

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,
3 on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the
4 presence of and nature of toxic chemicals in consumer goods.

5 2. This Complaint seeks to remedy defendants' continuing failures to warn the citizens
6 of the State of California about the presence of, the nature of, and such citizens' actual and
7 potential exposure to lead present in or on consumer products placed into the stream of commerce
8 by defendants.

9 3. Lead and cadmium are chemicals that are identified in 22 C.C.R. §12000 that are
10 known to the State of California to cause birth defects and other reproductive harm. Lead and
11 cadmium shall hereafter be referred to as the "LISTED CHEMICALS".

12 4. The consumer products containing the LISTED CHEMICALS, and for which
13 defendants are responsible, are shot glasses and other glassware intended for the consumption of
14 food or beverages with colored artwork or designs (containing lead and/or cadmium) on the
15 exterior, including but not limited to, *Hipsters Choice Shot Glasses, Tailless Monkey Shot Glass,*
16 *Set of 2 (#11040; #7 39048 11040 1), and Hipsters Choice Shot Glasses, Cowboy and Indian Shot*
17 *Glasses, Set of 2 (#11047; #7 39048 11047 0).* All such consumer products containing the
18 LISTED CHEMICAL in shot glasses and other glassware shall hereafter be referred to as the
19 "PRODUCTS."

20 5. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health
21 & Safety Code §25249.5 *et seq.*¹ (hereafter "Proposition 65"), "No person in the course of doing
22 business shall knowingly and intentionally expose any individual to a chemical known to the state
23 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual...."

25 6. On February 27, 1987, the State listed lead as a chemical known to cause birth
26 defects and other reproductive harm. This chemical became subject to the warning requirement
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28 ¹ Unless specifically noted, all statutory citations refer to California law.

1 one year later and was therefore subject to the "clear and reasonable warning" requirements of
2 Proposition 65, beginning on February 27, 1988. (22 Code of Regulations §12000(b)(c); Health &
3 Safety Code §25249.5 *et seq.*)

4 7. On May 1, 1997, the State had listed cadmium as a chemical known to cause birth
5 defects or other reproductive harm. This chemical became subject to the warning requirement one
6 year later and was therefore subject to the "clear and reasonable warning" requirements of
7 Proposition 65, beginning on October 1, 1988 and May 1, 1998, respectively. 22 Code of
8 Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*

9 8. Defendants' failures to provide proper mandatory warnings about exposure to the
10 LISTED CHEMICALS in conjunction with the sale of the PRODUCTS is a violation of
11 Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for
12 each such violation.

13 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
14 and permanent injunctive relief to compel defendants to provide purchasers of the PRODUCTS
15 with the appropriate Proposition 65 warning regarding the health hazards of the LISTED
16 CHEMICALS.

17 10. Plaintiff also seeks civil penalties against defendants for their violations of
18 Proposition 65, as provided for by Health & Safety Code §25249.7(b).

19 PARTIES

20 11. Plaintiff RUSSELL BRIMER is a citizen of the State of California who resides in
21 the County of Alameda and who is dedicated to protecting the health of California citizens,
22 including the elimination or reduction of toxic exposures from consumer products, and who brings
23 this action on behalf of the general public pursuant to Health & Safety Code §25249.7.

24 12. Defendant ARCHIE MCPHEE & CO. ("ARCHIE") is a person doing business
25 within the meaning of Health & Safety Code §25249.11.

26 13. ARCHIE distributes and/or offers the PRODUCTS for sale or use in the State of
27 California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use
28 in the State of California.

1 14. Defendant ACCOUTREMENTS (“ACCOUTREMENTS”) is a person doing
2 business within the meaning of Health & Safety Code §25249.11.

3 15. ACCOUTREMENTS manufactures, distributes and/or offers the PRODUCTS for
4 sale or use in the State of California or implies by its conduct that it distributes and/or offers the
5 PRODUCTS for sale or use in the State of California.

6 16. Defendants DOES 1-50 (hereafter "MANUFACTURER DEFENDANTS") are each
7 persons doing business within the meaning of Health & Safety Code §25249.11.

8 17. MANUFACTURER DEFENDANTS engage in the process of research, testing,
9 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
10 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
11 one or more of the PRODUCTS for sale, consumption or use in the State of California.

12 18. Defendants DOES 51-100 (hereafter "DISTRIBUTOR DEFENDANTS") are each
13 persons doing business within the meaning of Health & Safety Code §25249.11.

14 19. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
15 transport one or more of the PRODUCTS to individuals, businesses or retailers in the State of
16 California.

17 20. Defendants DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons
18 doing business within the meaning of Health & Safety Code §25249.

19 21. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
20 of California.

21 22. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
22 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code
23 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of
24 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When
25 ascertained, their true names shall be reflected in an amended complaint.

26 23. ARCHIE, ACCOUTREMENTS, MANUFACTURER DEFENDANTS,
27 DISTRIBUTOR DEFENDANTS, RETAIL DEFENDANTS, and Defendants DOES 1 through 150
28 shall, where appropriate, collectively be referred to hereafter as “DEFENDANTS”.

1 **VENUE AND JURISDICTION**

2 24. Venue is proper in the Alameda Superior Court, pursuant to Code of Civil
3 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one or
4 more instances of wrongful conduct occurred, and continues to occur, in the County of Alameda
5 and/or because DEFENDANTS conducted, and continue to conduct, business in this County with
6 respect to the PRODUCTS.

7 25. The California Superior Court has jurisdiction over this action pursuant to
8 California Constitution Article VI, §10, which grants the Superior Court "original jurisdiction in all
9 causes except those given by statute to other trial courts." The statute under which this action is
10 brought does not specify any other basis of subject matter jurisdiction.

11 26. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
13 association that either is a citizen of the State of California, has sufficient minimum contacts in the
14 State of California, or otherwise purposefully avails itself of the California market.
15 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65)**

19 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 26, inclusive.

21 28. The citizens of the State of California have expressly stated in the Safe Drinking
22 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
23 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
24 other reproductive harm." (Proposition 65, §1(b).)

25 29. Proposition 65 further states that, "No person in the course of doing business shall
26 knowingly and intentionally expose any individual to a chemical known to the state to cause cancer
27 or reproductive toxicity without first giving clear and reasonable warning to such individual..."

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1 30. Based on information and good faith belief, plaintiff alleges that, at all times
2 relevant to this Complaint, DEFENDANTS have engaged in the sales of the PRODUCTS in
3 violation Health & Safety Code §25249.6, *et seq.*, and that DEFENDANTS' offensive sale of the
4 PRODUCTS has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice
5 of Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
6 future.

7 31. Beginning on July 25, 2005, "60-Day Notices" of Proposition 65 violations were
8 provided to public enforcement agencies and to ARCHIE and ACCOUTREMENTS stating that
9 exposures to the LISTED CHEMICALS were occurring in the State of California from the
10 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
11 having been provided with a "clear and reasonable warning" regarding such exposure.

12 32. The appropriate public enforcement agencies have failed to commence and
13 diligently prosecute a cause of action, under Health & Safety Code §25249.6, *et seq.*, against
14 DEFENDANTS based on the claims asserted in Plaintiff's 60-Day Notices.

15 33. At all times relevant to this action, the PRODUCTS contained the LISTED
16 CHEMICALS.

17 34. At all times relevant to this action, the DEFENDANTS knew or should have known
18 that the PRODUCTS contained the LISTED CHEMICALS.

19 35. At all times relevant to this action, the LISTED CHEMICALS were present in or on
20 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to
21 individuals during the reasonably foreseeable use of the PRODUCTS.

22 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
23 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by
24 22 C.C.R. §12601.

25 37. Based on information and good faith belief, plaintiff alleges that at all times relevant
26 to this action, DEFENDANTS had knowledge that individuals' normal and reasonably foreseeable
27 use of the PRODUCTS would cause an exposure to the LISTED CHEMICALS.

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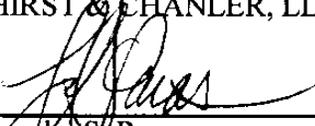
1 plaintiff shall specify in further application to the Court;

2 3. That the Court grant plaintiff his reasonable attorney's fees and costs of suit; and

3 4. That the Court grant such other and further relief as may be just and proper.

4 Dated: April 13, 2006

5 Respectfully Submitted,
HIRST & CHANLER, LLP

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8 Larabel S. Paras
9 Attorneys for Plaintiff
10 RUSSELL BRIMER

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