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10 Attorneys for Defendants  
11 BUSCH ENTERTAINMENT CORPORATION and  
SEA WORLD, INC.

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

RUSSELL BRIMER

Plaintiff,  
v.

BUSCH ENTERTAINMENT  
CORPORATION; SEA WORLD, INC.; and  
DOES 1 through 150, inclusive.  
Defendants.

Case No. CGC-05-447598

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

1     **1. INTRODUCTION**

2             **1.1 Russell Brimer, Busch Entertainment Corporation and Sea World, Inc.**

3             This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter  
4 "Brimer" or "Plaintiff") and defendants Busch Entertainment Corporation and Sea World, Inc.  
5 (hereafter "Busch" or "Defendants"), with Brimer and Busch collectively referred to as the  
6 "Parties."

7             **1.2 Plaintiff**

8             Brimer is an individual residing in California who seeks to promote awareness of  
9 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous  
10 substances contained in consumer products.

11            **1.3 Defendants**

12            Busch employs ten or more persons in the course of doing business for purposes of  
13 Proposition 65.

14            **1.4 General Allegations**

15            Brimer alleges that Busch has manufactured, distributed and/or sold in the State of  
16 California glass and ceramic containers intended for the consumption of food or beverages with  
17 colored artwork or designs on the exterior that contain lead. Lead is listed pursuant to the Safe  
18 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6  
19 *et seq.* ("Proposition 65"), as a chemical known to the State of California to cause birth defects  
20 and other reproductive harm. Lead shall be referred to herein as the "Listed Chemical."

21            **1.5 Product Description**

22            The products that are covered by this Consent Judgment are defined as follows: mugs and  
23 other ceramic containers intended for the consumption of food or beverages with colored artwork  
24 or designs containing lead, as well as all glassware intended for the consumption of food or  
25 beverages with colored artwork or designs containing lead. All such products shall be referred to  
26 herein as the "Products."

27            **1.6 Notice of Violation**

28            On or about September 27, 2005, Brimer served Busch and various public enforcement

1 agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided  
2 Busch and such public enforcers with notice that alleged that Busch was in violation of California  
3 Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products  
4 that Busch sold exposed users in California to the Listed Chemical.

5 **1.7 Complaint**

6 On December 13, 2005, Brimer, who is acting in the interest of the general public in  
7 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the  
8 Superior Court in and for the City and County of San Francisco against Busch, and Does 1  
9 through 150, (*Brimer v. Busch Entertainment Corporation, et al., Case No. CGC-05-447598*)  
10 alleging violations of California Health & Safety Code § 25249.6 based on the alleged exposures  
11 to the Listed Chemical contained in the Products sold by Busch.

12 **1.8 No Admission**

13 Busch denies the material factual and legal allegations contained in Brimer's Notice and  
14 Complaint and maintains that all products that it has sold and distributed in California, including  
15 the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment  
16 shall be construed as an admission by Busch of any fact, finding, issue of law, or violation of law,  
17 nor shall compliance with this Consent Judgment constitute or be construed as an admission by  
18 Busch of any fact, finding, conclusion, issue of law or violation of law, such being specifically  
19 denied by Busch. However, this Section shall not diminish or otherwise affect the obligations,  
20 responsibilities and duties of Busch under this Consent Judgment.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
23 jurisdiction over Busch as to the allegations contained in the Complaint, that venue is proper in the  
24 County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions of  
25 this Consent Judgment.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term "Effective Date" shall mean June 1, 2007.  
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1     **2.     INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

2             **2.1     Product Warnings**

3             After the Effective Date, Busch shall not sell, ship or offer to be shipped for sale in  
4 California Products containing the Listed Chemical unless such Products are sold or shipped with  
5 a clear and reasonable warning or exempt pursuant to Section 2.2.

6             A warning shall be deemed to be clear and reasonable if it utilizes the language set out in  
7 this Section 2.1. Any warning issued for Products pursuant to this Section 2.2 below shall be  
8 prominently placed with such conspicuousness as compared with other words, statements, designs,  
9 or devices as to render it likely to be read and understood by an ordinary individual under  
10 customary conditions before purchase or, for Products shipped directly to an individual in  
11 California, before use. Any warning issued pursuant to Section 2.1 shall be provided in a manner  
12 such that the consumer or user understands to which *specific* product the warning applies, so as to  
13 minimize if not eliminate the chance that an overwarning situation will arise.

14             Sections 2.1(a)-(b) describes Busch’s options for satisfying the warning obligations  
15 depending on the manner of sale:

16                     **(a)     Retail Store Sales**

17                             **(i)     Product Labeling.** Busch may perform its warning obligations by  
18 ensuring that a warning is affixed to the packaging, labeling or directly on the Product that states:

19                                     **WARNING:** This product contains lead, a chemical  
20   known to the State of California to cause  
   birth defects and other reproductive harm.

21                             **(ii)    Point-of-Sale Warnings.** Busch may perform its warning  
22 obligations by insuring that signs are posted at its retail outlets in the State of California where the  
23 Products are sold. Point-of-sale warnings shall be provided through one or more signs posted in  
24 close proximity to the point of display of the Products that states:

25                                     **WARNING:** The following glassware or ceramic  
26   products sold in this establishment contain  
27   lead, a chemical known to the State of  
   California to cause birth defects or other  
   reproductive harm.

28   **[list products for which warning is given]**

1                   **(b) Mail Order Catalog and Internet Sales.** Busch shall satisfy its warning  
2 obligations for Products that are sold by mail order catalog or from the internet to California  
3 residents, by providing, at its option, a warning: (i) in the mail order catalog; (ii) on the website;  
4 or (iii) with the Product when it is shipped to an address in California. Warnings given in the mail  
5 order catalog or on the website shall identify the specific Product to which the warning applies as  
6 further specified in Sections 2.1(b)(i), (ii) or (iii) as applicable:

7                   **(i) Mail Order Catalog.** Any warning provided in a mail order catalog  
8 must be in the same type size or larger as the product description text within the catalog. The  
9 following warning shall be provided on the same page and in the same location as the display  
10 and/or description of the Product:

11                   **WARNING:** This product contains lead, a chemical known  
12   to the State of California to cause birth  
  defects and other reproductive harm.

13                   Where it is impracticable to provide the warning on the same page and in the same location  
14 as the display and/or description of the Product, Busch may utilize a designated symbol to cross  
15 reference the applicable warning ("Designated Symbol") and shall provide the following language  
16 on the inside of the front cover of the catalog or on the same page as any order form for the  
17 Product(s):

18                   **WARNING:** Products identified with this symbol ▼and  
19   offered for sale in this catalog contain lead, a  
20   chemical known to the State of California to  
  cause birth defects and other reproductive  
  harm.

21                   The Designated Symbol (shown on Exhibit A attached hereto) must appear on the same  
22 page and in close proximity to the display and/or description of the Product. On each page where  
23 the Designated Symbol appears, Busch must provide a header or footer directing the consumer to  
24 the warning language and definition of the Designated Symbol.

25                   If Busch elects to provide warnings in the mail order catalog, then the warnings must be  
26 included in all catalogs provided to consumers in California offering to sell one or more Products  
27 printed after July 1, 2007.

28

1                   (ii)     **Internet Web Sites and Pages.** A warning may be given in  
2 conjunction with the sale of the Product via the internet, provided it appears either: (a) on the  
3 same web page on which the Product is displayed; (b) on the same web page as the order form for  
4 the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages  
5 displayed to a purchaser during the checkout process. The following warning statement shall be  
6 used and shall appear in any of the above instances adjacent to or immediately following the  
7 display, description, or price of the Product for which it is given in the same type size or larger as  
8 the product description text:

9                   **WARNING:** This product contains lead, a chemical known  
10                   to the State of California to cause birth  
11                   defects and other reproductive harm.

12                   Alternatively, the Designated Symbol may appear adjacent to or immediately following the  
13 display, description or price of the Product for which a warning is being given, provided that the  
14 following warning statement also appears elsewhere on the same web page:

15                   **WARNING:** Products identified on this page with the  
16                   following symbol contain lead, a chemical  
17                   known to the State of California to cause birth  
18                   defects and other reproductive harm: ▼

19                   (iii)     **Package Insert or Label.** For all Products sold by catalog or via  
20 the internet, a warning may be provided with the Product when it is shipped directly to an  
21 individual in California, by either: (a) affixing the following warning language to the packaging,  
22 labeling or directly to a specific Product; (b) inserting a warning card measuring at least 4" x 6" in  
23 the shipping carton which contains the following warning language; or (c) by placing the  
24 following warning statement on the packing slip or customer invoice on the line directly below the  
25 description of the Product on the packing slip or customer invoice:

26                   **WARNING:** This product contains lead, a chemical  
27                   known to the State of California to cause  
28                   birth defects and other reproductive harm.

29                   Alternatively, Busch may place the following language on the packing slip or invoice and  
30 specifically identifying the Product in lettering of the same size or larger as the description of the  
31 Product:

1                   **WARNING:** The following product(s) contain lead, a  
2                   chemical known to the State of California to  
3                   cause birth defects or other reproductive  
4                   harm:

5                   ***[list products for which warning is given].***

6                   The Defendants shall, in any of these instances, in conjunction with providing the warning,  
7                   also inform the consumer, in a conspicuous manner, that he or she may return the Product for a  
8                   full refund (including shipping costs for both the receipt and the return of the Product) within  
9                   thirty (30) days of his or her receipt of the Product.

10                   **2.2    Exceptions**

11                   The warning requirements set forth in Section 2.1 shall not apply to:

- 12                   (i)     Any Products received in inventory before the Effective Date;
- 13                   (ii)    Reformulated Products (as defined in Section 2.3 below); or
- 14                   (iii)  any Product released by the terms of the Court approved settlement  
15                   agreements in *Brimer v. The Boelter Companies, et al.* (San Francisco  
16                   Superior Court Case No. CGC-05-440811) and *Leeman v. Arc International*  
17                   (San Francisco Superior Court Case No. CGC-03-418025.)

18                   **2.3    Lead Content Standards**

19                   Lead free Products are defined as follows: any Product with decorations that contain six  
20                   one-hundredths of one percent (0.06%) or less of lead as measured either before or after the  
21                   material is fired onto (or otherwise affixed to) the Product using a test method of sufficient  
22                   sensitivity to establish a limit of quantitation of less than 600 parts per million ("ppm").<sup>1</sup> All  
23                   Products with exterior decorations that extend into the "Lip-and-Rim Area<sup>2</sup>" must only utilize  
24                   decorating materials that contain two one-hundredths of one percent (0.02%) or less of lead by  
25                   weight using a sample size of the material in question measuring approximately 50-100 mg and a  
26                   test method of sufficient sensitivity to establish a limit of quantitation of less than 200 ppm. The

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27                   <sup>1</sup>If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by weight  
28                   must relate only to the decorating material and must not only include any quantity attributable to non-decorating  
29                   material.

30                   <sup>2</sup>"Lip-and-Rim Area" is defined as the exterior top twenty (20) millimeters of a hollowware food or beverage  
31                   Product.

1 warning specified in Section 2.1 above shall not be required for Lead Free Products.

2 **2.4 Lead Free Products Goals**

3 Busch shall endeavor to achieve the goal that at least eighty percent (80%) of the Products  
4 offered for sale in California by June 1, 2008, shall qualify as Lead Free Products or be otherwise  
5 exempt from the warning requirements pursuant to 2.2(iii).<sup>3</sup>

6 **3. MONETARY PAYMENTS**

7 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b)**

8 The total penalty amount shall be \$10,000 which shall be paid by Busch as set forth herein.  
9 Pursuant to Health & Safety Code § 25249.7(b), Busch shall pay \$5,000 to be delivered as soon  
10 and expeditiously as possible but in no event later than 15 days after the date of the Court's  
11 approval of the Consent Judgment. The second payment of \$5,000 shall be payable on or before  
12 July 1, 2008. The second payment shall be waived in the event that Busch certifies in writing  
13 under penalty of perjury with supporting facts and documentation, not later than June 1, 2008, that  
14 it has achieved the goal set forth in Section 2.4. Said payments shall be made payable to the  
15 "HIRST & CHANLER LLP in Trust For Russell Brimer" and shall be delivered to plaintiff's  
16 counsel at the following address:

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

22 **3.2 Apportionment of Penalties Received**

23 All penalty monies received shall be apportioned by Brimer in accordance with Health &  
24 Safety Code § 25192, with 75% of these funds remitted by Brimer to the State of California's  
25 Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty  
26 monies retained by Brimer as provided by Health & Safety Code § 25249.12(d). Brimer shall bear  
27 all responsibility for apportioning and paying to the State of California the appropriate civil  
28 penalties paid in accordance with this Section.

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<sup>3</sup>Achievement of the goal provided for in this Section 2.4 shall exclusively be enforced through Section 3.1 below.



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

2             The Parties acknowledge that Brimer and his counsel offered to resolve this dispute  
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
4 this fee issue to be resolved after the material terms of the agreement had been settled. Busch then  
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
6 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due  
7 to Brimer and his counsel under the private attorney general doctrine codified at California Code  
8 of Civil Procedure §1021.5 for all work performed through the Court's approval of this agreement.  
9 Under the private attorney general doctrine, Busch shall reimburse Brimer and his counsel for fees  
10 and costs incurred as a result of investigating, bringing this matter to Busch's attention, litigating  
11 and negotiating a settlement in the public interest and seeking the Court's approval of the  
12 settlement agreement. Busch shall pay Brimer and his counsel \$45,000 for all attorneys' fees,  
13 expert and investigation fees, litigation and related costs. The payment shall be made payable to  
14 HIRST & CHANLER LLP and shall be delivered as soon and expeditiously as possible but in no  
15 event later than 15 days after the date of the Court's approval of the Consent Judgment, at the  
16 following address:

17             HIRST & CHANLER LLP  
18             Attn: Proposition 65 Controller  
19             2560 Ninth Street  
20             Parker Plaza, Suite 214  
21             Berkeley, CA 94710-2565

22     **5. RELEASE OF ALL CLAIMS**

23             **5.1 Release of Busch and Downstream Customers**

24             In further consideration of the promises and agreements herein contained, and for the  
25 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and  
26 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
27 general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
28 form of legal action and releases all claims, including, without limitation, all actions, and causes  
of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and

1 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
2 (collectively "Claims"), against Busch and each of its downstream distributors, wholesalers,  
3 licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers,  
4 users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors,  
5 attorneys, representatives, shareholders, agents, and employees, and sister and parent entities,  
6 (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65,  
7 as such claims relate to Busch's alleged failure to warn about consumer or occupational exposures  
8 to or identification of the Listed Chemical contained in the Products.

9 The Parties further understand and agree that this release shall not extend upstream to any  
10 entities that manufactured the Products or any component parts thereof, or any distributors or  
11 suppliers who sold the Products or any component parts thereof to Busch.

#### 12 **5.2 Busch's Release of Brimer**

13 Busch waives any and all claims against Brimer, his attorneys and other representatives,  
14 for any and all actions taken or statements made (or those that could have been taken or made) by  
15 Brimer and his attorneys and other representatives, whether in the course of investigating claims  
16 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to  
17 the Products.

#### 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 paid  
22 to Plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within  
23 fifteen (15) days after receiving written notice from Busch that the one-year period has expired.

#### 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.

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1       **8. ATTORNEYS' FEES**

2           In the event that, after Court approval: (1) Busch or any third party seeks modification of  
3 this Consent Judgment pursuant to Section 14 below; or (2) Brimer takes reasonable and necessary  
4 steps to enforce the terms of this Consent Judgment, Brimer shall be entitled to seek his  
5 reasonable attorneys' fees and costs pursuant to CCP §1021.5.

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, then Busch  
10 shall provide written notice to Brimer of any asserted change in the law, and shall have no further  
11 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products  
12 are so affected.

13       **10. NOTICES**

14           Unless specified herein, all correspondence and notices required to be provided pursuant to  
15 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
16 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the  
17 other party at the following addresses:

18       To Busch:

19           Patrick T. Stokes  
20           Legal Department  
21           ANHEUSER-BUSCH, INC.  
22           One Busch Place  
23           St. Louis, MO 63118-1852

24       With a Copy to:

25           José R. Allen, Esq.  
26           SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
27           Four Embarcadero Center, Suite 3800  
28           San Francisco, CA 94111-4144

          To Brimer:

          Proposition 65 Coordinator  
          HIRST & CHANLER LLP  
          2560 Ninth Street, Suite 214  
          Berkeley, CA 94710-2565

1 Any Party, from time to time, may specify in writing to the other Party a change of address  
2 to which all notices and other communications shall be sent.

3 **11. 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 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

8 Brimer agrees to comply with the reporting form requirements referenced in Health &  
9 Safety Code § 25249.7(f).

10 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

11 Brimer and Busch agree to mutually employ their best efforts to support the entry of this  
12 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
13 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a  
14 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the  
15 Parties agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), within a  
16 reasonable period of time after the Execution Date (*i.e.*, not to exceed thirty (30) days unless  
17 otherwise agreed to by the Parties' counsel based on unanticipated circumstances). Busch shall  
18 have no additional responsibility to Plaintiff's counsel pursuant to Code of Civil Procedure §  
19 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to  
20 the preparation and filing of the Joint Motion and its supporting declaration or with regard to  
21 Plaintiff's counsel appearing for a hearing thereon.

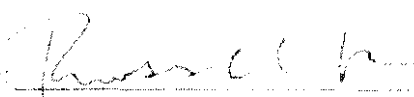


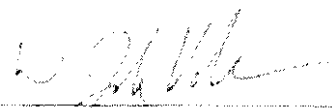
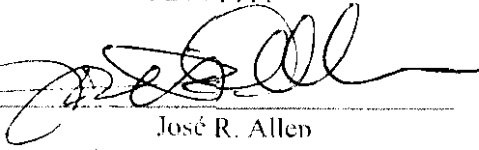
22 **14. MODIFICATION**

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

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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.

<p>5 <b>AGREED TO:</b></p> <p>6 Date: <u>2-15-07</u></p> <p>7</p> <p>8</p> <p>9 By: <u></u> Plaintiff Russell Brimer</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>5 <b>AGREED TO:</b></p> <p>6 Date: <u></u></p> <p>7</p> <p>8</p> <p>9 By: <u>2/22/07</u> Defendant Busch Entertainment Corp.</p> <p>10</p> <p>11 Date: <u>2/22/07</u></p> <p>12</p> <p>13 By: <u></u> Defendant Sea World Inc.</p> <p>14</p> <p>15</p>
<p>16 <b>APPROVED AS TO FORM:</b></p> <p>17 Date: <u>2/15/07</u></p> <p>18 HIRST &amp; CHANLER LLP</p> <p>19</p> <p>20</p> <p>21 By: <u></u> D. Joshua Voorhees Attorneys for Plaintiff RUSSELL BRIMER</p> <p>22</p> <p>23</p> <p>24</p>	<p>16 <b>APPROVED AS TO FORM:</b></p> <p>17 Date: <u>3/9/07</u></p> <p>18 SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM LLP</p> <p>19</p> <p>20</p> <p>21 By: <u></u> José R. Allen Attorneys for Defendants BUSCH ENTERTAINMENT CORP. and SEA WORLD INC.</p> <p>22</p> <p>23</p> <p>24</p>

25 **IT IS SO ORDERED.**

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

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

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**Exhibit A**

If Defendants elect to use the warning symbol system set forth in Sections 2.1(b)(i) or (ii), Defendants will use the following Designated Symbol [Yellow Triangle] to identify Products containing the Listed Chemical which are sold through their catalogs or on their website:

