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5 Attorneys for Plaintiff  
6 RUSSELL BRIMER

**ENDORSED  
FILED**  
*San Francisco County Superior Court*

OCT 12 2006

GORDON PARK-LI, Clerk  
BY: ERICKA LARNAUTI  
Deputy Clerk

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
9 **UNLIMITED JURISDICTION**

11 RUSSELL BRIMER

12 Plaintiff,  
13 v.

14 SPECIALTY SPORTS VENTURES, LLC  
and HEAVENLY SPORTS,

15 Defendants.

**CASE NO.: CGC-06-449027**

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

Date: October 12, 2006  
Time: 9:30 a.m.  
Dept.: 301  
Judge: Hon. Peter J. Busch

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

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant, SPECIALTY  
2 SPORTS VENTURES, LLC, doing business as HEAVENLY SPORTS, having agreed through their  
3 respective counsel that judgment be entered pursuant to the terms of the Consent Judgment entered into  
4 by the parties, and after issuing an Order approving the Proposition 65 settlement agreement, captioned  
5 Stipulation and [Proposed] Consent Judgment on October 12, 2006.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil  
7 Procedure section 664.5, judgment is entered in accordance with the terms of the Stipulation and  
8 [Proposed] Consent Judgment.

9  
10 **IT IS SO ORDERED.**

11  
12 Dated: October 12, 2006

**PETER J. BUSCH**  
\_\_\_\_\_  
Hon. Peter J. Busch  
JUDGE OF THE SUPERIOR COURT

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Attorneys for Plaintiff  
RUSSELL BRIMER

**ENDORSED  
FILED**  
*San Francisco County Superior Court*

OCT 12 2006

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION**

RUSSELL BRIMER

Plaintiff,

v.

SPECIALTY SPORTS VENTURES, LLC  
and HEAVENLY SPORTS,

Defendants.

CASE NO.: CGC-06-449027

~~[PROPOSED]~~ ORDER PURSUANT TO  
TERMS OF STIPULATION AND  
~~[PROPOSED]~~ CONSENT JUDGMENT

Date: October 12, 2006  
Time: 9:30 a.m.  
Dept.: 301  
Judge: Hon. Peter J. Busch

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant SPECIALTY  
2 SPORTS VENTURES, LLC, doing business as HEAVENLY SPORTS ("Defendant"), having agreed  
3 through their respective counsel that judgment be entered pursuant to the terms of the Consent  
4 Judgment entered into by the above-referenced parties and attached hereto as Exhibit A; and after  
5 consideration of the papers submitted and the arguments presented, the Court finds that the settlement  
6 agreement set out in the attached Consent Judgment meets the criteria established by Senate Bill 471,  
7 in that:

- 8 1. The health hazard warning that is required by the Consent Judgment complies with  
9 Health & Safety Code section 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 terms  
15 of the Consent Judgment, attached hereto as Exhibit A.

16  
17 **IT IS SO ORDERED.**

18  
19 Dated: October 12, 2006

**PETER J. BUSCH**

\_\_\_\_\_  
Hon. Peter J. Busch  
JUDGE OF THE SUPERIOR COURT

1 Laralei S. Paras, State Bar No. 203319  
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SPECIALTY SPORTS VENTURES, LLC

12  
13 **SUPERIOR COURT OF CALIFORNIA**  
14 **COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION**  
15

16 RUSSELL BRIMER, )

17 Plaintiff, )

18 v. )

19 SPECIALTY SPORTS VENTURES, LLC )  
and HEAVENLY SPORTS, )

20 Defendants. )  
21 \_\_\_\_\_ )

Case No.: CGC 06 449027

**STIPULATION AND [PROPOSED]  
CONSENT JUDGMENT**

Judge:

Dept.:

Compl. Filed: 1/31/06

Trial Date: not set

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Defendants.** This Consent Judgment is entered into by and between  
3 Plaintiff Russell Brimer (hereinafter "Brimer" or "Plaintiff") and Specialty Sports Venture LLC,  
4 doing business as Heavenly Sports (hereafter "SSV" or "Defendants"), with Brimer and SSV  
5 collectively referred to as "the Parties" and with Brimer and SSV each being a "Party."

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

9 **1.3 Settling Defendants.** SSV employs ten or more persons and is a person in the  
10 course of doing business for purposes of Proposition 65.

11 **1.4 Covered Products.** The products that are covered by this Consent Judgment are  
12 defined as follows:

13 (A) Glass beverageware and tableware products with colored artwork, designs  
14 and/or markings on the exterior surface that are distributed or offered for use or sale by SSV in  
15 California and that are purchased and/or used by individuals in California for the storage, serving  
16 or consumption of food or beverages including, but not limited to: glasses, pilsners, mugs,  
17 carafes, tumblers, bottles, condiment dispensers, bowls, cups, saucers, plates, trays, pitchers,  
18 punch bowls, serving utensils, serving platters and other like items (hereinafter collectively  
19 referred to as "Glassware Food/Beverage Products" or "Category A Products");

20 (B) Ceramicware products with colored artwork, designs and/or markings on  
21 the exterior surface that are distributed or offered for use or sale by SSV in California and that are  
22 purchased and/or used by individuals in California for the storage, serving or consumption of food  
23 or beverages, including but not limited to: mugs, steins, carafes, bowls, drinking vessels, bottles,  
24 condiment dispensers, cups, saucers, plates, trays, pitchers, punch bowls, serving utensils, serving  
25 platters and other like items (hereinafter collectively referred to as "Ceramicware Food/Beverage  
26 Products" or "Category B Products");

27 (C) Unless referred to separately by category, all of the products described in  
28 section 1.4 above shall be collectively referred to herein as "Covered Products."

1           **1.5 General Allegations.** Plaintiff alleges that SSV has distributed or offered for use  
2 or sale in the state of California Covered Products with colored artwork, designs and/or markings  
3 on the exterior surface that contain (and cause exposure to) lead and/or cadmium. Lead and  
4 cadmium are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986,  
5 California Health & Safety Code sections 25249.5, *et seq.*, also known as Proposition 65, as  
6 carcinogens and reproductive toxicants. Lead and cadmium shall be referred to herein as the  
7 “Listed Chemicals.”

8           **1.6 Notices of Violation.** On November 23, 2005, Brimer served SSV and various  
9 public enforcement agencies with documents entitled “60-Day Notice of Violation” (“Notice”)  
10 that provided SSV and the public enforcers with notice that SSV was allegedly in violation of  
11 Health & Safety Code section 25249.6 for failing to warn individuals that products, including  
12 Category A Products, that it sold in California expose consumers to one or more of the Listed  
13 Chemicals contained in the exterior decoration on the Covered Products. On June 27, 2006,  
14 Brimer served SSV and various public enforcement agencies with documents entitled  
15 “Supplemental 60-Day Notice of Violation” that provided SSV and the public enforcers with  
16 notice that SSV was allegedly in violation of Health & Safety Code section 25249.6 for failing to  
17 warn individuals that products, including Category B Products, that it sold in California expose  
18 consumers to one or more of the Listed Chemicals contained in the exterior decoration on the  
19 Covered Products

20           **1.7 Complaint.** On January 31, 2006, Brimer, in the interest of the general public in  
21 California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the  
22 Superior Court for the City and County of San Francisco (*Brimer v. Specialty Sports Ventures,*  
23 *LLC, et al.*, Case No. CGC 06-449027) against SSV and Does 1 through 150, alleging violations  
24 of Health & Safety Code section 25249.6 based on alleged exposure to one or more of the Listed  
25 Chemicals contained in Covered Products sold by SSV.

26           **1.8 No Admission.** SSV denies the material factual and legal allegations contained in  
27 Plaintiff’s Notice and Complaint, and maintains that all products that it has distributed or offered  
28 for use or sale in California have been and are in compliance with all laws. Nothing in this

1 Consent Judgment shall be construed as an admission by SSV of any fact, finding, issue of law, or  
2 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an  
3 admission by SSV of any fact, finding, conclusion, issue of law or violation of law. However, this  
4 section shall not diminish or otherwise affect the obligations, responsibilities and duties of SSV  
5 under this Consent Judgment.

6 **1.9 Consent to Jurisdiction.** For purposes of this Consent Judgment only, Plaintiff  
7 and SSV stipulate that this Court has jurisdiction over the allegations of violations contained in  
8 the Notice and Complaint and personal jurisdiction over SSV as to the acts alleged in the  
9 Complaint, that venue is proper in the Superior Court for the City and County of San Francisco,  
10 and that this Court has jurisdiction to enter this Consent Judgment and to enforce the provisions  
11 thereof.

12 **1.10 Effective Date.** For purposes of this Consent Judgment, the "Effective Date" shall  
13 be July 1, 2006.

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

15 **2.1 Warning Obligations for Products**

16 (A) **Required Warnings.** After the Effective Date, SSV shall not distribute or  
17 offer for use or sale any Covered Products containing one or more of the Listed Chemicals (or  
18 supply any Covered Product containing one or more of the Listed Chemicals to any entity) for  
19 distribution, sale or use in California, unless clear and reasonable warnings are given in  
20 accordance with one or more provisions in subsection 2.2 below.

21 (B) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and  
22 2.2 below shall not apply to:

- 23 (i) Reformulated Products (as defined below in subsection 2.3); or  
24 (ii) any Covered Products supplied to SSV by any other person in the course  
25 of doing business who is subject to a final judgment in an action brought by  
26 any private or public enforcer whose action was brought on behalf of the  
27 People of the State of California addressing Proposition 65 warning  
28 obligations arising from alleged exposures to lead or cadmium from



1 glassware and/or ceramic products with colored artwork, designs or  
2 markings on the exterior surface.

3 **2.2 Clear and Reasonable Warnings.** The methods and language outlined in the  
4 following subsections describe SSV's options for satisfying the warning obligations described in  
5 section 2.1(a) depending, in part, on the manner of sale of the Covered Product.

6 (A) **Retail Sales.** If the Covered Product is sold at a retail outlet in California,  
7 SSV must comply with its warning requirements in one of the two following ways:

8 (i) **Product Labeling.** A warning may be given by affixing the  
9 following language to the packaging, labeling or directly to a specific Covered Product by SSV or  
10 its agents, or the manufacturer, decorator, importer, or distributor of the Covered Product that  
11 states:

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

17 Warnings issued for Covered Products pursuant to this subsection shall be prominently  
18 placed with such conspicuousness as compared with other words, statements, designs or devices  
19 as to render it likely to be read and understood by an ordinary individual under customary  
20 conditions prior to the use or purchase. For purposes of this subsection, a warning statement or  
21 sticker placed on the bottom of the product packaging is not an adequate warning. Similarly, for  
22 purposes of this Consent Judgment, a warning insert that is placed inside the product packaging  
23 that is not intended to be opened prior to leaving the retail establishment is deemed not reasonably  
24 calculated to transmit the health hazard warning to the individual prior to purchase.

25 Any changes to the manner, delivery, language or format of the warning required by this  
26 subsection shall only be made following: (1) written 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 (2) court approval after hearing of a noticed motion.

(ii) **Point-of-Sale Warnings.** SSV may satisfy its warning obligations  
by arranging for signs to be posted at the retail outlets or other locations in the State of California

1 at which Covered Products are sold directly to individuals, in accordance with the terms specified  
2 in subsections 2.2(A)(ii)(a), 2.2(A)(ii)(b) and 2.2(A)(ii)(c).

3 (a) Point-of-sale warnings may be provided through a sign  
4 posted at each point of sale or product display for each Covered Product that state:

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

8 Where more than one Covered Product is sold in proximity to other like items or to those  
9 that do not require a warning (*e.g.*, Reformulated Products as defined in sections 2.3), the  
10 following statement must be used.<sup>1</sup>

11 **WARNING: The materials used as colored decorations on the**  
12 **exterior of the following products contain lead**  
13 **and/or cadmium, chemicals known to the State**  
14 **of California to cause birth defects or other**  
15 **reproductive harm.**  
16 ***[DISPLAY LIST OF EACH SPECIFIC PRODUCT FOR WHICH WARNING IS***  
17 ***REQUIRED.]***

15 (b) A point-of-sale warning provided pursuant to subsection 2.2(A)(ii)  
16 shall be prominently placed with such conspicuousness as compared with other words, statements,  
17 designs or devices as to render it likely to be read and understood by an ordinary individual under  
18 customary conditions of purchase and shall be placed among other products (especially when near  
19 any Reformulated Products as defined in section 2.3 below) in a manner such that the consumer  
20 understands to which *specific* Covered Products the warnings apply so as to minimize if not  
21 eliminate the chances that an overwarning situation will arise.

22 (c) Any changes to the language or format of the warning required for  
23 Covered Products by this subsection shall only be made following (1) written approval from the  
24 California Attorney General's Office, provided that written notice of at least fifteen (15) days is  
25 ///

26 \_\_\_\_\_  
27 <sup>1</sup> For purposes of this Consent Judgment, "sold in proximity" shall mean that the Covered  
28 Product and another product are offered for sale close enough to each other so that the  
consumer, under customary conditions, could not reasonably determine which of the two  
products is subject to the warning sign.

1 given to Plaintiff for the opportunity to comment; or (2) court approval after hearing of a noticed  
2 motion.

3           **2.3 Reformulation Standards.** The following section sets forth the specifications  
4 which the Covered Products must meet in order to be sold without a Proposition 65 warning. For  
5 purposes of this section, the following definitions apply:

6                           “Children’s Product” is defined as any Covered Product  
7 intended or marketed primarily for use by children such as: Covered  
8 Products with designs on their exterior surface which are affiliated  
9 with children’s toys or entertainment (*e.g.*, Sesame Street, Looney  
10 Tunes, Barbie, and Winnie the Pooh); Covered Products of a  
11 reduced size so as to be marketed primarily for children (*e.g.*,  
12 “piggy banks”) which typically would be used by children, and all  
13 similar items.

14                           “Exterior Decorations” is defined as all colored artwork,  
15 designs and/or markings on the exterior surface of the Covered  
16 Product.

17                           “Lip and Rim Area” is defined as the exterior top 20  
18 millimeters of a holloware Glassware or Ceramicware  
19 Food/Beverage Product, as defined by American Society of Testing  
20 and Materials Standard Test Method C927.

21                           “**No Detectable Lead or Cadmium**” shall mean that neither  
22 lead nor cadmium is detected at a level above two one-hundredths  
23 of one percent (0.02%) of lead and eight one-hundredths of one  
24 percent (0.08%) of cadmium by weight, respectively, using a  
25 sample size of materials in question measuring approximately 500-  
26 100 mg and a test method of sufficient sensitivity to establish a limit  
27  
28

1 of quantitation of less than 200 ppm.<sup>2</sup>

2 “Reformulated Product” refers to any Covered Product that  
3 meets the reformulation standards described in section 2.3 .1 and  
4 2.3.2 as set forth below.

5 **2.3.1 Glassware Reformulation Standards:**

6 A Glassware Food/Beverage Product is a Reformulated Product if it satisfies either the  
7 standard outlined in subsection 2.3.1(a) *or* (b), subject to the following qualifications:

8 All Children’s Products must contain No Detectable Lead or Cadmium to be  
9 considered a Reformulated Product.

10  
11 If a Glassware Food/Beverage Product has Exterior Decorations in the Lip and  
12 Rim Area, it must also satisfy subsection 2.3.1(c) to be considered a Reformulated  
13 Product.

14 A Glassware Non-Food/Beverage Use Product may qualify as a Reformulated Product by  
15 meeting the Glassware Food/Beverage standards outlined in 2.3.1(a) or (b) *or* the alternate  
16 Glassware Non-Food/Beverage standard outlined in subsection (d) if applicable.

17 **(a) Wipe Test-Based Standard.** The Glassware Food/Beverage Product  
18 must produce a test result no higher than 1.0 micrograms (ug) of lead or 8.0 ug of cadmium as  
19 applied to the Exterior Decorations and performed as outlined in NIOSH method no. 9100.

20 **(b) Decorating Material Content-Based Standard.** The Exterior  
21 Decorations, exclusive of the Lip and Rim Area, must only utilize decorating materials that  
22 contain six one-hundredths of one percent (0.06%) of lead and forty-eight one-hundredths of one  
23 percent (0.48%) of cadmium by weight or less as measured either before or after the material is  
24 fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050B.<sup>3</sup>

25 \_\_\_\_\_  
26 <sup>2</sup> If the decoration is tested after it is affixed to the Covered Product, the percentage of the  
27 Listed Chemical by weight must relate only to the decorating material and must not include  
any quantity attributable to non-decorating material (*e.g.*, the glass substrate).

28 <sup>3</sup> If the decoration is tested after it is affixed to the Covered Product, the percentage of the  
Listed Chemical by weight and must relate only to the decorating material and must not

1                   (c)     **Lip and Rim Area Decoration.** All Exterior Decorations that extend into  
2 the Lip and Rim Area must only utilize decorating materials that contain No Detectable lead or  
3 cadmium.

4                   (d)     **Alternative Non-Food/Beverage Use Product Standard.** A Glassware  
5 Non-Food/Beverage Use Product qualifies as a Reformulated Product if it achieves a test result of  
6 4.0 ug of lead and 32.0 ug of cadmium or less as applied to all of the decorated portions of all  
7 surfaces of the Product performed as outlined in NIOSH method no. 9100. A Children's Product  
8 that is also a Glassware Non-Food/Beverage use Product must nevertheless contain No  
9 Detectable Lead or Cadmium to be considered a Reformulated Product.

10                   **2.3.2 Ceramic Reformulation Standards:**

11                   A Ceramicware Food/Beverage Product is a Reformulated Product if it satisfies the  
12 standards outlined in subsections 2.3.2(a) *or* (b) *or* (c), subject to the following qualifications:

13                             All Children's Products must contain No Detectable Lead or Cadmium to be  
14 considered a Reformulated Product.

15  
16                             If the Product is decorated in the Lip and Rim Area, it must also satisfy subsection  
17 2.3.2(d) to be considered a Reformulated Product.

18  
19                   A Ceramicware Non-Food/Beverage Use Product may qualify as a Reformulated Product  
20 by meeting the standards outlined in subsection 2.3.2(a), (b) *or* (c) or the alternate standard  
21 outlined in subsection (e) below.

22                   (a)     **Wipe Test-Based Standard.** The Ceramicware Food/Beverage Product  
23 must produce a test result no higher than 1.0 micrograms (ug) of lead or 8.0 ug of cadmium  
24 applied on decorated portions of the surface of the Product performed as outlined in NIOSH  
25 method no. 9100.

26                   (b)     **Decorating Material Content-Based Standard.** The Exterior  
27 Decorations, exclusive of the Lip and Rim Area, must only utilize decorating materials that  
28 \_\_\_\_\_  
include any quantity attributable to non-decorating materials (*e.g.*, the glass substrate).

1 contain six one-hundredths of one percent (0.06%) of lead by weight or less and forty-eight one-  
2 hundredths of one percent (0.48%) of cadmium by weight or less, as measured either before or  
3 after the material is fired onto (or otherwise affixed to) the Product, using EPA Test Method  
4 3050B.<sup>4</sup>

5 (c) **Total Acetic-Acid Immersion Test Based Standard.** The Ceramicware  
6 Food/Beverage Product must achieve a result of 0.99 ppm or less for lead and 7.92 ppm or less  
7 for cadmium after correction for internal volume when tested under the protocol attached hereto  
8 as Exhibit C (the ASTM C927-99 test method, modified for total immersion with results  
9 corrected for internal volume).<sup>5</sup>

10 (d) **Lip and Rim Area Exterior Decoration.** If the Ceramicware  
11 Food/Beverage Product contains Exterior Decorations in the Lip and Rim Area:

12 (i) Any Exterior Decorations that extend into the Lip and Rim Area  
13 must only utilize decorating materials that contain No Detectable lead or cadmium; *or*

14 (ii) The Ceramicware Food/Beverage Product must yield a test result  
15 showing a concentration level of 0.5 ug/ml or less of lead and a result of 4.0 ug/ml or less of  
16 cadmium using ASTM method C 927-99.<sup>6</sup>

17 (e) **Alternate Non-Food/Beverage Use Product Standard:** A Ceramic Non-  
18 Food Beverage Use Product qualifies as a Reformulated Product if it achieves a test result of 4.0  
19 ug or less of lead and 32.0 ug or less of cadmium as applied to all of the decorated portions of all  
20 surfaces of the Product performed as outlined in NIOSH method no. 9100. A Children's Product  
21 that is also a Ceramicware Non-Food/Beverage Use Product must nevertheless contain No  
22 Detectable Lead or Cadmium to be considered a Reformulated Product.

23 \_\_\_\_\_  
24 <sup>4</sup> If the decoration is tested after it is affixed to the Covered Product, the percentage of the  
25 Listed Chemical by weight must related only to the decorating material and must not include  
26 any quantity attributable to non-decorating material (*e.g.*, the ceramicware substrate).

27 <sup>5</sup> Because this method requires correction for internal volume, this method and subsections  
28 2.3.2(c) and 2.3.2(d)(ii) are only appropriate for ceramic hollowware.

<sup>6</sup> This subsection 2.3.2(d)(ii) is only appropriate for ceramic hollowware.

1           **2.4 Reformulation Goal.** SSV hereby commits to undertake good faith efforts to  
2 ensure that as many Covered Products as reasonably possible that it offers for sale in California  
3 after September 1, 2006 shall either qualify as Reformulated Products or will otherwise be exempt  
4 from the warning requirements of section 2.2, with the commitment that at least eighty percent  
5 (80%) of the Covered Products manufactured on or after December 31, 2006 *and* reasonably  
6 likely to be sold in California will not require warnings pursuant to section 2.2, with the further  
7 commitment to undertake all commercially reasonable efforts to sell one-hundred percent (100%)  
8 Reformulated Products in California, after January 1, 2007.

9           **3. MONETARY PAYMENTS**

10           **3.1** In settlement of all of the claims referred to in this Consent Judgment against SSV,  
11 SSV shall pay \$4,000 in civil penalties to be apportioned by Plaintiff in accordance with Health &  
12 Safety Code section 25192, with 75% of these funds remitted to the State of California's Office of  
13 Environmental Health Hazard Assessment and the remaining 25% of these penalty monies  
14 retained by Plaintiff as provided by Health & Safety Code section 25249.12(d).

15           Plaintiff shall bear all responsibility for apportioning and paying to the State of California  
16 the appropriate civil penalties paid in accordance with this section.

17           **3.2 Payment Schedule.** The payment set forth in this section shall be made payable to  
18 "HIRST & CHANLER LLP In Trust for Russell Brimer" by July 15, 2006, and be delivered to  
19 Plaintiff's counsel at the following address:

20  
21   Proposition 65 Controller  
22   HIRST & CHANLER LLP  
23   2560 Ninth Street  
  Parker Plaza, Suite 214  
  Berkeley, CA 94710

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

25           **4.1** The Parties have reached an accord on the compensation due to Plaintiff and his  
26 counsel under the private attorney general doctrine codified at Code of Civil Procedure section  
27 1021.5 for all work performed in connection with this matter. Under the private attorney general  
28 doctrine, SSV shall reimburse Plaintiff and his counsel for fees and costs, incurred as a result of

1 investigating, bringing this matter to SSV's attention, litigating and negotiating a settlement in the  
2 public interest. SSV shall pay Plaintiff and his counsel \$20,000 for all attorneys' fees, expert and  
3 investigation fees, and litigation costs. The payment shall be made payable to the "HIRST &  
4 CHANLER LLP" and shall be delivered to Plaintiff's counsel within 20 days of the Court's  
5 approval of this Consent Judgment at the following address:

6 Proposition 65 Controller  
7 HIRST & CHANLER LLP  
8 2560 Ninth Street  
9 Parker Plaza, Suite 214  
10 Berkeley, CA 94710

11 Except as specifically provided in this Consent Judgment, SSV shall have no further  
12 obligation with regard to reimbursement of Plaintiff's attorneys' fees or costs with regard to the  
13 Covered Products or this Action.

14 **5. RELEASE OF ALL CLAIMS**

15 **5.1 Plaintiff's Release of Settling Defendants.** In further consideration of the  
16 promises and agreements herein contained, and for the payments to be made pursuant to sections  
17 3 and 4, Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys,  
18 successors and/or assignees, and in the interest of the general public, hereby waives all rights to  
19 institute or participate in, directly or indirectly, any form of legal action and release all claims,  
20 including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities,  
21 demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not  
22 limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether  
23 known or unknown, fixed or contingent (collectively, "Claims"), against SSV or its customers,  
24 owners, parent companies, corporate affiliates, subsidiaries and their respective officers, directors,  
25 attorneys, representatives, shareholders, agents, and employees (collectively, "SSV Releasees")  
26 arising under or derived from Proposition 65, related to SSV Releasees' alleged failure to warn  
27 about exposure to or identification of one or more of the Listed Chemicals contained in the  
28 exterior decorations on the Covered Products distributed or offered for use or sale by SSV.

The Parties further and acknowledge that this Consent Judgment is a full, final and binding  
resolution of any direct or derivative violation of Proposition 65, that has been or could have been



1 asserted in the Complaint against SSV for SSV Releasees' alleged failure to provide clear and  
2 reasonable warnings of exposure to or identification of one or more of the Listed Chemicals in the  
3 exterior decorations on the Covered Products distributed or offered for use or sale by SSV.

4 It is specifically understood and agreed that SSV's compliance with the terms of this  
5 Consent Judgment resolves all issues and liability, now and in the future (so long as SSV complies  
6 with the terms of the Consent Judgment) concerning SSV Releasees' compliance with the  
7 requirements of Proposition 65, as to the Listed Chemicals in the exterior decorations of the  
8 Covered Products distributed or offered for use or sale by SSV.

9 The releases provided by Plaintiff in this subsection shall not extend upstream to the  
10 Covered Product manufacturer or decorator or to any Product importer, distributor or supplier  
11 from whom SSV purchased any Covered Product. This Agreement expressly does not release  
12 SSV for exposures to the Listed Chemicals from sources other than the paints, pigments, decals,  
13 dyes and other materials used as exterior decoration on the Covered Products.

14 **5.2 Settling Defendant's Release of Plaintiff.** SSV waives all rights to institute any  
15 form of legal action against Plaintiff, or his attorneys or representatives, for all actions taken or  
16 statements made by Plaintiff and his attorneys or representatives, in the course of investigating  
17 and/or seeking enforcement of Proposition 65, against it in this matter and/or with respect to the  
18 Covered Products.

## 19 **6. COURT APPROVAL**

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

## 25 **7. SEVERABILITY**

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

1 **8. ATTORNEYS' FEES**

2 In the event that a dispute arises with respect to any provision of this Consent Judgment,  
3 including the enforcement of this Consent Judgment, the prevailing party shall, except as  
4 otherwise provided herein, be entitled to recover reasonable costs and attorneys' fees incurred in  
5 connection with 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 Covered Products  
10 specifically, then SSV and SSV Releasees shall have no further obligations pursuant to this  
11 Consent Judgment with respect to, and to the extent that, those Covered Products are so affected.

12 **10. NOTICES**

13 All correspondence and notices required to be provided pursuant to this Consent  
14 Judgment shall be in writing and personally delivered or sent by First Class, Registered, Certified  
15 Mail, Return Receipt Requested or overnight courier to Plaintiff and SSV at the following  
16 addresses:

17 For Brimer:

18 Proposition 65 Controller  
19 HIRST & CHANLER LLP  
20 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

21 For SSV:

22 Specialty Sports Ventures, LLC  
23 c/o Carey L. Cooper  
KLINEDINST pc  
24 501 West Broadway, Suite 600  
San Diego, CA 92101

25 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

26 This Consent Judgment may be executed in counterparts and transmitted by facsimile,  
27 each of which shall be deemed as original, and all of which, when taken together, shall constitute  
28 one and the same document.

1 **12. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

2 Plaintiff shall comply with the regulations promulgated under Health & Safety Code  
3 section 25249.7(f) regarding the reporting of the Consent Judgment to the California Attorney  
4 General's Office following its execution by all Parties. A noticed motion to enter the Consent  
5 Judgment will then be served on the California Attorney General's Office at least forty-five (45)  
6 days prior to the date a hearing is scheduled on such a motion in the Superior Court for the City  
7 and County of San Francisco unless the Court allows a shorter period of time.

8 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

9 The Parties shall mutually employ their best efforts to support the entry of this Agreement  
10 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
11 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed  
12 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, Plaintiff  
13 shall file a Motion to Approve the Agreement ("Motion"), preferably as a joint motion if the  
14 parties can so agree. In an effort to achieve this objective, counsel for SSV agrees to transmit a  
15 draft of the moving papers to counsel for Plaintiff within forty-five (45) days after the Effective  
16 Date and the parties will endeavor to file a joint application to the Court; if the moving papers are  
17 not provided to Plaintiff in a timely manner, or the parties cannot ultimately agree on the final  
18 papers to file, Plaintiff shall file the Motion to Approve on his own. In the event that any third  
19 party, including the Attorney General or any other public enforcer, objects or otherwise comments  
20 to one or more provisions of this Agreement, SSV agrees to undertake its best efforts to satisfy  
21 such concerns or objections and support the terms of this Agreement.

22 **14. MODIFICATION**

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

28 ///

1 **15. AUTHORIZATION**


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


5 AGREED TO:

AGREED TO:

6 Date: 7.20.06

Date: 7-13-06

7  
8 By:   
9 Plaintiff Russell Brimer

By:   
Defendants Specialty Sports Venture,  
LLC and Heavenly Sports

11 APPROVED AS TO FORM:

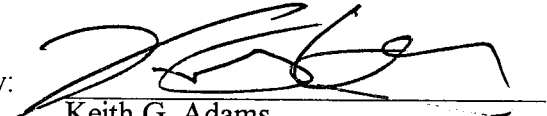
APPROVED AS TO FORM:

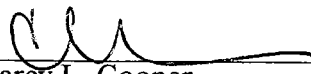
12 Date: 7.20.06

Date: 7/14/06

14 HIRST & CHANLER LLP

KLINEDINST PC

15  
16 By:   
17 Keith G. Adams  
18 Attorneys for Plaintiff  
19 RUSSELL BRIMER

By:   
Carey L. Cooper  
Attorneys for Defendants  
SPECIALTY SPORTS VENTURE,  
LLC and HEAVENLY SPORTS  
RUSSELL BRIMER

20 **IT IS SO ORDERED.**

22 Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

24 495228.1