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Attorneys for Plaintiff
RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

GOLDEN ORCHID, LTD.; and DOES 1 through 150, inclusive,

Defendants.

Case No. CGC-07-464845

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

Date: December 12, 2008
Time: 9:30 a.m.
Dept.: 301
Judge: Hon. Peter Busch

In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant GOLDEN ORCHID, LTD., have agreed through their respective counsel that judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a Stipulation and [Proposed] Order Re: Consent Judgment entered into by the parties on September 9, 2008.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil Procedure §664.5, judgment is entered in accordance with the terms of the Stipulation and Order Re: Consent Judgment attached hereto as **Exhibit 1**~~, and lodged concurrently herewith~~. (UM)

IT IS SO ORDERED.

Dated: DEC 29 2008

The Honorable PETER J. BUSCH signing this document on behalf of the Judge who heard the cause

Hon. Peter Busch
JUDGE OF THE SUPERIOR COURT

Exhibit 1

David S. Lavine, State Bar No. 166744
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Attorneys for Defendant
GOLDEN ORCHID, LTD.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

GOLDEN ORCHID, LTD.; and DOES 1 through 150

Defendants.

Case No. CGC-07-464845

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 defendant Golden Orchid, Ltd. (hereinafter "Golden Orchid" or "Defendant"), with Plaintiff and Defendant collectively referred to as the "Parties" and Brimer and Defendant each being a "Party."

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

1.3 **General Allegations**. Plaintiff alleges that Defendant has manufactured, distributed and/or sold in the State of California glass soy sauce bottles and other glass-bottled products intended for the consumption of food or beverages with colored artwork or designs containing lead on the exterior surface. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.* (" Proposition 65") is known to cause cancer and birth defects (and other reproductive harm). Lead (and/or lead compounds) shall be referred to herein as the "Listed Chemical."

1.4 **Product Description**. The products that are covered by this Consent Judgment are defined as follows: glass soy sauce bottles and other glass-bottled products intended for the consumption of food or beverages, with colored artwork or designs on the exterior surface containing lead, manufactured, imported, distributed and/or otherwise sold by Defendant in California. Such products collectively are referred to herein as the "Products."

1.5 **Notices of Violation**. Beginning on March 21, 2007, Brimer served Defendant and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice"), that provided Defendant and such public enforcers with notice that alleged that Defendant was in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain Products that they sold expose users in California to the Listed Chemical. Since then, no public enforcer sought to diligently prosecute the allegations set forth in the Notice.

1.6 **Complaint**. On July 3, 2007, Brimer, in the interest of the general public in California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the

Superior Court for the City and County of San Francisco against Defendant and Does 1 through 150, alleging violations of Health & Safety Code §25249.6 based on the alleged exposures to the Listed Chemical contained in certain Products sold by Defendant without the requisite health hazard warnings.

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

1.8 **Consent to Jurisdiction**. For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the Parties and concerning the alleged violations at issue and personal jurisdiction over Defendant as to the acts alleged, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment and to enforce the provisions thereof.

1.9 **Effective Date**. For purposes of this Consent Judgment, "Effective Date" shall be May 1, 2008.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Representation and Commitment To Sell Only of Lead-Free Products In California.

Beginning on the Effective Date, Defendant represents and warrants that it will not sell any Products to California customers unless those Products comply with Section 2.2 below.

2.2 Reformulation Commitment

Defendant hereby makes the following commitment, which shall be deemed to be sufficient in lieu of providing Proposition 65 warnings for the Products: as of the Effective Date, Defendant

shall not ship, offer to ship for sale or sale in California any Products containing the Listed Chemical, unless such Products meet the applicable reformulation standards set forth in section 2.2(b) below.

(a) **Reformulation Definitions**. For purposes of this section, the following definitions apply:

"Exterior Decorations" is defined as all colored artwork, designs and/or markings on the exterior surface of the Product.

"Lip and Rim Area" is defined as the interior and exterior top 20 millimeters of a hollowware food/beverage Product, as defined by American Society of Testing and Materials Standard Test Method C927-99.

"No Detectable Lead" shall mean that no lead is detected at a level above two one-hundredths of one percent (0.02%) by weight using a sample size of the materials in question measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation of less than 200 ppm.[1]

"Product" shall mean glass soy sauce bottles and other glassware intended for the consumption of food or beverages, with colored artwork or designs on the exterior surface.

"Reformulated Product" refers to any Product that meets the Reformulation Standard set forth below, as applicable.

(b) **Reformulation Standard.** A Product is a Reformulated Product if it satisfies the standards outlined in subsections 2.2.(b)(i), (ii) or (iii), subject to the following qualifications:

i. Decorating Material Content-Based Standard. The Exterior Decorations, exclusive of the Lip and Rim Area, must only utilize decorating materials that contain six one-hundredths of one percent (0.06%) lead by weight or less as measured either before or after the material is fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050B.[2]

[1] If the decoration is tested after it is affixed to the Product, the percentage of the 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 substrate).

[2] If the decoration is tested after it is affixed to the Product, the percentage of the 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 substrate).

ii. Wipe Test-Based Standard. The Product must produce a test result no higher than 1.0 micrograms (ug) of lead as applied to the Exterior Decorations and performed as outlined in NIOSH method no. 9100.

iii. Total Acetic-Acid Immersion Test Based Standard. The Product must achieve a result of 0.99 ppm or less for lead after correction for internal volume when tested under the protocol attached hereto as Exhibit A (the ASTM C927-99 test method, modified for total immersion with results corrected for internal volume).[3]

iv. Lip and Rim Area Decoration. If the Product contains Exterior Decorations in the Lip and Rim Area:

(A) Any Exterior Decorations that extend into the Lip and Rim Area must only utilize decorating materials that contain No Detectable Lead; or

(B) The Product must yield a test result showing a concentration level of 0.5 ug/ml or less of lead using ASTM method C 927-99.[4]

3. **PAYMENTS MADE PURSUANT TO HEALTH & SAFETY CODE §25249.6**

In settlement of all the claims referred to in this Consent Judgment against it, Golden Orchid shall pay $1,600 in civil penalties to be apportioned in accordance with California 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 remitted to Brimer as provided by California Health and Safety Code §25249.12(d). Golden Orchid shall issue two separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of $1,200, representing 75% of the total penalty; and (b) one check to Hirst & Chanler LLP in Trust for Brimer in the amount of $400, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be

[3] Because this method requires correction for internal volume, this method is only appropriate for ceramic hollowware.

[4] The result must be evaluated without correction for internal volume; this method is only appropriate for ceramic hollowware.

issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of $1,200. The second 1099 shall be issued to Brimer in the amount of $400, whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due. The payment shall be made payable to HIRST & CHANLER LLP and shall be delivered on or before May 1, 2008, at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
455 Capitol Mall, Suite 605
Sacramento, CA 95814

4. **REIMBURSEMENT OF FEES AND COSTS**

The parties reached an accord on the compensation due to Brimer and his counsel under the private attorney doctrine, Heath & Safety Code §25249.6 *et seq.* and principles of contract law. Under these legal principles, Golden Orchid shall reimburse Brimer's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Golden Orchid's attention, and negotiating a settlement in the public interest. Golden Orchid shall pay Brimer and his counsel $18,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be made payable to HIRST & CHANLER LLP and shall be delivered no or before May 1, 2008, at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
455 Capitol Mall, Suite 605
Sacramento, CA 95814

Golden Orchid shall issue a separate 1099 for fees and cost paid in the amount of $18,000 to Hirst & Chanler LLP, 455 Capitol Mall, Suite 605, Sacramento, CA 95814 (EIN: 20-3929984).

5. **RELEASE OF ALL CLAIMS**

In further consideration of the representations, warranties and commitments herein contained, and for the payments to be made pursuant to sections 3 and 4, Plaintiff, on behalf of himself, his past and current agents, representatives, attorneys, successors assignees, or any person or entity who may now or in the future claim through him in a derivative manner, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or

indirectly, any form of legal action and release all claims, including, without limitation, all actions, 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 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Defendant and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent company, corporate affiliates, subsidiaries and their respective officers, directors, attorneys, representatives, shareholders, agents, representatives, insurers and employees and any other persons or entities to whom Defendant may be liable (collectively, "Defendant's Releasees") arising under Proposition 65 related to Defendant's or Defendant's Releasees' alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Products. It is specifically understood and agreed that the Parties and the Court intend that Defendant's compliance with the terms of this Consent Judgment resolves all issues and liability, now and in the future (so long as Defendant complies with the terms of the Consent Judgment) concerning Defendant and the Defendant's Releasees' compliance with the requirements of Proposition 65 as to the Listed Chemical in the exterior decorations on the Products.

6. COURT APPROVAL

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

7. SEVERABILITY

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

8. **GOVERNING LAW**

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

9. **NOTICES**

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

For Plaintiff:	For Defendant:
Russell Brimer c/o Hirst & Chanler LLP Attn: Proposition 65 Controller 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565	Herman Chung, President Golden Orchid, Ltd. 6025 Triangle Drive Los Angeles, CA 90040

10. **COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

Plaintiff agrees to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall present this Consent Judgment to the California Attorney General's Office within two (2) days after receiving all of the necessary signatures. A noticed motion to enter the Consent

Judgment will then be served on the Attorney General's Office at least forty-five (45) days prior to the date a hearing is scheduled on such motion in the Superior Court for the City and County of San Francisco unless the Court allows a shorter period of time.

12. **ADDITIONAL POST EXECUTION ACTIVITIES**

The Parties shall mutually employ their best efforts to support the entry of this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the plaintiff agrees to file a Motion to Approve the Agreement ("Motion"), the first draft of which Plaintiff's counsel shall prepare, within a reasonable period of time after the Execution Date (*i.e.*, not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to Section 4.

13. **MODIFICATION**

This Consent Judgment may be modified only by: (1) written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court. Brimer shall be entitled to his reasonable fees and costs under CCP §1021.5 if Defendant, the Attorney General and/or any third party seeks to modify the terms of this Consent Judgment.

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14. **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.

AGREED TO:

Date: 4-21-09

By: _____
Plaintiff RUSSELL BRIMER

AGREED TO:

Date: _____

By: _____
Defendant GOLDEN ORCHID, LTD.

APPROVED AS TO FORM:

Date: _____

HIRST & CHANLER LLP

By: _____
David R. Bush, Esq.
Attorney for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: _____

MORRIS, POLICH & PURDY LLP

By: _____
David J. Vendler, Esq.
Attorney for Defendant
GOLDEN ORCHID, LTD.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT

14. **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.

AGREED TO:

Date: _____

By: _____
Plaintiff RUSSELL BRIMER

AGREED TO:

Date: _____

By: _____
Defendant GOLDEN ORCHID, LTD.

APPROVED AS TO FORM:

Date: Apr. 28, 2008

HIRST & CHANLER LLP

By: _____
David R. Bush, Esq.
Attorney for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: _____

MORRIS, POLICH & PURDY LLP

By: _____
David J. Vendler, Esq.
Attorney for Defendant
GOLDEN ORCHID, LTD.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT

14. **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.

AGREED TO:

Date: 4-28-08

By: _____
Plaintiff RUSSELL BRIMER

AGREED TO:

Date: 4-28-08

By: _____
Defendant GOLDEN ORCHID, LTD.

APPROVED AS TO FORM:

Date: _____

HIRST & CHANLER LLP

By: _____
David R. Bush, Esq.
Attorney for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: _____

MORRIS, POLICH & PURDY LLP

By: _____
David J. Vendler, Esq.
Attorney for Defendant
GOLDEN ORCHID, LTD.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT

14. **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.

AGREED TO:

Date: _____

By: _____
Plaintiff RUSSELL BRIMER

APPROVED AS TO FORM:

Date: _____

HIRST & CHANLER LLP

By: _____
David R. Bush, Esq.
Attorney for Plaintiff
RUSSELL BRIMER

AGREED TO:

Date: _____

By: _____
Defendant GOLDEN ORCHID, LTD.

APPROVED AS TO FORM:

Date: Sept 9/09

MORRIS, POLICH & PURDY LLP

By: _____
David J. Vendler, Esq.
Attorney for Defendant
GOLDEN ORCHID, LTD.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT