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12 DAISO CALIFORNIA LLC and  
13 DAISO HOLDING, U.S.A. INC.

14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR THE COUNTY OF ALAMEDA  
17 UNLIMITED JURISDICTION

18  
19 RUSSELL BRIMER,

20 Plaintiff,

21 v.

22 DAISO CALIFORNIA LLC; et al.,

23 Defendants.

Case No. RG-09-436586

**PROPOSITION 65 SETTLEMENT  
AND [PROPOSED] 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 defendants Daiso  
4 California LLC and Daiso Holding U.S.A. Inc. (hereinafter collectively "Daiso" or "Defendant"),  
5 with Brimer and Daiso collectively referred to as the "Parties" and Brimer and Defendant each  
6 being a "Party."

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

10           **1.3 General Allegations.** Plaintiff alleges that Defendant has manufactured, distributed  
11 and/or sold in the State of California drinking glasses and glassware items intended for the  
12 consumption of food or beverages containing lead in the decorative designs on the exterior surface.  
13 Lead is listed pursuant to California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65") as a chemical known to the  
15 State of California to cause birth defects and other reproductive harm. Lead is referred to herein as  
16 the "Listed Chemical."

17           **1.4 Product Description.** The products covered by this Consent Judgment are defined  
18 as follows: drinking glasses and glassware items intended for the consumption of food or beverages  
19 containing the Listed Chemical in and on decorative designs on the exterior surface including, but  
20 not limited to, *Colorful Dot Glass (#4 984343 317673)*. All such items shall be referred to herein as  
21 the "Products."

22           **1.5 Notice of Violation.** On June 5, 2008, Brimer served Daiso and various public  
23 enforcement agencies with a document entitled "60-Day Notice of Violation" that provided Daiso  
24 and such public enforcers with notice that Daiso was alleged to be in violation of California Health  
25 & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed  
26 users in California to lead. To the best of the Parties' knowledge, no public enforcer has diligently  
27 prosecuted the allegations set forth in the 60-Day Notice of Violation ("Notice").  
28

1           1.6    **Complaint.** On February 18, 2009, Brimer, acting in the interest of the general  
2 public in California, filed a complaint in Alameda County Superior Court, alleging violations by  
3 Defendant of Health & Safety Code § 25249.6 *et seq.*, based, *inter alia*, on the alleged exposures to  
4 lead contained in the Products (the "Complaint").

5           1.7    **No Admission.** Defendant denies the material factual and legal allegations  
6 contained in Plaintiff's Notice and Complaint, and maintains that all products that it has sold and  
7 distributed in California, including the Products, have been, and are in, compliance with all laws.  
8 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,  
9 finding, issue of law, or violation of law. Nor shall compliance with this Consent Judgment  
10 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of  
11 law, or violation of law. However, nothing in this section shall diminish or otherwise affect the  
12 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

13           1.8    **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties  
14 stipulate that this Court has subject matter jurisdiction over the Parties concerning the alleged  
15 violations at issue, and personal jurisdiction over Defendant as to the acts alleged, that venue is  
16 proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent  
17 Judgment and to enforce its provisions.

18           1.9    **Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall be  
19 June 22, 2010.

20           2.    **INJUNCTIVE RELIEF**

21           2.1    **Reformulation and Warnings.**

22                   (a)    **Reformulation.** Daiso shall ship, sell, or offer for sale in California only  
23 those Products that are "Lead Free", unless warnings are given in accordance with one of the two  
24 options in Subsection (b) below. For purposes of this Consent Judgment, "Lead Free" is defined  
25 as Products with exterior decorations containing less than 0.009% of lead by weight when  
26 analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies  
27 utilized by federal or state agencies for the purpose of determining lead content in a solid  
28 substance.

1 (b) Clear and Reasonable Warnings.

2 (i) Product Labeling. A warning shall be affixed to the packaging,  
3 labeling or directly to or on the Products which states:

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

8 or

9 **WARNING: The materials used as colored decorations on the**  
10 **exterior of the following products contain lead, a**  
11 **chemical known to the State of California to**  
12 **cause birth defects or other reproductive harm.**

13 *[list products for which warning is required]*

14 Warnings issued for the Products pursuant to this subsection shall be prominently placed  
15 with such conspicuousness compared with other words, statements, designs, or devices as to render  
16 it likely to be read and understood by an ordinary individual under customary conditions of use or  
17 purchase.

18 (ii) Point-of-Sale Warnings. Alternatively, Daiso may provide warning  
19 signs, containing the language below, at its California retail locations in close proximity to the  
20 point of display of the Products.

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

26 Where more than one Product is sold in proximity to other like items or to those that do not  
27 require a warning (e.g., Lead Free Products as defined in Section 2.1(a)), the following statement  
28 must be used:

29 **WARNING: The materials used as colored decorations**  
30 **on the exterior of the following glassware**  
31 **products sold in this store contain lead, a**  
32 **chemical known to the State of California to**  
33 **cause birth defects or other reproductive**  
34 **harm:**

1 [list products for which warning is required]

2 Warnings issued for the Products pursuant to this subsection shall be prominently placed  
3 with such conspicuousness as compared with other words, statements, designs, or devices as to  
4 render it likely to be read and understood by an ordinary individual under customary conditions of  
5 use or purchase and shall be placed or written in a manner such that the consumer understands to  
6 which *specific* Products the warnings apply so as to minimize, if not eliminate, the chances that an  
7 over-warning situation will arise.

8 (iii) **Exceptions.** Daiso shall not, under any circumstances and without  
9 regard to whether warnings are provided, ship, sell or offer for sale in California any Products with  
10 exterior decorations that contain in excess of 0.009% of lead by weight in the Lip and Rim Area of  
11 the Product when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or  
12 equivalent methodologies utilized by federal or state agencies for the purpose of determining lead  
13 content in a solid substance. For purposes of this Consent Judgment, "Lip and Rim Area" is  
14 defined as the interior and exterior top two centimeters (2 cm) of the Product.

15 (c) **Stricter Laws Apply.** The standards set forth in Subsection 2.1(a) shall be  
16 commensurate with any more stringent standard required by any applicable state or federal law or  
17 regulation which is already in effect or becomes effective subsequent to the Parties' execution of  
18 this Consent Judgment so that the stricter standard applies to the Products.

19 **3. PAYMENTS MADE PURSUANT TO HEALTH & SAFETY CODE §25249.6**

20 In settlement of all the claims referred to in this Consent Judgment against it, Daiso shall  
21 pay \$20,000.00 in civil penalties to be apportioned in accordance with California Health & Safety  
22 Code §25192, with 75% of these funds remitted to the State of California's Office of  
23 Environmental Health Hazard Assessment and the remaining 25% of the penalty amount paid to  
24 Brimer as provided by California Health and Safety Code § 25249.12(d). Daiso shall issue two  
25 separate checks for the penalty payments: (a) one check made payable to The Chanler Group in  
26 Trust for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")  
27 in the amount of \$15,000.00, representing 75% of the total penalty; and (b) one check to The  
28 Chanler Group in Trust for Brimer in the amount of \$5,000.00, representing 25% of the total

1 penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be  
2 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of  
3 \$15,000.00. The second 1099 shall be issued to Brimer in the amount of \$5,000.00, whose address  
4 and tax identification number have been furnished to Defendant's attorneys.

5 **3.1 Payment Timing.** Not later than three (3) calendar days after the Effective Date, at  
6 the sole election of Daiso, the penalty payment shall be made to either The Chanler Group or  
7 Teraoka & Partners, LLP ("Teraoka"), to be held in a client Trust Account. In the event Daiso  
8 elects to make the penalty payment to Teraoka, Teraoka shall immediately notify The Chanler  
9 Group, in writing, of its receipt thereof. For the purposes of such notification, writing sent by email  
10 shall be acceptable. Such penalty payment shall remain in the Trust Account until this Consent  
11 Judgment has been approved by the Court.

12 If the penalty payment is held by The Chanler Group, it shall be disbursed upon Court  
13 approval of this Consent Judgment. If the penalty payment is held by Teraoka, it shall be delivered  
14 to the following address no later than two (2) business days following the Court approval of this  
15 Consent Judgment.

16 THE CHANLER GROUP  
17 Attn: Proposition 65 Controller  
2560 Ninth Street  
18 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

20 The Parties reached an accord on the compensation due to Brimer and his counsel under the  
21 private attorney general doctrine, Health & Safety Code §25249.6 *et seq.* and principles of contract  
22 law. Under these legal principles, Daiso shall reimburse Brimer's counsel for fees and costs,  
23 incurred as a result of investigating, bringing this matter to Daiso's attention, and negotiating a  
24 settlement in the public interest. Daiso shall pay Brimer and his counsel \$80,000.00 for all  
25 attorneys' fees, expert and investigation fees, and related costs. The payment shall be made  
26 payable to The Chanler Group and shall be delivered with the payments required by Section 3 of  
27 this Consent Judgment.

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1           4.1     **Payment Timing.** Not later than three (3) calendar days after the Effective Date, at  
2 the sole election of Daiso, the payment required pursuant to Section 4 above, shall be made to either  
3 The Chanler Group or Teraoka, to be held in a client Trust Account. In the event Daiso elects to  
4 make the penalty payment to Teraoka, Teraoka shall immediately notify The Chanler Group, in  
5 writing, of its receipt thereof. For the purposes of such notification, writing sent by email shall be  
6 acceptable. Such penalty payment shall remain in the Trust Account until this Consent Judgment  
7 has approved by the Court.

8           If the payment is held by The Chanler Group, it shall be disbursed upon Court approval of  
9 this Consent Judgment. If the payment is held by Teraoka, it shall be delivered no later than two  
10 (2) business days following the Court approval of this Consent Judgment, to the following address:

11           THE CHANLER GROUP  
12           Attn: Proposition 65 Controller  
13           2560 Ninth Street  
14           Parker Plaza, Suite 214  
15           Berkeley, CA 94710-2565

16           Daiso shall issue a separate 1099 for fees and cost paid in the amount of \$80,000.00 to The  
17 Chanler Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710-2565 (EIN: 20-  
18 3929984).

19           **5.     RELEASE OF ALL CLAIMS**

20           In further consideration of the representations, warranties and commitments herein  
21 contained, and for the payments to be made pursuant to Sections 3 and 4, Plaintiff, on behalf of  
22 himself, his past and current agents, representatives, attorneys, successors assignees, or any person  
23 or entity who may now or in the future claim through him in a derivative manner, and in the  
24 interest of the general public, hereby waives all rights to institute or participate in, directly or  
25 indirectly, any form of legal action and releases all claims, including, without limitation, all  
26 actions, causes of action in law or in equity, suits, liabilities, demands, obligations, damages, costs,  
27 fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees  
28 and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
(collectively "Claims"), against Defendant and each of its distributors, wholesalers, licensors,  
licensees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent company,

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1 corporate affiliates, subsidiaries and their respective officers, directors, attorneys, representatives,  
2 shareholders, agents, representatives, insurers and employees and any other persons or entities to  
3 whom Defendant may be liable (collectively, "Defendant's Releasees") arising under  
4 Proposition 65 related to Defendant's or Defendant's Releasees' alleged failure to warn about  
5 exposures to or identification of the Listed Chemical contained in the Products. It is specifically  
6 understood and agreed that the Parties and the Court intend that Defendant's compliance with the  
7 terms of this Consent Judgment resolves all issues and liability, now and in the future (provided  
8 that the Defendant complies with the terms of this Consent Judgment) concerning Defendant and  
9 the Defendant's Releasees' compliance with the requirements of Proposition 65 as to the Listed  
10 Chemical present in the exterior decorations on the Products.

11 **6. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and  
13 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
14 after it has been fully executed by all Parties.

15 **7. SEVERABILITY**

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

19 **8. GOVERNING LAW**

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

25 **9. NOTICES**

26 All correspondence and notices required to be provided pursuant to this Consent Judgment  
27 shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail,  
28 return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed

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1 below. Either Party, from time to time, may specify a change of address to which all notices and  
2 other communications shall be sent.

3 For Plaintiff:

4 THE CHANLER GROUP  
5 Attn: Proposition 65 Coordinator  
6 2560 Ninth Street  
7 Parker Plaza, Suite 214  
8 Berkeley, CA 94710-2565

For Defendant:

Steven G. Teraoka, Esq.  
TERAOKA & PARTNERS LLP  
One Embarcadero Center  
Suite 1020  
San Francisco, CA 94111

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11 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

13 Plaintiff agrees to comply with the reporting form requirements referenced in Health &  
14 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall  
15 present this Consent Judgment to the California Attorney General's Office within two (2) days  
16 after receiving all of the necessary signatures. If necessary, a noticed motion to enter the Consent  
17 Judgment will be served on the Attorney General's Office, in which event, the Parties hereby agree  
18 to mutually employ their best efforts to obtain approval by the Court of the Consent Judgment in a  
19 timely manner.

20 **12. AUTHORIZATION**

21 The undersigned are authorized to execute this Consent Judgment on behalf of their  
22 respective Parties and have read, understood, and agree to all of the terms and conditions contained  
23 herein.  
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AGREED TO:

Date: 6.18.10

By:   
Plaintiff, RUSSELL BRIMER

AGREED TO:

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

By: \_\_\_\_\_  
Yoshihide Murata, Managing Member,  
Defendant DAISO CALIFORNIA LLC  
and Senior Vice President, Defendant  
DAISO HOLDING U.S.A., INC.

**IT IS SO ORDERED.**

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

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JUDGE OF THE SUPERIOR COURT

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AGREED TO:

AGREED TO:

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

Date: 6/17/2010

By: \_\_\_\_\_  
Plaintiff, RUSSELL BRIMER

By: \_\_\_\_\_  
Yoshihide Murata, Managing Member,  
Defendant DAISO CALIFORNIA LLC  
and Senior Vice President, Defendant  
DAISO HOLDING U.S.A., INC.

**IT IS SO ORDERED.**

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

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