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**ENDORSED
FILED**
San Francisco County Superior Court

JUL - 3 2007

CASE MANAGEMENT CONFERENCE SET
BY: GORDON PARK-LI, Clerk
PARAM NATT
Deputy Clerk

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6 Attorneys for Plaintiff
RUSSELL BRIMER

DEPARTMENT 212

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
12

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

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

18 Defendants.

Case No. CGC-07-464845

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code §25249.6 et seq.)

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1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,
3 in the public interest of the citizens of the State of California, to enforce the People's right to be
4 informed of the presence of lead (a toxic chemical) found in glass sauce bottles and other
5 glassware intended for the consumption of food or beverages with colored artwork or designs on
6 the exterior manufactured, distributed and/or sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn
8 California citizens about their exposure to lead present in or on certain glass sauce bottles and
9 other glassware intended for the consumption of food or beverages with colored artwork or
10 designs on the exterior that defendants manufacture, distribute and/or offer for sale to consumers
11 throughout the State of California.

12 3. High levels of lead are commonly found in the artwork or designs in and/or on glass
13 sauce bottles and other glassware that defendants manufacture, distribute and/or offer for sale to
14 consumers throughout the State of California.

15 4 Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
16 California Health & Safety Code §25249.6 *et seq.* (hereafter "Proposition 65"), "No person in the
17 course of doing business shall knowingly and intentionally expose any individual to a chemical
18 known to the state to cause cancer or reproductive toxicity without first giving clear and
19 reasonable warning to such individual...." (*Cal. Health & Safety Code* §25249.6.)

20 5. On February 27, 1987, California identified and listed lead as a chemical known to
21 cause birth defects and other reproductive harm. Lead became subject to the warning requirement
22 one year later and was therefore subject to the "clear and reasonable warning" requirements of
23 Proposition 65, beginning on February 27, 1988. (*22 CCR §12000(c); Cal. Health & Safety Code*
24 *§25249.8.*) Lead shall hereafter be referred to as the "LISTED CHEMICAL."

25 6. Defendants manufacture, distribute and/or offer for sale glass sauce bottles and
26 other glassware intended for the consumption of food or beverages with colored artwork or
27 designs on the exterior including, but not limited to, *Kimlan Soy Sauce, 148 ml (#0 79985 11055*
28 *4)*, which contain the LISTED CHEMICAL in a quantity that exceeds the maximum allowable

1 level set forth in Health & Safety Code §25249.10(c). All such glass sauce bottles and other
2 glassware containing the LISTED CHEMICAL shall hereafter be referred to as the
3 “PRODUCTS.”

4 7. Defendants’ failure to warn consumers about their exposure to the LISTED
5 CHEMICAL in conjunction with defendants’ manufacture, distribution and/or sale of the
6 PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such
7 conduct as well as civil penalties for each such violation.

8 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive
9 and permanent injunctive relief to compel defendants to provide purchasers or users of the
10 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.
11 (*Cal. Health & Safety Code §25249.7(a).*)

12 9. Plaintiff also seeks civil penalties against defendants for their violations of
13 Proposition 65, as provided for by California Health & Safety Code §25249.7(b).

14 **PARTIES**

15 10. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated
16 to protecting the health of California citizens through the elimination or reduction of toxic
17 exposures from consumer products, and brings this action in the public interest pursuant to
18 California Health & Safety Code §25249.7.

19 11. Defendant GOLDEN ORCHID, LTD. (“GOLDEN”) is a person doing business
20 within the meaning of California Health & Safety Code §25249.11.

21 12. GOLDEN manufactures, distributes and/or offers the PRODUCTS in the State of
22 California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS
23 for sale or use in the State of California.

24 13. Defendants DOES 1-50 (hereafter “MANUFACTURER DEFENDANTS”) are each
25 persons doing business within the meaning of California Health & Safety Code §25249.11.

26 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
27 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
28 engage in the process of research, testing, designing, assembling, fabricating and/or

1 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

2 15. Defendants DOES 51-100 (hereafter "DISTRIBUTOR DEFENDANTS") are each
3 persons doing business within the meaning of California Health & Safety Code §25249.11.

4 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
5 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
6 the State of California.

7 17. Defendants DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each
8 persons doing business within the meaning of California Health & Safety Code §25249.11.

9 18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
10 of California.

11 19. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
12 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code
13 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of
14 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When
15 ascertained, their true names shall be reflected in an amended complaint.

16 20. GOLDEN, MANUFACTURER DEFENDANTS, DISTRIBUTOR
17 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred
18 to hereafter as "DEFENDANTS".

19 **VENUE AND JURISDICTION**

20 21. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
21 Civil Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because
22 one or more instances of wrongful conduct occurred, and continues to occur, in the County of San
23 Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this
24 County with respect to the PRODUCTS.

25 22. The California Superior Court has jurisdiction over this action pursuant to
26 California Constitution Article VI, §10, which grants the Superior Court "original jurisdiction in
27 all causes except those given by statute to other trial courts." The statute under which this action
28 is brought does not specify any other basis of subject matter jurisdiction.

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23. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that either is a citizen of the State of California, has sufficient minimum contacts in the State of California, or otherwise purposefully avails itself of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION
(Violation of Proposition 65)

24. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 23, inclusive.

25. The citizens of the State of California have expressly stated in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5, *et seq.* ("Proposition 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and other reproductive harm." (*Cal. Health & Safety Code §25249.6.*)

26. Proposition 65 states, "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual..." (*Id.*)

27. On March 21, 2007, a sixty-day notice of violation, together with the requisite certificate of merit, was provided to GOLDEN and various public enforcement agencies stating that as a result of GOLDEN's manufacture, distribution and/or sale of the PRODUCTS, purchasers and users in the State of California were being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding such toxic exposures.

28. DEFENDANTS have engaged in the manufacture, distribution and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 has continued to occur beyond GOLDEN's

1 receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes that such
2 violations will continue to occur into the future.

3 29. DEFENDANTS' actions, in addition to exposing consumers, DEFENDANTS'
4 actions have also exposed their employees, as well as the employees at other workplaces, to the
5 LISTED CHEMICAL without appropriate warnings, including those provided in the general
6 hazard communication requirements of the California Occupational Safety and Health
7 Administration set forth in 8 CCR §5194.

8 30. Plaintiff is informed and believes that at all times relevant to this matter GOLDEN
9 has been an employer as defined in 8 CCR §5194(c).

10 31. Plaintiff is informed and believes that at all times relevant to this matter GOLDEN
11 failed to comply with 8 CCR §5194(f), and is liable for the exposures of its employees in addition
12 to the exposures of employees at other workplaces that received the PRODUCTS without
13 appropriate warning information.

14 32. Employees are exposed at the California business locations of the DEFENDANTS
15 where the PRODUCTS are, by way of example but not limitation, consumed, packed, unpacked,
16 labeled, arranged, displayed, cleaned, transferred, stocked, stored or otherwise handled.

17 33. These tasks cause employee exposure directly or indirectly though the routine
18 touching of the parts or portions of the PRODUCTS containing readily available surface amounts
19 of the LISTED CHEMICAL.

20 34. Additionally, exposure can occur through the routine touching and ingesting of
21 other materials that are contaminated with the LISTED CHEMICAL from the PRODUCTS as a
22 result of these tasks.

23 35. The appropriate public enforcement agencies have failed to commence and
24 diligently prosecute a cause of action, under Health & Safety Code §25249.6, et seq., against
25 DEFENDANTS based on the claims asserted in Plaintiff's 60-Day Notice of Violation.

26 36. At all times relevant to this action, the PRODUCTS contained the LISTED
27 CHEMICAL.

28 37. At all times relevant to this action, the DEFENDANTS knew or should have known

1 that the PRODUCTS contained the LISTED CHEMICAL.

2 38. At all times relevant to this action, the LISTED CHEMICAL was present in or on
3 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to
4 individuals during the reasonably foreseeable use of the PRODUCTS.

5 39. The normal and reasonably foreseeable use of the PRODUCTS has caused and
6 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by 22
7 CCR §12601.

8 40. Based on information and good faith belief, plaintiff alleges that at all times
9 relevant to this action, DEFENDANTS had knowledge that individuals' normal and reasonably
10 foreseeable use of the PRODUCTS would cause an exposure to the LISTED CHEMICAL through
11 dermal contact, ingestion and indirect ingestion via hand-to-mouth activities which transfer lead
12 from the PRODUCTS to the lips and mouth.

13 41. At all times relevant to this action, DEFENDANTS, and each of them, intended that
14 such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the
15 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,
16 distribution and/or sale of PRODUCTS to individuals in the State of California.

17 42. At all times relevant to this action, DEFENDANTS failed to provide a "clear and
18 reasonable warning" of reproductive toxicity (as defined by 22 CCR §12601) to those consumers,
19 employees and other individuals in the State of California who were or could become exposed to
20 the PRODUCTS and the LISTED CHEMICAL contained thereon and therein.

21 43. Individuals thus exposed to the LISTED CHEMICAL from the PRODUCTS,
22 without "clear and reasonable warning", have suffered and continue to suffer irreparable harm, for
23 which harm they have no plain, speedy or adequate remedy at law.

24 44. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
25 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
26 contact and ingestion resulting from the reasonably foreseeable use of the PRODUCTS,
27 manufactured, distributed and/or sold by DEFENDANTS without "clear and reasonable warning,"
28 have suffered, and continue to suffer, irreparable harm, for which harm they have no plain, speedy

1 or adequate remedy at law.

2 45. As a consequence of the above-described acts, DEFENDANTS, and each of them,
3 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
4 Health & Safety Code §25249.7(b).

5 46. As a consequence of the above-described acts, California Health & Safety Code
6 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
7 DEFENDANTS.

8 47. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
9 set forth hereafter.

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

12 1. That the Court, pursuant to California Health & Safety Code §25249.7(b), assess
13 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
14 violation alleged herein;

15 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
16 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
17 distributing or offering the PRODUCTS for sale or use in California, without providing “clear and
18 reasonable warnings” as defined by 22 CCR §12601, as to the harms associated with exposures to
19 the LISTED CHEMICAL;

20 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

21 4. That the Court grant such other and further relief as may be just and proper.

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23 Dated: June 27, 2007

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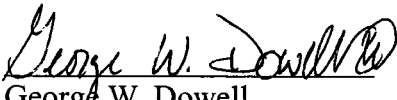
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Respectfully Submitted,
HIRST & CHANLER, LLP


George W. Dowell
Attorneys for Plaintiff
RUSSELL BRIMER