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

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

FILED
San Francisco County Superior Court

JUL 3 2007

GORDON PARK-LI, Clerk
BY: *Paul Henders*
Deputy Clerk

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.
28

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 **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”).¹ All
23 Products with exterior decorations that extend into the “Lip-and-Rim Area²” 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

27 ¹If 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 ²“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).³

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.

³Achievement 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 \$42,000 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.

28

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

29 To Brimer:

30 Proposition 65 Coordinator
31 HIRST & CHANLER LLP
32 2560 Ninth Street, Suite 214
33 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**

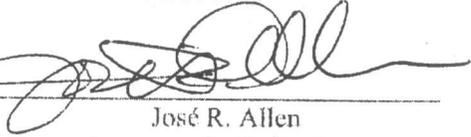
23 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
24 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
25 of any Party and entry of a modified Consent Judgment by the Court. The Attorney General shall
26 be served 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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15. AUTHORIZATION

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

<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>2-15-07</u></p> <p>By: <u></u> Plaintiff Russell Brimer</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u></u></p> <p>By: <u>2/22/07</u> Defendant Busch Entertainment Corp.</p> <p>Date: <u>2/22/07</u></p> <p>By: <u></u> Defendant Sea World Inc.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>2/15/07</u></p> <p style="text-align: center;">HIRST & CHANLER LLP</p> <p>By: <u></u> D. Joshua Voorhees Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>3/9/07</u></p> <p style="text-align: center;">SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP</p> <p>By: <u></u> José R. Allen Attorneys for Defendants BUSCH ENTERTAINMENT CORP. and SEA WORLD INC.</p>

IT IS SO ORDERED.

Date: July 3, 2007


JUDGE OF THE SUPERIOR COURT
PATRICIA J. HANCOCK

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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:

