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MICHAEL DIPIRRO

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10 Attorneys for Defendant
11 JOYCE CHEN, INC.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF SAN FRANCISCO

15 UNLIMITED CIVIL JURSDICTION
16

17 MICHAEL DIPIRRO,) No. CGC-02-407399
18 Plaintiff,)
19 v.) CONSENT JUDGMENT
20 JOYCE CHEN, INC.; and DOES 1)
21 through 150,)
22 Defendants.)
_____)

23 This Consent Judgment ("Agreement" or "Consent Judgment")
24 is entered into by and between Michael DiPirro and Joyce Chen,
25 Inc. (hereinafter "JOYCE CHEN"), a Massachusetts corporation,
26 as of November 22, 2002 (the "Effective Date"). The parties
27 agree to the following terms and conditions:
28

1 **WHEREAS:**

2 A. Michael DiPirro is an individual residing in
3 San Francisco, California, who seeks to promote awareness of
4 exposures to toxic chemicals and improve human health by
5 reducing or eliminating hazardous substances contained in
6 consumer and industrial products;

7 B. DiPirro alleges that JOYCE CHEN is a company
8 that apparently manufactures, distributes and/or sells certain
9 Brass Strainers and Skimmers that contain lead or lead
10 compounds, a substance known to the State of California to
11 cause cancer and birth defects (or other reproductive harm);

12 C. A list of such JOYCE CHEN products that DiPirro
13 alleges contain lead (or lead compounds) (the "Listed
14 Chemical"), which are sold or offered for sale in California
15 and which are covered by this Agreement, is provided in
16 Exhibit A (all such JOYCE CHEN products to be collectively
17 referred to hereinafter as the "Products");

18 D. On December 28, 2001, Michael DiPirro first
19 served JOYCE CHEN and other public enforcement agencies with a
20 document entitled "60-Day Notice of Violation" that provided
21 JOYCE CHEN, and such public enforcers, with notice that JOYCE
22 CHEN was allegedly in violation of Health & Safety Code
23 §25249.6 for failing to warn purchasers that the Products sold
24 in California expose users to the Listed Chemical; and

25 E. On May 1, 2002, Michael DiPirro filed a
26 complaint entitled Michael DiPirro v. Joyce Chen, Inc.; et al.
27 in the San Francisco County Superior Court, naming JOYCE CHEN
28 as a defendant and alleging violations of Business &

1 Professions Code §17200 and §17500 as well as Health & Safety
2 Code §25249.6 on behalf of individuals in California who
3 allegedly have been exposed to the Listed Chemical, listed
4 pursuant to Proposition 65, contained in certain products that
5 JOYCE CHEN manufactures and distributes for sale.

6 F. Nothing in this Agreement shall be construed as
7 an admission by JOYCE CHEN of any fact, finding, issue of law
8 or violation of law, nor shall compliance with this Agreement
9 constitute or be construed as an admission by JOYCE CHEN of
10 any fact, finding, conclusion, issue of law or violation of
11 law. However, this paragraph shall not diminish or otherwise
12 affect the obligations, responsibilities, and duties of JOYCE
13 CHEN under this Agreement.

14 **NOW THEREFORE, MICHAEL DIPIRRO AND JOYCE CHEN AGREE AS
15 FOLLOWS:**

16 **1.0 Product Warnings.** (a) Subject to Paragraph
17 1.0(b) below, beginning as soon as reasonably practicable
18 after the Effective Date of this Agreement but no later than
19 December 15, 2002, JOYCE CHEN shall begin to revise its
20 product packaging to ensure that all of the Products bear the
21 following warning statement:

22 **"WARNING:**

23 **The brass in this product contains**
24 **Lead, a substance known to the State**
25 **of California to cause cancer and**
26 **birth defects (or other reproductive**
27 **harm).**

28 **Use of this product is likely to**
contribute some levels of lead into
food.

1 The warning stated above may be placed on: (1) a
2 product label; (2) on the accompanying packaging as a sticker;
3 or (3) on a store sign sufficiently near the Products' point
4 of sale so that it is likely to be read by an ordinary
5 individual under customary conditions of purchase for the
6 Products. For purposes of this Consent Judgment, a warning
7 sticker placed on product packaging that is not available to
8 the consumer before purchase, or on product packaging that
9 does not accompany the Products when purchased, is not
10 reasonably calculated to transmit the requisite warning and,
11 thus, may not be used to comply with this paragraph.

12 (b) Notwithstanding any other provision of this
13 Agreement, no warning for exposure to lead shall or need be
14 provided by JOYCE CHEN for any Product that: produces a test
15 result of 0.100 ppm or less for lead (using graphite furnace
16 AAS or flame AAS, at JOYCE CHEN's sole discretion) using, at
17 JOYCE CHEN's sole discretion: (1) ASTM method C927-80
18 (Reapproved 1999); ASTM C738-94 (Reapproved 1999); or U.S. FDA
19 Elemental Analysis Manual for Food and Related Products,
20 Section 4.1 (January 2000).

21 **1.1 Interim Health Safety Efforts**

22 In an attempt to ensure that all Products already in
23 the stream of commerce contain the requisite health hazard
24 warnings at the point of sale, JOYCE CHEN agrees to send a
25 letter within 30 days of the Effective Date, via certified
26 mail, with a copy to counsel for plaintiff, to each of its
27 California retail customers which it believes have sold any of
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1 the Products over the past two years or may have any inventory
2 of any Products within 30 days of the Effective Date, that
3 explains such retailer's duty to provide toxic warnings for
4 the Products and either: (a) includes a sufficient number of
5 warning stickers (with warning language from Paragraph 1.0)
6 and requires that they be placed on any and all Products still
7 on the retailers' sales floors or in such retailers'
8 inventory; or (b) requests that if they do not place the
9 warning stickers, that such retail stores destroy any and all
10 of such Product remaining on the retailers' sales floors.

11 **2. Payment Pursuant To Health & Safety Code**

12 **§25249.7 (b).** Pursuant to Health & Safety Code §25249.7(b),
13 JOYCE CHEN shall pay a civil penalty of \$35,000 to be made in
14 three payments: (1) \$10,000 within five (5) days of the
15 Effective Date; (2) \$3,000 on January 15, 2003; and (3)
16 \$22,000 on August 30, 2003. Mr. DiPirro agrees to waive the
17 second payment, and JOYCE CHEN shall not be required to make
18 the second payment, if JOYCE CHEN certifies by declaration of
19 an officer or director to Mr. DiPirro, no later than January
20 10, 2003, that it has complied with the Interim Health Safety
21 provisions set forth in paragraph 1.1. Mr. DiPirro agrees to
22 waive all of the third payment, and JOYCE CHEN shall not be
23 required to make the third payment, if JOYCE CHEN certifies by
24 declaration of an officer or director to Mr. DiPirro, no later
25 than August 15, 2003, that it has caused the Products to be
26 designed or reformulated so that no warning (as required under
27 Paragraph 1.0(b)) is necessary on any Product it shipped into
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1 California after December 30, 2002.

2 The penalty payment is to be made payable to
3 "Sheffer & Chanler LLP In Trust For Michael DiPirro". If the
4 Consent Judgment is not approved by the Court, DiPirro will
5 return all funds, with interest thereon at the prevailing
6 federal funds rate (currently set at 1.25% per annum), within
7 five (5) calendar days of notice of the Court's decision. All
8 penalty monies shall be apportioned by DiPirro in accordance
9 with Health & Safety Code §25192, with 75% of these funds
10 remitted to the State of California's Department of Toxic
11 Substances Control.

12 **3.0 Reimbursement Of Fees And Costs.** The parties
13 acknowledge that DiPirro and his counsel offered to resolve
14 this dispute without reaching terms on the amount of fees and
15 costs to be reimbursed to them, thereby leaving this fee issue
16 to be resolved after the material terms of the agreement had
17 been settled. JOYCE CHEN then expressed a desire to resolve
18 the fee and cost issue shortly after the other settlement
19 terms had been finalized. The parties then attempted to (and
20 did) reach an accord on the compensation due to DiPirro and
21 his counsel under the private attorney general doctrine
22 codified at C.C.P. §1021.5 for all work performed through the
23 Effective Date of the Agreement.

24 Under the private attorney general doctrine codified at
25 C.C.P. §1021.5, JOYCE CHEN shall reimburse DiPirro and his
26 counsel for his fees and costs, incurred as a result of
27 investigating, bringing this matter to JOYCE CHEN's attention,
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1 litigating and negotiating a settlement in the public
2 interest. JOYCE CHEN shall pay DiPirro and his counsel
3 \$28,800 except as provided for in paragraph 3.1 to 3.6 below,
4 for all attorneys' fees, expert and investigation fees, and
5 litigation costs, within five (5) days from the Effective
6 Date. Payment should be made payable to "Sheffer & Chanler
7 LLP." If the Consent Judgment is not approved by the Court,
8 DiPirro and Sheffer & Chanler LLP will return all funds, with
9 interest thereon at the prevailing federal funds rate
10 (currently set at 1.25% per annum), within five (5) calendar
11 days of notice of the Court's decision.

12 **3.1 Additional Fees and Costs in Seeking Judicial**
13 **Approval.** The parties acknowledge that, pursuant to recent
14 interpretations of Health & Safety Code §25249.7, a noticed
15 motion is required to obtain judicial approval of this
16 Agreement. Accordingly, the parties agree to use their best
17 efforts to file a *Joint Motion to Approve the Agreement* within
18 a reasonable period of time after execution of this Agreement.
19 As part of its best efforts commitment, JOYCE CHEN agrees to
20 transmit to Plaintiff's counsel a draft of the moving papers
21 for the court's approval of the Consent Judgment within
22 fifteen calendar days of the Effective Date of this Agreement.
23 It is understood that DiPirro may, in his sole discretion,
24 file the *Motion to Approve* on his own. Pursuant to C.C.P.
25 §1021.5, JOYCE CHEN agrees to reimburse DiPirro and his
26 counsel for their reasonable fees and costs incurred in
27 seeking judicial approval of this Agreement and for efforts
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1 related to fulfilling reporting requirements, to the extent
2 described in paragraphs 3.2 through 3.6.

3 **3.2** If no opposition to the motion to approve (nor
4 objection to the terms of the agreement) is filed or otherwise
5 transmitted by any third party, JOYCE CHEN agrees to reimburse
6 DiPirro under Paragraph 3.1, for additional reasonable fees
7 and costs actually incurred in an amount not to exceed \$4,800.

8 **3.3** In the event that any third party, including
9 any public enforcer, objects or otherwise comments to one or
10 more provisions of this Agreement, JOYCE CHEN agrees to use
11 its best efforts, comporting with a reasonable interpretation
12 of existing law, to support each of the terms of the
13 Agreement, as well as to seek judicial approval of this
14 Agreement.

15 **3.4** In the event that such an objection or
16 opposition is transmitted or filed by any third party, JOYCE
17 CHEN agrees to reimburse DiPirro under Paragraph 3.1, in
18 addition to any reasonable fees and costs due under Paragraph
19 3.2, for his additional reasonable attorneys' fees and costs
20 actually incurred in securing approval of this Consent
21 Judgment in an amount not to exceed \$3,000.

22 **3.5** In the event that defending this Agreement from
23 such objection or opposition from any third party requires a
24 declaration from an expert, then JOYCE CHEN agrees to
25 reimburse DiPirro, in addition to any attorney's fees and
26 costs under Paragraph 3.2 or 3.4, for such expert's reasonable
27 fees and costs in an amount not to exceed \$2,000.

1 **3.6** JOYCE CHEN's payment of DiPirro's legal fees
2 and costs pursuant to Paragraphs 3.1-3.5 shall be due within
3 ten (10) calendar days after receipt of a billing statement
4 from DiPirro ("Additional Fee Claim"). Payment of the
5 Additional Fee Claim shall be made payable to the "Sheffer &
6 Chanler LLP." JOYCE CHEN has the right to object to DiPirro's
7 reimbursement request and, in its sole discretion, may submit
8 the resolution of this issue to an arbitrator to be mutually
9 selected or failing to reasonably agree on the selection of
10 such arbitrator then to the American Arbitration Association
11 (AAA) in New York or San Francisco to determine the
12 reasonableness of the additional fees and costs sought. JOYCE
13 CHEN must file the arbitration claim, if at all, on this issue
14 of reimbursement for the Additional Fee Claim with the
15 arbitrator or the AAA administrative officer and serve the
16 claim on DiPirro within ten (10) calendar days following
17 DiPirro's service of the Additional Fee Claim on JOYCE CHEN or
18 ten (10) calendar days from the parties failure to mutually
19 select an arbitrator but no later than thirty (30) days from
20 service of the Additional Fee Claim. If JOYCE CHEN does not
21 file an arbitration notice with AAA in a timely manner, JOYCE
22 CHEN's right to arbitrate this matter is waived. DiPirro may
23 then file a motion, pursuant to C.C.P. §1021.5, with the Court
24 seeking his (and his attorneys') fees and costs incurred as
25 set forth in this paragraph.

26 **4. Michael DiPirro's Release of JOYCE CHEN.**

27 Michael DiPirro, by this Agreement, on behalf of himself, his
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1 agents, representatives, attorneys, heirs, executors,
2 administrators, successors and assigns, and in the interest of
3 the general public, waives all rights to institute or
4 participate in, directly or indirectly, any form of legal
5 action, and releases all claims, liabilities, obligations,
6 losses, costs, expenses, fines, penalties, fees, and damages,
7 restitution, injunction, and any other form of relief, whether
8 legal or equitable, against JOYCE CHEN and its directors,
9 officers, employees, agents, parents, subsidiaries, divisions,
10 customers, successors and assigns, whether under Proposition
11 65 or the Business & Profession Code §17200 or §17500, inter
12 alia, based on their alleged failure to warn about exposure to
13 the Listed Chemical contained in any of the Products. This
14 Agreement is a full, final, and binding resolution between
15 DiPirro, on behalf of himself and in the interest of the
16 general public, and JOYCE CHEN (and the above named parties),
17 of any violation of Proposition 65, Business & Professions
18 Code §§17200 or 17500, inter alia, or any other claim that
19 could have been asserted based on alleged failure to warn for
20 exposure to lead in the Products or other facts alleged in the
21 Notices and /or Complaint. The parties intend that compliance
22 with this Agreement to resolve any issue now, in the past, or
23 in the future concerning the Products' past and present, and
24 future (up to the date of compliance established in Paragraph
25 1, above, and in the future so long as JOYCE CHEN complies
26 with this Agreement) compliance with Proposition 65 as such
27 compliance pertains to the Products at issue. In addition,
28 DiPirro, on behalf of himself, his attorneys, his agents, his

1 heirs, his executors, his administrators and successors waives
2 all rights to institute any form of legal action against JOYCE
3 CHEN and its attorneys or representatives, for all actions or
4 statements made by JOYCE CHEN or its attorneys or
5 representatives, in the course of responding to alleged
6 violations of Proposition 65 or Business & Profession Code
7 §17200 and §17500 by JOYCE CHEN. Provided, however, that
8 DiPirro shall remain free to institute any form of legal
9 action to enforce the provisions of this Consent Judgment.

10 **5. JOYCE CHEN's Release Of Michael DiPirro.** JOYCE
11 CHEN, by this Agreement, waives all rights to institute any
12 form of legal action against Michael DiPirro and his attorneys
13 or representatives, for all actions or statements made by
14 Michael DiPirro or his attorneys or representatives, in the
15 course of seeking enforcement of Proposition 65 or Business &
16 Profession Code §17200 and §17500 against JOYCE CHEN in this
17 litigation. Provided, however, that JOYCE CHEN shall remain
18 free to institute any form of legal action to enforce the
19 provisions of this Consent Judgment.

20 **6. Court Approval.** If, for any reason, this
21 Consent Judgment is not ultimately approved by the Court, this
22 Agreement shall be deemed null and void.

23 **7. JOYCE CHEN Sales Data.** JOYCE CHEN understands
24 that the sales data provided to counsel for DiPirro by JOYCE
25 CHEN was a material factor upon which DiPirro has relied to
26 determine the amount of payments made pursuant to Health &
27 Safety Code §25249.7(b) in this Agreement. To the best of
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1 JOYCE CHEN's knowledge, the sales data provided is true and
2 accurate. In the event that DiPirro discovers facts that
3 demonstrate to a reasonable degree of certainty that the sales
4 data is materially inaccurate, the parties shall meet in a
5 good faith attempt to resolve the matter within ten (10) days
6 of JOYCE CHEN's receipt of notice from DiPirro of his intent
7 to challenge the accuracy of the sales data. If this good
8 faith attempt fails to resolve DiPirro's concerns, DiPirro
9 shall have the right to re-institute an enforcement action
10 against JOYCE CHEN, for those additional Products, based upon
11 any existing 60-Day Notices of violation served on JOYCE CHEN.

12 (Nothing herein, however, is intended to waive JOYCE CHEN's
13 right to challenge any such Notices in the event DiPirro re-
14 institutes an enforcement action.) In such case, all
15 applicable statutes of limitation shall be deemed tolled for
16 the period between the date DiPirro filed the instant action
17 and the date DiPirro notifies JOYCE CHEN that he is re-
18 instituting the action for the additional Products. Provided,
19 however, that such tolling period shall not exceed one year.
20 Provided, further, that JOYCE CHEN shall have no additional
21 liability, and DiPirro waives any claims that might otherwise
22 be asserted, from the Effective Date until the date that
23 DiPirro provides notice under this Paragraph 7, so long as
24 JOYCE CHEN has complied with the requirements of Paragraph 1.0
25 for all of the Products, including those numbers of Products
26 additionally discovered.

27 **8. Severability.** In the event that any of the
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1 provisions of this Agreement is held by a court to be
2 unenforceable, the validity of the enforceable provisions
3 shall not be adversely affected.

4 **9. Attorney's Fees.** In the event that a dispute
5 arises with respect to any provision(s) of this Agreement
6 (including, but not limited to, disputes arising from payments
7 to be made under this Agreement), reasonable attorneys' fees
8 incurred from the resolution of such dispute shall be
9 available to the prevailing party. This provision, however,
10 shall not apply to the procedure set forth in Paragraphs 3.1
11 to 3.6 which are to be governed by the principles of CCP
12 §1021.5.

13 **10. Governing Law.** The terms of this Agreement
14 shall be governed by the laws of the State of California.

15 **11. Notices.** All correspondence to Michael DiPirro
16 shall be mailed to:

17 Gregory M. Sheffer, Esq.
18 Sheffer & Chanler LLP
19 4400 Keller Ave., Suite 200
20 Oakland, CA 94605
21 Tel: (510) 577-0747

22 All correspondence to JOYCE CHEN shall be
23 mailed to:

24 Ann G. Grimaldi, Esq.
25 McKENNA LONG & ALDRIDGE, LLP
26 One Market Plaza, Steuart Tower
27 San Francisco, CA 94105
28 Tel: (415) 267-4000

With copy to:

Keith Ohmart, President
Joyce Chen, Inc.
6 Fortune Drive
Billerica, MA 01821

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2 **12. Compliance With Reporting Requirements (Health**
3 **& Safety Code §25249.7(f))**. The parties acknowledge that the
4 reporting provisions of Health & Safety Code § 25249.7(f)
5 apply to this Consent Judgment. Counsel for DiPirro shall
6 comply with that Paragraph by submitting the required
7 reporting form to, and serving a copy of this Consent Judgment
8 on, the California Attorney General's Office when noticing the
9 Motion to Approve hearing, if one is required by law.

10 **13. No Waiver of Parties' Rights to Modify Consent**
11 **Judgment.** Nothing herein is intended to waive any party's
12 right to seek modification of this Consent Judgment. Any such
13 modification must be submitted to the court for approval
14 either by stipulation between the parties or by noticed
15 motion, and no such modification shall have any effect unless
16 entered by the court pursuant to such stipulation or noticed
17 motion.

18 **14. Counterparts and Facsimile.** This Agreement may
19 be executed in counterparts and facsimile, each of which shall
20 be deemed an original, and all of which, when taken together,
21 shall constitute one and the same document.

22 **15. Authorization.** The undersigned are authorized
23 to execute this Agreement on behalf of their respective
24 parties and have read, understood and agree to all of the
25 terms and conditions of this Agreement.

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27 **AGREED TO:**

AGREED TO:

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Michael DiPirro
PLAINTIFF

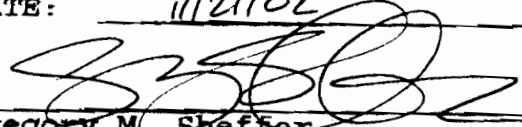
JOYCE CHEN PRODUCTS, INC.
(Sued as JOYCE CHEN, INC.)
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: 11/21/02

DATE: _____


Gregory M. Sheffer
Attorneys for Plaintiff
MICHAEL DIPIRRO

Ann G. Grimaldi
Attorneys for Defendant
JOYCE CHEN PRODUCTS, INC.
(Sued as JOYCE CHEN, INC.)

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DATE: _____


Michael DiPirro
PLAINTIFF

APPROVED AS TO FORM:

DATE: _____

Gregory M. Sheffer
Attorneys for Plaintiff
MICHAEL DIPIRRO

DATE: 20 November 2002


JOYCE CHEN PRODUCTS, INC.
(Sued as JOYCE CHEN, INC.)
DEFENDANT

APPROVED AS TO FORM:

DATE: 11/20/02

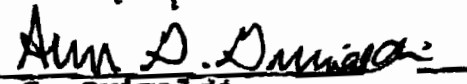

Ann G. Grimaldi
Attorneys for Defendant
JOYCE CHEN PRODUCTS, INC.
(Sued as JOYCE CHEN, INC.)

Exhibit A

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Brass Strainers and Skimmers

(such as 5" Solid Brass Strainer #30-0028)