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FILED
ALAMEDA COUNTY

JUN - 1 2016

CLERK OF THE SUPERIOR COURT
By Cheryl Clark Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,
v.
IT'SUGAR, LLC, and DOES 1-150, inclusive,
Defendants.

Case No. RG 16818767

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

RV FAX

1 limited to the *Saturday Night Live "Nothing Like A Schweddy Ball" Mug, UPC #8 19146*
2 *01321 4*.

3 7. All such mugs with exterior designs containing lead are referred to collectively
4 hereinafter as "PRODUCTS."

5 8. Defendants' failure to warn consumers in the State of California of the health
6 hazards associated with exposures to lead in conjunction with Defendants' sales of the
7 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
8 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
9 § 25249.7(a) & (b)(1).

10 9. For Defendants' violations of Proposition 65, Plaintiff seeks preliminary and
11 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
12 the required warning regarding the health hazards associated with exposures to lead. Health &
13 Safety Code § 25249.7(a).

14 10. Pursuant to Health and Safety Code section 25249.7(b), Plaintiff also seeks civil
15 penalties against defendants for their violations of Proposition 65.

16 **PARTIES**

17 11. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is
18 dedicated to protecting the health of California citizens through the elimination or reduction of
19 toxic exposures from consumer products. He brings this action in the public interest pursuant to
20 Health and Safety Code section 25249.7(d).

21 12. Defendant IT'SUGAR, LLC ("IT'SUGAR") is a person in the course of doing
22 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

23 13. IT'SUGAR manufactures, imports, distributes, sells, and/or offers the
24 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
25 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
26 State of California.

27 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
28

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

3 15. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
4 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
5 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
6 sale or use in California.

7 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
8 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
9 and 25249.11.

10 17. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
11 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
12 retailers for sale or use in the State of California, or each implies by its conduct that it
13 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
14 individuals, businesses, or retailers for sale or use in the State of California.

15 18. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
16 the course of doing business within the meaning of Health and Safety Code sections 25249.6
17 and 25249.11.

18 19. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
19 individuals in the State of California.

20 20. At this time, the true names of defendants DOES 1 through 150, inclusive, are
21 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
22 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
23 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
24 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

25 21. IT'SUGAR, MANUFACTURER DEFENDANTS, DISTRIBUTOR
26 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
27 referred to collectively as the "DEFENDANTS."
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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual” Health & Safety Code § 25249.6.

3 28. On January 29, 2016, Plaintiff served a sixty-day notice of violation, together
4 with the accompanying certificate of merit, on IT'SUGAR, the California Attorney General, and
5 all other requisite public enforcers alleging that, as a result of DEFENDANTS' sales of the
6 PRODUCTS, consumers in the State of California are being exposed to lead resulting from their
7 reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a “clear
8 and reasonable warning” regarding the harms associated with exposures to lead, as required by
9 Proposition 65.

10 29. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
11 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
12 violations have continued beyond their receipt of Plaintiff's sixty-day notice of violation. As
13 such, DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined
14 will continue in the future.

15 30. After receiving Plaintiff's sixty-day notice of violation, no public enforcement
16 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
17 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of
18 violation.

19 31. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
20 offer for sale or use in California cause exposures to lead as a result of the reasonably
21 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
22 consumers in California are not exempt from the “clear and reasonable” warning requirements
23 of Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS' violations of
24 Proposition 65 as a result of their failure to provide warnings to consumers exposed to lead from
25 the PRODUCTS, have continued since as far back as January 29, 2013.

26 32. DEFENDANTS knew or should have known that the PRODUCTS they
27 manufacture, import, distribute, sell, and offer for sale in California contain lead.

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1 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
2 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
3 each violation;

4 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
5 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
6 offering the PRODUCTS for sale or use in California without first providing a "clear and
7 reasonable warning" in accordance with title 27 of the California Code of Regulations, section
8 25601 *et seq.*, regarding the harms associated with exposures to lead;

9 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
10 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
11 currently in the chain of commerce in California without a "clear and reasonable warning" as
12 defined by California Code of Regulations title 27, section 25601 *et seq.*;

13 4. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and

14 5. That the Court grant such other and further relief as may be just and proper.

15 Dated: May 26, 2016

16 Respectfully submitted,
17 THE CHANLER GROUP

18 By: 
19 Warren M. Klein
20 Attorneys for Plaintiff
21 RUSSELL BRIMER
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