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MANDARIN SOY SAUCE, INC.

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF SAN FRANCISCO  
15 UNLIMITED CIVIL JURISDICTION  
16

17  
18 RUSSELL BRIMER

19 Plaintiff,

20 v.

21 MANDARIN SOY SAUCE, INC.; TAK SHING  
HONG, INC. and DOES 1 through 150,  
inclusive,

22 Defendants.  
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Case No. CGC-06-453880

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

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Mandarin Soy Sauce, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter  
4 "Brimer" or "Plaintiff") and defendant Mandarin Soy Sauce, Inc., (hereinafter "Mandarin" or  
5 "Defendant"), with Brimer and Mandarin collectively referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Mandarin employs ten or more persons and is a person in the course of doing business for  
12 purposes of Proposition 65.

13 **1.4 General Allegations**

14 Brimer alleges that Mandarin has manufactured, distributed and/or sold in the State of California  
15 certain glassware containers intended for the consumption of food or beverages with colored artwork or  
16 designs on the exterior (containing lead). Lead is listed pursuant to the Safe Drinking Water and Toxic  
17 Enforcement Act of 1986, California Health & Safety Code §§25249.6 *et seq.* ("Proposition 65"), as a  
18 chemical known to the State of California to cause birth defects and other reproductive harm. Lead shall  
19 be referred to herein as the "Listed Chemical."

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: Glass sauce  
22 bottles intended for the consumption of food or beverages with colored artwork or designs on the  
23 exterior (containing lead) identified in Exhibit A to this Consent Judgment. All such glassware shall be  
24 referred to herein as the "Products."

25 **1.6 Notice of Violation**

26 On or about February 13, 2006, Brimer served Mandarin, co-defendant and cross-complainant  
27 Tak Shing Hong, Inc. (hereinafter "Tak Shing"), and various public enforcement agencies with a  
28 document entitled "60-Day Notice of Violation" (the "Notice") that provided Mandarin, Tak Shing and

1 such public enforcers with notice that alleged that Mandarin was in violation of California Health &  
2 Safety Code §25249.6 for failing to warn consumers and customers that the Products that Mandarin sold  
3 exposed users in California to the Listed Chemical.

4 **1.7 Complaint**

5 On July 6, 2006, Brimer, who is acting in the interest of the general public in California, filed a  
6 complaint (hereafter referred to as the "Complaint" or the "Action") in the Superior Court in and for the  
7 City and County of San Francisco against Mandarin and Does 1 through 150, (*Brimer v. Mandarin Soy*  
8 *Sauce, Inc.*, Case No. CGC-06-453880) alleging violations of Health & Safety Code §25249.6 based on  
9 the alleged exposures to the Listed Chemical contained in the Products sold by Mandarin.

10 On July 25, 2006, Brimer filed an amended complaint in the Superior Court in and for the City  
11 and County of San Francisco against Mandarin, Tak Shing and Does 1 through 150, (*Brimer v.*  
12 *Mandarin Soy Sauce, Inc., Tak Shing Hong, Inc., et al.*, Case No. CGC-06-453880) alleging violations  
13 of Health & Safety Code §25249.6 based on the alleged exposures to the Listed Chemical contained in  
14 the Products sold by Mandarin and Tak Shing.

15 **1.8 No Admission**

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

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction  
26 over Mandarin as to the allegations contained in the Complaint, that venue is proper in the City and  
27 County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions of this  
28 Consent Judgment.

1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term "Effective Date" shall mean November 12,  
3 2006.

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

5           **2.1**     After the Effective Date, Mandarin shall not sell, ship or offer to be shipped for sale in  
6 California Products containing the Listed Chemical unless such Products are sold or shipped with the  
7 clear and reasonable warnings set out in section 2.2 or comply with the Reformulation Standards set  
8 forth in section 2.3.

9           Any warning issued for Products pursuant to this section 2.2 below shall be prominently placed  
10 with such conspicuousness as compared with other words, statements, designs, or devices as to render it  
11 likely to be read and understood by an ordinary individual under customary conditions before purchase  
12 or, for Products shipped directly to an individual in California, before use.

13           **2.2 Product Warnings**

14           **2.2.1**   Clear and Reasonable Warnings. This section describes Mandarin's options for  
15 satisfying the warning obligations required by section 2.1, depending, in part, on the manner of sale:

16                   **(a)   Retail Store Sales**

17                           **(i)   Product Labeling.** From the Effective Date, a warning will be  
18 affixed to the packaging, labeling or directly on the Product by Mandarin or its agent, that states:

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

23                                   **(ii)   Point-of-Sale Warnings.** Mandarin may perform its warning  
24 obligations by insuring to the greatest extent possible that signs are posted at retail outlets in the State of  
25 California where the Products are sold. Mandarin must receive a written commitment from each retailer  
26 to whom Mandarin sells Products directly that it will post the warning signs. Point-of-sale warnings  
27 shall be provided through one or more signs posted in close proximity to the point of display of the  
28 Products that state:

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

4           A point-of-sale warning shall be provided in a manner such that the consumer understands to  
5           which specific Products the warning applies.

6                       **(b) Package Insert or Label.** For all Products that are shipped by Mandarin,  
7           a warning may be provided with the Product when it is shipped directly to California, by either: (a)  
8           affixing the following warning language to the packaging, labeling or directly to a specific Product; (b)  
9           inserting a warning card measuring at least 4" x 6" in the shipping carton which contains the following  
10          warning language; or (c) by placing the following warning statement on the packing slip or customer  
11          invoice on the line directly below the description of the Product on the packing slip or customer invoice:

12                       **WARNING:** The materials used as colored decorations on the  
13                           exterior of this product contains lead, a chemical  
                              known to the State of California to cause birth  
                              defects and other reproductive harm.

14          Alternatively, Mandarin may place the following language on the packing slip or invoice and  
15          specifically identifying the Product in lettering of the same size or larger as the description of the  
16          Product:

17                       **WARNING:** The materials used as colored decorations on the  
18                           exterior of the following product(s) contains  
19                           lead, a chemical known to the State of  
                              California to cause birth defects or other  
                              reproductive harm:

20                                       *[list products for which warning is given].*

21          The Defendant shall, in any of these instances, in conjunction with providing the warning, also inform  
22          the consumer, in a conspicuous manner, that he or she may return the Product for a full refund  
23          (including shipping costs for both the receipt and the return of the Product) within thirty (30) days of his  
24          or her receipt of the Product.

## 25                       **2.2.2 Concurrent Warnings**

### 26                           **(a) Additional Languages On Warnings**

27          In addition to the warnings listed pursuant to section 2.2.1, Mandarin shall also include at the  
28          bottom of each warning the term:

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**“Consumer Health Warning”**

which shall be translated into languages that correlate to any and all non-English languages used in advertisements on the store premises, or used in print and/or broadcast advertisements for Mandarin stores.

**(b) Availability of Translated Warnings**

For all retail stores where the Products are made for sale, fully translated warnings shall be available upon request by a consumer. The warnings, posted pursuant to section 2.2.1(a), shall be translated into languages that correlate to any and all non-English languages used in advertisements on the store premises, or used in print or broadcast advertisement for Mandarin stores.

**2.2.3 Exceptions**

The warning requirements set forth in section 2.2.1 shall not apply to:

- (i) Any Products shipped to a third party before the Effective Date; or
- (ii) Reformulated Products (as defined in section 2.3 below).

**2.3 Reformulation Standards**

Products satisfying the conditions of sections 2.3.1 and 2.3.2 are referred to as “Reformulated Products”.

**2.3.1** Products with decorations that contain six one-hundredths of one percent (.06%) of lead as measured either before or after the material is fired onto (or otherwise affixed to) the Product using a test method of sufficient sensitivity to establish a limit of quantification of less than 600 parts per million (“ppm”).<sup>1</sup>

**2.3.2** Products with decorations within the "Lip and Rim Area"<sup>2</sup> or on any food contact surface that contain two one-hundredths of one percent (0.02%) of lead by weight or less using a sample size of the material 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.

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<sup>1</sup>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 only include any quantity attributable to non-decorating material (e.g., the ceramic substrate).

<sup>2</sup>“Lip and Rim Area” is defined as the exterior top 20 millimeters of a hollowware food or beverage Product.

1           **2.4 Reformulation Commitment**

2           Mandarin hereby commits that all Products that it offers for sale in California after February 1,  
3 2007, shall qualify as Reformulated Products.

4           **3. MONETARY PAYMENTS**

5           **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

6           The total civil penalty amount shall be \$1,000, which shall be paid by Mandarin, pursuant to  
7 Health & Safety Code §25249.7(b), shall be made on or before November 12, 2006. Said payment shall  
8 be made payable to the "HIRST & CHANLER LLP in Trust For Russell Brimer" and shall be delivered  
9 to plaintiff's counsel at the following address:

10           HIRST & CHANLER LLP  
11           Attn: Proposition 65 Controller  
12           2560 Ninth Street  
13           Parker Plaza, Suite 214  
14           Berkeley, CA 94710-2565

15           **3.2 Apportionment of Penalties Received**

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

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

23           The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
24 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue  
25 to be resolved after the material terms of the agreement had been settled. Mandarin then expressed a  
26 desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The  
27 Parties then attempted to (and did) reach an accord on the compensation due to Brimer and his counsel  
28 under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 for  
all work performed through the Court's approval of this agreement. Under the private attorney general  
doctrine, Mandarin shall reimburse Brimer and his counsel for fees and costs incurred as a result of

1 investigating, bringing this matter to Mandarin's attention, litigating and negotiating a settlement in the  
2 public interest and seeking the Court's approval of the settlement agreement. Mandarin shall pay Brimer  
3 and his counsel \$10,750 for all attorneys' fees, expert and investigation fees, litigation and related costs.  
4 The payment shall be made payable to HIRST & CHANLER LLP and shall be delivered on or before  
5 November 12, 2006, at the following address:

6 HIRST & CHANLER LLP  
7 Attn: Proposition 65 Controller  
8 2560 Ninth Street  
9 Parker Plaza, Suite 214  
10 Berkeley, CA 94710-2565

11 **5. RELEASE OF ALL CLAIMS**

12 **5.1 Release of Mandarin and Downstream Customers**

13 In further consideration of the promises and agreements herein contained, and for the payments  
14 to be made pursuant to sections 3 and 4, Brimer, on behalf of himself, his past and current agents,  
15 representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby  
16 waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases  
17 all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,  
18 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not  
19 limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known  
20 or unknown, fixed or contingent (collectively "Claims"), against Mandarin and each of its downstream  
21 distributors, including Well Luck Co., Inc., retailers, including Tak Shing Hong, Inc., franchisees,  
22 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and  
23 their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and  
24 sister and parent entities (collectively "Releasees"). This release is limited to those claims that arise  
25 under Proposition 65, and are such claims that relate to Mandarin's alleged failure to warn about  
26 exposures to or identification of the Listed Chemical contained in the Products.

27 The Parties further understand and agree that this release shall not extend upstream to any  
28 entities that manufactured the Products or any component parts thereof, or any distributors or suppliers  
who sold the Products or any component parts thereof to Mandarin.

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1           **5.2    Mandarin's Release of Brimer**

2           Mandarin waives any and all claims against Brimer, his attorneys and other representatives, for  
3 any and all actions taken or statements made (or those that could have been taken or made) by Brimer  
4 and his attorneys and other representatives, whether in the course of investigating claims or otherwise  
5 seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

6           **6.    COURT APPROVAL**

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

12          **7.    SEVERABILITY**

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

16          **8.    ATTORNEYS' FEES**

17          In the event that, after Court approval: (1) a dispute arises with respect to any provision of this  
18 Consent Judgment; (2) Mandarin or any third party seeks modification of this Consent Judgment  
19 pursuant to section 14 below; or (3) Brimer takes reasonable and necessary steps to enforce the terms of  
20 this Consent Judgment, Brimer shall be entitled to his reasonable attorneys' fees and costs only if he is  
21 the prevailing party.

22          **9.    GOVERNING LAW**

23          The terms of this Consent Judgment shall be governed by the laws of the State of California and  
24 apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered  
25 inapplicable by reason of law generally, or as to the Products, then Mandarin shall provide written  
26 notice to Brimer of any asserted change in the law, and shall have no further obligations pursuant to this  
27 Consent Judgment with respect to, and to the extent that, the Products are so affected.

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1 **10. NOTICES**

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

6 To Mandarin:

7 Mandarin Soy Sauce, Inc.  
8 Attn: Michael Wu, President  
9 4 Sand Station Road  
10 Middletown, NY 10940

11 Dean R. Paik, Esq.  
12 COHEN & PAIK LLP  
13 177 Post Street, Suite 600  
14 San Francisco, CA 94108

15 To Brimer:

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

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

23 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

**13. ADDITIONAL POST EXECUTION ACTIVITIES**

Brimer and Mandarin agree to 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

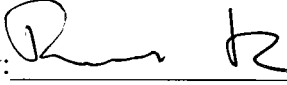
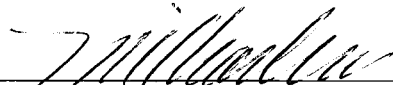
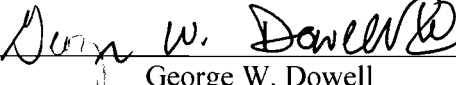
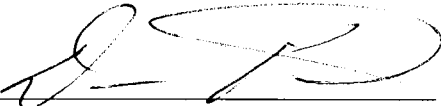
1 Motion to Approve the Agreement ("Motion").

2 **14. MODIFICATION**

3 This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon  
4 entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any  
5 party and entry of a modified Consent Judgment by the Court. The Attorney General shall be served  
6 with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance  
7 of its consideration by the Court.

8 **15. AUTHORIZATION**

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

<p>12 <b>AGREED TO:</b></p> <p>13 Date: <u>11-22-06</u></p> <p>14</p> <p>15 By: <u></u></p> <p>16 Plaintiff Russell Brimer</p>	<p>12 <b>AGREED TO:</b></p> <p>13 Date: <u>Nov 6 2006</u></p> <p>14</p> <p>15 By: <u></u></p> <p>16 Defendant Mandarin Soy Sauce, Inc.</p>
<p>18 <b>APPROVED AS TO FORM:</b></p> <p>19 Date: <u>11/27/2006</u></p> <p>20 HIRST &amp; CHANLER LLP</p> <p>21</p> <p>22 By: <u></u></p> <p>23 George W. Dowell Attorneys for Plaintiff RUSSELL BRIMER</p>	<p>18 <b>APPROVED AS TO FORM:</b></p> <p>19 Date: <u>November 13, 2006</u></p> <p>20 COHEN &amp; PAIK LLP</p> <p>21</p> <p>22 By: <u></u></p> <p>23 Dean D. Paik, Esq. Attorneys for Defendant MANDARIN SOY SAUCE, INC.</p>

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**IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

**EXHIBIT A**

The Products that are covered by this Consent Judgment include, but are not limited to:

1. *Wanjashan Soy Sauce, 148 ml (#0 74261 11005 1)*

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