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ENDORSED  
FILED  
San Francisco County Superior Court

JUL 6 - 2006

GORDON PARK-LI, Clerk  
BY: CRISTINA E. BAUTISTA  
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 ARTE ITALICA, LTD.; BARCLAY BUTERA,  
18 INC.; and DOES 1 through 150, inclusive,

19 Defendants.

No. \_\_\_\_\_

**CGC-06-453879**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code §25249, et seq.)

20  
21 RUSSELL BRIMER, by and through his counsel, on behalf of himself, on behalf all others  
22 similarly situated and on behalf of the general public, hereby alleges as follows:

23 **NATURE OF THE ACTION**

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

27 2. This Complaint seeks to remedy defendants' continuing failures to warn the citizens  
28 of the State of California about the presence of, the nature of, and such citizens' actual and

1 potential exposure to lead present in or on consumer products placed into the stream of commerce  
2 by defendants.

3 3. Lead is a chemical that is identified in Title 22, California Code of Regulations  
4 ("CCR") §12000 that is known to the State of California to cause birth defects and other  
5 reproductive harm. Lead shall hereafter be referred to as the "LISTED CHEMICAL." The  
6 consumer products containing the LISTED CHEMICAL, and for which defendants are  
7 responsible, are cereal bowls and other ceramic containers including, but not limited to, *Pewter*  
8 *and Ceramic Cereal Bowl, P5115.25 7" (#Arti-P5115)*. All such consumer products containing the  
9 LISTED CHEMICAL in cereal bowls and other ceramic containers shall hereafter be referred to as  
10 the "PRODUCTS."

11 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
12 Health & Safety Code §25249.5 *et seq.*<sup>1</sup> (hereafter "Proposition 65"), "No person in the course of  
13 doing business shall knowingly and intentionally expose any individual to a chemical known to the  
14 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to  
15 such individual...."

16 5. On February 27, 1987, the State listed lead as a chemical known to cause birth  
17 defects and other reproductive harm. This chemical became subject to the warning requirement  
18 one year later and was therefore subject to the "clear and reasonable warning" requirements of  
19 Proposition 65, beginning on February 27, 1988. (22 CCR §12000(b)(c); Proposition 65)

20 6. Defendants' failures to provide proper mandatory warnings about exposure to the  
21 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition  
22 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such  
23 violation.

24 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
25 and permanent injunctive relief to compel defendants to provide purchasers of the PRODUCTS  
26 with the appropriate Proposition 65 warning regarding the health hazards of the LISTED  
27

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28 <sup>1</sup>Unless specifically noted, all statutory citations refer to California law.

1 CHEMICAL.

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

4 PARTIES

5 9. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated  
6 to protecting the health of California citizens, including the elimination or reduction of toxic  
7 exposures from consumer products, and who brings this action on behalf of the general public  
8 pursuant to Health & Safety Code §25249.7.

9 10. Defendant ARTE ITALICA, LTD. ("ARTE ITALICA") is a person doing business  
10 within the meaning of Health & Safety Code §25249.11.

11 11. ARTE ITALICA manufactures, distributes and/or offers the PRODUCTS for sale  
12 or use in the State of California or implies by its conduct that it manufactures, distributes and/or  
13 offers the PRODUCTS for sale or use in the State of California.

14 12. Defendant BARCLAY BUTERA, INC. ("BARCLAY BUTERA") is a person doing  
15 business within the meaning of Health & Safety Code §25249.11.

16 13. BARCLAY BUTERA distributes and/or offers the PRODUCTS for sale or use in  
17 the State of California or implies by its conduct that it distributes and/or offers the PRODUCTS  
18 for sale or use in the State of California.

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

21 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
22 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
23 engage in the process of research, testing, designing, assembling, fabricating and/or  
24 manufacturing, one or more of the PRODUCTS for sale, consumption or use in the State of  
25 California.

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

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1 State of California, or otherwise purposefully avails itself of the California market.

2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California  
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

5 (Violation of Proposition 65)

6 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 24, inclusive.

8 26. The citizens of the State of California have expressly stated in the Safe Drinking  
9 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition  
10 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and  
11 other reproductive harm." (Proposition 65, §1(b).)

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

16 28. Based on information and good faith belief, plaintiff alleges that, at all times  
17 relevant to this Complaint, DEFENDANTS have engaged in the sales of the PRODUCTS in  
18 violation Health & Safety Code §25249.6, et seq., and that DEFENDANTS' offensive sale of the  
19 PRODUCTS has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice  
20 of Violation. Plaintiff also alleges and believes that such violations will continue to occur into the  
21 future.

22 29. On January 13, 2006, a "60-Day Notice" of Proposition 65 violations containing a  
23 Certificate of Merit pursuant to California Health & Safety Code §25249.7(d)(1) was provided to  
24 public enforcement agencies and to ARTE ITALICA, LTD, and BARCLAY BUTERA, INC.  
25 stating that exposures to LISTED CHEMICAL were occurring in the State of California from the  
26 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first  
27 having been provided with a "clear and reasonable warning" regarding such exposure.

28 30. The appropriate public enforcement agencies have failed to commence and

1 diligently prosecute a cause of action, under Health & Safety Code §25249.6, et seq., against  
2 DEFENDANTS based on the claims asserted in Plaintiff's 60-Day Notice.

3 31. At all times relevant to this action, the PRODUCTS contained the LISTED  
4 CHEMICAL.

5 32. At all times relevant to this action, the DEFENDANTS knew or should have known  
6 that the PRODUCTS contained the LISTED CHEMICAL.

7 33. At all times relevant to this action, the LISTED CHEMICAL was present in or on  
8 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to  
9 individuals during the reasonably foreseeable use of the PRODUCTS.

10 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
11 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by 22  
12 CCR §12601.

13 35. Based on information and good faith belief, plaintiff alleges that at all times  
14 relevant to this action, DEFENDANTS had knowledge that individuals' normal and reasonably  
15 foreseeable use of the PRODUCTS would cause an exposure to the LISTED CHEMICAL.

16 36. At all times relevant to this action, DEFENDANTS, and each of them, intended  
17 that such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the  
18 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,  
19 distribution and/or sale of PRODUCTS to individuals in the State of California.

20 37. At all times relevant to this action, DEFENDANTS failed to provide a "clear and  
21 reasonable warning" of reproductive toxicity (as defined by 22 CCR §12601) to those consumers  
22 or other individuals in the State of California who were or could become exposed to the  
23 PRODUCTS and the LISTED CHEMICAL contained therein.

24 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
25 directly by California voters, individuals thus exposed to LISTED CHEMICAL from the  
26 PRODUCTS, without "clear and reasonable warning", have suffered and continue to suffer  
27 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

28 39. As a consequence of the above-described acts, DEFENDANTS, and each of them,

1 are liable, pursuant to Health & Safety Code §25249.7(b), for a maximum civil penalty of \$2,500  
2 per day for each violation.

3 40. As a consequence of the above-described acts, Health & Safety Code §25249.7 also  
4 specifically authorizes the grant of injunctive relief under Proposition 65 against DEFENDANTS.

5 Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as set forth  
6 hereafter.

7 **PRAYER FOR RELIEF**

8 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

9 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil  
10 penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each  
11 violation alleged herein;

12 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and  
13 permanently enjoin DEFENDANTS, and each of them, from offering the PRODUCTS for sale or  
14 use in California, without providing an identification of LISTED CHEMICAL in the PRODUCTS  
15 as well as "clear and reasonable warning[s]" as defined by 22 CCR §12601, as plaintiff shall  
16 specify in further application to the Court;

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

18 4. That the Court grant such other and further relief as may be just and proper.  
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21 Dated: July 6, 2006

Respectfully Submitted,  
HIRST & CHANLER LLP

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24 George W. Dowell  
Attorneys for Plaintiff  
RUSSELL BRIMER  
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