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FILED  
ALAMEDA COUNTY  
DEC 16 2010  
CLERK OF THE SUPERIOR COURT  
By S. McMillan

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

RG10551801

RUSSELL BRIMER,  
Plaintiff,

v.

PACIFIC ENTERPRISE, LLC;  
and DOES 1-150, inclusive,  
Defendants.

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

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**VIA 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 ceramicware 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 on the exterior of certain  
8 ceramicware with colored artwork or designs that defendants import, manufacture, distribute,  
9 and/or offer for sale to consumers throughout the State of California.

10 3. High levels of lead are commonly found on the exterior of ceramicware with  
11 colored artwork or designs that defendants import, manufacture, distribute, and/or offer for sale  
12 to consumers throughout the State of California.

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

24 6. Defendants import, manufacture, distribute, and/or sell ceramicware with colored  
25 artwork or designs containing excessive levels of the LISTED CHEMICAL including, but not  
26 limited to, the *Plate and Wine Glass Set, “Friends are like wines – the longer you keep them,*  
27 *the more valued they become”*, *Item #8 40849 03588 3*. All such ceramicware with colored  
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1 artwork or designs containing the LISTED CHEMICAL shall hereinafter be referred to as the  
2 “PRODUCTS.”

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

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

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

13 **PARTIES**

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

18 11. Defendant PACIFIC ENTERPRISE, LLC (“PACIFIC”) is a person doing  
19 business within the meaning of California Health & Safety Code Section 25249.11.

20 12. Defendant PACIFIC imports, manufactures, distributes, and/or offers the  
21 PRODUCTS for sale or use in the State of California, or implies by its conduct that it imports,  
22 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
23 California.

24 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
25 persons doing business within the meaning of California Health & Safety Code Section  
26 25249.11.

27 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
28 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they

1 engage in the process of research, testing, designing, assembling, fabricating and/or  
2 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

8 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons  
9 doing business within the meaning of California Health & Safety Code Section 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
11 State of California.

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

17 20. PACIFIC, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
19 referred to hereinafter as “DEFENDANTS”.

20 **VENUE AND JURISDICTION**

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

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

3 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
5 association that either are citizens of the State of California, have sufficient minimum contacts  
6 in the State of California, or otherwise purposefully avail themselves of the California market.  
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
8 California courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 - Against All Defendants)**

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

13 25. The citizens of the State of California have expressly stated in the Safe Drinking  
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.5,  
15 *et seq.* that they must be informed “about exposures to chemicals that cause cancer, birth defects  
16 and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

21 27. On August 5, 2010, a sixty-day notice of violation, together with the requisite  
22 certificate of merit, was provided to PACIFIC and various public enforcement agencies stating  
23 that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the  
24 State of California were being exposed to lead resulting from the reasonably foreseeable uses of  
25 the PRODUCTS, without the individual purchasers and users first having been provided with a  
26 “clear and reasonable warning” regarding such toxic exposures.

27 28. DEFENDANTS have engaged in the importation, manufacture, distribution,  
28 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety

1 Code Section 25249.6, and DEFENDANTS' importation, manufacture, distribution, and/or  
2 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code  
3 Section 25249.6 has continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day  
4 notices of violation. Plaintiff further alleges and believes that such violations will continue to  
5 occur into the future.

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

9 30. The PRODUCTS imported, manufactured, distributed, and/or offered for sale or  
10 use in California by DEFENDANTS contained the LISTED CHEMICAL above the allowable  
11 state limits.

12 31. DEFENDANTS knew or should have known that the PRODUCTS imported,  
13 manufactured, distributed, and/or offered for sale or use by DEFENDANTS in California  
14 contained the LISTED CHEMICAL.

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

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

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

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

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

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

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

13 39. As a consequence of the above-described acts, California Health & Safety Code  
14 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
15 DEFENDANTS.

16 40. Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of  
17 them, as set forth hereinafter.

18 **PRAYER FOR RELIEF**

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

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

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

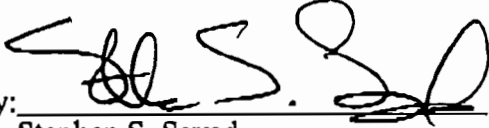
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: December 16, 2010

Respectfully submitted,  
THE CHANLER GROUP

By:   
Stephen S. Sayad  
Attorneys for Plaintiff  
RUSSELL BRIMER