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VALLEY HAN KOOK MARKET

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

17
18 RUSSELL BRIMER

19 Plaintiff,

20 v.

21 VALLEY HAN KOOK MARKET; and DOES 1
through 150, inclusive,

22 Defendants.

Case No. BC352505

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

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Valley Han Kook Market**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter
4 "Brimer" or "Plaintiff") and defendant Valley Han Kook Market, (hereafter "Valley Han Kook" or
5 "Defendant"), with Brimer and Valley Han Kook 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 in
9 consumer products.

10 **1.3 Defendant**

11 Valley Han Kook 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 Valley Han Kook has manufactured, distributed and/or sold in the State of
15 California certain glassware 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: drinking glasses
22 and other glassware intended for the consumption of food or beverages with colored artwork or designs
23 on the exterior (containing lead) including, but not limited to, the products identified in Exhibit A to this
24 Consent Judgment. All such glassware shall be referred to herein as the "Products."

25 **1.6 Notice of Violation**

26 On or about February 13, 2006, Brimer served Valley Han Kook and various public enforcement
27 agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Valley Han
28 Kook and such public enforcers with notice that alleged that Valley Han Kook was in violation of

1 California Health & Safety Code §25249.6 for failing to warn consumers and customers that the
2 Products that Valley Han Kook sold exposed users in California to the Listed Chemical.

3 **1.7 Complaint**

4 On May 16, 2006, Brimer, who is acting in the interest of the general public in California, filed a
5 complaint (hereafter referred to as the "Complaint" or the "Action") in the Superior Court in and for the
6 County of Los Angeles against Valley Han Kook and Does 1 through 150, (*Brimer v. Valley Han Kook*
7 *Market*, Case No. BC352505) alleging violations of Health & Safety Code §25249.6 based on the
8 alleged exposures to the Listed Chemical contained in the Products sold by Valley Han Kook.

9 **1.8 No Admission**

10 Valley Han Kook denies the material factual and legal allegations contained in Brimer's Notice
11 and Complaint and maintains that all products that it has sold and distributed in California, including the
12 Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
13 construed as an admission by Valley Han Kook of any fact, finding, issue of law, or violation of law, nor
14 shall compliance with this Consent Judgment constitute or be construed as an admission by Valley Han
15 Kook of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by
16 Valley Han Kook. However, this Section shall not diminish or otherwise affect the obligations,
17 responsibilities and duties of Valley Han Kook under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction
20 over Valley Han Kook as to the allegations contained in the Complaint, that venue is proper in the
21 County of Los Angeles and that this Court has jurisdiction to enter and enforce the provisions of this
22 Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean November 15,
25 2006.

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

2 **2.1** After the Effective Date, Valley Han Kook shall not sell, ship or offer to be shipped for
3 sale in California Products containing the Listed Chemical unless such Products are sold or shipped with
4 the clear and reasonable warnings set out in Section 2.2 or comply with the Reformulation Standards set
5 forth in Section 2.3.

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

10 **2.2 Product Warnings**

11 **2.2.1** Clear and Reasonable Warnings. This Section describes Valley Han Kook's
12 options for satisfying the warning obligations required by Section 2.1, depending, in part, on the manner
13 of sale:

14 **(a) Retail Store Sales**

15 **(i) Product Labeling.** From the Effective Date, a warning will be
16 affixed to the packaging, labeling or directly on the Product by Valley Han Kook or its agent, that states:

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

21 **(ii) Point-of-Sale Warnings.** Valley Han Kook may perform its
22 warning obligations by insuring to the greatest extent possible that signs are posted at its retail outlets in
23 the State of California where the Products are sold. Point-of-sale warnings shall be provided through
24 one or more signs posted in close proximity to the point of display of the Products that state:

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

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

28 **(i) Package Insert or Label.** For all Products that are shipped by

1 Valley Han Kook, a warning may be provided with the Product when it is shipped directly to an
2 individual in California, by either: (a) affixing the following warning language to the packaging, labeling
3 or directly to a specific Product; (b) inserting a warning card measuring at least 4" x 6" in the shipping
4 carton which contains the following warning language; or (c) by placing the following warning
5 statement on the packing slip or customer invoice on the line directly below the description of the
6 Product on the packing slip or customer invoice:

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

10 Alternatively, Valley Han Kook may place the following language on the packing slip or invoice
11 and specifically identifying the Product in lettering of the same size or larger as the description of the
12 Product:

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

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

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

21 **2.2.2 Concurrent Warnings**

22 **(a) Additional Languages On Warnings**

23 In addition to the warnings listed pursuant to section 2.2.1, Valley Han Kook shall also include at
24 the bottom of each warning the term:

25 **“Consumer Health Warning”**

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

1 **(b) Availability of Translated Warnings**

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

6 **2.2.3 Exceptions**

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

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

10 **2.3 Reformulation Standards**

11 Products satisfying the conditions of Sections 2.3.1 and 2.3.2 are referred to as "Reformulated
12 Products".

13 **2.3.1** Products with decorations that contain six one-hundredths of one percent (.06%)
14 of lead as measured either before or after the material is fired onto (or otherwise affixed to) the Product
15 using a test method of sufficient sensitivity to establish a limit of quantification of less than 600 parts per
16 million ("ppm").¹

17 **2.3.2** Products with decorations within the "Lip and Rim Area"² or on any food contact
18 surface that contain two one-hundredths of one percent (0.02%) of lead by weight or less using a sample
19 size of the material in question measuring approximately 50-100 mg and a test method of sufficient
20 sensitivity to establish a limit of quantitation of less than 200 ppm.

21 **2.4 Reformulation Commitment.**

22 Valley Han Kook hereby commits that all Products that it offers for sale in California after
23 February 1, 2007, shall qualify as Reformulated Products.

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26 ¹If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by weight must
27 relate only to the decorating material and must not only include any quantity attributable to non-decorating material (e.g., the
ceramic substrate).

28 ²"Lip and Rim Area" is defined as the exterior top 20 millimeters of a hollowware food or beverage Product.

1 **3. MONETARY PAYMENTS**

2 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

3 The total civil penalty amount shall be \$1,000, which shall be paid by Valley Han Kook,
4 pursuant to Health & Safety Code §25249.7(b), shall be made on or before November 17, 2006. Said
5 payment shall be made payable to the "HIRST & CHANLER LLP in Trust For Russell Brimer" and shall
6 be delivered to plaintiff's counsel at the following address:

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

12 **3.2 Apportionment of Penalties Received**

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

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

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

1 agreement. Valley Han Kook shall pay Brimer and his counsel \$ 6,000, for all attorneys' fees, expert and
2 investigation fees, litigation and related costs. The payment shall be made payable to HIRST &
3 CHANLER LLP and shall be delivered on or before November 17, 2006, at the following address:

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

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11 **5. RELEASE OF ALL CLAIMS**

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13 **5.1 Release of Valley Han Kook and Downstream Customers**

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

The Parties further understand and agree that this release shall not extend upstream to any 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 Valley Han Kook.

5.2 Valley Han Kook's Release of Brimer

Valley Han Kook waives any and all claims against Brimer, his attorneys and other

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

5 **6. COURT APPROVAL**

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

11 **7. SEVERABILITY**

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

15 **8. ATTORNEYS' FEES**

16 In the event that, after Court approval: (1) a dispute arises with respect to any provision of this
17 Consent Judgment; (2) Valley Han Kook or any third party seeks modification of this Consent Judgment
18 pursuant to Section 14 below; or (3) Brimer takes reasonable and necessary steps to enforce the terms of
19 this Consent Judgment, Brimer shall be entitled to his reasonable attorneys' fees and costs pursuant to
20 CCP §1021.5.

21 **9. GOVERNING LAW**

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

- 7 Valley Han Kook Market
- 8 Attn: Mihee Jang, President
- 9 17643 Sherman Way
- 10 Los Angeles, CA 91436

- 11 Baret C. Fink, Esq.
- 12 PERELMAN & FINK
- 13 1880 Century Park East, Suite 300
- 14 Los Angeles, CA 90067

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 Valley Han Kook 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

1 agrees to file a 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 Party
5 and entry of a modified Consent Judgment by the Court. The Attorney General shall be served with
6 notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance of its
7 consideration by the Court.

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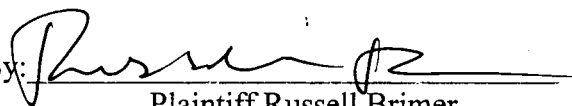

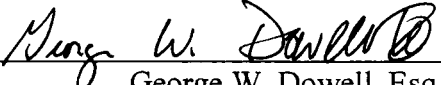

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1 **15. AUTHORIZATION**

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 Judgment.
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<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>11-27-06</u></p> <p>By: <u></u> Plaintiff Russell Brimer</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>11/20/06</u></p> <p>By: <u></u> Defendant Valley Han Kook Market MIHEE JANG</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>11-27-06</u></p> <p style="text-align: center;">HIRST & CHANLER LLP</p> <p>By: <u></u> George W. Dowell, Esq. Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>11/20/06</u></p> <p style="text-align: center;">PERELMAN & FINK</p> <p>By: <u></u> Baret C. Fink, Esq. Attorneys for Defendant VALLEY HAN KOOK MARKET</p>

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20 **IT IS SO ORDERED.**

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22 Date: _____

23 _____
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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

1. *Drinking Glass w/ Teddy Bear designs*

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