

# SECOND SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

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Date: March 19, 2009

To: Peter K. Jenkins, President – Boston Warehouse Trading Corp.  
California Attorney General's Office;  
District Attorney's Office for 58 Counties; and  
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 Supplemental 60-Day Notice of Violation sent on January 26, 2009. As noted above, notice is being provided to the violator, Boston Warehouse Trading Corp. (the "Violator"). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemicals ("listed chemicals") identified below, as follows:

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 of product that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under "Product Category/Type" in Exhibit A in Section VI below. All products within the type covered by this Notice shall be referred to hereinafter as the "products." The Violator's manufacture and/or sale of these ceramic products dating as far as March 19, 2008 are subject to this notice. 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, resulting from contact with 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 drink from the vessel, display, clean, pack, unpack, arrange, store or otherwise handle the products. These tasks cause consumers to be exposed directly and/or indirectly to the listed chemicals through the routine touching of the parts or portions of the products containing readily available amounts of the listed chemicals on the surface.

Additionally, exposure can occur through the routine touching and ingesting of other materials (such as food items consumed while handling the products) that become contaminated with the listed chemicals from the products. People likely to be exposed include both children and adults.

## **B. OCCUPATIONAL EXPOSURE**

Similarly, men and women in California use or otherwise handle the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemicals. Employees are exposed at any 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 as a drinking vessel, packed, unpacked, labeled, arranged, displayed, cleaned, stocked, stored, or otherwise handled. These tasks cause employee exposure directly and/or indirectly to the listed chemicals through the routine touching of the parts or portions of the products containing readily available amounts of the listed chemicals on the surface. 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 CSHA 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 me at the following address:

Russell Brimer  
c/o Daniel Bornstein  
Hirst & Chanler LLP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710  
Tel.: (510) 848-8880

#### 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 Violator's 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 is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator and other distributors and retailers of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Latte Lover Gift Mug, #63210 (#0 26602 63210 4)	Nob Hill Contra Costa County, Northern California	Boston Warehouse Trading Corp.
Deck the Halls Plate Set/4, Model No. 04609 (#0 26602 04609 3)	Tuesday Morning Placer County, Northern California	Boston Warehouse Trading Corp.

**VI. EXHIBIT A**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Ceramicware with Colored Artwork or Designs Intended for the Consumption of Food or Beverages (containing lead) on the Exterior	Latte Lover Gift Mug, #63210 (#0 26602 63210 4)	Lead
Ceramicware with Colored Artwork or Designs Intended for the Consumption of Food or Beverages (containing lead) on the Exterior	Deck the Halls Plate Set/4, Model No. 04609 (#0 26602 04609 3)	Cadmium

\*The specifically identified example of the type of product which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemicals from other items within the product category/type 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 type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

# 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 March 19, 2009, I served the following documents:

**SECOND 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)**

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

Peter K Jenkins, President  
Boston Warehouse Trading Corp.  
59 Davis Avenue, Suite 10  
Norwood, MA 02062

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 March 19, 2009, at Berkeley, California.



Caroline Liang

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Daniel Bornstein, hereby declare:

This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice has violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings.

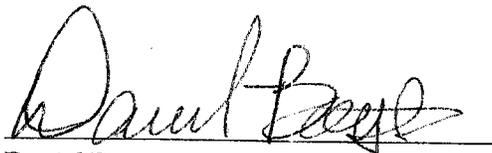
I am the attorney for the noticing party.

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.

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 Violator will be able to establish any of the affirmative defenses set forth in the statute.

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.)

Date: 3/18/09



Daniel Bornstein

## 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, PO BOX 248  
Markleeville, CA 96120

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

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

The Honorable Jeffrey Tuttle  
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The Honorable Elizabeth Egan  
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The Honorable Gilbert Otero  
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1215 Truxtun Avenue  
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The Honorable Ronald Calhoun  
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The Honorable Dean Flippo  
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Salinas, CA 93902

The Honorable Gary Lieberstein  
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Riverside, CA 92531

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Sacramento, CA 95814

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The Honorable Michael Ramos  
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San Bernardino, CA 92415

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San Diego County District Attorney  
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The Honorable Kamala Harris  
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The Honorable James Fox  
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Redwood City, CA 94063

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Santa Barbara, CA 93101

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San Jose, CA 95110

The Honorable Bob Lee  
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Santa Cruz, CA 95060

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Shasta County District Attorney  
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Redding, CA 96001

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Sierra County District Attorney  
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Trinity County District Attorney  
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Ventura, CA 93009

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San Diego, CA 92101

The Honorable Eileen M. Teichert  
Office of the City Attorney, Sacramento  
P.O. Box 1948  
Sacramento, CA 95812

The Honorable Dennis J. Herrera  
Office of the City Attorney, San Francisco  
City Hall, Room 234  
San Francisco, CA 94012

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