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WORLD KITCHEN, LLC

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

17 RUSSELL BRIMER,
18
19 Plaintiff,

20 v.

21 WORLD KITCHEN, LLC; CORNINGWARE
CORELLE REVERE FACTORY STORES; and
DOES 1 through 150
22 Defendants.

Case No. CGC-07-459939

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

1 **1. INTRODUCTION**

2 1.1 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and
3 between plaintiff Russell Brimer (hereafter “Brimer” or “Plaintiff”) and defendant World Kitchen,
4 LLC (hereinafter “World Kitchen” or “Defendant”),¹ with Plaintiff and Defendant collectively
5 referred to as the “Parties” and Brimer and Defendant each being a “Party.”

6 1.2 **Plaintiff.** Brimer is an individual residing in California who seeks to promote
7 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
8 hazardous substances contained in consumer and industrial products.

9 1.3 **General Allegations.** Plaintiff alleges that Defendant has manufactured,
10 distributed and/or sold in the State of California cups and other ceramic containers, and coolers
11 and other glassware, intended for the consumption of food or beverages, with colored artwork or
12 designs on the exterior surface containing lead, which is listed pursuant to the Safe Drinking
13 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 et seq.,
14 also known as Proposition 65, to cause cancer and birth defects (and other reproductive harm).
15 Lead (and/or lead compounds) shall be referred to herein as “Listed Chemical.”

16 1.4 **Product Descriptions.** The products that are covered by this Consent Judgment
17 are defined as follows: cups and other ceramic containers, and coolers and other glassware,
18 intended for the preparation and/or consumption of food or beverages, with colored artwork or
19 designs on the exterior surface containing lead, manufactured, sold and/or distributed by
20 Defendant in California. Such products collectively are referred to herein as the “Products.”

21 1.5 **Notices of Violation.** Beginning on November 7, 2006, and again on January 17,
22 2007, Brimer served Defendant and various public enforcement agencies with documents, entitled
23 “60-Day Notice of Violation” and “Supplemental 60-Day Notice of Violation,” respectively
24 (collectively, “Notice”), that provided Defendant and such public enforcers with notice that
25 alleged that Defendant was in violation of Health & Safety Code § 25249.6 for failing to warn
26 purchasers that certain Products that they sold expose users in California to the Listed Chemical.

27 ¹ Corningware Corelle Revere Factory Stores is a dba for World Kitchen, LLC and, hence, is
28 subsumed within the term “Defendant” herein.

1 1.6 **Complaint.** On January 26, 2007, Brimer, in the interest of the general public in
2 California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the
3 Superior Court for the City and County of San Francisco against Defendant and Does 1 through
4 150, alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to the
5 Listed Chemical contained in certain Products sold by Defendant. In the event that no public
6 prosecutor authorized to bring Proposition 65 enforcement actions elects to file suit with respect
7 to the matters covered in Plaintiff’s January 17, 2007 Notice by the time this Consent Judgment is
8 reviewed and approved by the Court and at least sixty-five days have passed from the mailing of
9 this Notice, the Complaint shall be deemed to have been amended so that this Action and this
10 Consent Judgment shall likewise be deemed to have addressed and resolved such matters in
11 addition to those put at issue in Plaintiff’s original, November 7, 2006, Notice letter.

12 1.7 **No Admission.** Defendant denies the material factual and legal allegations
13 contained in Plaintiff’s Notices and Complaint and maintains that all products that it has sold and
14 distributed in California including the Products have been and are in compliance with all laws.
15 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
16 finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or
17 be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or
18 violation of law. However, this section shall not diminish or otherwise affect the obligations,
19 responsibilities and duties of Defendant under this Consent Judgment.

20 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
21 stipulate that this Court has jurisdiction over the Parties and concerning the alleged violations at
22 issue and personal jurisdiction over Defendant as to the acts alleged, that venue is proper in the
23 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment and
24 to enforce the provisions thereof.

25 1.9 **Effective Date.** For purposes of this Consent Judgment, “Effective Date” shall be
26 April 9, 2007.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Representation and Warranty Regarding Prior Reformulation Efforts**

3 Defendant represents and warrants that, at certain points during the relevant period, it or
4 its suppliers previously reformulated World Kitchen's Products so as to comply with the criteria,
5 as applicable, set forth in section 2.2(b) below ("Reformulation Standards"); however, this
6 representation and warranty may not apply to non-World Kitchen Products supplied to
7 Corningware Corelle Revere Factory Stores by entites other than Defendant.

8 **2.2 Ongoing Reformulation Commitment**

9 (a) Defendant hereby makes the following commitment, which shall be
10 deemed to be sufficient in lieu of providing Proposition 65 warnings for the Products: as of the
11 Effective Date, unless they are obtained from a supplier otherwise subject to requirements
12 concerning exterior colored decoration on glass or ceramicware that are contained in a
13 Proposition 65 consent judgment entered into by Plaintiff, Michael DiPirro, or Dr. Whitney
14 Leeman, Defendant shall not ship or offer to ship for sale in California any Products containing
15 the Listed Chemical, unless such Products meet the applicable Reformulation Standards set forth
16 in section 2.2(b) below.²

17 (b) Reformulation Standards. For purposes of this section, the following
18 definitions apply:

19 "Children's Product" is defined as any Product whose use in the household is reasonably
20 anticipated substantially for use by children rather than substantially by adults such as: Products
21 with designs on their exterior surface which are affiliated with children's toys or entertainment
22 (e.g. cartoon characters), Products of a reduced size so as to be marketed primarily for children
23 (e.g. reduced-size juice glasses intended for use by children), or Products of a type or category
24 which typically would be used by children, and all similar items.

25
26 _____
27 ² In addition, Corningware Corelle Revere Factory Stores shall implement this Reformulation
28 Commitment within one hundred twenty (120) days of the Effective Date with respect to Products they
source from vendors other than Defendant.

1 “Exterior Decorations” is defined as all colored artwork, designs and/or markings on the
2 exterior surface of the Product.

3 “Lip and Rim Area” is defined as the interior and exterior top 20 millimeters of a
4 hollowware glassware or ceramicware food/beverage Product, as defined by American Society of
5 Testing and Materials Standard Test Method C927-99.

6 “No Detectable Lead” shall mean that no lead is detected at a level above two one-
7 hundredths of one percent (0.02%) by weight using a sample size of the materials in question
8 measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit
9 of quantitation of less than 200 ppm.³

10 “Reformulated Product” refers to any Product that meets the Reformulation Standards set
11 forth below, as applicable.

12 (i) Glassware Reformulation Standard:

13 A glassware Product is a Reformulated Product if it satisfies either the standard outlined
14 in subsection 2.2(b)(i)(A) or (B), subject to the following qualifications:

15
16 all Children’s Products must meet the Decorative Material Content-Based standard
17 outlined in subsection 2.2(b)(i)(A) to be considered a Reformulated Product; and

18
19 if a glassware food/beverage product has Exterior Decorations in the Lip and Rim Area, it
20 must also satisfy subsection 2.2(b)(i)(C) to be considered a Reformulated Product.

21
22 **A. Decorating Material Content-Based Standard.** The Exterior Decorations,
23 exclusive of the Lip and Rim Area, must only utilize decorating materials that
24 contain six one-hundredths of one percent (0.06%) lead by weight or less as
25

26
27 ³ If the decoration is tested after it is affixed to the Product, the percentage of the Listed
28 Chemical by weight must relate only to the decorating material and must not include any quantity
attributable to non-decorating material (e.g., the substrate).

1 measured either before or after the material is fired onto (or otherwise affixed to)
2 the Product, using EPA Test Method 3050B.⁴

3 **B. Wipe Test-Based Standard.** The Product must produce a test result no higher
4 than 1.0 micrograms (ug) of lead as applied to the Exterior Decorations and
5 performed as outlined in NIOSH method no. 9100.

6 **C. Lip and Rim Area Decoration.** Any Exterior Decorations that extend into the
7 Lip and Rim Area must only utilize decorating materials that contain No
8 Detectable Lead.

9 (ii) Ceramicware Reformulation Standard

10 A ceramicware Product is a Reformulated Product if it satisfies the standards outlined in
11 subsections 2.2.(b)(ii)(A), (B) or (C), subject to the following qualifications:

12
13 all Children's Products must meet the Decorating Materials Content-Based Standard
14 outlined in subsection 2.2(b)(ii)(A) to be considered a Reformulated Product; and

15
16 if the Product is decorated in the Lip and Rim Area, it must also satisfy subsection
17 2.2(b)(ii)(D) to be considered a Reformulated Product.

18
19 **A. Decorating Material Content-Based Standard.** The Exterior Decorations,
20 exclusive of the Lip and Rim Area, must only utilize decorating materials that
21 contain six one-hundredths of one percent (0.06%) lead by weight or less as
22 measured either before or after the material is fired onto (or otherwise affixed to)
23 the Product, using EPA Test Method 3050B.⁵

24
25 ⁴ If the decoration is tested after it is affixed to the Product, the percentage of the Listed
26 Chemical by weight must relate only to the decorating material and must not include any quantity
attributable to non-decorating material (e.g., the glass substrate).

27 ⁵ If the decoration is tested after it is affixed to the Product, the percentage of the Listed
28 Chemical by weight must relate only to the decorating material and must not include any quantity
attributable to non-decorating material (e.g., the substrate).

1 **B. Wipe Test-Based Standard.** The Product must produce a test result no higher
2 than 1.0 micrograms (ug) of lead as applied to the Exterior Decorations and
3 performed as outlined in NIOSH method no. 9100.

4 **C. Total Acetic-Acid Immersion Test Based Standard.** The ceramicware
5 Product must achieve a result of 0.99 ppm or less for lead after correction for
6 internal volume when tested under the protocol attached hereto as Exhibit A (the
7 ASTM C927-99 test method, modified for total immersion with results corrected
8 for internal volume).⁶

9 **D. Lip and Rim Area Decoration.** If the ceramicware Product contains Exterior
10 Decorations in the Lip and Rim Area:

11 (i) Any Exterior Decorations that extend into the Lip and Rim Area must only
12 utilize decorating materials that contain No Detectable Lead, or

13 (ii) The ceramicware Product must yield a test result showing a concentration
14 level of 0.5 ug/ml or less of lead using ASTM method C 927-99.⁷

15 **3. MONETARY PAYMENTS.**

16 3.1 **Payments Pursuant to Health & Safety Code § 25249.7(b).** The total settlement
17 amount to be paid pursuant to this section is \$80,000. Defendant shall receive a credit of \$56,000
18 against the above-stated amount in light of its prompt cooperation with Plaintiff in resolving this
19 matter and in light of the efforts it undertook to achieve the Reformulation Standards in advance
20 of its receipt of the Notices. Pursuant to Health & Safety Code Section 25249.7(b), Defendant
21 shall pay the remaining amount as follows:

22 (a) A total of \$12,000 shall be paid by Defendant on or before April 30, 2007
23 as civil penalties. This payment shall be made payable to "Hirst & Chanler LLP in Trust For
24 Russell Brimer," and shall be delivered to Plaintiff's counsel at the following address:

25 _____
26 ⁶ Because this method requires correction for internal volume, this method is only appropriate for
ceramic hollowware.

27 ⁷ The result must be evaluated without correction for internal volume; this method is only
28 appropriate for ceramic hollowware.

1 HIRST & CHANLER LLP
2 Attn: Prop 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565

6 After Court approval of this Consent Judgment pursuant to section 6, the \$12,000 sum shall be
7 apportioned by Plaintiff in accordance with Health & Safety Code §25192, with 75% of these
8 funds remitted to the State of California's Office of Environmental Health Hazard Assessment
9 and remaining 25% of these monies retained by Plaintiff as provided by Health & Safety Code
10 § 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of
11 California the appropriate amounts paid in accordance with this subsection.

12 (b) Defendant shall pay an additional \$12,000, as a *cy pres* remedy pursuant to
13 Title 11, California Code of Regulations §3203(b). This payment will be earmarked for the
14 Cincinnati Children's Hospital Medical Center, a charitable organization formed under section
15 501(c)(3) of the Internal Revenue Code. Such funds shall be used to further the study of low-
16 level lead exposure and its potential adverse effects on children's intellectual abilities, behavioral
17 problems and other developmental issues. Defendant shall make this payment payable to "Hirst
18 & Chanler LLP in Trust For Russell Brimer" and deliver it to Plaintiff's counsel at the above
19 address by no later than April 30, 2007. Within 60 days after Court approval of this Consent
20 Judgment pursuant to section 6, the \$12,000 sum shall be transmitted by Plaintiff's counsel to the
21 Cincinnati Children's Environmental Health Center (Federal Tax ID# 31-0833936), c/o
22 Cincinnati Children's Hospital Medical Center, 2800 Winslow Avenue, Mail Location 7035,
23 Cincinnati, Ohio 45206.

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

25 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this
26 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
27 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
28 Defendant then expressed a desire to resolve the fee and cost issue shortly after the other

1 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
2 the compensation due to Plaintiff and his counsel under the private attorney general doctrine
3 codified at Code of Civil Procedure § 1021.5 for all work performed through the Court's approval
4 of the Agreement. Under the private attorney general doctrine codified at Code of Civil
5 Procedure § 1021.5, Defendant shall reimburse Plaintiff and his counsel for fees and costs,
6 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating and
7 negotiating a settlement in the public interest, and seeking the Court's approval of this Consent
8 Judgment. Specifically, Defendant shall pay Plaintiff and his counsel \$46,000 for all attorneys'
9 fees, expert and investigation fees, and litigation costs. The payment shall be made payable to
10 Hirst & Chanler LLP and shall be delivered to Plaintiff's counsel on or before April 30, 2007, at
11 the following address:

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

16 Except as specifically provided in this Consent Judgment, Defendant shall have no further
17 obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the
18 Products covered in this Action.

19 **5. RELEASE OF ALL CLAIMS**

20 5.1 **Plaintiff's Release of Defendant.** In further consideration of the representations,
21 warranties and commitments herein contained, and for the payments to be made pursuant to
22 sections 3 and 4, Plaintiff, on behalf of himself, his past and current agents, representatives,
23 attorneys, successors assignees, or any person or entity who may now or in the future claim
24 through him in a derivative manner, and in the interest of the general public, hereby waives all
25 rights to institute or participate in, directly or indirectly, any form of legal action and release all
26 claims, including, without limitation, all actions, causes of action, in law or in equity, suits,
27 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including,
28 but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever,

1 whether known or unknown, fixed or contingent (collectively “Claims”), against Defendant and
2 each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers (including but not
3 limited to its retail locations doing business as Corningware Corelle Revere Factory Stores),
4 dealers, customers, owners, purchasers, users, parent company (i.e., WKI Holding Company,
5 Inc.), corporate affiliates (i.e., World Kitchen (GHC), LLC, EKCO Group, LLC, and EKCO
6 Housewares, Inc.), subsidiaries (WKI Holding Latin America, LLC) and their respective officers,
7 directors, attorneys, representatives, shareholders, agents, representatives, insurers and employees
8 and any other persons or entities to whom Defendant may be liable (collectively, “Defendant’s
9 Releasees”) arising under Proposition 65 related to Defendant’s or Defendant’s Releasees’
10 alleged failure to warn about exposures to or identification of the Listed Chemical contained in
11 the Products.⁸ It is specifically understood and agreed that the Parties and the Court intend that
12 Defendant’s compliance with the terms of this Consent Judgment resolves all issues and liability,
13 now and in the future (so long as Defendant complies with the terms of the Consent Judgment)
14 concerning Defendant and the Defendant’s Releasees’ compliance with the requirements of
15 Proposition 65 as to the Listed Chemical in exterior decorations on the Products.

16 **5.2 Defendant’s Release of Plaintiff.** Defendant waives all rights to institute any
17 form of legal action against Plaintiff, or their attorneys or representatives, for all actions taken or
18 statements made by Plaintiff or his attorneys or representatives, in the course of seeking
19 enforcement of Proposition 65 in association with this Action.

20 **6. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and
22 shall be null and void if, for any reason, it is not approved and entered by the Court within one
23 year after it has been fully executed by all Parties, in which event any monies that have been
24 provided to Plaintiff or his counsel pursuant to section 3 and section 4 above, shall be refunded
25 within fifteen (15) days.

26 _____
27 ⁸ Nothing in this paragraph is intended to release from any liability any entity upstream of
28 Defendant in the chain of commerce that has supplied or supplies Products to Defendant other than the
parent, corporate affiliates or subsidiary of Defendant.

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7. SEVERABILITY

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

8. ATTORNEYS' FEES

In the event that a dispute arises with respect to any provision(s) of this Consent Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of such dispute.

9. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically, then Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, those Products are so affected.

10. NOTICES

All correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail, return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed below. Either Party, from time to time, may specify a change of address to which all notices and other communications shall be sent.

<p>For Plaintiff:</p> <p>Russell Brimer c/o Hirst & Chanler LLP 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565</p>	<p>For Defendant:</p> <p>General Counsel World Kitchen, LLC 11911 Freedom Drive, Suite 600 Reston, VA 20190</p> <p>with a copy to:</p> <p>Robert L. Falk Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105-2482</p>
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1 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

6 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
7 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
8 present this Consent Judgment to the California Attorney General’s Office within two (2) days
9 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment
10 will then be served on the Attorney General’s Office at least forty-five (45) days prior to the date
11 a hearing is scheduled on such motion in the Superior Court for the City and County of
12 San Francisco unless the Court allows a shorter period of time.

13 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

14 The Parties shall mutually employ their best efforts to support the entry of this Agreement
15 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
16 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
17 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
18 agree to file a Joint Motion to Approve the Agreement (“Joint Motion”), the first draft of which
19 Defendant’s counsel shall prepare, within a reasonable period of time after the Execution Date
20 (*i.e.*, not to exceed thirty (30) days unless otherwise agreed to by the Parties’ counsel based on
21 unanticipated circumstances). Plaintiff’s counsel shall prepare a declaration in support of the
22 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed
23 pursuant to Section 4. Defendant shall have no additional responsibility to Plaintiff’s counsel
24 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs
25 incurred with respect to the preparation and filing of the Joint Motion and its supporting
26 declaration or with regard to Plaintiff’s counsel appearing for a hearing or related proceedings
27 thereon.

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1 14. MODIFICATION

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

7 15. AUTHORIZATION

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

11 AGREED TO:

AGREED TO:

12
13 Date: _____

Date: 4-3-07

14 By:
15 Plaintiff Russell Brimer

By: ANIL MENA A. BURKE
Defendant World Kitchen, LLC

16 APPROVED AS TO FORM:

APPROVED AS TO FORM:

17 Date: _____
18 HIRST & CHANLER LLP

Date: 4/3/07 Robert L. Falk
MORRISON & FOERSTER LLP

19 By:
20 D. Joshua Voorhees
Attorneys for Plaintiff
21 RUSSELL BRIMER

By:
Robert L. Falk
Attorneys for Defendant
WORLD KITCHEN, LLC

22
23 IT IS SO ORDERED.

24
25 Date: _____

JUDGE OF THE SUPERIOR COURT

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1 **14. MODIFICATION**

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

7 **15. AUTHORIZATION**

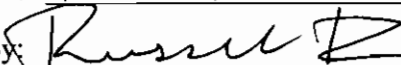
8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Parties and have read, understood and agree to all of the terms and conditions of this
10 Consent Judgment.

11 AGREED TO:

AGREED TO:

13 Date: 4.3.07

Date: _____

14 By: 
15 Plaintiff Russell Brimer


By:
Defendant World Kitchen, LLC

16 APPROVED AS TO FORM:

APPROVED AS TO FORM:

17 Date: 4/3/07
18 HIRST & CHANLER LLP

Date: _____
MORRISON & FOERSTER LLP

19 By: 
20 D. Joshua Voorhees
21 Attorneys for Plaintiff
RUSSELL BRIMER

By:
Robert L. Falk
Attorneys for Defendant
WORLD KITCHEN, LLC

23 **IT IS SO ORDERED.**

25 Date: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

TESTING PROTOCOL

For purposes of the Reformulation Standards in this Consent Judgment, the method on the attached pages, ASTM C 927-80 (reapproved in 1999 and 2004), shall be modified for total immersion of the Covered Products.

As modified, carefully add 4% acetic acid leaching solution from a graduated cylinder to each container containing a sample until the sample is fully immersed in solution. Record the volume of solution used. The container must comply with the diameter requirements specified in the protocol, while being large enough to fully immerse the product.

The remainder of the protocol should be followed as set forth in the attached document.



Standard Test Method for Lead and Cadmium Extracted from the Lip and Rim Area of Glass Tumblers Externally Decorated with Ceramic Glass Enamels¹

This standard is issued under the fixed designation C 927; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ϵ) indicates an editorial change since the last revision or reapproval.

1. Scope

1.1 This test method covers the determination of lead and cadmium extracted by acetic acid from the lip and rim area of glassware used for drinking and which is exteriorly decorated with ceramic glass enamels. The procedure of extraction may be expected to accelerate the release of lead and cadmium from the decorated area and to serve, therefore, as a severe test that is unlikely to be matched under the actual conditions of usage of such glassware. This test method is specific for lead and cadmium.

NOTE 1—For additional information see Test Method C 738.

1.2 The values stated in acceptable metric units are to be regarded as the standard. The values given in parentheses are for information only.

1.3 *This standard may involve hazardous materials, operations, and equipment. This standard does not purport to address all of the safety concerns associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

2. Referenced Documents

2.1 ASTM Standards:²

C 738 Test Method for Lead and Cadmium Extracted from Glazed Ceramic Surfaces

3. Terminology

3.1 Definitions:

3.1.1 *ceramic glass decorations*—ceramic glass enamels fused to glassware at temperatures above 425°C (800°F) to produce a decoration.

3.1.2 *ceramic glass enamels (also ceramic enamels or glass enamels)*—predominately colored, silicate glass fluxes used to decorate glassware.

3.1.3 *lip and rim area*—that part of a drinking vessel which extends 20 mm below the rim on the outside of the specimen.

4. Summary of Test Method

4.1 Lead and cadmium are extracted from the lip and rim area of the article under test by leaching with a 4 % acetic acid solution at 20 to 24°C (68 to 75°F) for 24 h and are measured by atomic absorption spectrophotometry using specific hollow cathode or electrodeless discharge lamps for lead and cadmium respectively. Results are reported as micrograms per millilitre (ppm) extracted relative to the internal volume of the glass article.

5. Significance and Use

5.1 The heavy metals, lead and cadmium, are known to cause serious health effects in man if consumed in excess. It is, therefore, important to measure the amount that may be extracted from an area of the glass drinking vessel in contact with the lip. Even though the amount of lead and cadmium extracted by this test method is in no way representative of the amount of the metals extracted by actual lip contact, the relative magnitude of metals extracted from one test specimen in relation to another test specimen provides an effective tool for discrimination.

6. Interferences

6.1 Since specific hollow cathode lamps or electrodeless discharge lamps for lead and cadmium are used, there are no interferences.

7. Apparatus

7.1 *Atomic Absorption Spectrophotometer (AAS)*, equipped with a 102-mm (4-in.) single slot or Boling burner head and digital concentration readout attachment (DCR) if available. This instrument should have a sensitivity of about 0.5 µg/mL of

¹ This test method is under the jurisdiction of ASTM Committee C14 on Glass and Glass Products and is the direct responsibility of Subcommittee C14.10 on Glass Decoration. It was developed jointly by ASTM Committee C-14 and C-21 on Ceramic Whitewares and Related Products, the Society of Glass Decorators A-20 Subcommittee on Ceramic Enamelled Decorated Glass Tumblers, and an Inter-agency Task Force consisting of FDA, EPA, and CPSC of the U.S. Government.

Current edition approved Oct. 1, 2004. Published October 2004. Originally approved in 1980. Last previous edition C 927 - 80 (1999).

² For referenced ASTM standards, visit the ASTM website, www.astm.org, or contact ASTM Customer Service at service@astm.org. For *Annual Book of ASTM Standards* volume information, refer to the standard's Document Summary page on the ASTM website.

lead for 1 % absorption and a sensitivity of about 0.025 µg/mL of cadmium for 1 % absorption. Use the operating conditions as specified in the instrument manufacturer's analytical methods manual.

7.2 *Hollow Cathode or Electrodeless Discharge Lead Lamp*, set at 283.3 nm.

7.3 *Hollow Cathode or Electrodeless Discharge Cadmium Lamp*, set at 228.8 nm.

7.4 *Glassware* of chemically resistant borosilicate glass for use in preparing and storing reagents and solutions, and for use as test specimen containers.

7.5 Detection limits of lead and cadmium shall be determined and reported for individual instruments. In this test method, the detection limit shall be defined as twice the mean noise level at 0 µg/mL. Representative detection limits would be approximately 0.01 to 0.03 µg/mL for lead and 0.0005 to 0.0010 µg/mL for cadmium.

8. Reagents

8.1 *Purity of Reagents*—Reagent grade chemicals shall be used in all tests. Unless otherwise indicated, it is intended that all reagents shall conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available.³ Other grades may be used provided it is first ascertained that the reagent is of sufficiently high purity to permit its use without lessening the accuracy of the determination. Analyze each new batch of reagents for lead and cadmium.

8.2 *Purity of Water*—Unless otherwise indicated, references to water shall be understood to mean distilled or deionized water.

8.3 *Acetic Acid (4 volume %)*—Mix 1 volume of glacial acetic acid with 24 volumes of water.

8.4 *Cadmium Standard Stock Solution (1000 µg/mL of cadmium)*—Dissolve 0.9273 g of anhydrous cadmium sulfate in 250 mL of 1 % HCl (8.6) and dilute to 500 mL with 1 % HCl. Commercially available standard cadmium solutions may also be used.

8.5 *Detergent Rinse*—Add 2 mL of hand dishwashing detergent to 1 L of lukewarm tap water.

8.6 *Hydrochloric Acid (1 weight %)*—Mix 1 volume of concentrated hydrochloric acid (HCl, sp gr 1.19) with 37 volumes of water.

8.7 *Lead Standard Stock Solution (1000 µg/mL)*—Dissolve 1.598 g of lead nitrate (Pb(NO₃)₂) in 4 % acetic acid and dilute to 1 L with 4 % acetic acid. Commercially available standard lead solutions may also be used.

9. Sampling

9.1 *Continuous Process*—Since the amount of metal released from a decoration can be affected by the firing conditions, which may not be uniform across the width of thelehr,

a minimum of six samples should be taken representing both sides and the center of the lehr.

9.2 *Load or Pile*—A minimum of six samples should be randomly selected from throughout the load.

10. Preparation of Standards

10.1 *Lead Standard Working Solutions*—Dilute lead nitrate solution (8.7) with acetic acid (8.3) to obtain working standards having final lead concentrations of 0, 5, 10, 15, and 20 µg/mL.

10.2 *Cadmium Standard Working Solutions*—Dilute cadmium stock solution (8.4) with acetic acid (8.3) to obtain working standards having final cadmium concentrations of 0.0, 0.3, 0.5, 1, 1.5, and 2.0 µg/mL.

10.3 Fresh working solutions should be prepared daily.

11. Procedure

11.1 *Preparation of Sample*—Take six identical units and cleanse each with a detergent rinse. Then rinse with tap water followed by distilled water followed by air drying. Mark each unit 7 mm below the rim. Record the internal volume of each article in millilitres by filling from a graduated cylinder to approximately 6 to 7 mm (¼ in.) of overflowing. Mark each article, in a nondecorated area (if possible), 20 mm below the rim on the outside. Invert the article in an appropriate laboratory glassware container whose diameter is a minimum of 1.25 times and a maximum of 2.0 times the diameter of the test specimen at the rim. Carefully add 4 % acetic acid leaching solution from a graduated cylinder to the 20-mm mark. Record the volume of solution used. Cover the glassware containers, if possible, to prevent evaporation and to protect them from contamination. Let stand for 24 h at room temperature (20 to 24°C) in the dark. Remove the article after the 24-h leaching period and determine the lead and cadmium by atomic absorption. Record the lead and cadmium found in micrograms per millilitre.

NOTE 2—The possibility of a significant amount of evaporation exists. The analyst should determine whether the acetic acid leaching is noticeably below the 20-mm mark before removing the article. If it is, sufficient acetic acid solution should be added to restore the leaching solution to the 20-mm mark.

11.2 *Determination of Lead*—Set the instrument (7.1) for maximum signal at 283.3 nm using the lead hollow cathode lamp (7.2) (Note 3) and air/acetylene (C₂H₂) flow rates recommended by the manufacturer. Stir the sample (leaching) solution and pour off a portion into a clean flask or aspirate from the extraction container if suitable. Flush the burner with water and check zero point between readings. Determine lead from a standard curve of absorbance against µg/mL of lead or calibrate the direct concentration reading (DCR) unit in the concentration mode with lead working solutions (11.1) and read and record the sample concentration directly. Bracket the sample solution with the next higher and lower working solutions. Dilute samples containing more than 20 µg/mL of lead with 4 % acetic acid and reanalyze.

NOTE 3—Electrodeless discharge lamps may be substituted for hollow cathode lamps.

³ *Reagent Chemicals, American Chemical Society Specifications*, American Chemical Society, Washington, DC. For suggestions on the testing of reagents not listed by the American Chemical Society, see *Analar Standards for Laboratory Chemicals*, BDH Ltd., Poole, Dorset, U.K., and the *United States Pharmacopoeia and National Formulary*, U.S. Pharmacopoeial Convention, Inc. (USPC), Rockville, MD.

11.3 *Determination of Cadmium*—Proceed as in 11.2 using the cadmium hollow cathode lamp (7.3) and cadmium standards (10.2). If the sample (leaching) solution contains more than 2 µg/mL of cadmium, dilute with 4 % acetic acid and reanalyze.

12. Calculation

12.1 Use the following equations to calculate the total amount of lead or cadmium metal released from the lip and rim area of the article expressed (1) in total micrograms and (2) parts per million of lead or cadmium metal leached relative to the internal volume of the article.

12.1.1 Determine lead or cadmium, A , in micrograms as follows:

$$A = C \times V_1 \quad (1)$$

12.1.2 Determine lead or cadmium, A , in parts per million as follows:

$$A = \frac{C \times V_1}{V_2} \quad (2)$$

where:

C = concentration of lead or cadmium in leaching solution, µg/mL;

V_1 = volume of leaching solution, mL; and

V_2 = internal volume of article, mL (Note 4).

NOTE 4—The internal volume of the article expressed in millilitres of water closely approximates its weight in grams. Therefore, in this instance microgram per millilitre equals microgram per gram which equals parts per million.

13. Report

13.1 A suggested report form is given in Fig. 1.

14. Precision and Bias

14.1 Precision for the analytical method for single or multiple operator within a single laboratory is within the sensitivity of the AAS used and as specified is about 0.5 µg/mL for lead and 0.25 µg/mL for cadmium.

14.2 The accuracy and between-laboratory precision are dependent upon the ability to obtain representative samples for the statistical universe being sampled.

15. Keywords

15.1 atomic absorption; cadmium; ceramic glass enamels; glaze; heavy metals; lead

MBCPSBUPSZ UFTU EBUB

M be boe Dben jvn Sf rhtb f e gpn Mq boe Sjn Bsf b pgEgol joh Hrtt t x bsf Ef dpsbf e Fyuf sobrn x ju Df sbn jd Hrtt t Fobn f rh Ebd

N bov gduw f s	_____	Mbcpsbpsz	_____
Qbuf so	_____		
Ef d dypo Mn juM be	_____	Sf bhf ouCrtol M be	_____
Oben jvn	_____	Dben jvn	_____
Juf sobrnVprn f - n M	_____		

Tbn qrti	Vprn f pgM bdi . joh Tprnypo- n M	Dpodf ousbypo- AnOn M M be-	UprnMh	qqn Sf rhtuwl up Juf sobrnVprn f
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