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11 DARIOUSH KHALEDI WINERY LLC

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE CITY AND COUNTY OF NAPA  
15 UNLIMITED CIVIL JURISDICTION  
16

17  
18 RUSSELL BRIMER

19 Plaintiff,  
v.

20 DARIOUSH KHALEDI WINERY LLC; and  
21 DOES 1 through 150,

22 Defendants.  
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Case No. 26-34343

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

1       **1. INTRODUCTION**

2               **1.1 Russell Brimer And Darioush Khaledi Winery LLC**

3               This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter  
4 Brimer or plaintiff) and defendant Darioush Khaledi Winery LLC (hereinafter Darioush or  
5 defendant), with Brimer and Darioush collectively referred to as the "parties."

6               **1.2 Plaintiff**

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

10              **1.3 Defendant**

11              Darioush employs ten or more persons and is a person in the course of doing business for  
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety  
13 Code §§ 25249.5 *et seq.* (Proposition 65).

14              **1.4 General Allegations**

15              Brimer alleges that Darioush has manufactured, distributed and/or sold certain glass  
16 containers and other glass items with colored artwork or designs (containing lead) on the exterior in  
17 the State of California without the requisite health hazard warnings. Lead is a substance known to  
18 cause birth defects and other reproductive harm and is listed pursuant to Proposition 65. Lead shall  
19 be referred to hereinafter as the "listed chemical."

20              **1.5 Product Description**

21              The products that are covered by this Consent Settlement are defined as follows: wine glasses  
22 and other glassware intended for the consumption of food and beverages with colored artwork or  
23 designs (containing lead) on their exterior, such as *Logo Glass #700-1*. All such wine glasses and  
24 other glassware intended for the consumption of food and beverages with colored artwork or designs  
25 (containing lead) on their exterior shall be referred to hereinafter as "products" and are limited by the  
26 product names and numbers listed on Exhibit A hereto.

27              ///

1           **1.6 Notices of Violation**

2           On September 27, 2005, Brimer served Darioush and various public enforcement agencies  
3 with a document entitled "60-Day Notice of Violation" (Notice) that provided Darioush and such  
4 public enforcers with notice that alleged that Darioush was in violation of California Health & Safety  
5 Code §25249.6 for failing to warn customers and consumers that the products that Darioush sold  
6 exposed users in California to the listed chemical.

7           **1.7 Complaint**

8           On December 14, 2005, Brimer, who is acting in the interest of the general public in  
9 California, filed a complaint (Complaint or Action) in the Superior Court in and for the City and  
10 County of San Francisco against Darioush Khaledi Winery LLC and Does 1 through 150, (*Brimer v.*  
11 *Darioush Khaledi Winery LLC; and Does 1 through 150, Case No. CGC-05-447638*) alleging  
12 violations of Health & Safety Code §25249.6 based on the alleged exposures to the listed chemical  
13 contained in the products Darioush sold. On July 24, 2006, the matter was transferred to the Napa  
14 Superior Court, (*Brimer v. Darioush Khaledi Winery LLC; and Does 1 through 150, Case No. 26-*  
15 *34343*).

16           **1.8 No Admission**

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

25           **1.9 Consent to Jurisdiction**

26           For purposes of this Consent Judgment only, the parties stipulate that this Court has  
27 jurisdiction over Darioush as to the allegations contained in the Complaint, that venue is proper in the  
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1 County of Napa and that this Court has jurisdiction to enter and enforce the provisions of this Consent  
2 Judgment.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean February 1,  
5 2007.

6 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

7 **2.1 Product Warnings**

8 After the effective date, Darioush shall not sell, ship or offer to be shipped for sale in  
9 California products containing the listed chemical unless such products are sold or shipped with the  
10 clear and reasonable warnings set out in this Section 2.1, comply with the reformulation standards set  
11 forth in Section 2.3 or are otherwise exempt pursuant to Section 2.2.

12 Any warning issued for products pursuant to this Section 2.1 shall be prominently placed with  
13 such conspicuousness as compared with other words, statements, designs, or devices as to render it  
14 likely to be read and understood by an ordinary individual under customary conditions before  
15 purchase or, for products shipped directly to an individual in California or in the workplace, before  
16 use. Any warning issued pursuant to this Section 2.1 shall be provided in a manner such that the  
17 consumer or user understands to which *specific* product the warning applies, so as to minimize if not  
18 eliminate the chance that an overwarning situation will arise.

19 Sections 2.1(a) describes Darioush's options for satisfying its warning obligations depending,  
20 in part, on the manner of sale. The following warnings will be applicable when the product is sold  
21 either to consumers or in a business-to-business transaction.

22 **(a) Retail Store Sales.** Darioush may satisfy its retail store sale warning options  
23 through either (i) product labeling or (ii) point-of-sale warnings, as described below.

24 **(i) Product Labeling.** From the effective date, a warning will be  
25 affixed to the packaging, labeling or directly on the product sold in retail outlets by Darioush or its  
26 agent that states:

27 ///

1                   **WARNING:** The materials used as colored decorations on the  
2                   exterior of this product contain lead, a chemical  
3                   known to the State of California to cause birth  
4                   defects and other reproductive harm.

5                   (ii)     **Point-of-Sale Warnings.** Darioush may perform its warning  
6                   obligations by ensuring that signs are posted at retail outlets in the State of California where the  
7                   products are sold. In order to avail itself of the point-of-sale option, Darioush shall provide a written  
8                   notice (via certified mail in the first quarter of each calendar year) to each retailer or distributor to  
9                   whom Darioush sells or transfers the products directly which informs such retailers or distributors  
10                  that point-of-sale warnings are required at each retail location in the State of California. Darioush  
11                  shall include a copy of the warning signs and posting instructions with such notice. Further, Darioush  
12                  must receive and make available for Brimer's inspection, upon request, a written commitment: (a)  
13                  from each retailer to whom Darioush sells products directly that said retailer will post the warning  
14                  signs; and (b) from each distributor to whom Darioush sells products directly that the distributor will  
15                  transmit the point-of-sale warning notice and instructions to its direct customers. Point-of-sale  
16                  warnings shall be provided through one or more signs posted in close proximity to the point of  
17                  display of the products that states:

18                   **WARNING:** The materials used as colored decorations on the  
19                   exterior of this product contain lead, a chemical  
20                   known to the State of California to cause birth  
21                   defects and other reproductive harm.

22                   **2.2     Exceptions To Warning Requirements**

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

- 24                   (i)     Any products shipped to a third party before the effective date; or
- 25                   (ii)    Reformulated products (as defined in Section 2.3 below).

26                   **2.3     Reformulation Standards**

27                   The following products shall be deemed "reformulated products" and to comply with  
28                   Proposition 65 and be exempt from any Proposition 65 warning requirements under Sections 2.1:  
29                   Products utilizing decorating materials that contain six one-hundredths of one percent (0.06%) or less

1 of lead by weight; and there must be no detectable lead in the Lip-and-Rim Area<sup>1</sup>.

2 **2.4 Reformulation Commitment**

3 Darioush hereby commits that all decorated glassware products that it offers for sale in  
4 California after March 1, 2007, shall qualify as reformulated products.

5 **3. MONETARY PAYMENTS**

6 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

7 The total settlement amount shall be \$2,000, which Darioush shall pay as set forth herein.  
8 Pursuant to Health & Safety Code §25249.7(b), Darioush shall pay the \$2,000 in civil penalties in  
9 two installments. The first payment of \$1,000 shall be made on or before February 1, 2007. The  
10 second payment of \$1,000 shall be payable April 1, 2007. The second payment shall be waived in the  
11 event that Darioush certifies in writing under penalty of perjury with supporting facts and  
12 documentation, not later than March 1, 2007 that it has complied with the Reformulation  
13 Commitment set forth in Section 2.4. Said payments shall be made payable to "HIRST & CHANLER  
14 LLP in Trust For Russell Brimer" and shall be delivered to plaintiff's counsel at the following  
15 address:

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

21 **3.2 Apportionment of Penalties Received**

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

28 \_\_\_\_\_  
<sup>1</sup>"Lip-and-Rim Area" is defined as the exterior top 20 millimeters of a hollowware food or  
beverage product.

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

2             The parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
4 issue to be resolved after the material terms of the agreement had been settled. Darioush then  
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
6 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Brimer  
7 and his counsel under the private attorney general doctrine codified at California Code of Civil  
8 Procedure §1021.5 for all work performed through the Court's approval of this agreement. Under the  
9 private attorney general doctrine, Darioush shall reimburse Brimer and his counsel for fees and costs  
10 incurred as a result of investigating, bringing this matter to Darioush's attention, litigating and  
11 negotiating a settlement in the public interest and seeking the Court's approval of the settlement  
12 agreement. Darioush shall pay Brimer and his counsel \$18,000 for all attorneys' fees, expert and  
13 investigation fees, litigation and related costs. The payment shall be made payable to HIRST &  
14 CHANLER, LLP and shall be delivered on or before February 1, 2007, at the following address:

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

20       **5.     RELEASE OF ALL CLAIMS**

21             **5.1     Release of Darioush and Downstream Customers**

22             In further consideration of the promises and agreements herein contained, and for the  
23 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and current  
24 agents, representatives, attorneys, successors and/or assignees, and in the interest of the general  
25 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
26 action and releases all claims, including, without limitation, all actions, and causes of action, in law  
27 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or  
28 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

1 Darioush and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers,  
2 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate  
3 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders,  
4 agents, and employees, and sister and parent entities (collectively releasees). This release is limited to  
5 those claims that arise under Proposition 65, as such claims relate to Darioush's alleged failure to  
6 warn about exposures to or identification of the listed chemical contained in the products.

7 The parties further understand and agree that this release shall not extend upstream to any  
8 entities that manufactured the products or any component parts thereof, or any distributors or  
9 suppliers who sold the products or any component parts thereof to Darioush.

10 **5.2 Darioush's Release of Brimer**

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

15 **6. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
17 be null and void if, for any reason, it is not approved and entered by the Court within one  
18 year after it has been fully executed by all parties, in which event any monies that have been  
19 provided to plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded  
20 within fifteen (15) days after receiving written notice from Darioush that the one-year period has  
21 expired.

22 **7. SEVERABILITY**

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

26 **8. ATTORNEYS' FEES**

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

4 **9. GOVERNING LAW**

5 The terms of this Consent Judgment shall be governed by the laws of the State of California  
6 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
7 rendered inapplicable by reason of law generally, or as to the products, then Darioush shall provide  
8 written notice to Brimer of any asserted change in the law, and shall have no further obligations  
9 pursuant to this Consent Judgment with respect to, and to the extent that, the products are so affected.

10 **10. NOTICES**

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

15 To Darioush Khaledi Winery LLC:

16 Bruce R. Brandlin, Esq.  
17 1245 E. Watson Center Road  
18 Carson, CA 90745

18 To Brimer:

19 Proposition 65 Coordinator  
20 HIRST & CHANLER LLP  
21 2560 Ninth Street  
22 Parker Plaza, Suite 214  
23 Berkeley, CA 94710-2565

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

26 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

4       **13. ADDITIONAL POST EXECUTION ACTIVITIES**

5               Brimer and Darioush agree to mutually employ their best efforts to support the entry of this  
6 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
7 timely manner. The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed  
8 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the plaintiff  
9 agrees to file a Motion to Approve the Agreement (Motion). Darioush shall have no additional  
10 responsibility to plaintiff's counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with  
11 regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of  
12 the Motion or with regard to plaintiff's counsel appearing for a hearing thereon.

13       **14. MODIFICATION**

14               This Consent Judgment may be modified only: (1) by written agreement of the parties and  
15 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of  
16 any party and entry of a modified Consent Judgment by the Court. The Attorney General shall be  
17 served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in  
18 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 respective  
3 parties and have read, understood and agree to all of the terms and conditions of this Consent  
4 Judgment.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>2.28.07</u></p> <p>By: <u></u> Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>March 5, 2007</u></p> <p>By: <u></u> Defendant DARIOUSH KHALEDI WINERY LLC</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>MARCH 7, 2007</u></p> <p>HIRST &amp; CHANLER LLP</p> <p>By: <u></u> Christopher M. Martin Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>March 5, 2007</u></p> <p>By: <u></u> Bruce R. Brandlin, Esq. Attorney for Defendant DARIOUSH KHALEDI WINERY LLC</p>

23 **IT IS SO ORDERED.**

24 Date: \_\_\_\_\_

25 \_\_\_\_\_  
26 Hon.  
27 JUDGE OF THE SUPERIOR COURT

Exhibit A

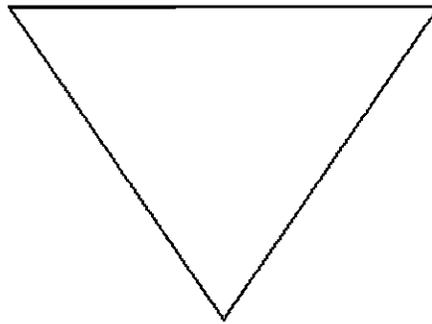
The products that are covered by this Consent Judgment are wine glasses and other glassware intended for the consumption of food or beverages with colored artwork or designs containing lead on the exterior, including, but not limited to:

- 1. *Logo Glass, #700-1*
- 2. *Tree Glass. #K029*
- 3. *Tea Glass Blue w Gold, #B068*

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**Exhibit B**

The designated symbol that Darioush will use to identify products containing lead on the exterior which are sold through its mail order catalogs, the Internet, or other means:



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