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1 Stephen S. Sayad, State Bar No. 104866  
2 Daniel M. Bornstein, State Bar No. 181711  
3 Laralei S. Paras, State Bar No. 203319  
4 PARAS LAW GROUP  
5 655 Redwood Highway, Suite 216  
6 Mill Valley, CA 94941  
7 Tel: (415) 380-9222  
8 Fax: (415) 380-9223

6 Clifford A. Chanler, State Bar No. 135534  
7 CHANLER LAW GROUP  
8 71 Elm Street, Suite 8  
9 New Canaan, CT 06840  
10 Tel: (203) 966-9911  
11 Fax: (203) 801-5222

9 \*Attorneys for Plaintiff  
10 RUSSELL BRIMER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF ALAMEDA – OAKLAND BRANCH  
13 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER, )

16 Plaintiff, )

17 v. )

18 )  
19 IKEA U.S. INC.; IKEA NORTH AMERICA; )  
20 and DOES 1 through 150, )

21 Defendants. )  
22 \_\_\_\_\_ )

No. 05204297

**COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF**

Health & Safety Code §25249

23 RUSSELL BRIMER, by and through his counsel, on behalf of himself, on behalf all others  
24 similarly situated and on behalf of the general public, hereby alleges as follows:

25 **NATURE OF THE ACTION**

26 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,  
27 on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the  
28 presence of and nature of toxic chemicals in consumer goods.

1           2.       This Complaint seeks to remedy defendants' continuing failures to warn the citizens  
2 of the State of California about the presence of, the nature of and such citizens' actual and potential  
3 exposure to lead and cadmium present in or on consumer products placed into the stream of  
4 commerce by defendants.

5           3.       Lead and cadmium are chemicals that are identified within 22 C.C.R. §12000 and  
6 that are known to the State of California to cause birth defects and other reproductive harm. Lead  
7 and cadmium shall hereafter be referred to as "LISTED CHEMICALS".

8           4.       The consumer products containing the LISTED CHEMICALS, and for which  
9 defendants are responsible, are mugs and other tableware with colored artwork or designs  
10 (containing lead) on the exterior, including but not limited to, *Trans Mug Asst (500.630.33)*, and  
11 mugs and other tableware with colored artwork or designs (containing cadmium) on the exterior,  
12 including but not limited to, *Trans Mug Asst (500.630.33)*. All such consumer products containing  
13 the LISTED CHEMICALS shall hereafter be referred to as the "PRODUCTS".

14           5.       Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health  
15 & Safety Code §25249.5 *et seq.*<sup>1</sup> (hereafter "Proposition 65"), "No person in the course of doing  
16 business shall knowingly and intentionally expose any individual to a chemical known to the state  
17 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
18 individual...."

19           6.       Beginning on October 1, 1992, the State of California officially listed lead (and lead  
20 compounds) as a known carcinogen. On February 27, 1987, the State had listed lead as a chemical  
21 known to cause birth defects and other reproductive harm. This chemical became subject to the  
22 warning requirement one year later and was therefore subject to the "clear and reasonable warning"  
23 requirements of Proposition 65, beginning on October 1, 1993 and February 27, 1988, respectively.  
24 (22 Code of Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

25           7.       Beginning on October 1, 1987, the State of California officially listed cadmium as a  
26 known carcinogen. On May 1, 1997, the State had listed cadmium as a chemical known to cause  
27

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28 <sup>1</sup> Unless specifically noted, all statutory citations refer to California law.

1 birth defects or other reproductive harm. This chemical became subject to the warning requirement  
2 one year later and was therefore subject to the "clear and reasonable warning" requirements of  
3 Proposition 65, beginning on October 1, 1988 and May 1, 1998, respectively. (22 Code of  
4 Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

5 8. Defendants' failure to provide proper mandatory warnings about exposure to the  
6 LISTED CHEMICALS in conjunction with the sale of the PRODUCTS is a violation of  
7 Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for  
8 each such violation.

9 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
10 and permanent injunctive relief to compel defendants to provide users of the PRODUCTS with the  
11 appropriate Proposition 65 warning regarding the hazards of such LISTED CHEMICALS.

12 10. Plaintiff also seeks civil penalties against defendants for their violations of  
13 Proposition 65, as provided for by Health & Safety Code §25249.7(b).

#### 14 PARTIES

15 11. Plaintiff RUSSELL BRIMER is a citizen of the State of California who resides in  
16 the City and County of ALAMEDA and who is dedicated to protecting the health of California  
17 citizens, including the elimination or reduction of toxic exposures, and brings this action on behalf  
18 of the general public pursuant to Health & Safety Code §25249.7.

19 12. Defendant IKEA U.S. INC. ("IKEA U.S.") is a person doing business within the  
20 meaning of Health & Safety Code §25249.11.

21 13. IKEA U.S. manufactures, distributes and/or offers the PRODUCTS for sale or use  
22 in the State of California or implies by its conduct that it manufactures, distributes and/or offers the  
23 PRODUCTS for sale or use in State of California.

24 14. Defendant IKEA NORTH AMERICA ("IKEA NA") is a person doing business  
25 within the meaning of Health & Safety Code §25249.11.

26 15. IKEA NA distributes and/or offers the PRODUCTS for sale or use in the State of  
27 California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use  
28 in State of California.

1           16.   DOES 1-50 (hereafter "MANUFACTURER DEFENDANTS") are each persons  
2 doing business within the meaning of Health & Safety Code §25249.11.

3           17.   MANUFACTURER DEFENDANTS engage in the process of research, testing,  
4 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
5 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,  
6 one or more of the PRODUCTS in the State of California or for consumption or use in the State of  
7 California.

8           18.   DOES 51-100 (hereafter "DISTRIBUTOR DEFENDANTS") are each persons  
9 doing business within the meaning of Health & Safety Code §25249.11.

10          19.   DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
11 transport one or more of the PRODUCTS to individuals, businesses or retailers in the State of  
12 California.

13          20.   DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons doing  
14 business within the meaning of Health & Safety Code §25249.

15          21.   RETAIL DEFENDANTS offer one or more of the PRODUCTS for sale to  
16 individuals in the State of California.

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

22          23.   IKEA U.S., IKEA NA, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
23 DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to  
24 hereafter as "DEFENDANTS".

25                               **VENUE AND JURISDICTION**

26          24.   Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
27 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one or  
28 more instances of wrongful conduct occurred, and continues to occur, in the County of Alameda

1 and/or because DEFENDANTS conducted, and continue to conduct, business in this County.

2 25. The California Superior Court has jurisdiction over this action pursuant to  
3 California Constitution Article VI, Section 10, which grants the Superior Court "original  
4 jurisdiction in all causes except those given by statute to other trial courts." The statute under  
5 which this action is brought does not specify any other basis of jurisdiction.

6 26. The California Superior Court has jurisdiction over DEFENDANTS based on  
7 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
8 association that either is a citizen of the State of California, has sufficient minimum contacts in the  
9 State of California, or otherwise purposefully avails itself of the California market.  
10 DEFENDANTS' purposeful availment renders the exercise of jurisdiction by California courts  
11 consistent with traditional notions of fair play and substantial justice.

12 **FIRST CAUSE OF ACTION**

13 **(Violation of Proposition 65)**

14 27. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,  
15 Paragraphs 1 through 26, inclusive.

16 28. The citizens of the State of California have expressly stated in the Safe Drinking  
17 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition  
18 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and  
19 other reproductive harm." (Proposition 65, §1(b).)

20 29. Proposition 65 further states that, "No person in the course of doing business shall  
21 knowingly and intentionally expose any individual to a chemical known to the state to cause cancer  
22 or reproductive toxicity without first giving clear and reasonable warning to such individual...."

23 30. Based on information and good faith belief, plaintiff alleges that, at all times  
24 relevant to this Complaint, DEFENDANTS have engaged in the sales of these PRODUCTS in  
25 violation Health & Safety Code §25249.6, et seq., and that DEFENDANTS' offensive sale of these  
26 PRODUCTS continues to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of  
27 Violation. Plaintiff also alleges and believes that such violations will continue to occur into the  
28 future.

1           31. Beginning on September 2, 2004, "60-Day Notices" of Proposition 65 violations  
2 were provided to public enforcement agencies and to IKEA U.S. and IKEA NA stating that  
3 exposures to the LISTED CHEMICALS were occurring in the State of California from the  
4 reasonably foreseeable uses of the PRODUCTS, without the individual users first having been  
5 provided with a "clear and reasonable warning" regarding such exposure.

6           32. The appropriate public enforcement agencies have failed to commence and  
7 diligently prosecute a cause of action, under Health & Safety Code §25249.6, *et seq.*, against  
8 DEFENDANTS based on the claims asserted in Plaintiff's 60-Day Notices.

9           33. At all times relevant to this action, the PRODUCTS contained the LISTED  
10 CHEMICALS.

11           34. At all times relevant to this action, the DEFENDANTS knew or should have known  
12 that the PRODUCTS contained the LISTED CHEMICALS.

13           35. At all times relevant to this action, the LISTED CHEMICALS were present in or on  
14 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to  
15 individuals during the reasonably foreseeable use of PRODUCTS.

16           36. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
17 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by  
18 22 C.C.R. §12601.

19           37. Based on information and good faith belief, plaintiff alleges, that at all times  
20 relevant to this action, DEFENDANTS had knowledge that individuals' normal and reasonably  
21 foreseeable use of the PRODUCTS would cause an exposure to the LISTED CHEMICALS.

22           38. At all times relevant to this action, DEFENDANTS, and each of them, intended that  
23 such exposures to the LISTED CHEMICALS from the reasonably foreseeable use of the  
24 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,  
25 distribution and/or sale of PRODUCTS to individuals.

26           39. At all times relevant to this action, DEFENDANTS failed to provide a "clear and  
27 reasonable warning" of reproductive toxicity (as defined by 22 C.C.R. §12601) to those consumers  
28 or other individuals in the State of California who were or could become exposed to the

1 PRODUCTS and the LISTED CHEMICALS contained therein.

2 40. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
3 directly by California voters, individuals thus exposed to the LISTED CHEMICALS from the  
4 PRODUCTS, without "clear and reasonable warning", have suffered and continue to suffer  
5 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

6 41. As a consequence of the above-described acts, DEFENDANTS, and each of them,  
7 are liable, pursuant to Health & Safety Code §25249.7(b), for a maximum civil penalty of \$2,500  
8 per day for each violation.

9 42. As a consequence of the above-described acts, Health & Safety Code §25249.7  
10 specifically also authorizes the grant of injunctive relief under Proposition 65.

11 Wherefore, plaintiff prays judgment against DEFENDANTS as set forth hereafter.

12 **PRAYER FOR RELIEF**

13 Wherefore, plaintiff prays for judgment against defendants as follows:

14 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties  
15 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation  
16 alleged herein;

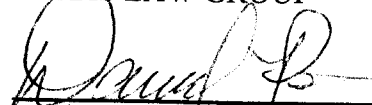
17 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and  
18 permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California,  
19 without providing an identification of the LISTED CHEMICALS in the PRODUCTS as well as  
20 "clear and reasonable warning[s]" as defined by 22 CCR §12601, as plaintiff shall specify in  
21 further application to the Court;

22 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

23 4. That the Court grant such other and further relief as may be just and proper.

24 Dated: March 14, 2005

25 Respectfully Submitted,  
26 PARAS LAW GROUP

27 

28 Daniel M. Bornstein  
Attorneys for Plaintiff  
RUSSELL BRIMER