1 2 3 4 5	Evan J. Smith, Esquire (SBN 242352) Ryan P. Cardona, Esquire (SNB 302113) BRODSKY & SMITH, LLC 9595 Wilshire Blvd., Ste. 900 Beverly Hills, CA 90212 Telephone: (877) 534-2590 Facsimile: (310) 247-0160  Attorneys for Plaintiff	ENDORSED FILED ALAWEDA COLINTY  SEP 1 8 2015  CLERK OF THE SUPERIOR COURT By Alaia Carrera, Deputy		
7 8	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
9	COUNTY OF ALAMEDA			
10	EMA BELL,	CASE NO.: RG 1 5 7 8 6 2 8 0		
11	Plaintiff,	JUDGE		
12 13	VS.	DEPT.:		
14	COST PLUS, INC. and COST PLUS WORLD MARKET,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF		
15	Defendants.	(Violation of Health & Safety Code §25249.5		
16		et seq.)		
17		BYFAX		
18				
19	Plaintiff Ema Bell, by and through her attorneys, alleges the following cause of action in			
20	the public interest of the citizens of the State of California.			
21	BACKGROUND OF THE CASE			
22	1. Plaintiff Ema Bell ("Plaintiff" or "Bell"), brings this representative action on			
23	behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic			
24	Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 et seq ("Proposition			
25	65"), which reads, in relevant part, "[n]o person in the course of doing business shall knowingly			
26	and intentionally expose any individual to a chemical known to the state to cause cancer or			
- 1	reproductive toxicity without first giving clear and reasonable warning to such individual"			
പ	Health & Safety Code § 25249.6.			
28	Health & Safety Code § 25249.6.			
28		- 1 - AND INJUNCTIVE RELEIF – VIOLATION OF		

- 2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to lead, a toxic chemical found in certain ceramic tableware products produced, sold, and/or distributed by defendants Cost Plus, Inc. and Cost Plus World Market (collectively, "Cost Plus" or "Defendants") in California.
- 3. Lead is a harmful chemical, known to cause both cancer and adverse developmental and reproductive effects in both males and female. Lead has been listed on the Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm since February 27, 1987 and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
- 4. Proposition 65 requires all businesses with ten (10) or more employees that operate within California or sell products therein to comply with Proposition 65 regulations. Included in such regulations is the requirement that businesses must label any product containing a Proposition 65-listed chemical with a "clear and reasonable" warning before "knowingly and intentionally" exposing any person to it.
- 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation to be imposed upon defendants in a civil action for violations of Proposition 65. *Health & Safety Code* § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the actions of a defendant which "violate or threaten to violate" the statute. *Health & Safety Code* § 25249.7.
- 6. Plaintiff alleges that Defendants produce, manufacture, distribute, import, sell, and/or offer for sale, without the required warning ceramic tableware products, including but not limited to a) Shanghai SP 4A, UPC No. 200477030, and b) PASSARO SLD PLT, UPC No. 24328524 (the "Products").
- 7. Defendants' failure to warn consumers, workers, and other individuals in California of the health hazards associated with exposure to lead in conjunction with the sale, manufacture, and/or distribution of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinment and civil penalties described herein.

- 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition 65 in accordance with Health and Safety Code § 25249.7(b).
- 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendants to provide purchasers or users of the Product with the required warnings related to the dangers and health hazards associated with exposure to lead pursuant to Health and Safety Code § 25249.7(a).

#### **PARTIES**

- 10. Plaintiff is a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items. She brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).
- 11. Defendant Cost Plus, Inc. is a California corporation doing business in California at all relevant times herein. Cost Plus is a retailer that sells food items, alcohol, and other "extraordinary finds from all over the world." As such, Cost Plus effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in California, or it implies by its conducts or through its affiliate's conduct that it manufactures, imports, distributes sells, and/or offers the Products for sale or use in the State of California. Cost Plus can be served care of its agent for service in California, The Prentice-Hall Corporation System, Inc., at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833. Cost Plus is a person in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.
- 12. Defendant Cost Plus World Market is a California organization doing business in California at all relevant times herein. World Market is a retailer who sells food items, alcohol, and other "extraordinary finds from all over the world." As such, World Market effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in California, or it implies by its conducts or through its affiliate's conduct that it manufactures, imports, distributes sells, and/or offers the Products for sale or use in the State of California. Cost Plus can be served at its address at 10860 Santa Monica Blvd., Los Angeles, CA 90025. Cost Plus is

a person in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

- 13. Upon information and belief, Plaintiff avers that each Defendant acted as an employee, servant, or agent of each other Defendant at all times relevant to this action. Plaintiff further avers that in conducting the activities alleged in this Complaint, all Defendants acted within the scope of their agency or similarly situated relationship as toward one another. Therefore all Defendants acted with consent, permission, and authorization of each other in relation to all acts related to the scope of this Complaint.
- 14. Upon information and belief, Plaintiff avers that at all relevant times herein, each Defendant was a person doing business within the meaning of Health and Safety Code § 25249.11(b) and that each and every Defendant had ten (10) or more employees at all relevant times.

#### VENUE AND JURISDICTION

- 15. Venue is proper in the County of Alameda, because one or more of the instances of wrongful conduct occurred, and continue to occur in this county and/or because Defendants conducted, and continue to conduct, business in the County of Alameda with respect to the Product.
- 16. This Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement of violations of Proposition 65 in any Court of competent jurisdiction, therefore, this Court has jurisdiction over this lawsuit.
- 17. This Court has jurisdiction over the Defendants as each Defendant either is a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business in the State of California, and/or have otherwise purposefully availed themselves of the California market. Such purposeful availment has rendered the exercise of jurisdiction by

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California courts consistent and permissible with traditional notions of fair play and substantial iustice.

## **SATISFACTION OF NOTICE REQUIREMNTS**

- 18. On July 8, 2015, Plaintiff gave notice of alleged violations of Health and Safety Code § 25249.6, concerning the exposure of California citizens to lead contained in the Products without proper warning, subject to a private action to Defendant and to the California Attorney General's office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred.
- 19. The notice complied with all procedural requirements of Proposition 65 including the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at least one person with relevant and appropriate expertise who reviewed relevant data regarding lead exposure, and that counsel believed there was meritorious and reasonable cause for a private action.
- 20. After receiving Plaintiff's notice, and to Plaintiff's best information and belief, none of the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged violations which are the subject of Plaintiff's notice of violation.
- 21. Plaintiff is commencing this action more than sixty (60) days from the date of her notice to Defendants, as required by law.

## FIRST CAUSE OF ACTION

# (By Plaintiff against all Defendants for the Violation of Proposition 65)

- 22. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 21 of this complaint as though fully set forth herein.
- 23. Defendants have, at all times mentioned herein, acted as manufacturer, distributer, and/or retailer of the Products.
- 24. The Products contains lead, a hazardous chemical found on the Proposition 65 list of a chemical known to be hazardous to human health.
  - 25. The Products do not comply with the Proposition 65 warning requirements.

- 26. Plaintiff, based on her best information and belief, avers that at all relevant times hereto, and at least since September 17, 2014 continuing until the present, that Defendants have continued to knowingly and intentionally expose California users and consumers of the Products to lead without providing required warnings under Proposition 65.
- 27. The exposures that are the subject of this Complaint result from the purchase, acquisition, handling and recommended use of the Product. Consequently, the primary route of exposure to these chemicals is through ingestion and/or dermal contact, particularly when consumers, including children, place the product that has come into contact with food or beverage into their mouths; ingestion via hand to mouth contact after consumers touch or handle the product; and dermal absorption directly through the skin when consumers touch the product. People likely to be exposed include children.
- 28. Plaintiff, based on her best information and belief, avers that such exposures will continue every day until clear and reasonable warnings are provided to the Products purchasers and users or until this known toxic chemical is removed from the product.
- 29. Defendants have knowledge that the normal and reasonably foreseeable use of the Products expose individuals to lead, and Defendants intend that exposures to lead will occur by their deliberate, non-accidental participation in the manufacture, importation, distribution, sale and offering of the Products to consumers in California
- 30. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this Complaint.
- 31. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per violation.
- 32. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

#### **PRAYER FOR RELIEF**

1	WHEREFOR	E, Plaintiff demands judgment against Defendants and requests the	
2	following relief:		
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4	A.	That the court assess civil penalties against each and every Defendant i	
5		the amount of \$2,500 per day for each violation in accordance with He	alth
6		and Safety Code § 25249.7(b);	
7	В.	That the court preliminarily and permanently enjoin all Defendants	
8		mandating Proposition 65 compliant warnings on the Products;	
9	C.	That the court grant Plaintiff reasonable attorney's fees and costs of sui	it.
10	D.	That the court grant any further relief as may be just and proper.	
11	Dated: September 17,	, 2015 BRODSKY & SMITH, LLC	
12	•	By:	
13		Evan J. Smith (SBN242352)	
14		Ryan P. Cardona (SBN302113) 9595 Wilshire Boulevard, Suite 900	
15		Beverly Hills, CA 90212 Telephone: (877) 534-2590	
16		Facsimile: (310) 247-0160	
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