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1 Josh Voorhees, State Bar No. 241436
Harris A. Weinstein, State Bar No. 282166
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 RUSSELL BRIMER

ENDORSED Santa Clara
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David H. Yamasaki
Chief Executive Officer
By: cecilia DTSCIV01
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TL \$395.00
Case: 1-12-CV-224755

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SANTA CLARA
9 UNLIMITED CIVIL JURISDICTION

C.A. Pinacate

11 RUSSELL BRIMER,

12 Plaintiff,

13 v.

14 EVRIHOLDER PRODUCTS, LLC.; and
DOES 1-150, inclusive,

15 Defendants.
16

Case No. 112 CV 224755

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

By Fax

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER
3 (“BRIMER or “Plaintiff”), in the public interest of the citizens of the State of California, to
4 enforce the People’s right to be informed of the presence of lead, a toxic chemical found in
5 casserole dishes with colored artwork or designs (containing lead) on the interior sold in
6 California.

7 2. By this Complaint, Plaintiff seeks to remedy defendant’s continuing failure to warn
8 California citizens about their exposure to lead, present in or on casserole dishes with colored
9 artwork or designs (containing lead) on the interior that defendant manufactures, imports,
10 distributes, and/or offers for sale to consumers throughout the State of California.

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

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

21 5. Defendant EVRIHOLDER PRODUCTS, LLC. (“EVRIHOLDER” or
22 “Defendant”) manufactures, imports, distributes, and/or sells casserole dishes with colored
23 artwork or designs (containing lead) on the interior including, but not limited to, *Campbell’s*
24 *Green Bean Casserole Dish, #80536 (#0 17145 60041 5).*

25 6. All such casserole dishes with colored artwork or designs (containing lead) on the
26 interior shall hereinafter be collectively referred to as the “PRODUCTS.”

1 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
2 25249.6 has continued to occur beyond EVRIHOLDER's receipt of Plaintiff's Notice. Plaintiff
3 further alleges and believes that such violations will continue to occur into the future.

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

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

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

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

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

18 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to lead through dermal contact and ingestion.

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

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

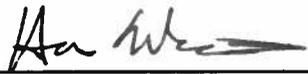
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- 3. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: May 17, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Harris A. Weinstein
Attorneys for Plaintiff
RUSSELL BRIMER