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Superior Court  
County of Santa Clara  
San Jose, CA

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SANTA CLARA  
13 UNLIMITED CIVIL JURISDICTION

14 1120V216180

11 RUSSELL BRIMER. )  
12 Plaintiff, )  
13 v. )  
14 CAPITOL RECORDS, LLC; and DOES 1- )  
15 150, inclusive. )  
16 Defendants. )

Case No. \_\_\_\_\_  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
*(Cal. Health & Safety Code § 25249.6 et seq.)*

BY FAX

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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 failure to warn  
7 California citizens about reproductive harms associated with their exposure to lead, present in or  
8 on certain mugs with colored artwork or designs that defendant manufactures, imports,  
9 distributes, sells, and/or offers for sale to consumers throughout the State of California.

10 3. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
11 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course  
12 of doing business shall knowingly and intentionally expose any individual to a chemical known  
13 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
14 warning to such individual . . . ." (*Cal. Health & Safety Code § 25249.6.*)

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

20 5. Defendants manufacture, import, distribute, sell, and or offer for sale mugs with  
21 colored artwork of designs containing lead on the exterior including, but not limited to, *The*  
22 *Beatles Magical Mystery Tour Mug* (#8 437007 655261).

23 6. All such mugs with colored artwork or designs containing lead on the exterior shall  
24 hereinafter be collectively referred to as the "PRODUCTS".

25 7. Defendants' failure to warn consumers and/or other individuals in the State of  
26 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*  
27 *seq.* about their exposure to lead and its potential to cause birth defects and other reproductive  
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1 harm in conjunction with defendants' distribution, importation, manufacture, sale, and/or offer of  
2 the PRODUCTS for sale is a violation of Proposition 65 and subjects defendants to enjoinder  
3 of such conduct as well as civil penalties for each such violation.

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

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

#### 10 PARTIES

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

15 11. Defendant CAPITOL RECORDS, LLC ("CAPITOL" or "Defendant") is a person  
16 doing business within the meaning of California Health & Safety Code § 25249.11(c).

17 12. CAPITOL manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
18 for sale or use in the State of California or implies by its conduct that it manufactures, imports,  
19 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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1 all causes except those given by statute to other trial courts.” The statute under which this action  
2 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 is a citizen of the State of California, has sufficient minimum contacts in the  
6 State of California, or otherwise purposefully avails itself of the California market.  
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
8 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 Proposition 65 that  
14 they must be informed “about exposures to chemicals that cause cancer, birth defects and other  
15 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

16 26. Proposition 65 states. “[n]o person in the course of doing business shall knowingly  
17 and intentionally expose any individual to a chemical known to the state to cause cancer or  
18 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
19 (*Id.*)

20 27. On September 19, 2011, a 60-Day Notice of Violation, together with the requisite  
21 Certificate of Merit (the “Notice”), was provided to CAPITOL and various public enforcement  
22 agencies stating that as a result of DEFENDANTS’ manufacture, importation, distribution, sale  
23 and/or offering of the PRODUCTS for sale, purchasers and users in the State of California were  
24 being exposed to lead resulting from the reasonably foreseeable uses of the PRODUCTS,  
25 without the individual purchasers and users first having been provided with a “clear and  
26 reasonable warning” regarding such toxic exposures.

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

7           29.   After receipt of the claims asserted in the Notice, the appropriate public  
8 enforcement agencies have failed to commence and diligently prosecute a cause of action against  
9 DEFENDANTS under Proposition 65.

10          30.   The PRODUCTS manufactured, imported, distributed, sold, and/or offered for sale  
11 or use in California by DEFENDANTS contained lead in an amount above the allowable state  
12 limits.

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

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

19          33.   The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
20 continues to cause, consumer exposures to lead, as such exposure is defined by 27 California  
21 Code of Regulations ("CCR") § 25602(b).

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

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

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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: January 5, 2012

Respectfully Submitted,

THE CHANLER GROUP

By:   
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Troy C. Bailey  
Attorneys for Plaintiff  
RUSSELL BRIMER