

FILED
San Francisco County Superior Court

JUL 07 2005

GORDON PARK-LI, Clerk

BY: J. P. [Signature]
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CASE MANAGEMENT CONFERENCE SET

PLAN I DEC 09 2005 900AM

DEPARTMENT 212

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SUMMONS ISSUED

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE CITY AND COUNTY OF SAN FRANCISCO

19 UNLIMITED CIVIL JURISDICTION

20 RUSSELL BRIMER,

21 Plaintiff,

22 v.

23 SIX FLAGS THEME PARK, INC; and DOES
24 1 through 150,

25 Defendants.

No. 00C05442879

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

Health & Safety Code §25249

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

NATURE OF THE ACTION

28 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,
on behalf of the citizens of the State of California, to enforce each citizen's right to be informed of
the 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 shot glasses and other glassware with colored artwork or designs
10 (containing lead) on their exterior, including, but not limited to, the *Hex Shot Glass, Item #503-*
11 *0965; #4 00001 20323 1*. All such consumer products containing the LISTED CHEMICALS shall
12 hereinafter be referred to as the "PRODUCTS", with the exception of the *Dolphin Shot Glass, Item*
13 *# 7 97448 57228 1*, sold at Six Flags Marine World stores located in Solano County, the sales of
14 which were prosecuted by the Solano County District Attorney's Office in the Solano Country
15 Superior Court in the case of *The People of the State of California v. Six Flags Theme Park, Inc.*
16 *Case No. F0S025016.*¹

17 5. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health
18 & Safety Code §25249.5 *et seq.*² (hereafter "Proposition 65"), "no person in the course of doing
19 business shall knowingly and intentionally expose any individual to a chemical known to the state
20 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
21 individual...."

22 6. Beginning on October 1, 1992, the State of California officially listed lead (and lead
23 compounds) as a known carcinogen. On February 27, 1987, the State listed lead as a chemical
24

25 ¹ The parties to the Solano District Attorney's action reached an agreement and executed a consent judgment which
26 was filed with the Court on or about June 17, 2005. The glassware covered by the filed consent judgment is defined as:
27 "Dolphin Shot Glasses # 7 97448 57228 1, manufactured by Artistic Impressions, Inc. 1." (*See Consent Judgment at*
§1.4.) The civil penalties (approximately \$5,000) assessed in that action are consistent with other settlements involving
28 a single product. (*Id. at §6.*)

² Unless specifically noted, all statutory citations refer to California law.

1 known to cause birth defects and other reproductive harm. This chemical became subject to the
2 warning requirement one year later and was therefore subject to the "clear and reasonable warning"
3 requirements of Proposition 65, beginning on October 1, 1993 and February 27, 1988, respectively.
4 (22 Code of Regulations §12000(b)(c); Health & Safety Code §25249.5 *et seq.*)

5 7. Beginning on October 1, 1987, the State of California officially listed cadmium as a
6 known carcinogen. On May 1, 1997, the State listed cadmium as a chemical known to cause birth
7 defects and other reproductive harm. This chemical became subject to the warning requirement
8 one year later and was therefore subject to the "clear and reasonable warning" requirements of
9 Proposition 65, beginning on October 1, 1988 and May 1, 1998, respectively. (22 Code of
10 Regulations §12000(b)(c); Health & Safety Code §25249.5 *et seq.*)

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

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

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

20 PARTIES

21 11. Plaintiff RUSSELL BRIMER is a citizen of the State of California who resides in
22 the County of Alameda and who is dedicated to protecting the health of California citizens,
23 including the elimination or reduction of toxic exposures, and brings this action on behalf of the
24 general public pursuant to Health & Safety Code §25249.7.

25 12. Defendant SIX FLAGS THEME PARK, INC. ("SIX FLAGS") is a person doing
26 business within the meaning of Health & Safety Code §25249.11.

27 13. SIX FLAGS manufactures, distributes and/or offers the PRODUCTS for sale or use
28 in the State of California or implies by its conduct that it manufactures, distributes and/or offers the

1 PRODUCTS for sale or use in State of California.

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

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

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

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

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

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

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

23 21. SIX FLAGS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
24 DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
25 hereafter as "DEFENDANTS".

26 VENUE AND JURISDICTION

27 22. Venue is proper in the San Francisco Superior Court, pursuant to Code of Civil
28 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one or

1 more instances of wrongful conduct (including exposures to LISTED CHEMICALS) occurred, and
2 continues to occur, in the County of San Francisco and/or because DEFENDANTS conducted, and
3 continue to conduct, business in this County.

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

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

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Proposition 65)**

16 25. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,
17 Paragraphs 1 through 24, inclusive.

18 26. The citizens of the State of California have expressly stated in the Safe Drinking
19 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
20 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
21 other reproductive harm." (Proposition 65, §1(b).)

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

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

1 Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
2 future.

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

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

12 31. At all times relevant to this action, the PRODUCTS contained the LISTED
13 CHEMICALS.

14 32. At all times relevant to this action, the DEFENDANTS knew or should have known
15 that the PRODUCTS contained the LISTED CHEMICALS.

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

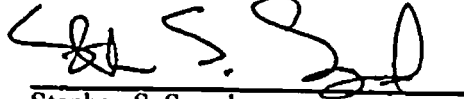
19 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
20 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by
21 22 C.C.R. §12601.

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

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

1 Dated July 6, 2005

PARAS LAW GROUP



Stephen S. Sayad
Attorneys for Plaintiff
RUSSELL BRIMER

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