

FEB 14 2011

CLERK OF THE COURT  
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Deputy Clerk

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
12 UNLIMITED CIVIL JURISDICTION

CGC-11-508222

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 ICUP, INC.;  
17 and DOES 1-150, inclusive,

18 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 glassware 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 glassware 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 glassware with colored  
11 artwork or designs that defendants import, manufacture, distribute, and/or offer for sale to  
12 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 glassware with colored  
25 artwork or designs containing excessive levels of the LISTED CHEMICAL including, but not  
26 limited to, the *ACDC Collector's Series Pint Glass 4-Pack (#6 74449 31116 6)*. All such  
27 glassware with colored artwork or designs containing the LISTED CHEMICAL shall  
28 hereinafter be referred to as the "PRODUCTS".

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

5 8. As a result of defendants' violations of Proposition 65, plaintiff seeks preliminary  
6 injunctive and permanent injunctive relief to compel defendants to provide purchasers or users  
7 of the PRODUCTS with the required warning regarding the health hazards of the LISTED  
8 CHEMICAL in the PRODUCTS. (*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 Section 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  
15 the public interest pursuant to California Health & Safety Code Section 25249.7.

16 11. Defendant ICUP, INC. ("ICUP") is a person doing business within the meaning of  
17 California Health & Safety Code Section 25249.11.

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

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

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

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

8 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
9 State 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  
12 Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis  
13 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
14 herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

15 20. ICUP, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
16 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to hereinafter  
17 as "DEFENDANTS".

18 **VENUE AND JURISDICTION**

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

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



1 Section 25249.6 has continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day  
2 notices of violation. Plaintiff further alleges and believes that such violations will continue to  
3 occur into the future.

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

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

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

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

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

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

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

26 36. DEFENDANTS failed and continue to fail to provide a "clear and reasonable  
27 warning" to those consumers and/or other individuals in the State of California who were or  
28

1 who could become exposed to the LISTED CHEMICAL through dermal contact and/or  
2 ingestion during the reasonably foreseeable use of the PRODUCTS.

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

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

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

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

16 **PRAYER FOR RELIEF**

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

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

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

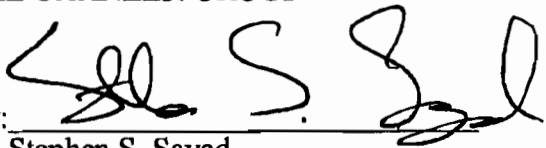
26 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

27 4. That the Court grant such other and further relief as may be just and proper.  
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1 Dated: February 10, 2011

Respectfully submitted,

2 THE CHANLER GROUP

3  
4 By:   
5 Stephen S. Sayad  
6 Attorneys for Plaintiff  
7 RUSSELL BRIMER

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