

(ENDORSED)

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CLERK
COUNTY OF SANTA CLARA
BY _____ DEPUTY

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11 Attorneys for Plaintiff
12 Russell Brimer

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SANTA CLARA
15 UNLIMITED CIVIL JURISDICTION

16 RUSSELL BRIMER,
17 Plaintiff,
18 v.
19 DAVE & BUSTER'S, INC.; and DOES 1
20 through 150,
21 Defendants.

Case No. 105-CV-034242

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

Date: February 14, 2006
Time: 9:00 A.M.
Dept.: 10
Judge: Hon. Neal A. Cabrinha

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

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

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

16 IT IS SO ORDERED.

17 Dated: ^{Apr. 19,} ~~February 14,~~ 2006

NEAL A. CABRINHA

Hon. Neal A. Cabrinha
JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

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9 655 Redwood Highway, Suite 216
10 Mill Valley, CA 94941
11 Telephone: (415) 380-9222
12 Facsimile: (415) 380-9223

13 Attorneys for Plaintiff
14 Russell Brimer

15 Ryan T. Dunn (State Bar No. 215383)
16 PHILLIPS, SPALLAS & ANGSTADT LLP
17 650 California Street, 10th Floor
18 San Francisco, CA 94108
19 Telephone: (415) 278-9400
20 Facsimile: (415) 278-9411

21 Attorneys for Defendants
22 Dave & Buster's, Inc.

23 SUPERIOR COURT OF THE STATE OF CALIFORNIA
24 IN AND FOR THE COUNTY OF SANTA CLARA
25 UNLIMITED CIVIL JURISDICTION

26 RUSSELL BRIMER,

27 Plaintiff,

28 v.

DAVE & BUSTER'S, INC.; and DOES 1
through 150,,

Defendants.

Case No. 105-CV-034242

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

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and
3 between plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”) and Dave & Buster’s, Inc.
4 (hereafter “D&B”), with Plaintiff and D&B collectively referred to as the “Parties” and Brimer
5 and D&B each being a “Party.”

6 **1.2 Plaintiff.** Brimer is an individual residing in Alameda County, California who
7 seeks to promote awareness of exposures to toxic chemicals and improve human health by
8 reducing or eliminating hazardous substances contained in consumer and industrial products.

9 **1.3 General Allegations.** Plaintiff alleges that D&B has manufactured, distributed,
10 furnished and/or sold in the State of California shot glasses, and other glassware and ceramic
11 products intended to hold food and/or beverages with colored artwork, designs or markings on the
12 exterior surface with materials that contain lead and/or cadmium that are listed pursuant to the
13 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
14 §§ 25249.5 et seq., also known as Proposition 65, to cause cancer and birth defects (or other
15 reproductive harm). Lead and/or cadmium shall be referred to herein as “Listed Chemicals.”

16 **1.4 Product Descriptions.** The products that are covered by this Consent Judgment
17 are defined as follows: glassware and ceramic products intended to hold food and/or beverages
18 manufactured, sold, furnished and/or distributed by D&B with colored artwork, designs or
19 markings on the exterior surface including, by way of example and without limitation, glassware
20 products contained in the items listed at Exhibit A. Such products collectively are referred to
21 herein as the “Products.”

22 **1.5 Notices of Violation.** Beginning on October 18, 2004, Brimer served D&B and
23 various public enforcement agencies with documents, entitled “60-Day Notice of Violation”
24 (“Notice”) that provided D&B and such public enforcers with notice that alleged that D&B was in
25 violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products
26 that it sold expose users in California to lead and/or cadmium (hereafter “the Listed Chemicals”).
27 On or before July 15, 2005, plaintiff shall serve a Supplemental Notice on D & B and all required
28 public enforcement agencies expanding plaintiff’s prior allegations concerning the Products to

1 include ceramic products intended to hold food and/or beverages. If no public enforcer filed an
2 action based on the Supplemental Notice, such ceramic products intended to hold food and/or
3 beverages shall be included as Products within this Consent Judgment.

4 **1.6 Complaint.** On January 20, 2005, Brimer, in the interest of the general public in
5 California, filed a complaint entitled *Russell Brimer v. Dave & Buster's, Inc., et al.*, Case No. 105
6 CV 034242 (hereafter referred to as the "Complaint" or the "Action") in the Superior Court for
7 the County of Santa Clara against D&B and Does 1 through 150, alleging violations of Health &
8 Safety Code § 25249.6 based on the alleged exposures to one or more of the Listed Chemicals
9 contained in certain products furnished and/or sold by D&B.

10 **1.7 No Admission.** D&B denies the material factual and legal allegations contained in
11 Plaintiff's Notices and Complaint and maintains that all products that it has furnished, sold and/or
12 distributed in California including the Products have been and are in compliance with all laws.
13 Nothing in this Consent Judgment shall be construed as an admission by D&B of any fact,
14 finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or
15 be construed as an admission by D&B of any fact, finding, conclusion, issue of law or violation
16 of law. However, this section shall not diminish or otherwise affect the obligations,
17 responsibilities and duties of D&B under this Consent Judgment.

18 **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
19 stipulate that this Court has jurisdiction over the allegations of violations contained in the
20 Complaint and personal jurisdiction over D&B as to the acts alleged in the Complaint, that venue
21 is proper in the County of Santa Clara, and that this Court has jurisdiction to enter this Consent
22 Judgment and to enforce the provisions thereof.

23 **1.9 Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall be
24 June 30, 2005.

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

26 **2.1 WARNINGS AND REFORMULATION OBLIGATIONS**

27 **(a) Required Warnings.** After the Effective Date, D&B shall not sell,
28 furnish or transmit to any individual, distributor or retailer in California or any entity located

1 outside of California who D&B knows or should know in the exercise of reasonable diligence
2 will offer for sale in California any Products containing the Listed Chemicals, unless warnings are
3 given in accordance with one or more provisions in subsection 2.2 below.

4 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and
5 2.2 below shall not apply to:

6 (i) Reformulated Products as defined in subsection 2.3 below.

7 **2.2 CLEAR AND REASONABLE WARNINGS**

8 (a) **Product Labeling.** A warning is affixed to the packaging, labeling or
9 directly to or on a Product by D&B, its agent, or the manufacturer, importer, or distributor of the
10 Product that states:

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

17 **or**

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

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

¹ This warning is to be used only when the Products are sold as a set.

1 (b) **Point-of-Sale Warnings.** D&B may execute its warning obligations,
2 where applicable, through arranging for the posting of signs at D&B locations in the State of
3 California at which Products are used or sold, in accordance with the terms specified in
4 subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii).

5 (i) Point of Sale warnings may be provided through one or more signs
6 posted at or near the point of use, sale or display of the Products that state:

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

12 **or**

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

19 *(List Products to by product name, pattern, type and size)*

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

1 (iii) If D&B intends to utilize point of sale warnings to comply with this
2 Consent Judgment, it must provide written notice as required by this Consent Judgment to each
3 entity to whom D&B ships the Products for sale in California, obtain the written consent of such
4 entity before shipping the Products and secure their agreement to ensure that such warnings will
5 be posted at the point of sale in California. The notice provided by D&B shall include a copy of
6 this Consent Judgment and any required warning materials including, as appropriate, signs and/or
7 stickers. If D&B has obtained the consent of its retailers to provide point of sale warnings, D&B
8 shall not be found to have violated this Consent Judgment if it has complied with the terms of this
9 Consent Judgment and has proof that it transmitted the requisite warnings in the manner provided
10 herein.

11 **2.3 REFORMULATION STANDARDS:** Products satisfying the conditions of
12 section 2.3(a) and 2.3(b) are referred to as “Reformulated Products” and are defined as follows:

13 (a) If the colored artwork, designs or markings on the exterior surface of the
14 Product do not extend into the top 20 millimeters of the ware (*i.e.*, only appear below the exterior
15 portion of the lip and rim area as defined by American Society of Testing and Materials Standard
16 Test Method C 927-99, hereinafter the “Lip and Rim Area”), produce a test result no higher than
17 1.0 micrograms (“ug”) of lead and 4.0 micrograms (ug) of cadmium using a Ghost Wipe™ test
18 applied on the decorated portions of the surface of the Product performed as outlined in NIOSH
19 method no. 9100; or

20 (b) If the Product utilizes paints for all colored artwork, designs or markings
21 containing six one-hundredths of one percent (0.06%) lead and cadmium or less by weight as
22 measured at D&B’s option, either before or after the material is fired onto (or otherwise affixed
23 to) the Product, using a sample size of the materials in question measuring approximately 50-
24 100 mg and a test method of sufficient sensitivity to establish a limit of quantitation (as
25 distinguished from detection) of less than 600 parts per million (“ppm”).²

26 _____
27 ² If D&B 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 (c) If the Product has colored artwork, designs or markings on the exterior
2 surface within the Lip and Rim area, it must utilize paints containing "no detectable lead or
3 cadmium" for all colored artwork, designs or markings within the Lip and Rim area. For
4 purposed of this subsection, "no detectable lead or cadmium" shall mean that neither lead nor
5 cadmium is detected at a level above two one-hundredths of one percent (0.02%) for lead or eight
6 one-hundredths of one percent (0.08%) for cadmium by weight, respectively as measured at the
7 option of D&B or the manufacturer or distributor of the Product, either before or after the
8 material is fired onto (or otherwise affixed to) the Product, using a sample size of the materials in
9 question measuring approximately 50-100 mg and a test method of sufficient sensitivity to
10 establish a limit of quantitation (as distinguished from detection) of less than 600 parts per million
11 ("ppm")³

12 2.4 **REFORMULATION COMMITMENT.** By entering into this Stipulation and
13 Consent Judgment, D&B hereby commits that it will only furnish and sell Reformulated
14 Products, after January 1, 2007.

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), D&B shall pay \$32,000 in civil penalties. The penalty
18 payment shall be made payable to "Chanler Law Group in Trust For Russell Brimer," and shall be
19 delivered to Plaintiff's counsel on or before June 30, 2005, at the following address:

20
21 CHANLER LAW GROUP
22 Attn: Clifford A. Chanler
23 71 Elm Street, Suite 8
24 New Canaan, CT 06840

25 (a) In the event that D&B pays any penalty and the Consent Judgment is not
26 thereafter approved and entered by the Court, Brimer shall return any penalty funds paid under

27
28 ³ See footnote 2 above.

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

3 (b) The Parties agree that D&B's potential interest in and ability to acquire and
4 market Reformulated Products is to be accounted for in this section and, since it is not a remedy
5 provided for by law, the absence of D&B previously acquiring, manufacturing, marketing or
6 selling Reformulated Products is not relevant to the establishment of a penalty amount pursuant to
7 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 D&B then expressed a desire to resolve the fee and cost issue shortly after the other settlement
20 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
21 compensation due to Plaintiff and his counsel under the private attorney general doctrine codified
22 at Code of Civil Procedure §1021.5 for all work performed through the Effective Date of the
23 Agreement. Under the private attorney general doctrine, D&B shall reimburse Plaintiff and his
24 counsel for fees and costs, incurred as a result of investigating, bringing this matter (as well as
25 any other matters reasonably related to the furnishing and/or sale of D&B's Products allegedly
26 sold in violation of Proposition 65) to D&B's attention, litigating and negotiating a settlement in
27 the public interest. D&B shall pay Plaintiff and his counsel \$40,000 for all attorneys' fees, expert
28 and investigation fees, and litigation costs related to the various claims made against D&B. The

1 payment shall be made payable to the "Chanler Law Group" and shall be delivered to Plaintiff's
2 counsel on or before June 30, 2005, at the following address:

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

7 4.2 Except as specifically provided in this Consent Judgment, D&B shall have no
8 further obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with
9 regard to the Products covered in this Action.

10 **5. RELEASE OF ALL CLAIMS**

11 5.1 **Plaintiff's Release of D&B.** In further consideration of the promises and
12 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
13 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors
14 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
15 participate in, directly or indirectly, any form of legal action and release all claims, including,
16 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
17 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
18 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
19 unknown, fixed or contingent (collectively "Claims"), against D&B and each of its licensors,
20 licensees, auctioneers, dealers, customers, owners, purchasers, users, parent companies, corporate
21 affiliates, subsidiaries and their respective officers, directors, attorneys, representatives,
22 shareholders, agents, and employees (collectively, "D&B Releasees") arising under
23 Proposition 65, related to D&B's or D&B Releasees' alleged failure to warn about exposures to
24 or identification of Listed Chemicals contained in the Products.

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

1 In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waive all rights
2 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims
3 against the D&B Releasees arising under Proposition 65, related to each of the D&B Releasees'
4 alleged failures to warn about exposures to or identification of Listed Chemicals contained in the
5 Products and for all actions or statements made by D&B or its attorneys or representatives, in the
6 course of responding to alleged violations of Proposition 65 by D&B. Provided however, The
7 Parties shall remain free to institute any form of legal action to enforce the provisions of this
8 Consent Judgment.

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

14 This release expressly excludes any entity that manufactured or supplied any of the
15 Products to D&B.

16 5.2 **D&B's Release of Plaintiff.** D&B waives all rights to institute any form of legal
17 action against Plaintiff, or his attorneys or representatives, for all actions taken or statements
18 made by Plaintiff and his attorneys or representatives, in the course of seeking enforcement of
19 Proposition 65 in this Action.

20 **6. COURT APPROVAL**

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

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1 **7. SEVERABILITY**

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

5 **8. ATTORNEYS' FEES**

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

10 **9. GOVERNING LAW**

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

16 **10. NOTICES**

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

22 To D&B:

23 Dave O. Corriveau, President
24 Dave & Buster's, Inc.
25 2481 Manana Drive
 Dallas, TX 75220

26 With a copy to:

27 Robert K. Phillips, Esq.
28 Phillips, Spallas & Angstadt LLP

1 650 California Street, 10th Floor
2 San Francisco, CA 94108

3 To Plaintiff:

4 Clifford A. Chanler
5 Chanler Law Group
6 71 Elm Street, Suite 8
7 New Canaan, CT 06840

8 **11. NO ADMISSIONS**

9 Nothing in this Consent Judgment shall constitute or be construed as an admission by
10 D&B of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with
11 this Consent Judgment constitute or be construed as an admission by D&B of any fact, finding,
12 conclusion, issue of issue of law, or violation of law, such being specifically denied by D&B.
13 D&B reserves all of its rights and defenses with regard to any claim by any party under
14 Proposition 65 or otherwise. However, this section shall not diminish or otherwise affect D&B's
15 obligations, responsibilities and duties under this Consent Judgment.

16 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

21 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
22 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
23 present this Consent Judgment to the California Attorney General's Office within five (5) days
24 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment
25 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date
26 a hearing is scheduled on such motion in the Superior Court for the City and County of Santa
27 Clara unless the Court allows a shorter period of time.

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1 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

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

15 **15. MODIFICATION**

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

21 **16. AUTHORIZATION**

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

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AGREED TO:

AGREED TO:

Date: 6.30.05

Date:

By: 
Plaintiff RUSSELL BRIMER

By:
Defendant DAVE & BUSTER'S, INC.

APPROVED AS TO FORM:


APPROVED AS TO FORM:

Date: 6/30/05

Date:

PARAS LAW GROUP

PHILLIPS, SPALLAS & ANGSTADT LLP

By: 
Daniel Bornstein
Attorneys for Plaintiff
RUSSELL BRIMER

By:
Ryan T. Dunn
Attorney for Defendant
DAVE & BUSTER'S, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

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Date:

Date:

By:
Plaintiff RUSSELL BRIMER

By: 
Defendant DAVE & BUSTER'S, INC.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date:

Date:

PARAS LAW GROUP

PHILLIPS, SPALLAS & ANGSTADT LLP

By:
Daniel Bornstein
Attorneys for Plaintiff
RUSSELL BRIMER

By:
Ryan T. Dunn
Attorney for Defendant
DAVE & BUSTER'S, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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Date:

Date:

By:
Plaintiff RUSSELL BRIMER

By:
Defendant DAVE & BUSTER'S, INC.

APPROVED AS TO FORM:

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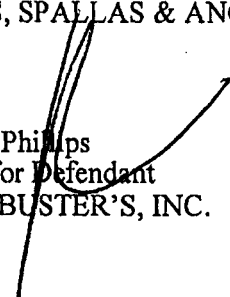
Date:

Date:

PARAS LAW GROUP

PHILLIPS, SPALLAS & ANGSTADT LLP

By:
Daniel Bornstein
Attorneys for Plaintiff
RUSSELL BRIMER

By:

Robert K. Phillips
Attorney for Defendant
DAVE & BUSTER'S, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

Exhibit A

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All shot glasses, and ceramic and glassware products intended to hold food and/or beverages with colored artwork, designs or markings on the exterior surface including, but not limited to:

- Glass, Clear Shooter, City Specific
- Glass, Clear Shot, City Specific
- Glass, Pub, Logo
- Glass, Pilsner 23 oz., Logo
- Glass, Martini, Logo
- Glass, Lemon Drop, Logo
- Glass, Tulip Shot, Logo
- Glass, Hurricane Shooter, Logo
- Glass, Vodka Shooter, Logo
- Glass, Blue Stripe Shot, Logo
- Glass, Beveled Beer Mug, Logo
- Frosted Glass, Shot, Logo
- Frosted Glass, Shooter, Logo
- Frosted Glass, Whiskey, Logo
- Frosted Glass, Tankard, Logo
- Frosted Glass, Coffee Mug, Logo
- Ceramic, White Coffee Mug, Logo
- Ceramic, Soup Mug, Logo
- TNtea, glassware
- Over/Under, glassware

(ENDORSED)

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SANTA CLARA
BY: DeHerrera DEPUTY

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8
 9 Attorneys for Plaintiff
 Russell Brimer

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 FOR THE COUNTY OF SANTA CLARA
 12 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,
 15 Plaintiff,
 16 v.
 17 DAVE & BUSTER'S, INC.; and DOES 1
 through 150,
 18 Defendants.

Case No. 105-CV-034242

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

Date: February 14, 2006
Time: 9:00 A.M.
Dept.: 10
Judge: Hon. Neal A. Cabrinha

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In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant DAVE & BUSTER'S, 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 December 20, 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: ^{Apr. 19,} February 14, 2006

NEAL A. CABRINHA

Hon. Neal A. Cabrinha
JUDGE OF THE SUPERIOR COURT