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ALAMEDA COUNTY

09 JUL 22 PM 3:52

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

R G 0 9 4 6 4 3 4 4

12 RUSSELL BRIMER,  
13 Plaintiff,

14 v.

15 ARAMCO IMPORTS, INC.; and DOES 1-  
16 150, inclusive,  
17 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  
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 mugs with colored  
5 artwork or designs sold in 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 mugs with colored  
8 artwork or designs 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 mugs with colored artwork or  
11 designs that defendants manufacture, distribute and/or offer for sale to consumers throughout the  
12 State of 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 (c); Cal.*  
22 *Health & Safety Code § 25249.8.*) Lead shall be referred to hereinafter as the “LISTED  
23 CHEMICAL.”

24 6. Defendants manufacture, distribute, and/or sell mugs with colored artwork or  
25 designs containing excessive levels of the LISTED CHEMICAL including, but not limited to,  
26 the *Café Mug, #SWM2-11, (#6 43700 05323 7)*. All such mugs with colored artwork or designs  
27 containing the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”  
28

1 7. Defendants’ failures to warn consumers and/or other individuals in the State of  
 2 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’ sale  
 3 of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of  
 4 such conduct as well as civil penalties for each such violation.

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

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

11 **PARTIES**

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

16 11. Defendant ARAMCO IMPORTS, INC. (“ARAMCO”) is a person doing business  
 17 within the meaning of California Health & Safety Code § 25249.11.

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

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

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

27 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
 28 doing business within the meaning of California Health & Safety Code § 25249.11.

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

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

6 18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the  
7 State of California.

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

13 20. ARAMCO, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
14 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred  
15 to hereinafter as “DEFENDANTS.”

16 **VENUE AND JURISDICTION**

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

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

26 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
27 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
28 association that either are citizens of the State of California, have sufficient minimum contacts in

1 the State of California, or otherwise purposefully avail themselves of the California market.  
2 DEFENDANTS' purposeful avilment 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 - Against All Defendants)**

6 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 23, inclusive.

8 25. The citizens of the State of California have expressly stated in the Safe Drinking  
9 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*  
10 (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer,  
11 birth defects and other reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

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

16 27. On December 23, 2008, a sixty-day notice of violation, together with the requisite  
17 certificate of merit, was provided to ARAMCO and various public enforcement agencies stating  
18 that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the  
19 State of California were being exposed to lead resulting from the reasonably foreseeable uses of  
20 the PRODUCTS, without the individual purchasers and users first having been provided with a  
21 "clear and reasonable warning" regarding such toxic exposures.

22 28. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
23 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
24 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
25 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
26 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges and  
27 believes that such violations will continue to occur into the future.

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

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

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

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

13          33.     The normal and reasonably foreseeable use of the PRODUCTS has caused and  
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
15 by 27 CCR § 25602(b).

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

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

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

27          37.     Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
2 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
3 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

7 39. As a consequence of the above-described acts, California Health & Safety Code  
8 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
9 DEFENDANTS.

10 40. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth  
11 hereinafter.

12 **PRAYER FOR RELIEF**

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

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

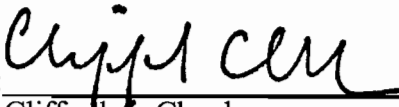
17 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
18 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or  
19 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
20 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures the  
21 LISTED CHEMICAL;

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

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

24 Dated: July 22, 2009

Respectfully Submitted,  
HIRST & CHANLER LLP

25  
26 By:   
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Attorneys for Plaintiff  
RUSSELL BRIMER