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FILED

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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS

BY _____

DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

THE WORLD OF 98 CENTS INC.; DOLLAR
CITY; UNIVERSAL DISTRIBUTION
CENTER LLC; and DOES 1 through 150,
inclusive,

Defendants.

Case No. 612633

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Cal. Health & Safety Code §25249.6 et seq.)

BY FAX

This case has been assigned to Judge ROGER M. BEAUCHE
Department 15, for all purposes including Trial.

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,
3 in the public interest of the citizens of the State of California, to enforce the People’s right to be
4 informed of the presence of lead (a toxic chemical) found in certain oil bottles and other glass
5 containers intended for the consumption of food or beverages with colored artwork or designs on
6 the exterior manufactured, distributed and/or sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to warn
8 California citizens about their exposure to lead present in or on certain oil bottles and other glass
9 containers intended for the consumption of food or beverages with colored artwork or designs on
10 the exterior that defendants manufacture, distribute and/or offer for sale to consumers throughout
11 the State of California.

12 3. High levels of lead are commonly found in and on the colored artwork or designs on
13 the exterior of the oil bottles and other glass containers intended for the consumption of food or
14 beverages that defendants manufacture, distribute and/or offer for sale to consumers throughout the
15 State of California.

16 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
17 California Health & Safety Code §25249.6 *et seq.* (hereinafter Proposition 65), “No person in the
18 course of doing business shall knowingly and intentionally expose any individual to a chemical
19 known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
20 warning to such individual...” (*Cal. Health & Safety Code §25249.6.*)

21 5. On February 27, 1987, California identified and listed lead as a chemical known to
22 cause birth defects and other reproductive harm. Lead became subject to the warning requirement
23 one year later and was therefore subject to the “clear and reasonable warning” requirements of
24 Proposition 65, beginning on February 27, 1988. (*22 CCR §12000(c); Cal. Health & Safety Code*
25 *§25249.8.*) Lead shall hereinafter be referred to as the “LISTED CHEMICAL.”

26 6. Defendants manufacture, distribute, and/or sell oil bottles and other glass containers
27 intended for the consumption of food or beverages with colored artwork or designs on the exterior
28 containing lead including, but not limited to, *Oil Bottle (# 76979 29058 4)*, which contain

1 excessive levels of the LISTED CHEMICAL. All such oil bottles and other glass containers
2 intended for the consumption of food or beverages with colored artwork or designs on the exterior
3 containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

4 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
5 and permanent injunctive relief to compel defendants to provide purchasers or users of the
6 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.
7 (*Cal. Health & Safety Code §25249.7(a).*)

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

10 **PARTIES**

11 9. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated
12 to protecting the health of California citizens through the elimination or reduction of toxic
13 exposures from consumer products, and brings this action in the public interest pursuant to
14 California Health & Safety Code §25249.7.

15 10. Defendant THE WORLD OF 98 CENTS INC. ("WORLD") is a person doing
16 business within the meaning of California Health & Safety Code §25249.11.

17 11. WORLD manufactures, distributes and/or offers the PRODUCTS for sale or use in
18 the State of California or implies by its conduct that it manufactures, distributes and/or offers the
19 PRODUCTS for sale or use in the State of California.

20 12. Defendant DOLLAR CITY ("DOLLAR") is a person doing business within the
21 meaning of California Health & Safety Code §25249.11.

22 13. DOLLAR manufactures, distributes and/or offers the PRODUCTS for sale or use in
23 the State of California or implies by its conduct that it manufactures, distributes and/or offers the
24 PRODUCTS for sale or use in the State of California.

25 14. Defendant UNIVERSAL DISTRIBUTION CENTER LLC ("UNIVERSAL") is a
26 person doing business within the meaning of California Health & Safety Code §25249.11.

27 15. UNIVERSAL manufactures, distributes and/or offers the PRODUCTS for sale or
28 use in the State of California or implies by its conduct that it manufactures, distributes and/or

1 offers the PRODUCTS for sale or use in the State of California.

2 16. Defendants DOES 1-50 (hereinafter MANUFACTURER DEFENDANTS) are each
3 persons doing business within the meaning of California Health & Safety Code §25249.11.

4 17. MANUFACTURER DEFENDANTS engage in the process of research, testing,
5 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
6 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
7 one or more of the PRODUCTS for sale or use in the State of California.

8 18. Defendants DOES 51-100 (hereinafter DISTRIBUTOR DEFENDANTS) are each
9 persons doing business within the meaning of California Health & Safety Code §25249.11.

10 19. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
11 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
12 the State of California.

13 20. Defendants DOES 101-150 (hereinafter RETAIL DEFENDANTS) are each persons
14 doing business within the meaning of California Health & Safety Code §25249.11.

15 21. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
16 of California.

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

22 23. WORLD, DOLLAR, UNIVERSAL, MANUFACTURER DEFENDANTS,
23 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS, shall, where appropriate,
24 collectively be referred to hereinafter as “DEFENDANTS.”

25 **VENUE AND JURISDICTION**

26 24. Venue is proper in the Stanislaus County Superior Court, pursuant to Code of Civil
27 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one
28 or more instances of wrongful conduct occurred, and continues to occur, in the County of

1 Stanislaus and/or because DEFENDANTS conducted, and continue to conduct, business in this
2 County with respect to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65)**

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

17 28. The citizens of the State of California have expressly stated in the Safe Drinking
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6, *et seq.*
19 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer, birth
20 defects and other reproductive harm.” (*Cal. Health & Safety Code §25249.6.*)

21 29. Proposition 65 states, “No person in the course of doing business shall knowingly
22 and intentionally expose any individual to a chemical known to the state to cause cancer or
23 reproductive toxicity without first giving clear and reasonable warning to such individual....” (*Id.*)

24 30. On November 7, 2006, a sixty-day notice of violation, together with the requisite
25 certificate of merit, was provided to WORLD, DOLLAR, UNIVERSAL, and various public
26 enforcement agencies stating that as a result of WORLD, DOLLAR and UNIVERSAL’S sale of
27 PRODUCTS, purchasers and users in the State of California were being exposed to the LISTED
28 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the

1 individual purchasers and users first having been provided with a “clear and reasonable warning”
2 regarding such toxic exposures.

3 31. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and
5 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
6 violation of California Health & Safety Code §25249.6 has continued to occur beyond WORLD,
7 DOLLAR and UNIVERSAL’S receipt of plaintiff’s sixty-day notice of violation. Plaintiff further
8 alleges and believes that such violations will continue to occur into the future.

9 32. After receipt of the claims asserted in the sixty-day notice of violation, the
10 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
11 of action against WORLD, DOLLAR and UNIVERSAL under Proposition 65.

12 33. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
13 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
14 limits.

15 34. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
16 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
17 CHEMICAL.

18 35. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to
19 expose individuals to the LISTED CHEMICAL through ingestion and/or dermal contact during the
20 reasonably foreseeable use of the PRODUCTS.

21 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
22 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
23 by 22 CCR §12601(b).

24 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
25 the PRODUCTS would expose individuals to the LISTED CHEMICAL through ingestion and/or
26 dermal contact.

27 38. DEFENDANTS, and each of them, intended that such exposures to the LISTED
28 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their

1 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use
2 of PRODUCTS to individuals in the State of California.

3 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and/or other individuals in the State of California who were or who could become
5 exposed to the LISTED CHEMICAL through ingestion and/or dermal contact during the
6 reasonably foreseeable use of the PRODUCTS.

7 40. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through ingestion
9 and/or dermal contact resulting from the reasonably foreseeable use of the PRODUCTS, sold by
10 DEFENDANTS without “clear and reasonable warning,” have suffered, and continue to suffer,
11 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

12 41. As a consequence of the above-described acts, DEFENDANTS, and each of them,
13 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
14 Health & Safety Code §25249.7(b).

15 42. As a consequence of the above-described acts, California Health & Safety Code
16 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 43. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
19 set forth hereinafter.

20 **PRAYER FOR RELIEF**

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

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

25 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
26 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
27 distributing or offering the PRODUCTS for sale or use in California, without providing “clear and
28 reasonable warnings” as defined by 22 CCR §12601, as to the harms associated with exposures to

1 the LISTED CHEMICAL;

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

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

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6 Dated: January 29, 2007

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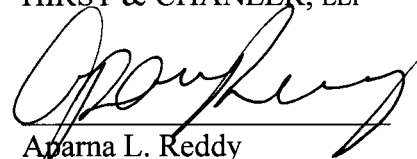
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Respectfully Submitted,
HIRST & CHANLER, LLP



Aparna L. Reddy
Attorneys for Plaintiff
RUSSELL BRIMER