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Attorneys for Defendant
HALLMARK CARDS, INCORPORATED

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

RUSSELL BRIMER,)
)
Plaintiff,)
)
v.)
)

HALLMARK CARDS, INCORPORATED, and)
DOES 1 through 50,)
)
Defendants.)
_____)

ENDORSED
FILED
San Francisco County Superior Court

OCT 19 2005

GORDON PARK-LI, Clerk
By: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

Case No. CGC 04-436729

**[PROPOSED] ORDER APPROVING
PROPOSITION 65 SETTLEMENT AND
CONSENT JUDGMENT**

Hearing: October 19, 2005
Time: 9:30 am
Dept: 301
Judge: Hon. James L. Warren
Action Filed: December 1, 2004
Trial Date: None set

1 Plaintiff RUSSELL BRIMER and Defendant HALLMARK CARDS, INCORPORATED,
2 having agreed through their respective counsel that judgment be entered pursuant to the terms of the
3 Consent Judgment entered into by the above-referenced parties and attached hereto as Exhibit 1;
4 and after consideration of the papers submitted and the arguments presented, the Court finds that the
5 settlement agreement set out in the attached Consent Judgment meets the criteria established by
6 Health & Safety Code section 25249.7, in that:

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

14 Accordingly, IT IS HEREBY ORDERED that Judgment be entered in the case referenced
15 above, in accordance with the terms of the Consent Judgment, attached hereto as Exhibit 1.
16
17

18 Dated: OCT 19 2005, 2005

JAMES L WARREN

Hon. James L. Warren
Judge of the San Francisco Superior Court

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10 Attorneys for Defendants
 11 Hallmark Cards, Incorporated

12
 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 14 COUNTY OF SAN FRANCISCO
 15 UNLIMITED JURISDICTION
 16

17 RUSSELL BRIMER,
 18 Plaintiff,

19 v.

20 HALLMARK CARDS, INCORPORATED, and
 21 DOES 1 through 50,
 22 Defendants.

Case No. CGC 04-436429

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

23 1. INTRODUCTION

24 1.1 Plaintiff and Settling Defendant. This Consent Judgment is entered into by and
 25 between plaintiff Russell Brimer (hereafter "Brimer" or "Plaintiff") and defendant Hallmark
 26 Cards, Incorporated ("Defendant"), with Plaintiff and Defendant collectively referred to as the
 27 "Parties" and Brimer and Defendant each being a "Party."
 28

1 **1.2 Plaintiff.** Brimer is an individual residing in California who seeks to promote
2 awareness of exposures 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 Defendant has distributed and/or sold
5 in the State of California mugs and other tableware products with colored artwork, designs or
6 markings on the exterior surface with materials in that colored artwork, designs or markings that
7 contain cadmium and/or lead, which are listed pursuant to the Safe Drinking Water and Toxic
8 Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 et seq., also known as
9 Proposition 65, to cause cancer and birth defects and other reproductive harm. Lead (and/or lead
10 compounds) and 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: mugs and other tableware products with colored artwork, designs or
13 markings on the exterior surface, sold and/or distributed by Defendant, its subsidiaries and
14 corporate affiliates (collectively "Hallmark") in California including, by way of example and
15 without limitation, products contained in the items listed at Exhibit A. Such products collectively
16 are referred to herein as the "Products."

17 **1.5 Notices of Violation.** Beginning on July 30, 2004, Brimer served Defendant and
18 various public enforcement agencies with documents, entitled "60-Day Notice of Violation"
19 ("Notice") that provided Defendant and such public enforcers with notice that alleged that
20 Defendant was in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that
21 certain products that they sold expose users in California to the Listed Chemicals.

22 **1.6 Complaint.** On December 1, 2004, Brimer, in the interest of the general public in
23 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the
24 Superior Court for the City and County of San Francisco against Defendant and Does 1 through
25 50, alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to one
26 or more of the Listed Chemicals contained in certain products sold by Defendant.

27 **1.7 No Admission.** Defendant denies the material factual and legal allegations
28 contained in Plaintiff's Notices and Complaint and maintain that all products that it has sold and

1 distributed in California including the Products have been and are in compliance with all laws.
2 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
3 finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or
4 be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or
5 violation of law. However, this section shall not diminish or otherwise affect the obligations,
6 responsibilities and duties of Defendant under this Consent Judgment.

7 **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
8 stipulate that this Court has jurisdiction over the parties and concerning the violations contained
9 in the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint,
10 that venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter
11 this Consent Judgment and to enforce the provisions thereof.

12 **1.9 Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall be
13 the date of entry of the Consent Judgment.

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

15 **2.1 Warning Obligations**

16 **(a) Required Warnings.** After the Effective Date, Defendant shall not ship or
17 offer to ship for sale in California any Products containing the Listed Chemicals, unless warnings
18 are given in accordance with one or more provisions in subsection 2.2 below.

19 **(b) Exceptions.** The warning requirements set forth in subsections 2.1(a) and
20 2.2 below shall not apply to:

- 21 **(i)** any Products distributed by Hallmark before the Effective Date, or
22 **(ii)** Reformulated Products.

23 **2.2 Clear and Reasonable Warnings**

24 Defendant may satisfy its warning obligation under section 2.1(a) through any of the
25 following methods:
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1 (a) **Product Labeling.** A warning is affixed to the packaging, labeling or
2 directly to or on a Product by Hallmark, its agents, or the manufacturer, importer, or distributor of
3 the Product, that states:

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

8 or

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

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

21 (b) **Point-of-Sale Warnings.** Defendant may execute its warning obligations,
22 where applicable, through arranging for the posting of signs in Hallmark's stores and/or at third
23 party retail outlets located in the State of California at which Products are sold, in accordance
24 with the terms specified in subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii).

25 (i) Point-of-Sale warnings may be provided through one or more signs
26 posted at or near the point of sale or display of the Products that state:

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

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

or

WARNING: The materials used as colored decorations on the exterior of the tableware sold in this store contain lead and/or cadmium, chemicals known to the State of California to cause birth defects or other reproductive harm.²

or

WARNING: The materials used as colored decorations on the exterior of the following tableware products sold in this store contain lead and/or cadmium, chemicals known to the State of California to cause birth defects or other reproductive harm:
(Insert list of products)

(ii) A point of sale warning provided pursuant to subsection 2.2(b)(i) shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use or purchase and shall be placed or written in a manner such that the consumer understands to which *specific* Products the warnings apply so as to minimize, if not eliminate, the chances that an overwarning situation will arise. Any changes to the language or format of the warning required for Products by this subsection shall only be made following: (1) approval of Plaintiff; (2) approval from the California Attorney General's Office, 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 Hallmark intends to utilize point-of-sale warnings to comply with this Consent Judgment, it must provide notice as required by this Consent Judgment to each third

² The posting instructions shall instruct that the sign is intended for use only where the recipient establishment uses or sells non-Reformulated Products and that if the establishment uses 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 party retailer to whom it ships the Products for sale in California and obtain the written consent of
2 such retailer before shipping the Products to them. Such notice shall include specific posting
3 instructions, and any required warning materials (including, as appropriate, signs and/or stickers).
4 If Hallmark obtains the consent of such a retailer, Hallmark shall not be found to have violated
5 this Consent Judgment if it has complied with the terms of this Consent Judgment and has proof
6 that it transmitted the requisite warnings in the manner provided herein.

7 (c) **Internet Sales** For Products that are sold by Hallmark from the internet to
8 California residents, a warning containing the language in subsection 2.2(a) shall be included, at
9 Hallmark's sole option, either: (a) on the website; or (b) with the Product when it is shipped to an
10 address in California. Any warnings given on a website shall identify the *specific* Products to
11 which the warning applies.

12 (i) **Web Site Warning** The warning text, or a link to a page
13 containing the warning text, shall be displayed either (a) on the same page on which a Product is
14 displayed, (b) on the same page as any order form for a Product, (c) on the same page as the price
15 for any Product, (d) on one or more pages displayed to a purchaser over the Internet or via
16 electronic mail during the checkout and order confirmation process for sale of a Product. The
17 same language as that appearing in subsection 2.2(a) must be used for transmitting warnings
18 under this paragraph. If a link is used, it shall state "California residents," and shall be of a size
19 equal to the size of other links on the page.

20 (ii) **Warning With Product** Alternatively, a warning may be
21 provided with the Product when it is shipped directly to a consumer in California, by (a) product
22 labeling pursuant to subsection 2.2(a) above, (b) inserting a card or slip of paper measuring at
23 least 4" x 6" in the shipping carton, or (c) including the warning, using at least 18-point font size,
24 on the packing slip or customer invoice identifying the Product. The warning shall include the
25 language appearing in subsection 2.2(a) and shall inform the consumer that he or she may return
26 the Product for a full refund within 30 days of receipt.

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1 2.3 **Reformulation Standards.** Products satisfying the conditions of section 2.3(a),
2 2.3(b), 2.3(c) and 2.3(d), are to be considered "Reformulated Products" and are defined as
3 follows:

4 (a) If the colored artwork, designs or markings on the exterior surface of the
5 Product (i) do not extend into the top 20 millimeters on the exterior of the ware (i.e., appears only
6 below the lip and rim area as defined by American Society of Testing and Materials Standard
7 Test Method C 927-99, hereinafter the "Lip and Rim Area"), and (ii) produce a test result no
8 higher than 1.0 micrograms (ug) of lead and 4.0 micrograms (ug) or less of cadmium using a
9 GhostWipe™ test applied on all decorated portions of the surface of the Product performed as
10 outlined in NIOSH method no. 9100; or

11 (b) If the colored artwork, designs or markings on the exterior surface of the
12 Product (i) do not extend to the Lip and Rim Area and (ii) the Product achieves a result of
13 0.99 ppm or less for lead or 3.96 ppm or less for cadmium when tested under the protocol
14 attached hereto as Exhibit B (the ASTM C927-99 test method, modified for total immersion and
15 comparison to internal volume), (iii) the Product is made of ceramic material, and (iv) the Product
16 is manufactured on or before December 31, 2006; or

17 (c) If the colored artwork, designs or markings on the exterior surface of the
18 Product extend into the exterior Lip and Rim Area and otherwise meets the standard set forth
19 under Paragraph 2.2(a)(ii) above, and (i) the decorative materials used in the Lip and Rim Area
20 contain no detectable lead or cadmium,³ or (ii) the Product yields a test result of 0.5
21 micrograms/milliliter (ug/ml) of lead or less and a result of 2.0 ug/ml of cadmium of less using
22 ASTM method C 927-99,⁴ or

23
24
25 ³ For purposes of this subsection, "no detectable lead or cadmium" shall mean that neither
26 lead nor cadmium is detected at a level above .02% (for lead) or .08% (for cadmium) by weight,
27 respectively, using a sample size of the materials in question measuring approximately 50-100 mg
28 and a test method of sufficient sensitivity to establish a limit of quantitation of less than 200 ppm.

⁴ The reformulation standard specified in subsection 2.3.(c)(ii) may only be used for
Products manufactured prior to December 31, 2006.

1 (d) If the Product utilizes decorating materials for all colored artwork, designs
 2 or markings containing six one-hundredths of one percent (0.06%) lead by weight or less and
 3 twenty-four one hundredths of one percent (0.24%) cadmium by weight or less as measured, at
 4 Defendant's option, either before or after the material is fired onto (or otherwise affixed to) the
 5 Product, using EPA's Test Method 3050B⁵; such Products are "Reformulated Products".

6 2.4 Reformulation Commitment. By entering into this Stipulation and Consent
 7 Judgment, Defendant hereby commits that it will undertake good faith efforts, to ensure that as
 8 many Products as reasonably possible shall qualify as Reformulated Products, with the
 9 commitment to reach 80% (eighty percent) or more Reformulated Products for Products
 10 manufactured on or after December 31, 2005, and the commitment to make commercially
 11 reasonable efforts thereafter to reach 100% (one-hundred percent) Reformulated Products.

12 3. MONETARY PAYMENTS.

13 3.1 Payments Pursuant to Health & Safety Code § 25249.7(b). Pursuant to
 14 Health & Safety Code Section 25249.7(b), Defendant shall pay \$40,000. This payment shall be
 15 made payable to "Chanler Law Group in Trust For Russell Brimer," and shall be delivered to
 16 Plaintiff's counsel on or before April 15, 2005 at the following address:

17
 18 CHANLER LAW GROUP
 19 Attn: Clifford A. Chanler
 20 71 Elm Street, Suite 8
 New Canaan, CT 06840

21 (a) In the event that Defendant pays any amount pursuant to this section and
 22 the Consent Judgment is not thereafter approved and entered by the Court, Brimer or his counsel
 23 shall return any funds paid under this section within fifteen (15) days of receipt of a written
 24 request from Defendant following notice of the issuance of the Court's decision.

25
 26
 27 ⁵ If any party tests the decoration after it is affixed to the Product, the percentage of the
 28 Listed Chemical by weight must be less than the identified limit as measured in relation to the
 other components of the decorating material and not the ceramic material.

1 (b) The Parties agree that Defendant's potential interest in and ability to
2 acquire and market Reformulated Products is to be accounted for in this section and, since it is
3 not a remedy provided for by law, the absence of Defendant previously acquiring, manufacturing,
4 marketing or selling Reformulated Products is not relevant to the establishment of a payment
5 amount pursuant to section 3.1 above.

6 3.2 Apportionment Pursuant to Health & Safety Code § 25192. After Court
7 approval of this Consent Judgment pursuant to section 6, all monies received shall be apportioned
8 by Plaintiff in accordance with Health & Safety Code § 25192, with 75% of these funds remitted
9 to the State of California's Office of Environmental Health Hazard Assessment and remaining
10 25% of these monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d).
11 Plaintiff shall bear all responsibility for apportioning and paying to the State of California the
12 appropriate amounts paid in accordance with this section.

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

14 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
15 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
16 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
17 Defendant then expressed a desire to resolve the fee and cost issue shortly after the other
18 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
19 the compensation due to Plaintiff and his counsel under the private attorney general doctrine
20 codified at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date
21 of the Agreement. Under the private attorney general doctrine codified at Code of Civil
22 Procedure § 1021.5, Defendant shall reimburse Plaintiff and his counsel for fees and costs,
23 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating and
24 negotiating a settlement in the public interest. Specifically, Defendant shall pay Plaintiff and his
25 counsel \$65,000 for all attorneys' fees, expert and investigation fees, and litigation costs. The
26 payment shall be made payable to the "Chanler Law Group" and shall be delivered to Plaintiff's
27 counsel on or before April 15, 2005, at the following address:
28

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

5 Except as specifically provided in this Consent Judgment, Defendant shall have no further
6 obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the
7 Products covered in this Action.

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Plaintiff's Release of Defendant.** In further consideration of the promises and
10 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
11 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
12 assignees, or any person or entity who may now or in the future claim through him in a derivative
13 manner, and in the interest of the general public, hereby waives all rights to institute or participate
14 in, directly or indirectly, any form of legal action and release all claims, including, without
15 limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands, obligations,
16 damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation
17 fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed
18 or contingent (collectively "Claims"), against Defendant and each of its distributors, wholesalers,
19 licensors, licensees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent
20 companies, corporate affiliates, subsidiaries and their respective officers, directors, attorneys,
21 representatives, shareholders, agents, representatives, insurers and employees and any other
22 persons or entities to whom Defendant may be liable (collectively, "Defendant's Releasees")
23 arising under Proposition 65, Business & Professions Code § 17200 et seq. and Business &
24 Professions Code § 17500 et seq., related to Defendant's or Defendant's Releasees' alleged
25 failure to warn about exposures to or identification of Listed Chemicals contained in the Products.
26 The Parties acknowledge that Plaintiff does not waive or release any Claims against the
27 manufacturers or other entities who supplied the Products to Defendant.

28 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
binding resolution of any violation of Proposition 65, Business & Professions Code

1 §§ 17200 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, that have been or could
 2 have been asserted in the Complaint against Defendant for its alleged failure to provide clear and
 3 reasonable warnings of exposure to or identification of Listed Chemicals in the Products.

4 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waive all rights
 5 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims
 6 against the Defendant's Releasees arising under Proposition 65, Business & Professions Code
 7 §§ 17200 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, related to each of the
 8 Defendants Releasees' alleged failures to warn about exposures to or identification of Listed
 9 Chemicals contained in the Products and for all actions or statements made by Defendant or its
 10 attorneys or representatives, in the course of responding to alleged violations of Proposition 65,
 11 Business & Professions Code §§ 17200 *et seq.* or Business & Professions Code §§ 17500 *et seq.*
 12 by Defendant. Provided however, Plaintiff shall remain free to institute any form of legal action
 13 to enforce the provisions of this Consent Judgment.

14 It is specifically understood and agreed that the Parties intend that Defendant's
 15 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in
 16 the future (so long as Defendant complies with the terms of the Consent Judgment) concerning
 17 Defendant and the Defendant's Releasees' compliance with the requirements of Proposition 65,
 18 Business and Professions Code §§ 17200 *et seq.* and Business & Professions Code §§ 17500 *et*
 19 *seq.*, as to the Listed Chemicals in the Products.

20 5.2 **Defendant's Release of Plaintiff.** Defendant waives all rights to institute any
 21 form of legal action against Plaintiff, or their attorneys or representatives, for all actions taken or
 22 statements made by Plaintiff and his attorneys or representatives, in the course of seeking
 23 enforcement of Proposition 65, Business & Professions Code §§ 17200 *et seq.* or Business &
 24 Professions Code §§ 17500 *et seq.* in this Action.

25 **6. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court and
 27 shall be null and void if, for any reason, it is not approved and entered by the Court within one
 28 year after it has been fully executed by all Parties, in which event any monies that have been

1 provided to Plaintiff or his counsel pursuant to section 3 and section 4 above, shall be refunded
2 within fifteen (15) days.

3 **7. 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 **8. ATTORNEYS' 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 **9. 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 Defendant shall have no further obligations pursuant to this Consent Judgment with respect
17 to, and to the extent that, those Products are so affected.

18 **10. 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: (i) 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.

<p>25 For Plaintiff:</p> <p>26 Chanler Law Group 27 Attn: Clifford A. Chanler 28 71 Elm Street, Suite 8 New Canaan, CT 06840</p>	<p>For Defendant:</p> <p>Robert L. Falk Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105-2482</p>
--	--

1 **11. NO ADMISSIONS**

2 Nothing in this Consent Judgment shall constitute or be construed as an admission by
3 Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance
4 with this Consent Judgment constitute or be construed as an admission by Defendant of any fact,
5 finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by
6 Defendant. Defendant reserves all of its rights and defenses with regard to any claim by any
7 party under Proposition 65 or otherwise. However, this section shall not diminish or otherwise
8 affect Defendant's obligations, responsibilities and duties under this Consent Judgment.

9 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

21 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

22 The Parties shall mutually employ their best efforts to support the entry of this Agreement
23 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
24 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
25 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
26 agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which
27 Defendant's counsel shall prepare, within a reasonable period of time after the Execution Date
28 (i.e., not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on

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

8 **15. MODIFICATION**

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

14 **16. AUTHORIZATION**

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

18
19
20 **AGREED TO:**

AGREED TO:

21
22 Date: _____
 23 By: _____
 24 Plaintiff Russell Brimer

Date: 4-21-05
 By: [Signature] *on behalf of*
 Defendant Hallmark Cards Incorporated

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

8 **15. MODIFICATION**

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

14 **16. AUTHORIZATION**

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

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20 AGREED TO:

AGREED TO:

21
22 Date: 3-30-05

Date: _____

23 By: Russell Brimer
Plaintiff Russell Brimer

By:
Defendant Hallmark Cards Incorporated

1 APPROVED AS TO FORM:

APPROVED AS TO FORM:

2

3 Date: _____
CHANLER LAW GROUP

Date: _____
MORRISON & FOERSTER LLP

4 By:
Clifford A. Chanler
5 Attorneys for Plaintiff
RUSSELL BRIMER

By:
Robert L. Falk
Attorneys for Defendant
HALLMARK CARDS INCORPORATED

6

7
8 IT IS SO ORDERED.

9

10 Date: _____

JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

Cliff Chanler

Date: _____
CHANLER LAW GROUP

By:
Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: _____
MORRISON & FOERSTER LLP

By:
Robert L. Falk
Attorneys for Defendant
HALLMARK CARDS INCORPORATED

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: 4/13/05

CHANLER LAW GROUP

MORRISON & FOERSTER LLP

By:

By: *Robert E. Falk*

Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

Robert E. Falk
Attorneys for Defendant
HALLMARK CARDS INCORPORATED

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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Exhibit A

All ceramic or glass mugs and other ceramic or glass tableware with colored designs and/or artwork on the exterior, including but not limited to Hallmark items nos.:

- 0001BGP1008
- 0001BGP1009
- 0001BYD2464
- 0001CBN6015
- 0001CKO1010
- 0001CKO1019
- 0001CKO1020
- 0001DAV2046
- 0001EXM1013
- 0001FFL8025
- 0001HHT8441
- 0001HKG203L
- 0001HKG204L
- 0001HOC6028
- 0001HTF1612
- 0001HTF1615
- 0001HTF1616
- 0001JCD409L
- 0001JHE720L
- 0001JHE721L
- 0001JHM509M
- 0001LCR1754
- 0001LCR1757
- 0001LCR1757
- 0001MAX1401
- 0001MAX1402
- 0001MAX1403
- 0001MAX1404
- 0001MAX1452
- 0001MYG4005
- 0001NSA6213
- 0001NSA6214
- 0001NSA6215
- 0001NSG5209
- 0001NSG5216
- 0001NSG5226
- 0001NSG5236
- 0001NSG5410
- 0001NSG5421
- 0001PEO5003
- 0001PXA2011
- 0001SNO5002
- 0001SNO5016
- 0001SWF4018
- 0001SWF4022
- 0001SWF4052

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0001VIC4004
0001VIC4007
0001VKG0002
0695TAN4002
0001MAX1439

1 CLIFFORD A. CHANLER (S.B. NO. 135534)
 2 CHANLER LAW GROUP
 3 71 Elm Street, Suite 8
 4 New Canaan, CT 06840
 Tel: (203) 966-9911
 Fax: (203) 801-5222

ENDORSED
 FILED
 San Francisco County Superior Court

OCT 19 2005

5 STEPHEN S. SAYAD (S.B. No. 104866)
 6 DANIEL BORNSTEIN (S.B. No. 181711)
 7 LARALEI S. PARAS (S.B. No. 203319)
 8 PARAS LAW GROUP
 655 Redwood Highway, Suite 216
 Mill Valley, CA 94941
 Tel: (415) 380-9222
 Fax: (415) 380-9223

GORDON PARK-LI, Clerk
 BY: MARJORIE SCHWARTZ-SCOTT
 Deputy Clerk

9 Attorneys for Plaintiff
 10 RUSSELL BRIMER

11 ROBERT L. FALK (S.B. NO. 142007)
 12 WILLIAM F. TARANTINO (S.B. NO. 215343)
 13 MILES H. IMWALLE (S.B. NO. 230244)
 14 MORRISON & FOERSTER LLP
 425 Market Street
 San Francisco, California 94105-2482
 Tel: (415) 268 7000
 Fax: (415) 268-7522

15 Attorneys for Defendant
 16 HALLMARK CARDS, INCORPORATED

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

19			
20	RUSSELL BRIMER,)	Case No. CGC 04-436729
)	
21	Plaintiff,)	[PROPOSED] JUDGMENT PURSUANT
)	TO TERMS OF CONSENT JUDGMENT
22	v.)	
)	Date: October 19, 2005
23	HALLMARK CARDS, INCORPORATED, and)	Time: 9:30 am
	DOES 1 through 50,)	Dept: 301
24)	Judge: Hon. James L. Warren
	Defendants.)	Action Filed: December 1, 2004
25)	Trial date: None set
26)	

[PROPOSED] JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT
 CASE NO. CGC 04-436729

1 In the above-entitled action, Plaintiff Russell Brimer and Defendant Hallmark Cards,
2 Incorporated, having agreed through their respective counsel that judgment be entered pursuant to
3 the terms of the Consent Judgment entered into by the parties, and after issuing an Order Approving
4 Proposition 65 Settlement Agreement and Consent Judgment on October 19, 2005;

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

8 **IT IS SO ORDERED.**

JAMES L. WARREN

9 Dated:

OCT 19 2005

Hon. James L. Warren
JUDGE OF THE SUPERIOR COURT