

1 David Lavine, State Bar No. 166744  
2 Daniel M. Bornstein, State Bar No. 181711  
3 HIRST & CHANLER LLP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 RUSSELL BRIMER

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION

**RG08378326**

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 IN GEAR FASHIONS, INC; and DOES 1  
19 through 150, inclusive,

20 Defendants.

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

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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 pint glasses with colored  
5 artwork or designs on the exterior manufactured, distributed and/or offered for sale by defendants  
6 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 pint glasses with colored artwork  
9 or designs on the exterior that defendants manufacture and/or offer for sale to consumers  
10 throughout the State of California.

11 3. High levels of lead are commonly found in the artwork or designs on the exterior of  
12 the pint glasses with colored artwork or designs on the exterior that defendants manufacture and/or  
13 off for sale to consumers throughout the State of California.

14 4 Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
15 California Health & Safety Code §25249.6 *et seq.* (hereafter “Proposition 65”), “No person in the  
16 course of doing business shall knowingly and intentionally expose any individual to a chemical  
17 known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
18 warning to such individual...” (*Cal. Health & Safety Code* §25249.6.)

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

24 6. Defendants manufacture, distribute and/or offer for sale pint glasses with colored  
25 artwork or designs on the exterior and other glassware intended for the consumption of food or  
26 beverages with colored artwork or designs (containing lead) on the exterior including, but not  
27 limited to, *Corona Extra Bucket Set (with Pint Glasses (#CE 11931)*, which contain excessive  
28 levels of the LISTED CHEMICAL. All such pint glasses with colored artwork or designs on the

1 exterior containing the LISTED CHEMICAL shall hereafter be referred to as the "PRODUCTS."

2 7. Defendants' failure to warn consumers about their exposure to the LISTED  
3 CHEMICAL in conjunction with defendants' sale of the PRODUCTS is a violation of Proposition  
4 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such  
5 violation.

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

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

12 **PARTIES**

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

17 11. Defendant IN GEAR FASHIONS, INC.. ("IN GEAR") is a person doing business  
18 within the meaning of California Health & Safety Code §25249.11.

19 12. IN GEAR manufactures, distributes and/or offers the PRODUCTS for sale or use in  
20 the State of California or implies by its conduct that it manufactures, distributes and/or offers the  
21 PRODUCTS for sale or use in the State of California.

22 13. Defendants DOES 1-50 (hereafter "MANUFACTURER DEFENDANTS") are each  
23 persons doing business within the meaning of California Health & Safety Code §25249.11.

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

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1           15. Defendants DOES 51-100 (hereafter "DISTRIBUTOR DEFENDANTS") are each  
2 persons doing business within the meaning of California Health & Safety Code §25249.11.

3           16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
4 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in  
5 the State of California.

6           17. Defendants DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons  
7 doing business within the meaning of California Health & Safety Code §25249.11.

8           18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
9 of California.

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

15           20. IN GEAR, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
16 and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereafter as  
17 "DEFENDANTS".

18                                       **VENUE AND JURISDICTION**

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

24           22. The California Superior Court has jurisdiction over this action pursuant to  
25 California Constitution Article VI, §10, which grants the Superior Court "original jurisdiction in all  
26 causes except those given by statute to other trial courts." The statute under which this action is  
27 brought does not specify any other basis of subject matter jurisdiction.  
28



1 violations will continue to occur into the future.

2 29. After receipt of the claims asserted in the sixty-day notice of violation, the  
3 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause  
4 of action against IN GEAR under Proposition 65.

5 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
6 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
7 limits.

8 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
9 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED  
10 CHEMICAL.

11 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to  
12 expose individuals to the LISTED CHEMICAL through dermal contact and ingestion during the  
13 reasonably foreseeable use of the PRODUCTS.

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

17 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
18 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
19 and ingestion.

20 35. DEFENDANTS, and each of them, intended that such exposures to the LISTED  
21 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their  
22 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use  
23 of PRODUCTS to individuals in the State of California.

24 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
25 consumers or other individuals in the State of California who were or who could become exposed  
26 to the LISTED CHEMICAL through dermal contact or ingestion during the reasonably foreseeable  
27 use of the PRODUCTS.

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

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

9 39. As a consequence of the above-described acts, California Health & Safety Code  
10 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
11 DEFENDANTS.

12 40. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as  
13 set forth hereafter.

14 **PRAYER FOR RELIEF**

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

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

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

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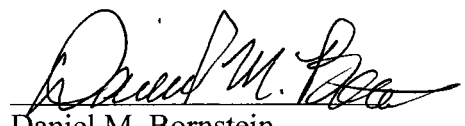
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: March 25, 2007

Respectfully Submitted,  
HIRST & CHANLER, LLP



Daniel M. Bornstein  
Attorneys for Plaintiff  
RUSSELL BRIMER