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FILED

JUL 31 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: D. Taylor, Deputy

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

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 THIRSTYSTONE RESOURCES, INC.; and
18 DOES 1-150, inclusive,

19 Defendants.

Case No. CIV1203479

**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 RUSSELL BRIMER
3 (“Brimer” or “Plaintiff”), in the public interest of the citizens of the state of California, to enforce
4 the People’s right to be informed of the presence of lead, a toxic chemical found in ceramic
5 plates with exterior designs containing lead sold in California.

6 2. By this Complaint, Plaintiff seeks to remedy defendant’s continuing failure to warn
7 California citizens about their exposure to lead, present in or on certain ceramic plates with
8 exterior designs containing lead that THIRSTYSTONE RESOURCES, INC (“Thirstystone” or
9 “Defendant”) manufactures, imports, distributes, and/or offers for sale to consumers throughout
10 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 manufactures, imports, distributes, and/or sells ceramic plates with
22 exterior designs containing lead including, but not limited to, *Winers Appetizer Plates, RWKT18,*
23 *RWKT19, RWKT20, RWKT21, #80236 (#7 97585 16656 9).*

24 6. All ceramic plates with exterior designs containing lead shall hereinafter be
25 collectively referred to as the “Products.”
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1 to occur beyond Thirstystone's receipt of Plaintiff's Notice. Plaintiff further alleges and believes
2 that such violations will continue to occur into the future.

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

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

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

11 32. Lead was present in or on the Products in such a way as to expose individuals to
12 lead through dermal contact and ingestion 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 and workplace exposures to lead, as such exposure is defined by 27
15 California Code of Regulations ("CCR") § 25602(b).

16 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the Products would expose individuals to lead through dermal contact and ingestion.

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

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

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

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

9 39. As a consequence of the above-described acts, California Health & Safety Code
10 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
11 DEFENDANTS.

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PRAYER FOR RELIEF

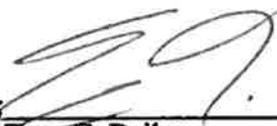
Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged herein;
2. That the Court, pursuant to California Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the Products for sale or use in California, without providing "clear and reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures to lead;
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: July 31, 2012

Respectfully Submitted,

THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
RUSSELL BRIMER