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ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 18 2009

CLERK OF THE SUPERIOR COURT  
By C. PITTS Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION

11  
12 RUSSELL BRIMER,  
13 Plaintiff,

14 v.

15 DAISO CALIFORNIA, LLC; DAISO  
16 HOLDINGS, U.S.A., INC.; and DOES 1-150,  
inclusive,  
17 Defendants.

Case No. RG09436586

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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**BY FAX**

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL  
3 BRIMER, in the public interest of the citizens of the State of California, to enforce the People's  
4 right to be informed of the presence of lead, a toxic chemical found in glassware items sold in  
5 California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to  
7 warn California citizens about their exposure to lead present in or on certain drinking glasses and  
8 glassware items that defendants manufacture, distribute and/or offer for sale to consumers  
9 throughout the State of California.

10 3. High levels of lead are commonly found in and on glassware items that  
11 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
12 California.

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

18 5. On February 27, 1987, California identified and listed lead as a chemical known  
19 to cause birth defects and other reproductive harm. Lead became subject to the warning  
20 requirement one year later and was therefore subject to the "clear and reasonable warning"  
21 requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001; Cal. Health*  
22 *& Safety Code § 25249.8.*)

23 6. Lead shall hereinafter be referred to as the "LISTED CHEMICAL."

24 7. Defendants manufacture, distribute, and/or sell drinking glasses and glassware  
25 items containing excessive levels of the LISTED CHEMICAL including, but not limited to, the  
26 *Colorful Dot Glass (#4 984343 317673)*. All such drinking glasses and glassware items  
27 containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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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  
7 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and  
8 believes that such violations will continue to occur into the future.

9 32. After receipt of the claims asserted in the sixty-day notices of violation, the  
10 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
11 cause of action against DEFENDANTS 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  
17 LISTED CHEMICAL.

18 35. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
19 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
20 during the 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 27 CCR § 25602(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 dermal contact  
26 and/or ingestion.

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  
2 use 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 dermal contact and/or ingestion 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 dermal  
9 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
10 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
11 suffer, 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 for judgment against DEFENDANTS, and each of  
19 them, as 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  
24 each 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  
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and reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to the LISTED CHEMICAL;

- 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: February 17 2009

Respectfully Submitted,  
HIRST & CHANLER LLP

By:   
Daniel Bernstein  
Attorneys for Plaintiff  
RUSSELL BRIMER