, shall be refunded within fifteen (15)
22 days.

23 7. **SALES DATA**

24 HOB understands that the sales data that it respectively provided to counsel for Russell
25 Brimer was a material factor upon which Russell Brimer has relied to determine the amount of
26 civil penalties made pursuant to Health & Safety Code Section 25249.7(b) in this Agreement. To
27 the best of HOB's knowledge, the sales data provided by HOB to counsel for Russell Brimer is a
28

1 true and accurate reflection of any and all sales of the Products in California during the relevant
2 period.

3 **8. SEVERABILITY**

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

7 **9. ATTORNEY'S FEES**

8 In the event that a dispute arises with respect to any provision(s) of this Consent
9 Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover
10 reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of
11 such dispute.

12 **10. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California and apply within the State of California. In the event that Proposition 65 is repealed or
15 is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically,
16 then HOB shall have no further obligations pursuant to this Consent Judgment with respect to,
17 and to the extent that, those Products are so affected.

18 **11. NOTICES**

19 All correspondence and notices required to be provided pursuant to this Consent Judgment
20 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
21 return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed
22 below. Either Party, from time to time, may specify a change of address to which all notices and
23 other communications shall be sent.

24 To HOB:

25 Preston W. Brooks, Esq.
26 Stuart I. Block, Esq.
27 Cox, Castle & Nicholson, LLP
28 555 Montgomery Street, 15th Floor
San Francisco, CA 94111

1 To Plaintiff:

2 Laralei S. Paras, Esq.
3 PARAS LAW GROUP
4 655 Redwood Highway, Suite 216
5 Mill Valley, CA 94941

6 Clifford A. Chanler, Esq.
7 CHANLER LAW GROUP
8 71 Elm Street, Suite 8
9 New Canaan, CT 06840

10 **12. 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 **13. 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 five (5) 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 **14. 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 that Plaintiff is to file a Motion to Approve the Agreement ("Motion") within a reasonable
28 period of time after the Execution Date. Defendant's Counsel will file a joinder within a
reasonable period after Defendant is served with the Motion, (*i.e.*, not to exceed ten (10) days
unless otherwise agreed to by the Parties' counsel based on unanticipated circumstances).

1 Plaintiff's counsel shall prepare a declaration in support of the Joint Motion which shall, *inter*
2 *alia*, set forth support for the fees and costs to be reimbursed pursuant to Section 4. HOB shall
3 have no additional responsibility to Plaintiff's counsel pursuant to C.C.P. § 1021.5 or otherwise
4 with regard to reimbursement of any fees and costs incurred with respect to the preparation and
5 filing of the Motion and its supporting declaration or with regard to Plaintiff's counsel appearing
6 for a hearing or related proceedings thereon.

7 **15. MODIFICATION**

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

13 **16. AUTHORIZATION**

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

17
18 **AGREED TO:**

AGREED TO:

19 Date: 7-22-05

Date: _____

20 By: 
21 Plaintiff Russell Brimer

By:
Defendant HOB Entertainment, Inc.

22 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

23 Date:  8/1/05
24 PARAS LAW GROUP

Date: _____
COX, CASTLE & NICHOLSON, LLP

25 By:
26 Laralei S. Paras
27 Attorneys for Plaintiff
RUSSELL BRIMER

By:
Stuart I. Block
Attorneys for Defendant
HOB ENTERTAINMENT, INC.

1 Plaintiff's counsel shall prepare a declaration in support of the Joint Motion which shall, *inter*
 2 *alia*, set forth support for the fees and costs to be reimbursed pursuant to Section 4. HOB shall
 3 have no additional responsibility to Plaintiff's counsel pursuant to C.C.P. § 1021.5 or otherwise
 4 with regard to reimbursement of any fees and costs incurred with respect to the preparation and
 5 filing of the Motion and its supporting declaration or with regard to Plaintiff's counsel appearing
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 12 least fifteen (15) days in advance of its consideration by the Court.

13 **16. AUTHORIZATION**

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

17
 18 **AGREED TO:**

19 Date: _____

20 By:
 21 Plaintiff Russell Brimer

AGREED TO:

22 Date: 8/1/05 _____

23 By: [Signature]
 24 Defendant HOB Entertainment, Inc.

25 **APPROVED AS TO FORM:**

26 Date: 8/1/05
 27 PARAS LAW GROUP

28 By:
 Laralei S. Paras
 Attorneys for Plaintiff
 RUSSELL BRIMER

APPROVED AS TO FORM:

Date: [Signature]
 COX, CASTLE & NICHOLSON, LLP

By:
 Stuart I. Block
 Attorneys for Defendant
 HOB ENTERTAINMENT, INC.

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Exhibit A

- Martini Glass
- Sunset Strip Blue Heart Pilsner
- Anaheim Blue Heart Pilsner
- Sunset Strip Blue Heart Shot Glass
- Anaheim Strip Blue Heart Shot Glass
- Sunset Strip Clear HOB Shot Glass
- Anaheim Clear HOB Shot Glass
- Sunset Strip Mason Jar
- Anaheim Mason Jar
- Sunset Strip House Glass
- Anaheim House Glass
- O.C. Blue Heart Pilsner
- O.C. Blue Heart Shot Glass
- O.C. Clear Heart Shot Glass
- Heart Shot Candle
- J&E Mug

Exhibit B

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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 C

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TEST PROTOCOL FOR LEAD RELEASE

Externally Decorated Glassware
Externally Decorated Ceramic Mugs

Decorated Glassware:

1. Wash glass and dry.
2. Totally immerse glass in beaker of acetic acid for 24 hours.
3. Measure ppm lead in acid, compare to internal volume of glass.
4. This procedure is attached.

Ceramic Mugs: Use the ASTM C 738-81 test modified for total immersion and comparison to internal volume.

Lip and Rim Testing: Not done as such. Since all drinking vessels are totally immersed, the lip and rim area is tested as a part of the whole.

Samples:

Six samples of each article, i.e., six randomly selected samples of each type decorated sample article. If a manufacturer wishes to distribute multiple different designs, six sample articles of each design should be submitted for testing. Six sample articles of each type design will be subjected to total immersion in acetic acid only.

Reagents:

1. Deionized or distilled deionized water.
2. Acetic acid 4% solution by volume; 1 volume of glacial acetic acid to 24 volumes of distilled deionized water.

Sample Preparation:

Thoroughly cleanse each sample to be tested by immersing in a detergent rinse of a suitable household alkaline detergent. Rinse several times with deionized water followed by several rinses with distilled deionized water. Place the sample articles in a clean aluminum basket, (covered with clean paper towels), or suitable clean rack and allow to air dry. Reduce contamination to a Minimum at all times.

Procedure for Leaching Lead, (4% Acetic Acid Solution):

Once all the samples have been properly immersed in a suitable household alkaline detergent, subjected to proper rinses and air dried, place each sample individually into an appropriately sized acid cleaned, (lead free), glass beaker or clean Nalgene plastic beaker. Using prenumbered labels, label the outside of each beaker containing a sample and record this number on the worksheet. Add 4% acetic acid to each beaker containing a sample, filling the sample and the space between the sample and the beaker while covering the rim of the sample with the acetic acid solution. Record the volume of leaching solution used in milliliters next to the sample number on the worksheet. (Cover each beaker completely with aluminum foil to shield the contents from light.) Record the time and allow the beakers to remain undisturbed for a period of 24 hours at 20 to 24° C (68 to 75° F). At the end of the 24 hour period mix the contents of each beaker well. To avoid contamination, wear disposable gloves and working with

one beaker at a time, lift up the sample and pour the contents of the sample into the respective beaker. Using a clean disposable plastic pipet, swirl the contents of the beaker to properly mix the contents, drain the pipet into the solution and draw off an aliquot of sample and place it into corresponding specifically numbered clean plastic snap cap test tube. The number on the outside of the beaker and the number on the test tube should correspond. Once the aliquot of sample has been drawn off, rinse the sample under running water, dry the bottom of the sample with a paper towel and transfer the prenumbered label from the outside of the respective beaker to the bottom of the sample.

Testing:

Perform testing for lead using atomic absorption spectrophotometry as prescribed in ASTM methodology C 738-81 or C 927-80. Run each sample in duplicate along with appropriate standards as well as aliquots of 4% acetic acid solution and distilled deionized water in plastic test tubes. Correct for the blank if necessary. If a sample of unknown goes off scale make necessary dilutions using 4% acetic acid from the same batch prepared for leaching. Record results in ppm using the following calculations:

$$\text{ug/dl} \times \text{dilution} = \text{ug/dl} \div 100 = \text{ug/ml Pb} \times \text{volume of leaching solution used (ml)} =$$

Total ug/Pb \div internal volume of the article to 7 mm(ml) = ppm leachable lead relative to the internal volume.

See attached laboratory report forms.

To Determine The Internal Volume:

Mark each unit 7 mm (1/4") below the rim on the outside of the sample. Fill each unit from a graduated cylinder to approximately 1/4" (6 to 7 mm) of overflowing. Measure and record the internal volume of each unit in milliliters.

When Reporting Final Results Include The Following:

1. The amount of leachable lead in ppm relative to the internal volume of the sample, average of six if possible.
2. The distance of decoration below the rim in mm.

Materials Used In Testing Procedure:

Beakers - Nalgene, polypropylene, graduated 2000 ml.

Test tubes - Polystyrene with friction fit snap cap, sterile, 17x100m

Pipets - Kimble, serological, polystyrene, sterile, 10 ml.x 1/10.

Carboys - Nalgene, 20 liter, for mixing acetic acid solution.

Aluminum Baskets

Utility bath - 18-8 stainless steel, deep drawn, seamless construction with cover; holds 31 quarts. Overall dimensions length 21 3/4", width 13 3/4", depth 8".

Utility bath - same as above, holds 20 quarts.

Gloves - vinyl, disposable.

Hot plate - VWR Scientific, Thermolyne, Type 2200, length 24", width 12"

Aluminum foil - to cover samples during the 24 hour period.

References:

1982 Annual Book Of ASTM Standards, Part 17, Refractories, Glass, Ceramic Materials, Carbon and Graphite Products:

pg. 757-759 ASTM Designation: C 738-81

pg. 999-1002 ASTM Designation: C 927-80

pg. 682 ASTM Designation: C 676-74 (reapproved 1980)

**Lead and Cadmium In Decorated Glass Tumblers - Interagency Task Force Report,
November 13, 1978.**

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8 Attorneys for Plaintiff
9 Russell Brimer

ENDORSED
FILED
San Francisco County Superior Court

DEC 14 2005

GORDON PARK-LI, Clerk
BY: PHILOMENA DIAS
Deputy Clerk

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION
14

15 RUSSELL BRIMER,
16 Plaintiff,
17 v.
18 HOUSE OF BLUES; HOB ENTERTAINMENT,
INC.; and DOES 1 through 150,
19 Defendants.
20

Case No. CGC-05-438712

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
CONSENT JUDGMENT**

Date: December 14, 2005
Time: 9:30 A.M.
Dept.: 302
Judge: Hon. Ronald E. Quidachay

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[PROPOSED] JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant HOB
2 ENTERTAINMENT, INC., having agreed through their respective counsel that judgment be
3 entered pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment
4 ("Consent Judgment") entered into by the parties, and after issuing an Order Approving
5 Proposition 65 Settlement Agreement and Consent Judgment on December 14, 2005.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of
7 Civil Procedure §664.5, judgment is entered in accordance with the terms of the Order Approving
8 Proposition 65 Settlement Agreement and Consent Judgment, between the parties.

9 **IT IS SO ORDERED.**

10
11 Dated: December 14, 2005

RONALD E. QUIDACHAY

Hon. Ronald E. Quidachay
JUDGE OF THE SUPERIOR COURT