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9 Attorneys for Plaintiff
Russell Brimer

ENDORSED
FILED
San Francisco County Superior Court

JUL 20 2005

GORDON PARK-LI, Clerk
BY: S. FENG
Deputy Clerk

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 RUSSELL BRIMER,

17 Plaintiff,

18 vs.

19 BUBBA GUMP SHRIMP CO.
RESTAURANTS, INC.; HARD ROCK
20 CAFE, HARD ROCK CAFE
INTERNATIONAL; PROGRESSIVE
21 SPECIALTY GLASS; and DOES 1 through
150,

22 Defendants.

Case No. CGC-04-436429

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[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF CONSENT
JUDGMENT

Date: July 20, 2005
Time: 9:30 A.M.
Dept: 301
Judge: Hon. James L. Warren

[PROPOSED] JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT

1 In the above-entitled action, Plaintiff Russell Brimer and Defendants BUBBA
2 GUMP SHRIMP CO.RESTAURANTS, INC.; HARD ROCK CAFÉ, HARD ROCK CAFÉ
3 INTERNATIONAL; PROGRESSIVE SPECIALTY GLASS ("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
6 Proposition 65 Settlement Agreement and Consent Judgment on July 20, 2005.

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

12 **IT IS SO ORDERED.**

13 Dated: July 20, 2005.

JAMES L. WARREN

Hon. James L. Warren
JUDGE OF THE SUPERIOR COURT

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Russell Brimer

ENDORSED
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JUL 20 2005

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by S. PENG
Deputy Clerk

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

16 RUSSELL BRIMER,

17 Plaintiff,

18 vs.

19 BURBA GUMP SHRIMP CO.
RESTAURANTS, INC.; HARD ROCK
20 CAFE, HARD ROCK CAFE
INTERNATIONAL; PROGRESSIVE
21 SPECIALTY GLASS; and DOES 1 through
150,

22 Defendants.

Case No. CGC-04-436429

[PROPOSED] ORDER PURSUANT TO
TERMS OF CONSENT JUDGMENT

Date: July 20, 2005
Time: 9:50 A.M.
Dept: 301
23 Judge: Hon. James L. Warren
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1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendants RUBRA GUMP
2 SHRIMP CO. RESTAURANTS, INC.; HARD ROCK CAFE, HARD ROCK CAFE
3 INTERNATIONAL; PROGRESSIVE SPECIALTY GLASS ("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 and the arguments presented, the Court finds that
7 the settlement agreement set out in the attached Consent Judgment meets the criteria established
8 by 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: July 20, 2005

JAMES L. WARREN

Hon. James L. Warren
JUDGE OF THE SUPERIOR COURT

Exhibit A

1 ANDREA SHERIDAN ORDIN (BAR NO. 38235)
2 TERESA A. MACDONALD (BAR NO. 217053)
3 MORGAN, LEWIS & BOCKIUS LLP
4 300 S. Grand Avenue, Suite 2200
5 Los Angeles, California 90071
6 Telephone: (213) 612-2500
7 Facsimile: (213) 612-2501

8 Attorneys for Defendants
9 PROGRESSIVE SPECIALTY GLASS

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

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

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

20 Defendants,

Case No. CGC-04-436429

STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT

21 1. INTRODUCTION

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

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

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

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

18 1.5 **Notices of Violation.** On November 24, 2004, and September 3, 2005, Briner
19 served Progressive, Hard Rock and Bubba Gump, and various public enforcement agencies with
20 documents, entitled "60-Day Notice of Violation" ("Notice") that provided Progressive, Hard
21 Rock and Bubba Gump and such public enforcers with notice alleging Progressive, Hard Rock
22 and Bubba Gump were in violation of Health & Safety Code §25249.6 for failing to warn
23 purchasers that certain products sold by Defendants exposed users in California to lead, lead
24 compounds and cadmium.

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

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

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

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

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

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

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

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

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

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

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

11 **2.2 CLEAR AND REASONABLE WARNINGS**

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

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

18 or,

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

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

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

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

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

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

13 or

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

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

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

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

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

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

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

22 (a) If the colored artwork, designs or markings on the exterior surface of the
23 Product does not extend within the top 30 millimeters of the ware (i.e., below the exterior portion
24 of the lip and rim area as defined by American Society of Testing and Materials Standard Test
25

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

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

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

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

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

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

27 **3. MONETARY PAYMENTS.**

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

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

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

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

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

23 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
24 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
25 leaving this fee issue to be resolved after the material terms of the Consent Judgment had been
26 settled. Progressive then expressed a desire to resolve the fee and cost issue shortly after the
27 other settlement terms had been finalized. The Parties then attempted to (and did) reach an
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1 accord on the compensation due to Plaintiff and his counsel under the private attorney general
2 doctrine codified at Code of Civil Procedure § 1021.5 for all work performed through the
3 Effective Date of the Consent Judgment. Under the private attorney general doctrine codified at
4 Code of Civil Procedure § 1021.5, Progressive, on behalf of itself and Defendants, shall
5 reimburse Plaintiff and his counsel for fees and costs, incurred as a result of investigating,
6 bringing this matter to Defendants' attention, litigating and negotiating a settlement in the public
7 interest. Progressive, on behalf of itself and Defendants, shall pay Plaintiff and his counsel for all
8 attorneys' fees, expert and investigation fees, and litigation costs in the amount of Seventy-nine
9 Thousand Dollars (\$79,000). The payment shall be made payable to the "Chanler Law Group,"
10 and shall be delivered to Plaintiff's counsel on or before February 15, 2005, at the following
11 address:

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

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

18 5. RELEASE OF ALL CLAIMS

19 5.1 Plaintiff's Release of Progressive, Hard Rock and Bubba Gump. In further
20 consideration of the promises and agreements herein contained, and for the payments to be made
21 pursuant to sections 3 and 4, Plaintiff, on behalf of himself, his past and current agents,
22 representatives, attorneys, successors and/or assignees, and in the interest of the general public,
23 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
24 action, and releases all claims, including, without limitation, all actions, causes of action, in law
25 or in equity, suits, liabilities, demands, obligations, damages, judgments, costs, fines, penalties,
26 losses and/or expenses (including, but not limited to, investigation fees, expert fees and attorneys'
27 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively
28

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

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

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

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

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

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

11 6. COURT APPROVAL.

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

17 7. SEVERABILITY

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

21 8. ATTORNEYS' FEES

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

26 9. GOVERNING LAW

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

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

4 **10. NOTICES**

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

10 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

22 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

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

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

9 **14. MODIFICATION**

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

15 **15. AUTHORIZATION**

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

FROM : PROGRESSIVE SPECIALTY GLASS CO. PHONE NO. : 3255387907

Feb. 07 2005 04:25PM FS

1	Dated: February <u>7</u> , 2005	By: <u>Vron Kosow</u>
2		for PROGRESSIVE SPECIALTY
3		GLASS
4	Dated: February __, 2005	By: _____
5		for HARD ROCK CAFE, HARD
6		ROCK CAFE INTERNATIONAL
7	Dated: February __, 2005	By: _____
8		for BUBBA GUMP SHRIMP CO.
9		RESTAURANTS, INC.
10	Dated: February __, 2005	By: _____
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Dated: February __, 2005

By: _____

for PROGRESSIVE SPECIALTY
GLASS

Dated: February __, 2005

By: _____

for HARD ROCK CAFE, HARD
ROCK GAMES INTERNATIONAL

Dated: February 7, 2005

By: 

James W. Sherman, Esq.
San Diego, California
for BUBBA GUMP SHRIMP CO.
RESTAURANTS, INC.

Dated: February __, 2005

By: _____
Russell Brimer

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Dated: February __, 2005

By: _____

for PROGRESSIVE SPECIALTY
GLASS

Dated: February __, 2005

By: _____

for HARD ROCK CAFE, HARD
ROCK CAFE INTERNATIONAL

Dated: February 7, 2005

By: *Karen H. Jansola*
Karen H. Jansola

Assistant Secretary of the Corporation

for BLUEBA GROUP SHRIMP CO.
RESTAURANTS, INC.

Dated: February __, 2005

By: _____

Russell Brimer

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Dated: January ____, 2005

By: _____

for PROGRESSIVE SPECIALTY
GLASS

Dated: January ____, 2005

By: _____

for HARD ROCK CAFE, HARD
ROCK CAFE INTERNATIONAL

Dated: January ____, 2005

By: _____

for BUBBA GUMP SHRIMP CO.
RESTAURANTS, INC.

Dated: January 1, 2005
REJ

By: Russell Briner
Russell Briner

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As to form:

Dated: February __, 2005

ANDREA SHERIDAN ORDEN
TERESA MACDONALD
MORGAN, LEWIS & BOCKIUS LLP

By: _____

Attorneys for Defendants
PROGRESSIVE SPECIALTY GLASS

Dated: February __, 2005

By: _____

Attorneys for Defendants
HARD ROCK CAFE, HARD ROCK
CAFE INTERNATIONAL

Dated: February 8, 2005

THOMAS M. DONNELLY
HELLER BHRMAN WHITE &
MCAULIFFE, LLP

By:  _____

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

Dated: February __, 2005

CLIFFORD A. CHANLER
CHANLER LAW GROUP

By: _____

Attorneys for Plaintiff
RUSSELL BRIMER

1 As to form;

2 Dated: February 2, 2005

ANDREA SHERIDAN ORDIN
TERESA MACDONALD
MORGAN, LEWIS & BOCKUS LLP

3
4
5 By: *Andrea Sheridan*

6
7 Attorneys for Defendant
PROGRESSIVE SPECIALTY GLASS

8 Dated: February 2, 2005

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10
11 By: *[Signature]*

12 *James M. Humana, Esq.*
13 Sr. Dir. Business Affairs
Attorneys for Defendant
HARD ROCK CAFE, HARD ROCK
CAFE INTERNATIONAL

14 Dated: February __, 2005

15 THOMAS M. DONNELLY
16 HELLER EHRMAN WHITE &
17 MCAULIFF, LLP

18 By: _____

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

20 Dated: February __, 2005

21 CLIFFORD A. CHANLER
22 CHANLER LAW GROUP

23 By: _____

24
25 Attorneys for Plaintiff
26 RUSSELL BROMER

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As to form:

Dated: January __, 2005

ANDREA SHERIDAN ORDIN
TERESA MACDONALD
MORGAN, LEWIS & BOCKIUS LLP

By: _____

Attorneys for Defendant
PROGRESSIVE SPECIALTY GLASS

Dated: January __, 2005

By: _____

Attorneys for Defendant
HARD ROCK CAFE, HARD ROCK
CAFE INTERNATIONAL

Dated: January __, 2005

THOMAS M. DONNELLY
HELLER EHRMAN WHITE &
MCAULIFFE, LLP

By: _____

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

February 11
Dated: ~~January~~ __, 2005

CLIFFORD A. CHANLER
CHANLER LAW GROUP

By:  _____

Attorneys for Plaintiff
RUSSELL BRIMER

EXHIBIT A

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

Customer Number	Product
4813	25 oz. Plastic Yard
08-85599	25 oz. Plastic Yard
08-85073	23 oz. Plastic Bubble Pilsner
5344	46 oz. Plastic Yard with Rings
08-85141	California Street 32 oz. Plastic Yard with Rings
08-86691	18 oz. Plastic Yard
08-86781	15 oz. Plastic Hurricane
08-86815	15 oz. Plastic Hurricane
08-86848	23 oz. Bubble Pilsner
2611	26 oz. Plastic Hurricane Plastic Football Cup
1833	15 oz. Plastic Hurricane
1615	15 oz. Plastic Hurricane
08-82776	25 oz. Plastic Yards
2411	23 oz. Bubble Pilsners
08-85002	18 oz. Plastic Yard 21 oz. Celebration Glass
08-85201 / 85018	21 oz. Celebration Glass 23 oz. Glass Pilsner
08-85201 / 85023	21 oz. Celebration Glass 23 oz. Pilsner
833	23 oz. Bubble Pilsner 23 oz. Glass Pilsner 23 oz. Glass Hurricane 2.5 oz. Glass Cordial 2 oz. Whiskey Shot Glass 16 oz. Mixing Glass
08-0086331	15 oz. Old Fashioned Glass
08-0083493	You're #1 23 oz. Glass Pilsner
08-0080500	1.5 oz. Clear Shot Glass Plastic Hanging Shot Plastic Martini Shot

Customer Number	Product
08-0082034	Hurricane Shot Glass Flashing Shot Glass Rock Glass
08-0082005	5" Plastic Test Tube 6" Plastic Test Tube Glass Hurricane
08-0086842	Plastic Cocktail Shaker
08-83350	Plastic Cordial Plastic Hurricane Plastic Hurricane with Rings 1.5 oz. Plastic Hurricane
11285	23 oz. Glass Hurricane 20 oz. Glass Pilsner 2.5 oz. Glass Cordial 2 oz. Shot Glass 6.75 oz. Martini Glass
11385	23 oz. Glass Hurricane 2 oz. Shot Glass 2.5 oz. Glass Cordial 20 oz. Glass Pilsner
11387	23 oz. Glass Hurricane 20 oz. Glass Pilsner 2.5 oz. Glass Cordial 2 oz. Shot Glass 6.75 oz. Martini Glass
11490	23 oz. Glass Hurricane 2.5 oz. Glass Cordial 20 oz. Glass Pilsner 2 oz. Shot Glass 6.75 oz. Martini Glass
11570	2.5 oz. Shot Glass 23 oz. Glass Hurricane 20 oz. Glass Pilsner 6.75 oz. Martini Glass 2.5 oz. Glass Cordial
11205	23 oz. Glass Hurricane 2.5 oz. Glass Cordial 20 oz. Glass Pilsner 2 oz. Shot Glass
11190	23 oz. Glass Hurricane 2.5 oz. Glass Cordial 20 oz. Glass Pilsner 2 oz. Shot Glass 6.75 oz. Martini Glass
11000	20 oz. Frosted Glass Pilsner
1737	23 oz. Glass Hurricane

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Customer Number	Product
4947	23 oz. Glass Pilsner
3953	23 oz. Glass Hurricane
2625	45 oz. Super Bowl Glass
89349	1.75 oz. Spirit Glass Hurricane Shot Glass 2 oz. Whiskey Shot 2.5 oz. Cordial 15 oz. Hurricane Grand Celebration Glass
2607	20 oz. Glass Pilsner
34017	23 oz. Glass Pilsner
17508	20 oz. Glass Pilsner 23 oz. Glass Hurricane
08-0086686	23 oz. Glass Hurricane 2.5 oz. Glass Cordial 23 oz. Glass Pilsner
08-0086683	23 oz. Glass Hurricane 23 oz. Glass Pilsner 2.5 oz. Glass Cordial
08-0086682	23 oz. Glass Hurricane 23 oz. Glass Pilsner
08-0086681	23 oz. Glass Hurricane 23 oz. Glass Pilsner 2.5 oz. Glass Cordial
08-0086680	23 oz. Glass Hurricane 23 oz. Glass Pilsner 2.5 oz. Glass Cordial
525 / 853	2.5 oz. Glass Cordial 23 oz. Glass Long Stem Hurricane 23 oz. Glass Pilsner 2 oz. Glass Whiskey Shot
1612	23 oz. Glass Pilsner 15 oz. Glass Hurricane
11585	23 oz. Glass Hurricane 20 oz. Glass Pilsner 2.5 oz. Glass Cordial 6.75 Martini Glass
4170	Royal Glass Two-tee Port Glass 2.5 oz. Glass Cordial Glass Tumbler 19 oz. Fish Glass 14 oz. Old Fashioned Glass Sealife Tumbler Glass 16 oz. Sunburst Glass Colored Mug

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Customer Number	Product
	2 oz. Whiskey Shot Glass 13 oz. Mug Shot Glass Tropical Mug
3439	45 oz. Pink Super Bowl Glass 45 oz. Blue Super Bowl Glass 45 oz. Green Super Bowl Glass 45 oz. Super Bowl Glass

EXHIBIT B

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PROP 65 WARNING

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

PROP 65

WARNING

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

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