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STATE OF CALIFORNIA, COUNTY OF ALAMEDA
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Clifford A. Chanler (State Bar No. 135534)
CHANLER LAW GROUP
71 Elm Street, Suite 8
New Canaan, CT 06840
Telephone: (203) 966-9911
Facsimile: (203) 801-5222

Stephen S. Sayad (State Bar No. 104866)
Daniel Bornstein (State Bar No. 181711)
Laralei S. Paras (State Bar No. 203319)
PARAS LAW GROUP
655 Redwood Highway, Suite 216
Mill Valley, CA 94941
Telephone: (415) 380-9222
Facsimile: (415) 380-9223

Attorneys for Plaintiff
Russell Brimer

CLERK OF THE SUPERIOR COURT
JUDGMENT FILED AND ENTERED ON

SEP 12 2005

By M. Guerrero
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA – OAKLAND BRANCH
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

K&M NORDIC COMPANY, INC.; NORDIC
COMPANY, INC.; FOLLETT CORPORATION;
CAL STUDENT STORE; and DOES 1 through
150,

Defendants.

Case No. RG-05-192649

~~PROPOSED~~ JUDGMENT
PURSUANT TO TERMS OF
CONSENT JUDGMENT

Date: September 12, 2005

Time: 9:30 A.M.

Dept.: 303

Judge: Comm. Thomas Rasch

~~PROPOSED~~ JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT

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In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendants K&M
NORDIC COMPANY, INC., FOLLETT CORPORATION, and BARNES & NOBLE
COLLEGE BOOKSELLERS, INC., having agreed through their respective counsel that judgment
be entered pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment
("Consent Judgment") entered into by the parties, and after issuing an Order Approving
Proposition 65 Settlement Agreement and Consent Judgment on September 12, 2005.

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

IT IS SO ORDERED.

Dated: September 12, 2005


Commissioner Thomas Rasch
JUDGE OF THE SUPERIOR COURT

REC'D

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Telephone: (203) 966-9911
Facsimile: (203) 801-5222

FILED
ALAMEDA COUNTY

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By M. L...
Deputy

Daniel Bornstein (State Bar No. 181711)
Laralei S. Paras (State Bar No. 203319)
PARAS LAW GROUP
655 Redwood Highway, Suite 216
Mill Valley, CA 94941
Telephone: (415) 380-9222
Facsimile: (415) 380-9223

Attorneys for Plaintiff
Russell Brimer

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA - OAKLAND BRANCH
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Case No. RG-05-0192649

Plaintiff,

v.

~~PROPOSED~~ ORDER PURSUANT
TO TERMS OF CONSENT
JUDGMENT

K&M/NORDIC COMPANY, INC.; NORDIC
COMPANY, INC.; FOLLETT CORPORATION;
CAL STUDENT STORE; and DOES 1 through
150,

Date: September 12, 2005
Time: 9:30 A.M.
Dept.: 303
Judge: Comm. Thomas Rasch

Defendants.

~~PROPOSED~~ ORDER PURSUANT TO TERMS OF CONSENT JUDGMENT

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1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant
2 K&M/NORDIC COMPANY, INC., FOLLETT CORPORATION, and BARNES & NOBLE
3 COLLEGE BOOKSELLERS, INC., having agreed through their respective counsel that
4 judgment be entered pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent
5 Judgment ("Consent Judgment") entered into by the above-referenced parties and attached hereto
6 as Exhibit A; and after consideration of the papers submitted and the arguments presented, the
7 Court finds that the settlement agreement set out in the attached Consent Judgment meets the
8 criteria established 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 §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: September 12, 2005


Commissioner Thomas Rasch
JUDGE OF THE SUPERIOR COURT

Exhibit A

1 Clifford A. Chanler (State Bar No. 135534)
2 CHANLER LAW GROUP
3 71 Elm Street, Suite 8
4 New Canaan, CT 06840
5 Telephone: (203) 966-9911
6 Facsimile: (203) 801-5222

7 Stephen S. Sayad (State Bar No. 104866)
8 Laralei S. Paras (State Bar No. 203319)
9 PARAS LAW GROUP
10 655 Redwood Highway, Suite 216
11 Mill Valley, CA 94941
12 Telephone: (415) 380-9222
13 Facsimile: (415) 380-9223

14 Attorneys for Plaintiff,
15 Russell Brimer

16 Thomas N. FitzGibbon (State Bar No. 169194)
17 PFEIFFER THIGPEN & FITZGIBBON LLP
18 233 Wilshire Boulevard, Suite 220
19 Santa Monica, California 90401
20 Telephone: (310) 451-5800
21 Facsimile: (310) 451-1599

22 Attorneys for Defendants
23 K&M/Nordic Company, Inc.

24 Todd O. Maiden (State Bar No. 123524)
25 Eric M. McLaughlin (State Bar No. 200867)
26 SEYFARTH SHAW LLP
27 560 Mission Street, Suite 3100
28 San Francisco, California 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549

Attorneys for Defendant
Follett Corporation

Adam J. Thurston (State Bar No. 162636)
BRYAN CAVE LLP
120 Broadway, Suite 300
Santa Monica, CA 90401
Telephone: (310) 576-2100
Facsimile: (310) 576-2200

Attorneys for Defendant
Barnes & Noble College Booksellers, Inc.
sued erroneously herein as Barnes & Noble
College Bookstore, Inc. and Santa Clara
University Campus Bookstore

1
2 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
3 **UNLIMITED CIVIL JURISDICTION**
4

5 RUSSELL BRIMER,
6 Plaintiff,
7 v.

8 K&M/NORDIC COMPANY, INC.; NORDIC
9 COMPANY, INC.; FOLLETT
10 CORPORATION; CAL STUDENT STORE;
11 and DOES 1 through 150,
12 Defendants.

Alameda County
Case No.: RG-05-192649

**STIPULATION AND [PROPOSED]
CONSENT JUDGMENT**

13 **1. INTRODUCTION**

14 **1.1 Plaintiff and Settling Defendants.** This Consent Judgment is entered into by and
15 between plaintiff Russell Brimer (hereafter "Brimer" or "Plaintiff"), and K&M/Nordic Company,
16 Inc. (hereafter "K&M"), Barnes & Noble College Booksellers, Inc. (hereafter "BNCB"), and
17 Follett Corporation and its subsidiaries (hereafter collectively referred to as "Follett"), with
18 BNCB and Follett collectively and/or individually referred to as the "Retailers", K&M and the
19 Retailers collectively referred to as the "Defendants", and Plaintiff and Defendants collectively
20 referred to as the "Parties" and Brimer and Defendants each being a "Party."

21 **1.2 Plaintiff.** Brimer is an individual residing in Alameda County, California who
22 seeks to promote awareness of exposures to toxic chemicals and improve human health by
23 reducing or eliminating hazardous substances contained in consumer and industrial products.

24 **1.3 General Allegations.** Plaintiff alleges that Defendants have manufactured,
25 distributed and/or sold in the State of California tulip glasses, shot glasses, mugs, and other
26 ceramic and glass beverage ware with colored artwork, designs or markings on the exterior
27 surface with materials that contain lead and/or cadmium that are listed pursuant to the Safe
28 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code

1 §§ 25249.5 et seq., also known as Proposition 65, to cause cancer and birth defects (or other
2 reproductive harm). Lead and/or cadmium shall be referred to herein as “Listed Chemicals.”

3 1.4 **Product Descriptions.** The products that are covered by this Consent Judgment
4 are defined as follows: ceramic and glass beverageware manufactured, sold and/or distributed by
5 Defendants within the State of California with colored artwork, designs or markings on the
6 exterior surface including, by way of example and without limitation, glassware products listed at
7 Exhibit A. Such products collectively are referred to herein as the “Products.”

8 1.5 **Notices of Violation.** Beginning on October 18, 2004, Brimer served each of the
9 Defendants and various public enforcement agencies with documents, entitled “60-Day Notice of
10 Violation” (the “Notices”) that provided Defendants and such public enforcers with notice that
11 alleged that Defendants were in violation of Health & Safety Code § 25249.6 for failing to warn
12 purchasers that the Products that they sold expose users in California to lead and/or cadmium.

13 1.6 **The Complaints.** On January 6, 2005, Brimer, in the interest of the general public
14 in California, filed a complaint (hereafter referred to as the “Alameda Complaint” or the
15 “Alameda Action”) in the Superior Court for the County of Alameda against K&M, Nordic
16 Company, Inc., Follett, Cal Student Store, and Does 1 through 150, alleging violations of
17 Health & Safety Code § 25249.6 based on the alleged exposures to one or more of the Listed
18 Chemicals contained in the Products sold by Defendants. On January 18, 2005, Brimer, in the
19 interest of the general public in California, filed a complaint (hereafter referred to as the “Santa
20 Clara Complaint” or the “Santa Clara Action”) in the Superior Court for the County of Santa
21 Clara against BNCB, Santa Clara University Campus Bookstore, Santa Clara University, K&M,
22 Nordic Company, Inc., and Does 1 through 150, alleging violations of Health & Safety Code
23 § 25249.6 based on the alleged exposures to one or more of the Listed Chemicals contained in the
24 Products sold by Defendants. In addition, on January 20, 2005, Brimer, in the interest of the
25 general public in California, filed a complaint (hereafter referred to as the “Stanford Complaint”
26 or the “Stanford Action”) in the Superior Court for the County of Santa Clara against Stanford
27 University Bookstore, The Stanford Bookstore, Follett, and Does 1 through 150, alleging
28 violations of Health & Safety Code § 25249.6 based on the alleged exposures to one or more of

1 the Listed Chemicals contained in the Products sold by Defendants. The Alameda Action, Santa
2 Clara Action and Stanford Action are referred to herein as the "Actions."

3 **1.7 No Admission.** Defendants deny the material factual and legal allegations
4 contained in Plaintiff's Notices and Actions and maintain that all products that they have sold and
5 distributed in California including the Products have been and are in compliance with all laws and
6 regulations. Nothing in this Consent Judgment shall be construed as an admission by Defendants
7 of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement
8 constitute or be construed as an admission by Defendants of any fact, finding, conclusion, issue of
9 law or violation of law. However, this section shall not diminish or otherwise affect the
10 obligations, responsibilities and duties of Defendants under this Consent Judgment.

11 **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
12 stipulate that this Court has jurisdiction over the allegations of violations contained in the Actions
13 and personal jurisdiction over Defendants as to the acts alleged in the Actions, that venue is
14 proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent
15 Judgment and to enforce the provisions thereof.

16 **1.9 Effective Date.** For purposes of this Consent Judgment, the "Effective Date" shall
17 be April 26, 2005.

18 **1.10 Dismissals.** Plaintiff agrees that the following defendants and Actions will be
19 dismissed, without prejudice, within five (5) business days of the Court's entry of Judgment
20 pursuant to this Consent Judgment, as set forth below:

- 21 (a) In the Alameda Action, Cal Student Store and Nordic Company, Inc.¹;
 - 22 (b) The entire Santa Clara Action; and
 - 23 (c) The entire Stanford Action.
- 24
25
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27 ¹ Plaintiff's agreement to this dismissal is based upon the representations of K&M and Follett, respectively, that
28 neither Nordic Company, Inc. nor Cal Student Store are legal entities.

1 **2. INJUNCTIVE RELIEF: PROPOSITION 65**

2 **2.1 WARNINGS AND REFORMULATION OBLIGATIONS**

3 (a) **Required Warnings.** After the Effective Date, Defendants² shall not offer
4 for sale in California any Products containing the Listed Chemicals, unless warnings are given in
5 accordance with one or more provisions in subsection 2.2 below.

6 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and
7 2.2 below shall not apply to:

8 (i) any Products manufactured before December 31, 2004, or

9 (ii) Reformulated Products as defined in subsection 2.3 below.

10 **2.2 CLEAR AND REASONABLE WARNINGS**

11 In order to comply with the applicable warning obligations imposed by Section 2.1,
12 Defendants shall provide one or more of the warnings set forth in subsections (a), (b) or (c) below
13 and in the manner specified in each such subsection.

14 (a) **Product Labeling.** A warning affixed to the packaging, labeling or
15 directly to or on a Product by Defendants, their agents, or the manufacturer, importer, or
16 distributor of the Product, which shall be deemed to be clear within the meaning of Proposition
17 65, shall state, verbatim or in substantially similar language, as follows:

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

23 **or**

24 **WARNING: The materials used as colored decorations on the**
25 **exterior of these products contain chemicals**
26 **known to the State of California to cause birth**
27 **defects and other reproductive harm.**

28 ² K&M shall only offer Products for sale in California after December 31, 2005 in accordance with Section 2.4,
regardless of the exemptions in Section 2.1(b)(i).

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

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

12 (i) Point of Sale warnings may be provided through one or more signs
13 posted at or near the point of sale or display of the Products, and shall be deemed to be clear
14 within the meaning of Proposition 65, if they state, verbatim or in substantially similar language,
15 as follows:

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

21 **or**

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

28 (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

1 manner such that the consumer understands to which *specific* Products the warnings apply so as
2 to minimize if not eliminate the chances that an overwarning situation will arise. Any changes to
3 the format, or material changes to the language of the warning required for Products by this
4 subsection, shall only be made following: (1) approval of Plaintiff; (2) approval from the
5 California Attorney General's Office, provided that written notice of at least fifteen (15) days is
6 given to Plaintiff for the opportunity to comment; or (3) Court approval.

7 (iii) If, between the Effective Date and December 31, 2005, K&M
8 intends to utilize point of sale warnings to comply with this Consent Judgment, it must provide
9 written notice as required by this Consent Judgment to each entity to whom it ships the Products
10 for sale in California and obtain the written consent of such entity before shipping the Products.
11 The notice provided by K&M shall include a copy of the injunctive relief portions of this Consent
12 Judgment and any required warning materials including, as appropriate, signs and/or stickers. If
13 K&M has obtained the consent of its customers to provide point of sale warnings, K&M shall not
14 be found to have violated this Consent Judgment if it has complied with the terms of this Consent
15 Judgment and has proof that it transmitted the requisite warnings in the manner provided herein.

16 (c) **Internet Sales** For Products that are sold by any of the Defendants from
17 the internet to California residents, a warning containing the language in subsection 2.2(a) shall
18 be included, at Defendants' sole option, either: (a) on the website; or (b) with the Product when it
19 is shipped to an address in California. Any warnings given on a website shall identify the *specific*
20 Products to which the warning applies.

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

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

8 **2.3 REFORMULATION STANDARDS:** Products satisfying the conditions of
9 section 2.3(a) and 2.3(b) are referred to as "Reformulated Products" and are defined as follows:

10 (a) If the colored artwork, designs or markings on the exterior surface of the
11 Product do not extend into the top 20 millimeters of the ware (*i.e.*, only appear below the exterior
12 portion of the lip and rim area as defined by American Society of Testing and Materials Standard
13 Test Method C 927-99, hereinafter the "Lip and Rim Area"), and produce a test result no higher
14 than 1.0 micrograms (ug) of lead and 4.0 micrograms (ug) of cadmium using a Ghost WipeTM
15 test applied on the decorated portions of the surface of the Product performed as outlined in
16 NIOSH method no. 9100; or

17 (b) If the Product utilizes materials for all colored artwork, designs or
18 markings containing no more than six one-hundredths of one percent (0.06%) lead and twenty-
19 four one hundredths of one percent (0.24%) cadmium by weight as measured at Defendants'
20 option, either before or after the material is fired onto (or otherwise affixed to) the Product, using
21 a sample size of the materials in question measuring approximately 50-100 mg and a test method
22 of sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less
23 than 600 parts per million ("ppm").³

24 **2.4 REFORMULATION COMMITMENT.** By entering into this Stipulation and
25 Consent Judgment:

26 _____
27 ³ If a Defendant tests the decoration after it is affixed to the Product, the percentage of the Listed Chemical by
28 weight must relate only to the other portions of the decorating material and not include any calculation of non-
decorating material.

1 (a) At present K&M does not sell any Products in the State of California. If
2 K&M elects to re-enter the California market for the Products, it commits that it will only offer
3 Reformulated Products for sale in California after December 31, 2005; and

4 (b) Subject to the exception set forth in the following sentence, the Retailers
5 shall require that each of their vendors of the Products certify in writing that all shipments of the
6 Products for sale in California after December 31, 2005, are Reformulated Products, and the
7 Retailers shall be entitled to rely upon such certification. If the Retailers cannot, after
8 commercially reasonable best efforts, obtain exclusively Reformulated Products for sale in
9 California by December 31, 2005, then (a) by January 15, 2006, that company shall submit a
10 verified written report to the mediator, with a copy to Plaintiff, certifying the extent to which its
11 commercially reasonable best efforts to obtain Reformulated Products were unsuccessful, and (b)
12 thereafter, with respect to those Products for which the Retailers could not reasonably obtain
13 Reformulated Product-equivalents, the Retailers will comply with Sections 2.1 and 2.2 in
14 connection with their sales of such non-Reformulated Products in California.

15 **3. MONETARY PAYMENTS.**

16 3.1 **Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to
17 Health & Safety Code Section 25249.7(b), Defendants shall pay \$20,000 in civil penalties. The
18 penalty payment shall be made payable to "Chanler Law Group in Trust For Russell Brimer," and
19 shall be delivered to Plaintiff's counsel on or before May 2, 2005, at the following address:

20 CHANLER LAW GROUP
21 Attn: Clifford A. Chanler
22 71 Elm Street, Suite 8
New Canaan, CT 06840

23 K&M shall pay its portion of the civil penalty payment (\$9,000.00) on or before May 31,
24 2005.

25 (a) In the event that Defendants pay any penalty and the Consent Judgment is
26 not thereafter approved and entered by the Court, Brimer shall return any penalty funds paid
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1 under this agreement within fifteen (15) days of receipt of a written request from Defendants
2 following notice of the issuance of the Court's decision.

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

8 (c) **Apportionment of Penalties Received.** After Court approval of this
9 Consent Judgment pursuant to section 6, all penalty monies received shall be apportioned by
10 Plaintiff in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to
11 the State of California's Office of Environmental Health Hazard Assessment and the remaining
12 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code
13 § 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of
14 California the appropriate civil penalties paid in accordance with this section.

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

16 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
17 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
18 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
19 Defendants then expressed a desire to resolve the fee and cost issue shortly after the other
20 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
21 the compensation due to Plaintiff and his counsel under the private attorney general doctrine
22 codified at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date
23 of the Agreement. Under the private attorney general doctrine, Defendants shall reimburse
24 Plaintiff and his counsel for fees and costs, incurred as a result of investigating, bringing the
25 Actions (as well as any other matters reasonably related to the sale of Defendants' Products
26 allegedly sold in violation of Proposition 65) to Defendants' attention, litigating and negotiating a
27 settlement in the public interest. Defendants shall pay Plaintiff and his counsel \$80,000 for all
28 attorneys' fees, expert and investigation fees, and litigation costs related to the various claims

1 made against Defendants, their downstream customers and Defendants' Releasees. The payment
2 shall be made payable to the "Chanler Law Group" and shall be delivered to Plaintiff's counsel
3 on or before May 2, 2005, at the following address:

4 CHANLER LAW GROUP
5 Attn: Clifford A. Chanler
6 71 Elm Street, Suite 8
7 New Canaan, CT 06840

8 K&M shall pay its portion of the attorneys' fees payment (\$36,000.00) on or before May
9 31, 2005.

10 4.2 Plaintiff has requested that it be provided supplemental attorneys' fees if the
11 negotiation of the Consent Judgment takes more time than expected. Plaintiff has budgeted 5.0
12 hours to complete this task. In the event that more than 5.0 hours are legitimately and necessarily
13 incurred and billed by Plaintiff's counsel to accomplish this task, Plaintiff may seek
14 reimbursement of these fees through a Mediator Submission Process, as explained below. The
15 Mediator Submission process shall proceed as follows: (1) counsel for Plaintiff shall submit a
16 written Declaration under penalty of perjury to the Mediator and to defense counsel identifying
17 all the hours incurred to complete the negotiation of the Consent Judgment, the reasons why the
18 extra hours should be paid for by Defendants, and the amount of additional fees requested, (2)
19 Defendants shall have 10 days to submit to the Mediator and Plaintiff's counsel any response to
20 the Plaintiff's submission, and (3) within 20 days of the Defendants' submission, the Mediator
21 shall make a final and binding determination of the additional fees to which Plaintiff's counsel is
22 entitled. The Mediator may conduct a telephonic hearing in connection with this process if he so
23 elects, in his sole discretion. The Mediator shall send a written report to all Parties identifying the
24 additional amount to which Plaintiff's counsel is due, and this report shall specify a deadline for
25 payment of these amounts, as well as an allocation among the Defendants.

26 4.3 Except as specifically provided in this Consent Judgment, Defendants shall have
27 no further obligation with regard to reimbursement of Plaintiff's attorneys' fees and costs with
28 regard to the Products covered in the Actions, including with respect to all actions needed for

1 approval, including the Motion to Approve Consent Judgment and all Attorney General
2 notifications.

3 **5. RELEASE OF ALL CLAIMS**

4 **5.1 Plaintiff's Release of Defendants.** In further consideration of the promises and
5 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
6 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
7 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
8 participate in, directly or indirectly, any form of legal action and release all claims, including,
9 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
10 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
11 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
12 unknown, fixed or contingent, arising under Proposition 65 related to Defendants' or Defendants'
13 Releasees' alleged failure to warn about exposures to or identification of Listed Chemicals
14 contained in the Products (collectively "Claims"), against Defendants and each of their
15 distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers, customers, owners,
16 purchasers, users, parent companies, corporate affiliates, subsidiaries, partner-schools (The
17 Leland Stanford Jr. University, U.C. Berkeley and Santa Clara University) and their respective
18 officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively,
19 "Defendants' Releasees"). It is specifically understood and agreed to by the Parties that Plaintiff
20 is not releasing the alleged liability of any entity, besides K&M, that sold any of the Products to
21 the Retailers. For example, an entity known as Capri which may have sold some of the Products
22 to Follett during the relevant period is expressly excluded from the release in Paragraph 5.1.

23 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
24 binding resolution of any violation of Proposition 65 that have been or could have been asserted
25 in the Complaints against Defendants for their alleged failure to provide clear and reasonable
26 warnings of exposure to or identification of Listed Chemicals in the Products.

27 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waives all rights
28 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims

1 against the Defendants' Releasees arising under Proposition 65 related to each of the Defendants'
2 Releasees' alleged failures to warn about exposures to or identification of Listed Chemicals
3 contained in the Products (with the exception noted in the last two sentences in the first paragraph
4 above) and for all actions or statements made by Defendants or their attorneys or representatives,
5 in the course of responding to alleged violations of Proposition 65 by Defendants. Provided
6 however, Plaintiff shall remain free to institute any appropriate form of legal action to enforce the
7 provisions of this Consent Judgment.

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

13 **5.2 Defendants' Release of Plaintiff.** Defendants, and each of them, waive all rights
14 to institute any form of legal action against Plaintiff, or his attorneys or representatives, for all
15 actions taken or statements made by Plaintiff and his attorneys or representatives, in the course of
16 seeking enforcement of Proposition 65 in the Actions.

17 **6. COURT APPROVAL**

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

23 **7. SEVERABILITY**

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

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1 **8. ATTORNEYS' FEES**

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

6 **9. GOVERNING LAW**

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

12 **10. NOTICES**

13 All correspondence and notices required to be provided pursuant to this Consent Judgment
14 shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail,
15 return receipt requested or (ii) overnight courier on either Party by the other at the following
16 addresses. (Either Party, from time to time, may, pursuant to the methods prescribed above,
17 specify a change of address to which all future notices and other communications shall be sent.)

18 To K&M/Nordic Company, Inc.:

19 Bradford N. Kindberg, President
20 K&M/Nordic Company, Inc.
21 5 Tripps Lane
 Riverside, RI 02915

22 To Barnes & Noble College Booksellers, Inc.:

23 Max Roberts, President
24 Joel Friedman, Vice President General Merchandising
25 Barnes & Noble College Booksellers, Inc.
26 120 Mountain Road
 Basking Ridge, NJ 07920

27
28

1 To Follett Corporation:

2 Christopher Traut, President
3 Suhaib Ghazi, Staff Attorney
4 Follett Corporation
5 2233 West Street
6 River Grove, IL 60171

7 With a copies to:

8 Thomas N. FitzGibbon
9 Pfeiffer Thigpen & FitzGibbon LLP
10 233 Wilshire Boulevard, Suite 220
11 Santa Monica, CA 90401

12 Todd O. Maiden
13 Seyfarth Shaw LLP
14 560 Mission Street, Suite 3100
15 San Francisco, California 94105

16 Adam J. Thurston
17 Bryan Cave LLP
18 120 Broadway, Suite 300
19 Santa Monica, CA 90401

20 To Plaintiff:

21 Clifford A. Chanler
22 Chanler Law Group
23 71 Elm Street, Suite 8
24 New Canaan, CT 06840

25 **11. NO ADMISSIONS**

26 Nothing in this Consent Judgment shall constitute or be construed as an admission by
27 Defendants of any fact, finding, conclusion, issue of law, or violation of law, nor shall
28 compliance with this Consent Judgment constitute or be construed as an admission by Defendants
of any fact, finding, conclusion, issue of issue of law, or violation of law, such being specifically
denied by Defendants. Defendants reserve all of its rights and defenses with regard to any claim
by any party under Proposition 65 or otherwise. However, this section shall not diminish or
otherwise affect Defendants' obligations, responsibilities and duties under this Consent Judgment.

1 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

13 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

14 The Parties shall mutually employ their best efforts to support the entry of this Agreement
15 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
16 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
17 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
18 agree to file a Joint Motion to Approve the Agreement (“Joint Motion”), the first draft of which
19 Defendants’ counsel shall prepare, within a reasonable period of time after the Execution Date
20 (*i.e.*, not to exceed thirty (30) days unless otherwise agreed to by the Parties’ counsel based on
21 unanticipated circumstances). Plaintiff’s counsel shall prepare a declaration in support of the
22 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed
23 pursuant to Section 4. Defendants shall have no additional responsibility to Plaintiff’s counsel
24 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs
25 incurred with respect to the preparation and filing of the Joint Motion and its supporting
26 declaration or with regard to Plaintiff’s counsel appearing for a hearing or related proceedings
27 thereon.

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15. MODIFICATION

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

16. DEFENDANTS SALES DATA

Defendants understand that the sales data provided to counsel for Brimer by Defendants was a material factor upon which Brimer has relied to determine the amount of payments made pursuant to Health & Safety Code §25249.7(b) under this Agreement. Defendants represent that the sales data provided to plaintiff is true and accurate.

17. AUTHORIZATION

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

AGREED TO:
RUSSELL BRIMER

Date: 6-26-05

By: [Signature]
Russell Brimer

AGREED TO:
K&M/NORDIC COMPANY, INC.

Date: _____

By: _____

Its: _____

APPROVED AS TO FORM:

Date: _____

CHANLER LAW GROUP

By: _____

Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: _____

PFEIFFER THIGPEN & FITZGIBBON LLP

By: _____

Thomas N. FitzGibbon
Attorneys for Defendant
K&M/NORDIC COMPANY, INC.

1 **15. MODIFICATION**

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

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9 was a material factor upon which Brimer has relied to determine the amount of payments made
10 pursuant to Health & Safety Code §25249.7(b) under this Agreement. Defendants represent that
11 the sales data provided to plaintiff is true and accurate.

12 **17. AUTHORIZATION**

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

16 AGREED TO:
17 RUSSELL BRIMER

AGREED TO:
K&M/NORDIC COMPANY, INC.

18 Date: _____

Date: _____

19 By: _____
20 Russell Brimer

By: _____

Its: _____

21 APPROVED AS TO FORM:

APPROVED AS TO FORM:

22 Date: 5/2/05

Date: _____

23 CHANLER LAW GROUP

PFEIFFER THIGPEN & FITZGIBBON LLP

24 By: 

By: _____

25 Clifford A. Chanler
26 Attorneys for Plaintiff
27 RUSSELL BRIMER

Thomas N. FitzGibbon
Attorneys for Defendant
K&M/NORDIC COMPANY, INC.

1 15. MODIFICATION

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

7 16. DEFENDANTS SALES DATA

8 Defendants understand that the sales data provided to counsel for Brimer by Defendants
9 was a material factor upon which Brimer has relied to determine the amount of payments made
10 pursuant to Health & Safety Code §25249.7(b) under this Agreement. Defendants represent that
11 the sales data provided to plaintiff is true and accurate.
12

13 17. AUTHORIZATION

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

17 AGREED TO:
18 RUSSELL BRIMER
19 Date: _____

20 By: _____
Russell Brimer

21 APPROVED AS TO FORM:
22 Date: _____
23 CHANLER LAW GROUP

24 By: _____
25 Clifford A. Chanler
26 Attorneys for Plaintiff
27 RUSSELL BRIMER

AGREED TO:
K&M/NORDIC COMPANY, INC.
Date: 4/27/05

By: Robert J. Colman
Its: _____

APPROVED AS TO FORM:
Date: 4/27/2005
PFEIFFER THIGPEN & FITZGIBBON LLP

By: Thomas N. FitzGibbon
Thomas N. FitzGibbon
Attorneys for Defendant
K&M/NORDIC COMPANY, INC.

1 AGREED TO:
FOLLETT CORPORATION

2 Date: 4/28/05

4 By: [Signature]

6 Its: EVP, GC & Sec'y

7 APPROVED AS TO FORM:

8 Date: 29 April 2005

9 SEYFARTH SHAW LLP

10 By: [Signature]

11 Todd O. Maiden
12 Attorneys for Defendant
FOLLETT CORPORATION

AGREED TO:
BARNES & NOBLE COLLEGE
BOOKSELLERS, INC.

Date: _____

By: _____

Its: _____

APPROVED AS TO FORM:

Date: _____

BRYAN CAVE LLP

By: _____

Adam J. Thurston
Attorneys for Defendant
BARNES & NOBLE COLLEGE
BOOKSELLERS, INC.

14 Having reviewed the foregoing Stipulation and the Motion to Approve Consent Judgment,
15 and finding that the Proposed Consent Judgment complies with the requirements of Proposition
16 65 and its implementing regulations and that it is in the public interest to approve and enter the
17 foregoing Consent Judgment:

18 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

20 Date: _____

JUDGE OF THE SUPERIOR COURT

22 PTF: 2589

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AGREED TO:
FOLLETT CORPORATION

Date: _____

By: _____

Its: _____

APPROVED AS TO FORM:

Date: _____

SEYFARTH SHAW LLP

By: _____

Todd O. Maiden
Attorneys for Defendant
FOLLETT CORPORATION

AGREED TO:
BARNES & NOBLE COLLEGE
BOOKSELLERS, INC.

Date: April 29, 2005

By: Joel Friedman V.P. General

Its: [Signature] *merchandise*

APPROVED AS TO FORM:

Date: April 30, 2005

BRYAN CAVE LLP

By: [Signature]

Adam J. Thurston
Attorneys for Defendant
BARNES & NOBLE COLLEGE
BOOKSELLERS, INC.

Having reviewed the foregoing Stipulation and the Motion to Approve Consent Judgment, and finding that the Proposed Consent Judgment complies with the requirements of Proposition 65 and its implementing regulations and that it is in the public interest to approve and enter the foregoing Consent Judgment:

IT IS SO ORDERED, ADJUDGED AND DECREED.

Date: _____

JUDGE OF THE SUPERIOR COURT

PTF: 2589.4

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Exhibit A

All ceramic and glass beverageware with colored designs and/or artwork on the exterior including, but not limited to:

- Tulip Glass 20 oz. 2/Clear/(#8499239)
- Shot Glass (#6 41139 51261 5)
- Shooter (#6 41139 11101 6)



FILED
ALAMEDA COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

SEP 12 2005

UNLIMITED CIVIL JURISDICTION

CLERK OF THE SUPERIOR COURT

By M. [Signature]
Deputy

RUSSELL BRIMER,
Plaintiff,

v.

K&M/NORDIC COMPANY, INC.; NORDIC
COMPANY, INC.; FOLLETT
CORPORATION; CAL STUDENT STORE;
and DOES 1 through 150,
Defendants.

Alameda County
Case No.: RG-05-192649

**STIPULATION AND ~~(PROPOSED)~~
CONSENT JUDGMENT**

1. INTRODUCTION

1.1 **Plaintiff and Settling Defendants.** This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereafter "Brimer" or "Plaintiff"), and K&M/Nordic Company, Inc. (hereafter "K&M"), Barnes & Noble College Booksellers, Inc. (hereafter "BNCB"), and Follett Corporation and its subsidiaries (hereafter collectively referred to as "Follett"), with BNCB and Follett collectively and/or individually referred to as the "Retailers", K&M and the Retailers collectively referred to as the "Defendants", and Plaintiff and Defendants collectively referred to as the "Parties" and Brimer and Defendants each being a "Party."

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

1.3 **General Allegations.** Plaintiff alleges that Defendants have manufactured, distributed and/or sold in the State of California tulip glasses, shot glasses, mugs, and other ceramic and glass beverage ware with colored artwork, designs or markings on the exterior surface with materials that contain lead and/or cadmium that are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code

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1 §§ 25249.5 et seq., also known as Proposition 65, to cause cancer and birth defects (or other
2 reproductive harm). Lead and/or cadmium shall be referred to herein as “Listed Chemicals.”

3 1.4 **Product Descriptions.** The products that are covered by this Consent Judgment
4 are defined as follows: ceramic and glass beverageware manufactured, sold and/or distributed by
5 Defendants within the State of California with colored artwork, designs or markings on the
6 exterior surface including, by way of example and without limitation, glassware products listed at
7 Exhibit A. Such products collectively are referred to herein as the “Products.”

8 1.5 **Notices of Violation.** Beginning on October 18, 2004, Brimer served each of the
9 Defendants and various public enforcement agencies with documents, entitled “60-Day Notice of
10 Violation” (the “Notices”) that provided Defendants and such public enforcers with notice that
11 alleged that Defendants were in violation of Health & Safety Code § 25249.6 for failing to warn
12 purchasers that the Products that they sold expose users in California to lead and/or cadmium.

13 1.6 **The Complaints.** On January 6, 2005, Brimer, in the interest of the general public
14 in California, filed a complaint (hereafter referred to as the “Alameda Complaint” or the
15 “Alameda Action”) in the Superior Court for the County of Alameda against K&M, Nordic
16 Company, Inc., Follett, Cal Student Store, and Does 1 through 150, alleging violations of
17 Health & Safety Code § 25249.6 based on the alleged exposures to one or more of the Listed
18 Chemicals contained in the Products sold by Defendants. On January 18, 2005, Brimer, in the
19 interest of the general public in California, filed a complaint (hereafter referred to as the “Santa
20 Clara Complaint” or the “Santa Clara Action”) in the Superior Court for the County of Santa
21 Clara against BNCB, Santa Clara University Campus Bookstore, Santa Clara University, K&M,
22 Nordic Company, Inc., and Does 1 through 150, alleging violations of Health & Safety Code
23 § 25249.6 based on the alleged exposures to one or more of the Listed Chemicals contained in the
24 Products sold by Defendants. In addition, on January 20, 2005, Brimer, in the interest of the
25 general public in California, filed a complaint (hereafter referred to as the “Stanford Complaint”
26 or the “Stanford Action”) in the Superior Court for the County of Santa Clara against Stanford
27 University Bookstore, The Stanford Bookstore, Follett, and Does 1 through 150, alleging
28 violations of Health & Safety Code § 25249.6 based on the alleged exposures to one or more of

1 the Listed Chemicals contained in the Products sold by Defendants. The Alameda Action, Santa
2 Clara Action and Stanford Action are referred to herein as the "Actions."

3 1.7 **No Admission.** Defendants deny the material factual and legal allegations
4 contained in Plaintiff's Notices and Actions and maintain that all products that they have sold and
5 distributed in California including the Products have been and are in compliance with all laws and
6 regulations. Nothing in this Consent Judgment shall be construed as an admission by Defendants
7 of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement
8 constitute or be construed as an admission by Defendants of any fact, finding, conclusion, issue of
9 law or violation of law. However, this section shall not diminish or otherwise affect the
10 obligations, responsibilities and duties of Defendants under this Consent Judgment.

11 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
12 stipulate that this Court has jurisdiction over the allegations of violations contained in the Actions
13 and personal jurisdiction over Defendants as to the acts alleged in the Actions, that venue is
14 proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent
15 Judgment and to enforce the provisions thereof.

16 1.9 **Effective Date.** For purposes of this Consent Judgment, the "Effective Date" shall
17 be April 26, 2005.

18 1.10 **Dismissals.** Plaintiff agrees that the following defendants and Actions will be
19 dismissed, without prejudice, within five (5) business days of the Court's entry of Judgment
20 pursuant to this Consent Judgment, as set forth below:

- 21 (a) In the Alameda Action, Cal Student Store and Nordic Company, Inc.¹;
 - 22 (b) The entire Santa Clara Action; and
 - 23 (c) The entire Stanford Action.
- 24
25
26

27 ¹ Plaintiff's agreement to this dismissal is based upon the representations of K&M and Follett, respectively, that
28 neither Nordic Company, Inc. nor Cal Student Store are legal entities.

1 **2. INJUNCTIVE RELIEF: PROPOSITION 65**

2 **2.1 WARNINGS AND REFORMULATION OBLIGATIONS**

3 (a) **Required Warnings.** After the Effective Date, Defendants² shall not offer
4 for sale in California any Products containing the Listed Chemicals, unless warnings are given in
5 accordance with one or more provisions in subsection 2.2 below.

6 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and
7 2.2 below shall not apply to:

8 (i) any Products manufactured before December 31, 2004, or

9 (ii) Reformulated Products as defined in subsection 2.3 below.

10 **2.2 CLEAR AND REASONABLE WARNINGS**

11 In order to comply with the applicable warning obligations imposed by Section 2.1,
12 Defendants shall provide one or more of the warnings set forth in subsections (a), (b) or (c) below
13 and in the manner specified in each such subsection.

14 (a) **Product Labeling.** A warning affixed to the packaging, labeling or
15 directly to or on a Product by Defendants, their agents, or the manufacturer, importer, or
16 distributor of the Product, which shall be deemed to be clear within the meaning of Proposition
17 65, shall state, verbatim or in substantially similar language, as follows:

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

21 or

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

26
27 ² K&M shall only offer Products for sale in California after December 31, 2005 in accordance with Section 2.4,
28 regardless of the exemptions in Section 2.1(b)(i).

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

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

12 (i) Point of Sale warnings may be provided through one or more signs
13 posted at or near the point of sale or display of the Products, and shall be deemed to be clear
14 within the meaning of Proposition 65, if they state, verbatim or in substantially similar language,
15 as follows:

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

20 or

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

25 (ii) A point of sale warning provided pursuant to subsection 2.2(b)(i)
26 shall be prominently placed with such conspicuousness as compared with other words,
27 statements, designs, or devices as to render it likely to be read and understood by an ordinary
28 individual under customary conditions of use or purchase and shall be placed or written in a

1 manner such that the consumer understands to which *specific* Products the warnings apply so as
2 to minimize if not eliminate the chances that an overwarning situation will arise. Any changes to
3 the format, or material changes to the language of the warning required for Products by this
4 subsection, shall only be made following: (1) approval of Plaintiff; (2) approval from the
5 California Attorney General's Office, provided that written notice of at least fifteen (15) days is
6 given to Plaintiff for the opportunity to comment; or (3) Court approval.

7 (iii) If, between the Effective Date and December 31, 2005, K&M
8 intends to utilize point of sale warnings to comply with this Consent Judgment, it must provide
9 written notice as required by this Consent Judgment to each entity to whom it ships the Products
10 for sale in California and obtain the written consent of such entity before shipping the Products.
11 The notice provided by K&M shall include a copy of the injunctive relief portions of this Consent
12 Judgment and any required warning materials including, as appropriate, signs and/or stickers. If
13 K&M has obtained the consent of its customers to provide point of sale warnings, K&M shall not
14 be found to have violated this Consent Judgment if it has complied with the terms of this Consent
15 Judgment and has proof that it transmitted the requisite warnings in the manner provided herein.

16 (c) **Internet Sales** For Products that are sold by any of the Defendants from
17 the internet to California residents, a warning containing the language in subsection 2.2(a) shall
18 be included, at Defendants' sole option, either: (a) on the website; or (b) with the Product when it
19 is shipped to an address in California. Any warnings given on a website shall identify the *specific*
20 Products to which the warning applies.

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

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

8 **2.3 REFORMULATION STANDARDS:** Products satisfying the conditions of
9 section 2.3(a) and 2.3(b) are referred to as "Reformulated Products" and are defined as follows:

10 (a) If the colored artwork, designs or markings on the exterior surface of the
11 Product do not extend into the top 20 millimeters of the ware (*i.e.*, only appear below the exterior
12 portion of the lip and rim area as defined by American Society of Testing and Materials Standard
13 Test Method C 927-99, hereinafter the "Lip and Rim Area"), and produce a test result no higher
14 than 1.0 micrograms (ug) of lead and 4.0 micrograms (ug) of cadmium using a Ghost Wipe™
15 test applied on the decorated portions of the surface of the Product performed as outlined in
16 NIOSH method no. 9100; or

17 (b) If the Product utilizes materials for all colored artwork, designs or
18 markings containing no more than six one-hundredths of one percent (0.06%) lead and twenty-
19 four one hundredths of one percent (0.24%) cadmium by weight as measured at Defendants'
20 option, either before or after the material is fired onto (or otherwise affixed to) the Product, using
21 a sample size of the materials in question measuring approximately 50-100 mg and a test method
22 of sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less
23 than 600 parts per million ("ppm").³

24 **2.4 REFORMULATION COMMITMENT.** By entering into this Stipulation and
25 Consent Judgment:

26 _____
27 ³ If a Defendant tests the decoration after it is affixed to the Product, the percentage of the Listed Chemical by
28 weight must relate only to the other portions of the decorating material and not include any calculation of non-
decorating material.

1 (a) At present K&M does not sell any Products in the State of California. If
2 K&M elects to re-enter the California market for the Products, it commits that it will only offer
3 Reformulated Products for sale in California after December 31, 2005; and

4 (b) Subject to the exception set forth in the following sentence, the Retailers
5 shall require that each of their vendors of the Products certify in writing that all shipments of the
6 Products for sale in California after December 31, 2005, are Reformulated Products, and the
7 Retailers shall be entitled to rely upon such certification. If the Retailers cannot, after
8 commercially reasonable best efforts, obtain exclusively Reformulated Products for sale in
9 California by December 31, 2005, then (a) by January 15, 2006, that company shall submit a
10 verified written report to the mediator, with a copy to Plaintiff, certifying the extent to which its
11 commercially reasonable best efforts to obtain Reformulated Products were unsuccessful, and (b)
12 thereafter, with respect to those Products for which the Retailers could not reasonably obtain
13 Reformulated Product-equivalents, the Retailers will comply with Sections 2.1 and 2.2 in
14 connection with their sales of such non-Reformulated Products in California.

15 **3. MONETARY PAYMENTS.**

16 3.1 **Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to
17 Health & Safety Code Section 25249.7(b), Defendants shall pay \$20,000 in civil penalties. The
18 penalty payment shall be made payable to "Chanler Law Group in Trust For Russell Brimer," and
19 shall be delivered to Plaintiff's counsel on or before May 2, 2005, at the following address:

20 CHANLER LAW GROUP
21 Attn: Clifford A. Chanler
22 71 Elm Street, Suite 8
New Canaan, CT 06840

23 K&M shall pay its portion of the civil penalty payment (\$9,000.00) on or before May 31,
24 2005.

25 (a) In the event that Defendants pay any penalty and the Consent Judgment is
26 not thereafter approved and entered by the Court, Brimer shall return any penalty funds paid
27
28

1 under this agreement within fifteen (15) days of receipt of a written request from Defendants
2 following notice of the issuance of the Court's decision.

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

8 (c) **Apportionment of Penalties Received.** After Court approval of this
9 Consent Judgment pursuant to section 6, all penalty monies received shall be apportioned by
10 Plaintiff in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to
11 the State of California's Office of Environmental Health Hazard Assessment and the remaining
12 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code
13 § 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of
14 California the appropriate civil penalties paid in accordance with this section.

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

16 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
17 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
18 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
19 Defendants then expressed a desire to resolve the fee and cost issue shortly after the other
20 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
21 the compensation due to Plaintiff and his counsel under the private attorney general doctrine
22 codified at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date
23 of the Agreement. Under the private attorney general doctrine, Defendants shall reimburse
24 Plaintiff and his counsel for fees and costs, incurred as a result of investigating, bringing the
25 Actions (as well as any other matters reasonably related to the sale of Defendants' Products
26 allegedly sold in violation of Proposition 65) to Defendants' attention, litigating and negotiating a
27 settlement in the public interest. Defendants shall pay Plaintiff and his counsel \$80,000 for all
28 attorneys' fees, expert and investigation fees, and litigation costs related to the various claims

1 made against Defendants, their downstream customers and Defendants' Releasees. The payment
2 shall be made payable to the "Chanler Law Group" and shall be delivered to Plaintiff's counsel
3 on or before May 2, 2005, at the following address:

4 CHANLER LAW GROUP
5 Attn: Clifford A. Chanler
6 71 Elm Street, Suite 8
7 New Canaan, CT 06840

8 K&M shall pay its portion of the attorneys' fees payment (\$36,000.00) on or before May
9 31, 2005.

10 4.2 Plaintiff has requested that it be provided supplemental attorneys' fees if the
11 negotiation of the Consent Judgment takes more time than expected. Plaintiff has budgeted 5.0
12 hours to complete this task. In the event that more than 5.0 hours are legitimately and necessarily
13 incurred and billed by Plaintiff's counsel to accomplish this task, Plaintiff may seek
14 reimbursement of these fees through a Mediator Submission Process, as explained below. The
15 Mediator Submission process shall proceed as follows: (1) counsel for Plaintiff shall submit a
16 written Declaration under penalty of perjury to the Mediator and to defense counsel identifying
17 all the hours incurred to complete the negotiation of the Consent Judgment, the reasons why the
18 extra hours should be paid for by Defendants, and the amount of additional fees requested, (2)
19 Defendants shall have 10 days to submit to the Mediator and Plaintiff's counsel any response to
20 the Plaintiff's submission, and (3) within 20 days of the Defendants' submission, the Mediator
21 shall make a final and binding determination of the additional fees to which Plaintiff's counsel is
22 entitled. The Mediator may conduct a telephonic hearing in connection with this process if he so
23 elects, in his sole discretion. The Mediator shall send a written report to all Parties identifying the
24 additional amount to which Plaintiff's counsel is due, and this report shall specify a deadline for
25 payment of these amounts, as well as an allocation among the Defendants.

26 4.3 Except as specifically provided in this Consent Judgment, Defendants shall have
27 no further obligation with regard to reimbursement of Plaintiff's attorneys' fees and costs with
28 regard to the Products covered in the Actions, including with respect to all actions needed for

1 approval, including the Motion to Approve Consent Judgment and all Attorney General
2 notifications.

3 **5. RELEASE OF ALL CLAIMS**

4 **5.1 Plaintiff's Release of Defendants.** In further consideration of the promises and
5 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
6 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
7 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
8 participate in, directly or indirectly, any form of legal action and release all claims, including,
9 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
10 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
11 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
12 unknown, fixed or contingent, arising under Proposition 65 related to Defendants' or Defendants'
13 Releasees' alleged failure to warn about exposures to or identification of Listed Chemicals
14 contained in the Products (collectively "Claims"), against Defendants and each of their
15 distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers, customers, owners,
16 purchasers, users, parent companies, corporate affiliates, subsidiaries, partner-schools (The
17 Leland Stanford Jr. University, U.C. Berkeley and Santa Clara University) and their respective
18 officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively,
19 "Defendants' Releasees"). It is specifically understood and agreed to by the Parties that Plaintiff
20 is not releasing the alleged liability of any entity, besides K&M, that sold any of the Products to
21 the Retailers. For example, an entity known as Capri which may have sold some of the Products
22 to Follett during the relevant period is expressly excluded from the release in Paragraph 5.1.

23 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
24 binding resolution of any violation of Proposition 65 that have been or could have been asserted
25 in the Complaints against Defendants for their alleged failure to provide clear and reasonable
26 warnings of exposure to or identification of Listed Chemicals in the Products.

27 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waives all rights
28 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims

1 against the Defendants' Releasees arising under Proposition 65 related to each of the Defendants'
2 Releasees' alleged failures to warn about exposures to or identification of Listed Chemicals
3 contained in the Products (with the exception noted in the last two sentences in the first paragraph
4 above) and for all actions or statements made by Defendants or their attorneys or representatives,
5 in the course of responding to alleged violations of Proposition 65 by Defendants. Provided
6 however, Plaintiff shall remain free to institute any appropriate form of legal action to enforce the
7 provisions of this Consent Judgment.

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

13 **5.2 Defendants' Release of Plaintiff.** Defendants, and each of them, waive all rights
14 to institute any form of legal action against Plaintiff, or his attorneys or representatives, for all
15 actions taken or statements made by Plaintiff and his attorneys or representatives, in the course of
16 seeking enforcement of Proposition 65 in the Actions.

17 **6. COURT APPROVAL**

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

23 **7. SEVERABILITY**

24 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
25 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
26 provisions remaining shall not be adversely affected.
27
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1 **8. ATTORNEYS' FEES**

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

6 **9. GOVERNING LAW**

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

12 **10. NOTICES**

13 All correspondence and notices required to be provided pursuant to this Consent Judgment
14 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
15 return receipt requested or (ii) overnight courier on either Party by the other at the following
16 addresses. (Either Party, from time to time, may, pursuant to the methods prescribed above,
17 specify a change of address to which all future notices and other communications shall be sent.)

18 To K&M/Nordic Company, Inc.:

19 Bradford N. Kindberg, President
20 K&M/Nordic Company, Inc.
21 5 Tripps Lane
Riverside, RI 02915

22 To Barnes & Noble College Booksellers, Inc.:

23 Max Roberts, President
24 Joel Friedman, Vice President General Merchandising
25 Barnes & Noble College Booksellers, Inc.
26 120 Mountain Road
Basking Ridge, NJ 07920

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To Follett Corporation:

Christopher Traut, President
Suhaib Ghazi, Staff Attorney
Follett Corporation
2233 West Street
River Grove, IL 60171

With a copies to:

Thomas N. FitzGibbon
Pfeiffer Thigpen & FitzGibbon LLP
233 Wilshire Boulevard, Suite 220
Santa Monica, CA 90401

Todd O. Maiden
Seyfarth Shaw LLP
560 Mission Street, Suite 3100
San Francisco, California 94105

Adam J. Thurston
Bryan Cave LLP
120 Broadway, Suite 300
Santa Monica, CA 90401

To Plaintiff:

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

11. NO ADMISSIONS

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

1 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

13 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

14 The Parties shall mutually employ their best efforts to support the entry of this Agreement
15 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
16 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
17 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
18 agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which
19 Defendants' counsel shall prepare, within a reasonable period of time after the Execution Date
20 (*i.e.*, not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on
21 unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the
22 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed
23 pursuant to Section 4. Defendants shall have no additional responsibility to Plaintiff's counsel
24 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs
25 incurred with respect to the preparation and filing of the Joint Motion and its supporting
26 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings
27 thereon.
28

1 15. **MODIFICATION**

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

7 16. **DEFENDANTS SALES DATA**

8 Defendants understand that the sales data provided to counsel for Brimer by Defendants
9 was a material factor upon which Brimer has relied to determine the amount of payments made
10 pursuant to Health & Safety Code §25249.7(b) under this Agreement. Defendants represent that
11 the sales data provided to plaintiff is true and accurate.

12 17. **AUTHORIZATION**

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

16 **AGREED TO:**
17 **RUSSELL BRIMER**

18 Date: 4-26-05

19 By: [Signature]
20 **Russell Brimer**

AGREED TO:
K&M/NORDIC COMPANY, INC.

Date: _____

By: _____

Its: _____

21 **APPROVED AS TO FORM:**

22 Date: _____

23 **CHANLER LAW GROUP**

24 By: _____

25 **Clifford A. Chanler**
26 **Attorneys for Plaintiff**
27 **RUSSELL BRIMER**

APPROVED AS TO FORM:

Date: _____

PFEIFFER THIGPEN & FITZGIBBON LLP

By: _____

Thomas N. FitzGibbon
Attorneys for Defendant
K&M/NORDIC COMPANY, INC.

1 **15. MODIFICATION**

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

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9 was a material factor upon which Brimer has relied to determine the amount of payments made
10 pursuant to Health & Safety Code §25249.7(b) under this Agreement. Defendants represent that
11 the sales data provided to plaintiff is true and accurate.

12 **17. AUTHORIZATION**

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

16 **AGREED TO:**
17 **RUSSELL BRIMER**
18 Date: _____


AGREED TO:
K&M/NORDIC COMPANY, INC.
Date: _____

19 By: _____
20 Russell Brimer

By: _____
Its: _____

21 **APPROVED AS TO FORM:**
22 Date: 5/2/05

APPROVED AS TO FORM:
Date: _____

23 **CHANLER LAW GROUP**
24 
25 By: _____
26 Clifford A. Chanler
27 Attorneys for Plaintiff
RUSSELL BRIMER

PFEIFFER THIGPEN & FITZGIBBON LLP
By: _____
Thomas N. FitzGibbon
Attorneys for Defendant
K&M/NORDIC COMPANY, INC.

28

1 15. MODIFICATION

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

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9 was a material factor upon which Brimer has relied to determine the amount of payments made
10 pursuant to Health & Safety Code §25249.7(b) under this Agreement. Defendants represent that
11 the sales data provided to plaintiff is true and accurate.

12 17. AUTHORIZATION

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

16 AGREED TO:
17 RUSSELL BRIMER

18 Date: _____

19 By: _____
20 Russell Brimer

AGREED TO:
K&M/NORDIC COMPANY, INC.

21 Date: 4/27/05

22 By: Robert S. Colman

23 Its: _____

24 APPROVED AS TO FORM:

25 Date: _____

26 CHANLER LAW GROUP

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

APPROVED AS TO FORM:

29 Date: 4/27/2005

30 PFEIFFER THIGPEN & FITZGIBBON LLP

31 By: Thomas N. FitzGibbon
32 Thomas N. FitzGibbon
Attorneys for Defendant
K&M/NORDIC COMPANY, INC.

1 AGREED TO:
2 FOLLETT CORPORATION

3 Date: 4/28/05

4 By: [Signature]

5 Its: EVP, GC & Sec'y

6 APPROVED AS TO FORM:

7 Date: 29 April 2005

8 SEYFARTH SHAW LLP

9 By: [Signature]

10 Todd O. Maiden
11 Attorneys for Defendant
12 FOLLETT CORPORATION

AGREED TO:
BARNES & NOBLE COLLEGE
BOOKSELLERS, INC.

Date: _____

By: _____

Its: _____

APPROVED AS TO FORM:

Date: _____

BRYAN CAVE LLP

By: _____

Adam J. Thurston
Attorneys for Defendant
BARNES & NOBLE COLLEGE
BOOKSELLERS, INC.

14 Having reviewed the foregoing Stipulation and the Motion to Approve Consent Judgment,
15 and finding that the Proposed Consent Judgment complies with the requirements of Proposition
16 65 and its implementing regulations and that it is in the public interest to approve and enter the
17 foregoing Consent Judgment:

18 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

19 Date: _____

20 _____
21 JUDGE OF THE SUPERIOR COURT

22 PTF: 2589.4

1 AGREED TO:
2 FOLLETT CORPORATION

3 Date: _____

4 By: _____

5 Its: _____

6 APPROVED AS TO FORM:

7 Date: _____

8 SEYFARTH SHAW LLP

9 By: _____

10 Todd O. Maiden
11 Attorneys for Defendant
12 FOLLETT CORPORATION

AGREED TO:
BARNES & NOBLE COLLEGE
BOOKSELLERS, INC.

Date: April 29, 2005

By: Joel Friedman V.P. General

Its: Joel Friedman *merchandise*

APPROVED AS TO FORM:

Date: April 30, 2005

BRYAN CAVE LLP

By: [Signature]

Adam J. Thurston
Attorneys for Defendant
BARNES & NOBLE COLLEGE
BOOKSELLERS, INC.

14 Having reviewed the foregoing Stipulation and the Motion to Approve Consent Judgment,
15 and finding that the Proposed Consent Judgment complies with the requirements of Proposition
16 65 and its implementing regulations and that it is in the public interest to approve and enter the
17 foregoing Consent Judgment:

18 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

19 Date: _____

20 _____
21 JUDGE OF THE SUPERIOR COURT

22 PTP: 2589.4

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Exhibit A

All ceramic and glass beverageware with colored designs and/or artwork on the exterior including, but not limited to:

- Tulip Glass 20 oz. 2/Clear/(#8499239)
- Shot Glass (#6 41139 51261 5)
- Shooter (#6 41139 11101 6)