

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SNB 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

ENDORSED
FILED
ALAMEDA COUNTY

SEP 18 2015

CLERK OF THE SUPERIOR COURT
By *María Carrera*
María Carrera, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 EMA BELL,
11 Plaintiff,
12 vs.
13 COST PLUS, INC. and COST PLUS
14 WORLD MARKET,
15 Defendants.

CASE NO.: RG 15 786 280
JUDGE
DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF
(Violation of Health & Safety Code §25249.5
et seq.)

BY FAX

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
27 reproductive toxicity without first giving clear and reasonable warning to such individual ..."
28 Health & Safety Code § 25249.6.

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposures to lead, a toxic chemical found in certain ceramic tableware
4 products produced, sold, and/or distributed by defendants Cost Plus, Inc. and Cost Plus World
5 Market (collectively, “Cost Plus” or “Defendants”) in California.

6 3. Lead is a harmful chemical, known to cause both cancer and adverse
7 developmental and reproductive effects in both males and female. Lead has been listed on the
8 Proposition 65 list of chemicals known to cause cancer, birth defects, or other reproductive harm
9 since February 27, 1987 and it has come under the purview of Proposition 65 regulations since
10 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

11 4. Proposition 65 requires all businesses with ten (10) or more employees that
12 operate within California or sell products therein to comply with Proposition 65 regulations.
13 Included in such regulations is the requirement that businesses must label any product containing
14 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
15 intentionally” exposing any person to it.

16 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
17 to be imposed upon defendants in a civil action for violations of Proposition 65. *Health & Safety*
18 *Code* § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
19 the actions of a defendant which “violate or threaten to violate” the statute. *Health & Safety*
20 *Code* § 25249.7.

21 6. Plaintiff alleges that Defendants produce, manufacture, distribute, import, sell,
22 and/or offer for sale, without the required warning ceramic tableware products, including but not
23 limited to a) Shanghai SP 4A, UPC No. 200477030, and b) PASSARO SLD PLT, UPC No.
24 24328524 (the “Products”).

25 7. Defendants’ failure to warn consumers, workers, and other individuals in
26 California of the health hazards associated with exposure to lead in conjunction with the sale,
27 manufacture, and/or distribution of the Products is a violation of Proposition 65 and subjects
28 Defendants to the enjoinder and civil penalties described herein.

1 a person in the course of doing business within the meaning of Health & Safety Code sections
2 25249.6 and 25249.11.

3 13. Upon information and belief, Plaintiff avers that each Defendant acted as an
4 employee, servant, or agent of each other Defendant at all times relevant to this action. Plaintiff
5 further avers that in conducting the activities alleged in this Complaint, all Defendants acted
6 within the scope of their agency or similarly situated relationship as toward one another.
7 Therefore all Defendants acted with consent, permission, and authorization of each other in
8 relation to all acts related to the scope of this Complaint.

9 14. Upon information and belief, Plaintiff avers that at all relevant times herein, each
10 Defendant was a person doing business within the meaning of Health and Safety Code §
11 25249.11(b) and that each and every Defendant had ten (10) or more employees at all relevant
12 times.

13 **VENUE AND JURISDICTION**

14 15. Venue is proper in the County of Alameda, because one or more of the instances
15 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
16 conducted, and continue to conduct, business in the County of Alameda with respect to the
17 Product.

18 16. This Court has jurisdiction over this action pursuant to California Constitution
19 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
20 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
21 enforcement of violations of Proposition 65 in any Court of competent jurisdiction, therefore,
22 this Court has jurisdiction over this lawsuit.

23 17. This Court has jurisdiction over the Defendants as each Defendant either is a
24 citizen of the State of California, has sufficient minimum contacts with the State of California, is
25 registered with the California Secretary of State as foreign corporations authorized to do business
26 in the State of California, and/or have otherwise purposefully availed themselves of the
27 California market. Such purposeful availment has rendered the exercise of jurisdiction by
28

1 California courts consistent and permissible with traditional notions of fair play and substantial
2 justice.

3 **SATISFACTION OF NOTICE REQUIREMENTS**

4 18. On July 8, 2015, Plaintiff gave notice of alleged violations of Health and Safety
5 Code § 25249.6, concerning the exposure of California citizens to lead contained in the Products
6 without proper warning, subject to a private action to Defendant and to the California Attorney
7 General's office and the offices of the County District attorneys and City Attorneys for each city
8 with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

9 19. The notice complied with all procedural requirements of Proposition 65 including
10 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
11 least one person with relevant and appropriate expertise who reviewed relevant data regarding
12 lead exposure, and that counsel believed there was meritorious and reasonable cause for a private
13 action.

14 20. After receiving Plaintiff's notice, and to Plaintiff's best information and belief,
15 none of the noticed appropriate public enforcement agencies have commenced and diligently
16 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
17 violations which are the subject of Plaintiff's notice of violation.

18 21. Plaintiff is commencing this action more than sixty (60) days from the date of her
19 notice to Defendants, as required by law.

20 **FIRST CAUSE OF ACTION**

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

22 22. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 21 of
23 this complaint as though fully set forth herein.

24 23. Defendants have, at all times mentioned herein, acted as manufacturer, distributor,
25 and/or retailer of the Products.

26 24. The Products contains lead, a hazardous chemical found on the Proposition 65 list
27 of a chemical known to be hazardous to human health.

28 25. The Products do not comply with the Proposition 65 warning requirements.

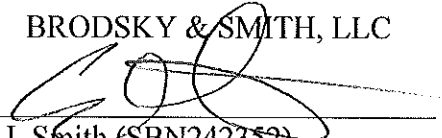
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WHEREFORE, Plaintiff demands judgment against Defendants and requests the following relief:

- A. That the court assess civil penalties against each and every Defendant in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin all Defendants mandating Proposition 65 compliant warnings on the Products;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: September 17, 2015

BRODSKY & SMITH, LLC

By: 
Evan J. Smith (SBN242352)
Ryan P. Cardona (SBN302113)
9595 Wilshire Boulevard, Suite 900
Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff