

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

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Date: April 28, 2006

To: William Marek, President – The Alley  
William Marek, President – Marek Inc.

California Attorney General's Office;  
District Attorney's Office for 58 Counties;  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles;

From: Russell Brimer

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## I. INTRODUCTION

My name is Russell Brimer. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 *et seq.* ("Proposition 65") and supplements the notice sent on July 8, 2005 and the notice sent on September 2, 2005. As noted above, notice is being provided to the violators, The Alley and Marek Inc. (the "Violators"). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the following toxic chemicals ("listed chemicals"):

Product Exposure: See Section VI. Exhibit A  
Listed Chemicals: Lead; Cadmium  
Routes of Exposure: Ingestion, Dermal  
Types of Harm: Birth Defects and Other Reproductive Harm

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type or types of products (hereafter the "products") that are causing consumer and occupational exposures in violation of Proposition 65 (and that are covered by this Notice) are listed in Exhibit A in section VI below. The Violators' sales of these glassware and ceramic products have been occurring from at least April 28, 2005 to the present. As a result of the sales of these products, exposures to the listed chemicals have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemicals produced by the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemicals from the reasonably foreseeable use of the products.

## **A. CONSUMER PRODUCT EXPOSURE**

California consumers, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemicals. By way of example but not limitation, exposures occur when California citizens use (such as drink from the vessel), display, clean, repair, pack, unpack, arrange, store or otherwise handle the products. These tasks cause consumers to be exposed directly and indirectly through the routine touching of the parts or portions of the products containing readily available surface amounts of the listed chemicals. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemicals from the products as a result of these tasks. People likely to be exposed include both children and adults.

## **B. OCCUPATIONAL EXPOSURE**

Similarly, men and women in California use the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemicals. Employees are exposed at the California business locations of the apparent manufacturer, distributor and retailer (and their agents, assigns and divisions) as well as all other California locations where the products, or the component parts thereof that include the listed chemicals are, by way of example but not limitation, used (such as drank from the vessel), packed, unpacked, labeled, arranged, displayed, cleaned, stocked, stored, repaired or otherwise handled. These tasks cause employee exposure directly and indirectly though the routine touching of the parts or portions of the products containing readily available surface amounts of the listed chemicals. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemicals from the products as a result of these tasks. These products are also used by sole proprietors and other persons in settings not covered by the Occupational Safety Health Act ("OSH Act"). This Notice alleges the violation of Proposition 65 with respect to occupational exposure governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance contained in the general hazard communication requirement to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

## **III. CONTACT INFORMATION**

Please direct all questions concerning this notice to my counsel at the following address:

Russell Brimer  
c/o Laralei S. Paras  
Hirst & Chanler  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

Russell Brimer  
c/o Clifford Chanler  
c/o D. Joshua Voorhees  
Hirst & Chanler  
71 Elm Street, Suite 8  
New Canaan, CT 06840  
Telephone: (203) 966-9911

#### IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violators' reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

#### V. ADDITIONAL NOTICE INFORMATION

THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 § 12903(b)(4).

Identified below are specific examples of one or more of the categories or types of offending products recently purchased and witnessed as being available for purchase or use in California. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples of the category or type of products are also provided below. Brimer believes and alleges that the sale of the offending products has also occurred without the requisite Proposition 65 "clear and reasonable warnings" at other locations including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalogue by the Violators.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributors</i>
Mug, Tex-Mex Chili Con Carne (#0 37435 44540 3; #M404540)	The Alley; Marek Inc. Riverside County, Southern California	Lynn Roberts International, Inc.
Mug, Texas Down Home Chili Authentic Taste Of The West (#0 37435 44540 3; #M404540)		

#### VI. EXHIBIT A

<i>Product Category</i>	<i>Such As*</i>	<i>Toxins</i>
Mugs and Other Ceramic Containers Intended for the Storage, serving or Consumption of Food or Beverages with Colored Artwork, Designs and/or Markings on the Exterior Surface	Mug, Tex-Mex Chili Con Carne (#0 37435 44540 3; #M404540)  Mug, Texas Down Home Chili Authentic Taste Of The West (#0 37435 44540 3; #M404540)	Lead
Ceramic Containers Intended for the Storage, serving or Consumption of Food or Beverages with Colored Artwork, Designs and/or Markings on the Exterior Surface		Cadmium

Glassware Intended for the Storage, serving or Consumption of Food or Beverages with Colored Artwork, Designs and/or Markings on the Exterior Surface		Lead
Glassware Intended for the Storage, serving or Consumption of Food or Beverages with Colored Artwork, Designs and/or Markings on the Exterior Surface		Cadmium
Glassware Household Products With Colored Artwork, Designs and/or Markings on the Exterior Surface		Lead
Glassware Household Products With Colored Artwork, Designs and/or Markings on the Exterior Surface		Cadmium
Ceramic Household Products With Colored Artwork, Designs and/or Markings on the Exterior Surface		Lead
Ceramic Household Products With Colored Artwork, Designs and/or Markings on the Exterior Surface		Cadmium

\*These specifically identified examples of one or more of the types of products subject to this Notice are for the recipients' benefit to assist in their investigation of, among other things, the magnitude of potential exposure to the listed chemicals from other items within the product categories listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category" in Exhibit A. Further, it is this citizen's position that the alleged Violators are obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipients' custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

# CERTIFICATE OF MERIT

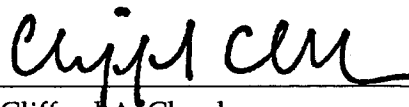
Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the *alleged* exposure to the listed chemicals that are the subject of this action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code §25249.7(h)(2) (i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.)

Dated: \_\_\_\_\_

4.28.2006



Clifford A. Chanler

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710.

On April 28, 2006 I served the following document:

**SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

served on the Violator listed below via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the Violator and placing such envelope in a United States Postal Service mailbox:

William Marek, President  
The Alley  
44503 Jackson Street  
Indio, CA 92201

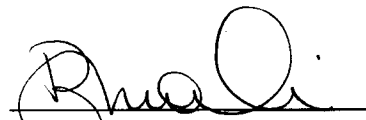
William Marek, President  
Marek Inc.  
44503 Jackson Street  
Indio, CA 92201

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Via 2<sup>nd</sup> Day Air Service by placing such envelope in a Federal Express Drop-Off Box:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, first class postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento;

*A list of addresses for each of these recipients is attached.*

Executed on April 28, at Berkeley, California.

  
Bozena M. Morawski

## SERVICE LIST

The Honorable Tom Orloff  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable William Richmond  
Alpine County District Attorney  
270 Laramie Street, Annex Building  
Markleeville, CA 96120

The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street, #202  
Jackson, CA 95642

The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive,  
Administration Building  
Oroville, CA 95965

The Honorable Jeffrey Tuttle  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249

The Honorable John R. Poyner  
Colusa County District Attorney  
547 Market Street  
Colusa, CA 95932

The Honorable Robert J. Kochly  
Contra Costa County District Attorney  
725 Court Street, 4<sup>th</sup> Floor, Rm. 402  
Martinez, CA 94553

The Honorable Michael Riese  
Del Norte County District Attorney  
450 H Street  
Crescent City, CA 95531

The Honorable Gary Lacy  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

The Honorable Elizabeth Egan  
Fresno County District Attorney  
2220 Tulare Street, #1000  
Fresno, CA 93721

The Honorable Robert Holzapfel  
Glenn County District Attorney  
540 West Sycamore  
Willows, CA 95988

The Honorable Paul Gallegos  
Humboldt County District Attorney  
825 5<sup>th</sup> Street  
Eureka, CA 95501

The Honorable Gilbert Otero  
Imperial County District Attorney  
939 West Main Street  
El Centro, CA 92243

The Honorable Arthur Maillet  
Inyo County District Attorney  
P.O. Drawer D  
Independence, CA 93526

The Honorable Edward R. Jagels  
Kern County District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301

The Honorable Ronald Calhoun  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

The Honorable Gerhard Luck  
Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453

The Honorable Robert Burns  
Lassen County District Attorney  
220 S. Lassen Street, Ste. 8  
Susanville, CA 96130

The Honorable Steve Cooley  
Los Angeles County District Attorney  
210 West Temple Street  
Los Angeles, CA 90012

The Honorable Ernest LiCalsi  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637

The Honorable Edward Berberian  
Marin County District Attorney  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

The Honorable Robert Brown  
Mariposa County District Attorney  
5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

The Honorable Norman Vroman  
Mendocino County District Attorney  
100 North State Street, G-10  
Ukiah, CA 95482

The Honorable Gordon Spencer  
Merced County District Attorney  
2222 M Street  
Merced, CA 95340

The Honorable Jordan Funk  
Modoc County District Attorney  
204 S. Court Street, Room 202  
Alturas, CA 96101

The Honorable George Booth  
Mono County District Attorney  
Old Court House, Main Street  
Bridgeport, CA 93517

The Honorable Dean Flippo  
Monterey County District Attorney  
240 Church Street, #101  
Salinas, CA 93901

The Honorable Gary Lieberstein  
Napa County District Attorney  
931 Parkway Mall  
Napa, CA 94559

The Honorable Michael Ferguson  
Nevada County District Attorney  
201 Church Street, Suite 8  
Nevada City, CA 95959

The Honorable Tony Rackauckas  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701

The Honorable Bradford Fenocchio  
Placer County District Attorney  
11562 B Avenue  
Auburn, CA 95603

The Honorable Jeff Cunan  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Grover Trask II  
Riverside County District Attorney  
4075 Main Street  
Riverside, CA 92501

The Honorable Jan Scully  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814

The Honorable John Sarsfield  
San Benito County District Attorney  
419 4<sup>th</sup> Street, Second Floor  
Hollister, CA 95203

The Honorable Michael Ramos  
San Bernardino County District Attorney  
316 N. Mountain View Avenue  
San Bernardino, CA 92415

The Honorable Bonnie Dumanis  
San Diego County District Attorney  
330 W. Broadway Street, Suite 1320  
San Diego, CA 92101

The Honorable Kamala Harris  
San Francisco County District Attorney  
850 Bryant Street, Room 325  
San Francisco, CA 94103

The Honorable James Willett  
San Joaquin County District Attorney  
222 E. Weber Avenue, 2<sup>nd</sup> Floor, Room 202  
Stockton, CA 95201

The Honorable Gerald Shea  
San Luis Obispo County District Attorney  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

The Honorable James Fox  
San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063

The Honorable Thomas Sneddon, Jr.  
Santa Barbara County District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

The Honorable George Kennedy  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110

The Honorable Bob Lee  
Santa Cruz County District Attorney  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

The Honorable Gerald Benito  
Shasta County District Attorney  
1525 Court Street, Third Floor  
Redding, CA 96001

The Honorable Lawrence Allen  
Sierra County District Attorney  
100 Courthouse Square, Second Floor  
Downieville, CA 95936

The Honorable James Andrus  
Siskiyou County District Attorney  
311 4<sup>th</sup> Street  
Yreka, CA 96097

The Honorable David Paulson  
Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

The Honorable Stephan Passalacqua  
Sonoma County District Attorney  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

The Honorable Carol Shipley  
Stanislaus County District Attorney  
800 11<sup>th</sup> Street, Room 200  
Modesto, CA 95353

The Honorable Carl Adams  
Sutter County District Attorney  
446 Second Street  
Yuba City, CA 95991

The Honorable Gregg Cohen  
Tehama County District Attorney  
PO BOX 519  
Red Bluff, CA 96080

The Honorable David Cross  
Trinity County District Attorney  
101 Court Street  
Weaverville, CA 96093

The Honorable Phillip Cline  
Tulare County District Attorney  
221 South Mooney Boulevard, Suite 224  
Visalia, CA 93291

The Honorable Donald Segerstrom, Jr  
Tuolumne County District Attorney  
221 South Green Street  
Sonora, CA 95370

The Honorable Gregory Totten  
Ventura County District Attorney  
800 South Victoria Avenue  
Ventura, CA 93009

The Honorable David C. Henderson  
Yolo County District Attorney  
301 Second Street  
Woodland, CA 95695

The Honorable Patrick McGrath  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

The Honorable Rockard Delgadillo  
Office of the City Attorney, Los Angeles  
200 North Main Street  
Los Angeles, CA 90012

The Honorable Michael Aguirre  
Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101

The Honorable Samuel Jackson  
Office of the City Attorney, Sacramento  
915 I Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

The Honorable Dennis J. Herrera  
Office of the City Attorney, San Francisco  
City Hall, Room 234  
San Francisco, CA 94102

The Honorable Richard Doyle  
Office of the City Attorney, San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550