

1 Daniel Bornstein, State Bar No. 181711
2 Stephen S. Sayad, State Bar No. 104866
3 Laralei S. Paras, State Bar No. 203319
4 PARAS LAW GROUP
5 655 Redwood Highway, Suite 216
6 Mill Valley, California 94941
7 Telephone: (415) 380-9222
8 Facsimile: (415) 380-9223

9 Clifford A. Chanler, State Bar No. 135534
10 CHANLER LAW GROUP
11 71 Elm Street, Suite 8
12 New Canaan, CT 06840
13 Telephone: (203) 966-9911
14 Facsimile: (203) 801-5222

15 Attorneys for Plaintiff
16 RUSSELL BRIMER

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE CITY AND COUNTY OF SAN FRANCISCO
19 UNLIMITED CIVIL JURISDICTION

20 RUSSELL BRIMER)

21 Plaintiff,)

22 v.)

23 SMITH-SOUTHWESTERN, INC.; THE)
24 MARKETPLACE BY MARRIOTT)
25 VACATION CLUB; MARRIOTT'S TIMBER)
26 LODGE; MARRIOTT VACATION CLUB; and)
27 DOES 1 through 150,)

28 Defendants.)

Case No. CGC-04-436038

(JCR)
[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF CONSENT JUDGMENT

Date: July 6, 2005

Time: 9:30 a.m.

Dept: 302

Judge: Hon. Ronald Evans ~~Quindary~~

FILED
San Francisco County Superior Court

AUG 28 2005

CORDED
BY: [Signature]

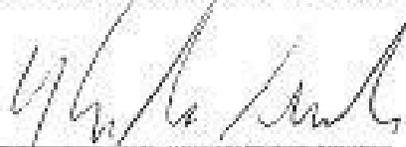
1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendants SMITH-
2 SOUTHWESTERN, INC., THE MARKETPLACE BY MARRIOTT VACATION CLUB,
3 MARRIOTT'S TIMBER LODGE, MARRIOTT VACATION CLUB ("Settling Defendants"), having
4 agreed through their respective counsel that judgment be entered pursuant to the terms of the
5 Consent Judgment entered into by the parties, and after issuing an Order Approving Proposition 65
6 Settlement Agreement and Consent Judgment on July 6, 2005.

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

10 IT IS SO ORDERED.

11 Dated: AUG 05 2005

(JCK)


Hon. Ronald Evans Quisling
JUDGE OF THE SUPERIOR COURT

KEVIN M. MCCARTHY

436038

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15 Attorneys for Plaintiff
16 RUSSELL BRIMER

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE CITY AND COUNTY OF SAN FRANCISCO
19 UNLIMITED CIVIL JURISDICTION

20 RUSSELL BRIMER

21 Plaintiff,

22 v.

23 SMITH-SOUTHWESTERN, INC.; THE
24 MARKETPLACE BY MARRIOTT
25 VACATION CLUB; MARRIOTT'S TIMBER
26 LODGE; MARRIOTT VACATION CLUB; and
27 DOES 1 through 150,

28 Defendants.

FILED
San Francisco County Superior Court

AUG 23 2005

GORDON PARK, L. Clerk
By: _____
Deputy Clerk

) Case No. CGC-04-436038
) (JLR)

) ~~PROPOSED~~ ORDER PURSUANT TO
) TERMS OF STIPULATION AND ORDER
) RE: CONSENT JUDGMENT

) Date: July 6, 2005

) Time: 9:30 a.m.

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KEVIN M. McCARTHY

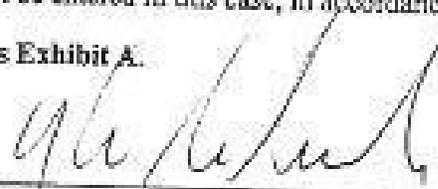
1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendants SMITH-
2 SOUTHWESTERN, INC.; THE MARKETPLACE BY MARRIOTT VACATION CLUB;
3 MARRIOTT'S TIMBER LODGE; MARRIOTT VACATION CLUB ("Settling Defendants"), having
4 agreed through their respective counsel that judgment be entered pursuant to the terms of the
5 Consent Judgment entered into by the above-referenced parties and attached hereto as Exhibit A;
6 and after consideration of the papers submitted ^{(JCR) appearance: Stephen Sigurd} ~~and the arguments presented~~, the Court finds that the
7 settlement agreement set out in the attached Consent Judgment meets the criteria established by
8 Senate Bill 471, in that:

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

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

17 IT IS SO ORDERED.

18 Dated: AUG 05 2005

19 (JCR) 
20 Hon. Ronald Evans Quidebecky
21 JUDGE OF THE SUPERIOR COURT

22 KEVIN M. MCCARTHY

23 # 436038
24
25
26
27
28

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13 Facsimile (203) 801-5222

14 Attorneys for Plaintiff
15 RUSSELL BRIMER

EXHIBIT "A"

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

19 RUSSELL BRIMER,
20 Plaintiff,

21 vs.

22 SMITH-SOUTHWESTERN, INC.; THE
23 MARKETPLACE BY MARRIOTT
24 VACATION CLUB; MARRIOTT'S TIMBER
25 LODGE; MARRIOTT VACATION CLUB;
26 and DOES 1 through 150,
27 Defendants.

Case No. CGC-04-436038

STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT

28 **1. INTRODUCTION**

1.1 Plaintiff and Settling Defendant This Consent Judgment is entered into by and between plaintiff RUSSELL BRIMER (hereafter "Mr. Brimer" or "Brimer" or "Plaintiff") and SMITH-SOUTHWESTERN, INC. (hereafter "Smith-Southwestern"), with Plaintiff and Smith-

STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT

1 Southwestern collectively referred to as the "Parties" and Mr. Brimer and Smith-Southwestern each
2 being a "Party".

3 **1.2 Plaintiff** Mr. Brimer is an individual residing in Alameda, California who seeks to
4 promote awareness of exposures to toxic chemicals and improve human health by reducing or
5 eliminating hazardous substances contained in consumer and industrial products.

6 **1.3 General Allegations** Plaintiff alleges that Smith-Southwestern has distributed and/or
7 sold in the State of California ceramic mugs and shot glasses and other glassware with colored
8 designs and/or artwork on the exterior surface that contain lead (and/or lead compounds) that are
9 listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
10 Safety Code §§25249.5 et seq., also known as Proposition 65, to cause both cancer and birth defects
11 (and other reproductive harm). Lead (and/or lead compounds) shall be referred to herein as "Listed
12 Chemicals." Smith-Southwestern denies Plaintiff's allegations.

13 **1.4 Product Descriptions** The products that are covered by this Consent Judgment are
14 defined as follows: all ceramic mugs and shot glasses and other glassware with colored designs
15 and/or artwork on their exterior surface containing lead. Such products collectively are referred to
16 herein as the "Products."

17 **1.5 Notices of Violation** On July 30, 2004, Mr. Brimer alleges that he served Smith-
18 Southwestern, The MarketPlace by Marriott Vacation Club, Marriott's Timber Lodge, Marriott
19 Vacation Club, Marriott Ownership Resorts Inc., and various public enforcement agencies (including
20 the Attorney General of the State of California) with documents, entitled "60-Day Notice of
21 Violation" ("Notice") that provided Smith-Southwestern and such public enforcers with notice that
22 alleged that Smith-Southwestern was in violation of Health & Safety Code §25249.6 for failing to
23 warn purchasers that certain products that it sold expose users in California to lead and lead
24 compounds. On or before March 31, 2005, Brimer will be serving a Supplemental Notice on Smith-
25 Southwestern and all required public enforcers expanding Plaintiff's prior allegations such that the
26 definition of "Products" as used herein shall be deemed to extend to both ceramic mugs and shot
27 glasses with exterior decorations, other tableware (such as spoonrests, coasters, and salt and pepper
28 shakers), and keychains, and such that the definition of "Listed Chemicals" as used herein shall be

1 deemed to have been expanded from lead (and/or lead compounds) to include the Listed Chemical,
2 cadmium, as well ("Supplemental Notices").

3 **1.6 Complaints** On November 3, 2004, Mr. Brimer, who asserts that he is acting in the
4 interest of the general public in California, filed a complaint (hereafter referred to as the
5 "Complaint" or the "Action") in the Superior Court for the City and County of San Francisco against
6 Smith-Southwestern, The MarketPlace By Marriott Vacation Club, Marriott's Timber Lodge,
7 Marriott Vacation Club, and Does 1 through 150, alleging violations of Health & Safety Code §
8 25249.6 based on the alleged exposures to one or more of the Listed Chemicals contained in certain
9 products sold by Smith-Southwestern. Upon the running of the 60-Day periods associated with the
10 issuance of the Supplemental Notices, and provided that no authorized public enforcer of Proposition
11 65 initiates an action against Smith-Southwestern based on the additional allegations therein
12 contained in the interim, the above-captioned Complaint and this Consent Judgment shall be deemed
13 such that the definition of "Products" as used herein shall be deemed to extend to both ceramic mugs
14 and shot glasses with exterior decorations, other tableware (such as spoonrests, coasters, and salt and
15 pepper shakers), and keychains, and such that the definition of "Listed Chemicals" as used herein
16 shall be deemed to have been expanded from lead (and/or lead compounds) to include the Listed
17 Chemical, cadmium, as well.

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

27 **1.8 Consent to Jurisdiction** For purposes of this Consent Judgment only, the Parties
28 stipulate that this Court has jurisdiction over the allegations of violations contained in the Notice, in

1 the Supplemental Notice, and in the Complaint, and personal jurisdiction over Smith-Southwestern
2 as to the acts alleged in the Complaint, that venue is proper in the County of San Francisco, and that
3 this Court has jurisdiction to enter this Consent Judgment and to enforce the provisions thereof.

4 1.9 Effective Date For purposes of this Consent Judgment, "Effective Date" shall be
5 March 23, 2005.

6 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS AND REFORMULATION**

7 **2.1 Warning Obligations For Non-Reformulated Products**

8
9 2.1.A. Required Warnings and Non-exempt Products After March 23, 2005,
10 Smith-Southwestern shall not sell or offer for sale in California any Products containing the Listed
11 Chemicals, unless warnings are given in accordance with one or more provisions in subsection 2.2
12 below.

13 2.1.B. Exceptions The warning requirements set forth in subsections 2.1.A and 2.2
14 below shall not apply to:

- 15 i. any Products manufactured before March 23, 2005, or
16 ii. Reformulated Products.

17 **2.2 Clear And Reasonable Warnings**

18 2.2.A. Product Labeling A warning is affixed to the packaging, labeling
19 or directly to or on a Product by Smith-Southwestern or its agent, that states:

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

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

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

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

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

8 **2.2.B. Point-of-Sale Warnings** Smith-Southwestern may execute its warning
9 obligations, where applicable, through arranging for the posting of signs at retail outlets in the State
10 of California at which Products are sold, in accordance with the terms specified in subsections
11 2.2.B.1, and 2.2.B.2, so long as Smith-Southwestern receives a written commitment from each
12 retailer that it will post the warning signs.

13 **2.2.B.1.** Point of Sale warnings may be provided through one or more
14 signs posted at or near the point of sale or display of the Products that state:

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

18 **WARNING:** The materials used as colored decorations on the exterior of
19 mugs, shot glasses and other glassware products sold in this
20 store contain lead and cadmium, chemicals known to the
21 State of California to cause birth defects and other
reproductive harm.²
or

22 **WARNING:** The materials used as colored decorations on the exterior of
23 the following mugs, shot glasses and other glassware
24 products sold in this store contain lead and cadmium,
25 chemicals known to the State of California to cause birth
26 defects and other reproductive harm.

27 ² This formulation of the warning may only be used where the store in which the Products are sold sells only Products
28 which are not included in Section 2.3.

1 2.2.B.2. A point of sale warning provided pursuant to subsection
2 2.2.B.1 shall be prominently placed with such conspicuousness as compared with other words,
3 statements, designs, or devices as to render it likely to be read and understood by an ordinary
4 individual under customary conditions of use or purchase and shall be placed or written in a manner
5 such that the consumer understands to which specific Products the warnings apply so as to minimize
6 if not eliminate the chances that an overwarning situation will arise. Any changes to the language or
7 format of the warning required for Products by this subsection shall only be made following: (1)
8 approval of Plaintiff; (2) approval from the California Attorney General's Office, provided that
9 written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or (3)
10 Court approval.

11 **2.3 Reformulation Standards:** Products satisfying the conditions of Section 2.3.A, or
12 2.3.B, are referred to as "Reformulated Products." The warnings required pursuant to
13 sections 2.1.A and 2.2 above shall not be required for Reformulated Products, defined as
14 follows:

15 2.3.A. For items intended to hold beverages, if the colored artwork, designs or
16 markings on the exterior surface of the Product does not extend into the top 20 millimeters of the
17 ware (i.e., appear only below the exterior portion of the lip and rim area as defined by American
18 Society of Testing and Materials Standard Test Method C927-99, hereinafter the "Lip and Rim
19 Area"), produce a test result no higher than 1.0 micrograms (ug) of lead using a Ghost Wipe™ test
20 applied on painted portions of the surface of the Product performed as outlined in NIOSH method
21 no. 9100, or

22 2.3.B. If the Product utilizes paints for all colored artwork, designs or markings
23 containing six one-hundredths of one percent (0.06%) lead and/or cadmium by weight or less as
24 measured at Smith-Southwestern's option, either before or after the material is fired onto (or
25 otherwise affixed to) the Product, using a sample size of the materials in question measuring
26 approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of
27 quantitation (as distinguished from detection) of less than 600 ppm pursuant to EPA Test Method
28 3050B, such Product is a Reformulated Product;

1
2 **3. MONETARY PAYMENTS**

3
4 **3.1 Penalties Pursuant To Health & Safety Code §25249.7(b)** Pursuant to Health &
5 Safety Code Section 25249.7(b), Smith-Southwestern shall pay a total of \$25,000 in civil penalties
6 in two installments with the first payment of \$10,000 to be made not later than March 23, 2005, and
7 made payable to "Chanler Law Group in Trust For Russell Brimer." The second penalty payment of
8 \$15,000 shall be paid on March 23, 2006; however, such second payment shall be waived in the
9 event that Smith-Southwestern certifies on or before March 1, 2006, that 80% or more of the
10 Products it sold in California during the last three quarters of calendar year 2005 were Reformulated
11 Products; provided, however, that Products manufactured before March 23, 2005, shall not be
12 included in this calculation. Any such certification with respect to the percentage of Reformulated
13 Products sold shall specify the Product (by Product name, SKU or UPC Code) and the number of
14 units sold for each such Product.

15 **3.1.A.** In the event that Smith-Southwestern pays any penalty and the Consent
16 Judgment is not thereafter approved and entered by the Court, Mr. Brimer shall return any penalty
17 funds paid under this agreement within fifteen (15) days of receipt of a written request from Smith-
18 Southwestern following notice of the issuance of the Court's decision.

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

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

27 **4.1** The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
28 without reaching terms on the amount of attorneys' fees and costs (including testing and

1 investigative costs) to be reimbursed to them, thereby leaving this fee issue to be resolved after the
2 material terms of the agreement had been settled. Smith Southwestern then expressed a desire to
3 resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties
4 then attempted to (and did) reach an accord on the compensation due to Plaintiff and his counsel
5 under the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5
6 for all work performed through the Effective Date of the Agreement. Under the private attorney
7 general doctrine, Smith-Southwestern shall reimburse Plaintiff and his counsel for fees and costs,
8 incurred as a result of investigating, bringing this matter to Smith-Southwestern's attention, litigating
9 and negotiating a settlement in the public interest. Smith-Southwestern shall pay Plaintiff and his
10 counsel \$43,000 for all attorneys' fees, expert and investigation fees, and litigation costs. The
11 payment shall be made payable to the "Chanler Law Group" and shall be delivered to Plaintiff's
12 counsel on or before March 23, 2005, at the following address:

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

18 Except as specifically provided in this Consent Judgment, Smith-Southwestern shall
19 have no further obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with
20 regard to the Products covered in this Action.

21 **5. RELEASE OF ALL CLAIMS**

22 **5.1 Plaintiff's Release of Smith-Southwestern** In further consideration of the promises
23 and agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
24 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
25 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
26 participate in, directly or indirectly, any form of legal action and release all claims, including,
27 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
28 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,

1 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
2 unknown, fixed or contingent (collectively "Claims"), against Smith-Southwestern and each of its
3 retailers (and specifically including The MarketPlace By Marriott Vacation Club, Marriott's Timber
4 Lodge, Marriott Ownership Resorts, Inc., and Marriott Vacation Club), licensors, licensees,
5 auctioneers, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,
6 subsidiaries and their respective officers, directors, attorneys, representatives, shareholders, agents,
7 and employees (collectively, "Smith-Southwestern Releasees") arising under Proposition 65, related
8 to Smith-Southwestern's or Smith-Southwestern Releasees' alleged failure to warn about exposures
9 to or identification of Listed Chemicals contained in the Products.

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 that has been or could have been asserted in the
12 Complaint against Smith-Southwestern for its alleged failure to provide clear and reasonable
13 warnings of exposure to or identification of Listed Chemicals in the Products.

14 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waive all rights to
15 institute or participate in, directly or indirectly, any form of legal action and releases all Claims
16 against the Smith-Southwestern Releasees arising under Proposition 65 related to each of the Smith-
17 Southwestern Releasees' alleged failures to warn about exposures to or identification of Listed
18 Chemicals contained in the Products and for all actions or statements made by Smith-Southwestern
19 or its attorneys or representatives, in the course of responding to alleged violations of Proposition 65
20 by Smith-Southwestern. Provided however, Plaintiff shall remain free to institute any form of legal
21 action to enforce the provisions of this Consent Judgment.

22 It is specifically understood and agreed that the Parties intend that Smith-Southwestern's
23 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in the
24 future (so long as Smith-Southwestern complies with the terms of the Consent Judgment) concerning
25 Smith-Southwestern's and the Smith-Southwestern Releasees' compliance with the requirements of
26 Proposition 65, as to the Listed Chemicals in the Products.

27 **5.2 Smith-Southwestern's Release of Plaintiff** Smith-Southwestern and the Smith-
28 Southwestern Releasees waive all rights to institute any form of legal action against Plaintiff, or his

1 attorneys or representatives, for all actions taken or statements made by Plaintiff and his attorneys or
2 representatives, in the course of seeking enforcement of Proposition 65 in this Action.

3 **6. COURT APPROVAL**

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

9 **7. SEVERABILITY**

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

13 **8. ATTORNEYS' FEES**

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

17 **9. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of California
19 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
20 rendered inapplicable by reason of law generally, or as to the Products specifically, then Smith-
21 Southwestern shall have no further obligations pursuant to this Consent Judgment with respect to,
22 and to the extent that, those Products are so affected.

23 **10. NOTICES**

24 All correspondence and notices required to be provided pursuant to this Consent Judgment
25 shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail,
26 return receipt requested or (ii) overnight courier on either Party by the others at the following
27 addresses.

28 To Smith-Southwestern:

1
2 Bruce Fincham, President
3 Smith-Southwestern, Inc.
4 1850 N. Rosemont
5 Mesa, Arizona 85205

6 To Plaintiff:

7 Clifford A. Chanler
8 Chanler Law Group
9 71 Elm Street, Suite 8
10 New Canaan, CT 06840

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

13 **11. NO ADMISSIONS**

14 Nothing in this Consent Judgment shall constitute or be construed as an admission by Smith-
15 Southwestern of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance
16 with this Consent Judgment constitute or be construed as an admission by Smith-Southwestern of
17 any fact, finding, conclusion, issue of issue of law, or violation of law, such being specifically
18 denied by Smith-Southwestern. Smith-Southwestern reserves all of its rights and defenses with
19 regard to any claim by any party under Proposition 65 or otherwise. However, this section shall not
20 diminish or otherwise affect Smith-Southwestern's obligations, responsibilities and duties under this
21 Consent Judgment.

22 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

27 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
28 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
present this Consent Judgment to the California Attorney General's Office within two (2) days after
receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment will then
be served on the Attorney General's Office at least forty-five (45) days prior to the date a hearing is

1 scheduled on such motion in the Superior Court for the City and County of San Francisco unless the
2 Court allows a shorter period of time.

3 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

4 The Parties shall mutually employ their best efforts to support the entry of this Agreement as
5 a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.

6 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is
7 required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties agree to file
8 a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which Plaintiff's
9 counsel shall prepare, within a reasonable period of time after the Execution Date (i.e., not to exceed
10 fourteen (14) days unless otherwise agreed to by the Parties' counsel based on unanticipated
11 circumstances). Plaintiff's counsel shall prepare a declaration in support of the Joint Motion that
12 shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to Section 4.

13 Smith-Southwestern shall have no additional responsibility to Plaintiff's counsel pursuant to Code of
14 Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred
15 with respect to the preparation and filing of the Joint Motion and its supporting declaration or with
16 regard to Plaintiff's counsel appearing for a hearing or related proceedings thereon.

17 **15. MODIFICATION**

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

23 **16. AUTHORIZATION**

24 The undersigned are authorized to execute this Consent Judgment on behalf of their
25 respective Parties and have read, understood and agree to all of the terms and conditions of this
26 Consent Judgment.
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AGREED TO:

Date: 3-23-05

By: 
Plaintiff Russell Brimer

APPROVED AS TO FORM:

Date: _____

CHANLER LAW GROUP

By: _____
Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

IT IS SO ORDERED.

Date: _____

AGREED TO:

Date: _____

By: _____
Defendant Smith-Southwestern, Inc.

APPROVED AS TO FORM:

Date: _____

CARSON MESSINGER ELLIOTT
LAUGHLIN & RAGAN, P.L.L.C.

By: _____
James A. Burns
Attorneys for Defendant SMITH-
SOUTHWESTERN, INC.

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____
Plaintiff Russell Brimer

By: _____
Defendant Smith-Southwestern, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: _____

CHANLER LAW GROUP

CARSON MESSINGER ELLIOTT
LAUGHLIN & RAGAN, P.L.L.C.

By: Cliff A
Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

By: _____
James A. Burns
Attorneys for Defendant SMITH-
SOUTHWESTERN, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

AGREED TO:

Date: _____

Date: 3/24/05

By: _____
Plaintiff Russell Brimer

Bruce Furchman
By: [Signature] *president*
Defendant Smith-Southwestern, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: 3/24/05

CHANLER LAW GROUP

CARSON MESSINGER ELLIOTT
LAUGHLIN & RAGAN, P.L.L.C.

By: _____
Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

By: [Signature]
James A. Burns
Attorneys for Defendant SMITH-
SOUTHWESTERN, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT