

1 Laralei S. Paras (State Bar No. 203319)  
Daniel Bornstein (State Bar No. 181711)  
2 PARAS LAW GROUP  
2560 Ninth Street, Suite 214  
3 Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
4 Facsimile: (510) 848-8118

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

9 Attorneys for Plaintiff  
Russell Brimer

ENDORSED  
FILED  
San Francisco County Superior Court

JAN 06 2006

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

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

15 RUSSELL BRIMER,  
16 Plaintiff,

17 v.

18 SMITH NOVELTY COMPANY, SMITH NEWS  
19 COMPANY, INC., POSTER SOURCE, INC. and  
20 DOES 1 through 50,  
21 Defendants.

Case No. CGC-04-435213

<sup>ew</sup>  
~~PROPOSED~~ ORDER PURSUANT  
TO STIPULATION AND ORDER RE:  
CONSENT JUDGMENT

Date: December 13, 2005  
Time: 9:30 A.M.  
Dept: 301  
Judge: Hon. James L. Warren

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant SMITH NEWS  
2 COMPANY, INC., dba SMITH NOVELTY COMPANY, ("Defendant"), having agreed through  
3 their respective counsel that judgment be entered pursuant to the terms of the Consent Judgment  
4 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  
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 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  
15 terms of the Consent Judgment, attached hereto as **Exhibit A**.

16 IT IS SO ORDERED.

17 Dated: December 13, 2005

**JAMES L. WARREN**

Hon. James L. Warren  
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 Attorneys for Plaintiff

8 Lawrence S. Bazel (State Bar No. 114641)  
9 Shaye Diveley (State Bar No. 215602)  
10 STOEL RIVES LLP  
11 111 Sutter Street, Suite 700  
12 San Francisco, CA 94104  
13 Telephone: (415) 617-8900  
14 Facsimile: (415) 676-3000

15 Attorneys for Defendant

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

RUSSELL BRIMER,

Plaintiff,

v.

SMITH NOVELTY COMPANY; SMITH NEWS  
COMPANY, INC; POSTER SOURCE, INC.; and  
DOES 1 through 150,

Defendants.

Case No. CGC 04-435213

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

**1. INTRODUCTION**

1.1 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereafter "Brimer" or "Plaintiff") and Smith News Company, Inc. dba Smith Novelty Company (hereafter collectively referred to as "Smith Novelty"), with

1 Plaintiff and Smith Novelty collectively referred to as the "Parties" and Brimer and Smith  
2 Novelty each being a "Party."

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

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

14 1.4 **Product Descriptions.** The products that are covered by this Consent Judgment  
15 are defined as follows: mugs and shot glasses and other tableware products manufactured, sold  
16 and/or distributed by Smith Novelty with colored artwork, designs or markings on the exterior  
17 surface (containing lead or cadmium), including, by way of example and without limitation, the  
18 products listed on Exhibit A hereto. Such products collectively are referred to herein as the  
19 "Products."

20 1.5 **Notices of Violation.** Beginning on July 30, 2004, Brimer served Smith Novelty  
21 and various public enforcement agencies with documents, entitled "60-Day Notice of Violation"  
22 ("Notice") that provided Smith Novelty and such public enforcers with notice that alleged that  
23 Smith Novelty was in violation of Health & Safety Code § 25249.6 for failing to warn purchasers  
24 that certain products that it sold expose users in California to lead and lead compounds and to  
25 cadmium. On January 3, 2005, Brimer served Smith Novelty (and the public enforcement  
26 agencies) with a second "60-Day Notice of Violation" that provided Smith Novelty (and the  
27 public enforcers) with notice that Smith Novelty was in violation of Health & Safety Code  
28

1 Section 25249.6 for failing to warn purchasers that it sold shot glasses that expose users in  
2 California to lead and lead compounds and to cadmium.

3       **1.6 Complaint.** On October 5, 2004, Brimer, in the interest of the general public in  
4 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the  
5 Superior Court for the City and County of San Francisco against Smith Novelty Company, Smith  
6 News Company, Inc., Poster Source, Inc., and Does 1 through 150, alleging violations of  
7 Health & Safety Code § 25249.6 based on the alleged exposures to one or more of the Listed  
8 Chemicals contained in certain products sold by Smith Novelty.

9       **1.7 No Admission.** Smith Novelty denies the material factual and legal allegations  
10 contained in Plaintiff's Notices and Complaint and maintains that all products that it has sold and  
11 distributed in California, including the Products, have been and are in compliance with all laws.  
12 Nothing in this Consent Judgment shall be construed as an admission by Smith Novelty of any  
13 fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement  
14 constitute or be construed as an admission by Smith Novelty of any fact, finding, conclusion,  
15 issue of law or violation of law. However, this section shall not diminish or otherwise affect the  
16 obligations, responsibilities and duties of Smith Novelty under this Consent Judgment.

17       **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties  
18 stipulate that this Court has jurisdiction over the allegations of violations contained in the Notices  
19 and in the Complaint and personal jurisdiction over Smith Novelty as to the acts alleged in the  
20 Notices and in the Complaint, that venue is proper in the County of San Francisco, and that this  
21 Court has jurisdiction to enter this Consent Judgment and to enforce the provisions thereof.

22       **1.9 Effective Date.** For purposes of this Consent Judgment, the "Effective Date" shall  
23 be April 30, 2005.

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

25       **2.1 Warning Obligations for Products**

26               **(a) Required Warnings.** After the Effective Date, Smith Novelty shall not  
27 transmit to any retailer (or any other entity) to sell or offer for sale in California any Products  
28

1 containing the Listed Chemicals, unless warnings are given in accordance with one or more  
2 provisions in subsection 2.2 below.

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

- 5 (i) any Products manufactured before the Effective Date, or
- 6 (ii) Reformulated Products.

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 Smith Novelty, its agent, or the manufacturer, importer, or  
10 distributor of the Product that states:

11 **WARNING: This product will expose you to lead and**  
12 **cadmium, chemicals known [to the State of**  
13 **California] to cause birth defects and other**  
14 **reproductive harm.**

14 The language in brackets may be omitted.

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

22 (b) **Point-of-Sale Warnings.** Smith Novelty may execute its warning  
23 obligations, where applicable, through arranging for the posting of signs at retail outlets in the  
24 State of California at which Products are sold, in accordance with the terms specified in  
25 subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii).

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

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

6                   or

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

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

22                   (iii)    If Smith Novelty intends to utilize point of sale warnings to comply  
23 with this Consent Judgment, it must provide notice as required by this Consent Judgment to each  
24 retailer to whom Smith Novelty ships the Products for sale in California and obtain the written  
25 consent of such retailer before shipping the Products. Such notice shall include a copy of this  
26 Consent Judgment and any required warning materials (including, as appropriate, signs and/or  
27 stickers). If Smith Novelty has obtained the written consent of a retailer, Smith Novelty shall not  
28 be found to have violated this Consent Judgment if it has complied with the terms of this Consent  
Judgment and has proof that it transmitted the requisite warnings in the manner provided herein.







1     **5.     RELEASE OF ALL CLAIMS**

2             **5.1     Plaintiff's Release of Smith Novelty.** In further consideration of the promises  
3 and agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,  
4 Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors  
5 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or  
6 participate in, directly or indirectly, any form of legal action and releases all claims, including,  
7 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,  
8 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,  
9 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or  
10 unknown, fixed or contingent (collectively "Claims"), against Smith Novelty and each of its  
11 auctioneers, retailers, dealers, customers, owners, purchasers, users, parent companies, corporate  
12 affiliates, subsidiaries and their respective officers, directors, attorneys, representatives,  
13 shareholders, agents, and employees, including but not limited to Smith News Company, Inc. and  
14 Poster Source, Inc. (collectively, "Smith Novelty Releasees") arising under Proposition 65,  
15 Business & Professions Code § 17200 et seq., and Business & Professions Code § 17500 et seq.,  
16 related to Smith Novelty's or the Smith Novelty Releasees' alleged failures to warn about  
17 exposures to or identification of Listed Chemicals contained in the Products sold by Smith  
18 Novelty.

19             The Parties further agree and acknowledge that this Consent Judgment is a full, final, and  
20 binding resolution of any violation of Proposition 65, Business & Professions Code  
21 §§ 17200 et seq. and Business & Professions Code §§ 17500 et seq., that have been or could  
22 have been asserted in the Complaint against Smith Novelty for its alleged failure to provide clear  
23 and reasonable warnings of exposure to or identification of Listed Chemicals in the Products sold  
24 by Smith Novelty.

25             In addition, Plaintiff, on behalf of himself, his attorneys, and their agents, waive all rights  
26 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims  
27 against the Smith Novelty Releasees arising under Proposition 65, Business & Professions Code  
28 §§ 17200 et seq. and Business & Professions Code §§ 17500 et seq., related to each of the Smith

1 Novelty Releasees' alleged failures to warn about exposures to or identification of Listed  
2 Chemicals contained in the Products and for all actions or statements made by Smith Novelty or  
3 its attorneys or representatives, in the course of responding to alleged violations of  
4 Proposition 65, Business & Professions Code §§ 17200 *et seq.* or Business & Professions Code  
5 §§ 17500 *et seq.* by Smith Novelty; provided however, that Plaintiff shall remain free to institute  
6 any form of legal action to enforce the provisions of this Consent Judgment.

7 It is specifically understood and agreed that the Parties intend that Smith Novelty's  
8 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in  
9 the future (so long as Smith Novelty complies with the terms of the Consent Judgment)  
10 concerning Smith Novelty's and the Smith Novelty Releasees' compliance with the requirements  
11 of Proposition 65, Business and Professions Code §§ 17200 *et. seq.* and Business & Professions  
12 Code §§ 17500 *et seq.*, as to the Listed Chemicals in the Products sold by Smith Novelty.

13 5.2 **Smith Novelty's Release of Plaintiff.** Smith Novelty, and the Smith Novelty  
14 Releasees, waive all rights to institute any form of legal action against Plaintiff, or his attorneys  
15 or representatives, for all actions taken or statements made by Plaintiff and his attorneys or  
16 representatives, in the course of seeking enforcement of Proposition 65, Business & Professions  
17 Code §§ 17200 *et seq.* or Business & Professions Code §§ 17500 *et seq.* in this Action.

## 18 6. COURT APPROVAL

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

## 24 7. SEVERABILITY

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

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 shall, except as otherwise provided herein, be entitled to recover  
4 reasonable and necessary costs and reasonable attorneys' fees incurred for the resolution of such  
5 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 Smith Novelty shall have no further obligations pursuant to this Consent Judgment with  
11 respect 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 addresses listed  
16 below. Either Party, from time to time, may specify a change of address to which all notices and  
17 other communications shall be sent.

18 Clifford A. Chanler  
19 Chanler Law Group  
20 71 Elm Street, Suite 8  
21 New Canaan, CT 06840

Lawrence S. Bazel  
Stoel Rives LLP  
111 Sutter Street  
San Francisco, CA 94104

22 **11. NO ADMISSIONS**

23 Nothing in this Consent Judgment shall constitute or be construed as an admission by  
24 Smith Novelty of any fact, finding, conclusion, issue of law, or violation of law, nor shall  
25 compliance with this Consent Judgment constitute or be construed as an admission by Smith  
26 Novelty of any fact, finding, conclusion, issue of issue of law, or violation of law, such being  
27 specifically denied by Smith Novelty. Smith Novelty reserves all of its rights and defenses with  
28 regard to any claim by any party under Proposition 65 or otherwise. However, this section shall

1 not diminish or otherwise affect Smith Novelty's obligations, responsibilities and duties under  
2 this Consent Judgment.

3 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

15 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

AGREED TO:

AGREED TO:

Date: 4.5.05

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

By: [Signature]  
Plaintiff Russell Brimer

By: \_\_\_\_\_  
Defendant Smith News Company, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: [Signature]  
CHANLER LAW GROUP

Date: \_\_\_\_\_  
STOEL RIVES LLP

By: 4/5/05  
Clifford A. Chanler  
Attorneys for Plaintiff  
RUSSELL BRIMER

By: \_\_\_\_\_  
Lawrence S. Bazel  
Attorneys for Defendants SMITH NEWS  
COMPANY, INC. aka SMITH NOVELTY  
COMPANY and POSTER SOURCE, Inc.

IT IS SO ORDERED.

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

AGREED TO:

AGREED TO:

*Kevin M. Shanley, President*  
4-4-05

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

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

By:  
Plaintiff Russell Brimer

By:  
Defendant Smith News Company, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

*LR*

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

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

CHANLER LAW GROUP

STOEL RIVES LLP

By:  
Clifford A. Chanler  
Attorneys for Plaintiff  
RUSSELL BRIMER

By:  
Lawrence S. Bazel  
Attorneys for Defendants SMITH NEWS  
COMPANY, INC. dba SMITH NOVELTY  
COMPANY and FOSTER SOURCE, Inc.

IT IS SO ORDERED.

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

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



**Exhibit A**

All mugs, shot glasses, and tableware with colored designs and/or artwork on the exterior, including but not limited to:

SF Subway Java Lge Mug (#0 85464 51124 8);

Santa Monica California Mug (#0 85464 00456 6); and

Pleasanton California Shooter (#0 85464 51488 1)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



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

Plaintiff Russell Brimer and defendant Smith News Company, Inc. dba Smith Novelty Company, hereby amend their "Stipulation And [Proposed] Order Re: Consent Judgment", executed by Brimer on April 5, 2005 and by Smith News Company on April 4, 2005, to incorporate the following provision as Section 3.2, as fully as though set forth at length in said Agreement, as follows:

**3.2 Apportionment of Penalties Received**

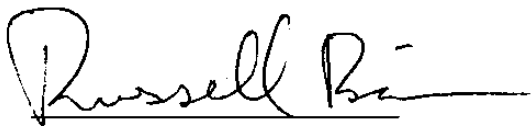
After Court approval of this Consent Judgment pursuant to Section 6, all penalty monies received shall be apportioned by Plaintiff in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining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

AGREED TO:

AGREED TO

Date: 12-13-05

Date:



Plaintiff Russell Brimer

\_\_\_\_\_

Defendant Smith News Company, Inc

C 172 =

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

Plaintiff Russell Brimer and defendant Smith News Company, Inc. dba Smith Novelty Company, hereby amend their "Stipulation And [Proposed] Order Re: Consent Judgment", executed by Brimer on April 5, 2005 and by Smith News Company on April 4, 2005, to incorporate the following provision as Section 3.2, as fully as though set forth at length in said Agreement, as follows:

**3.2 Apportionment of Penalties Received**

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

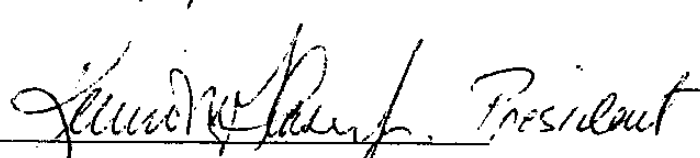
AGREED TO:

AGREED TO

Date:

Date: 12/14/05

\_\_\_\_\_  
Plaintiff Russell Brimer

  
\_\_\_\_\_  
Defendant Smith News Company, Inc

1 Laralei S. Paras (State Bar No. 203319)  
Daniel Bornstein (State Bar No. 181711)  
2 PARAS LAW GROUP  
2560 Ninth Street, Suite 214  
3 Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
4 Facsimile: (510) 848-8118

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

9 Attorneys for Plaintiff  
10 Russell Brimer

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

15 RUSSELL BRIMER,  
16 Plaintiff,  
17 v.  
18 SMITH NOVELTY COMPANY, SMITH NEWS  
19 COMPANY, INC., POSTER SOURCE, INC. and  
20 DOES 1 through 50,  
21 Defendants.

Case No. CGC-04-435213

<sup>er</sup>  
~~PROPOSED~~ JUDGMENT  
PURSUANT TO STIPULATION AND  
ORDER RE: CONSENT JUDGMENT

Date: January 6, 2006  
Time: 11:00 A.M.  
Dept: 301  
Judge: Hon. James L. Warren

ENDORSED  
FILED  
San Francisco County Superior Court

JAN 06 2006

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

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant, SMITH NEWS  
2 COMPANY, INC., dba SMITH NOVELTY COMPANY, ("Defendant"), having agreed through  
3 their respective counsel that judgment be entered pursuant to the terms of the Consent Judgment  
4 entered into by the parties, and after issuing an Order Approving Proposition 65 Settlement  
5 Agreement and Consent Judgment on January 6, 2006.

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

9 IT IS SO ORDERED.

10  
11 Dated: January 6, 2006

**JAMES L. WARREN**  
\_\_\_\_\_  
Hon. James L. Warren  
JUDGE OF THE SUPERIOR COURT