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RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,)
)
Plaintiff,)
)
v.)
)
)
BARNES & NOBLE COLLEGE)
)
BOOKSTORE, INC.; SANTA CLARA)
)
UNIVERSITY CAMPUS BOOKSTORE;)
)
SANTA CLARA UNIVERSITY;)
)
K&M/NORDIC COMPANY, INC.; NORDIC)
)
COMPANY, INC.; and DOES 1 through 150,)
)
)
Defendants.)
)
)

No 105CV033955
**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

Health & Safety Code §25249

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

NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,

1 on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the
2 presence of and nature of toxic chemicals in consumer goods.

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

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

10 4. The consumer products containing the LISTED CHEMICALS, and for which
11 defendants are responsible, are shot glasses, shooters, and other glassware with colored artwork or
12 designs (containing lead) on the exterior, including but not limited to, *Shot Glass* (#6 41139 51261
13 5) and *Shooter* (#6 41139 11101 6), and shot glasses, shooters, and other glassware with colored
14 artwork or designs (containing cadmium) on the exterior, including but not limited to, *Shot Glass*
15 (#6 41139 51261 5) and *Shooter* (#6 41139 11101 6). All such consumer products containing the
16 LISTED CHEMICALS shall hereafter be referred to as the "PRODUCTS".

17 5. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health
18 & Safety Code §25249.5 *et seq.*¹ (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 had listed lead as a chemical
24 known to cause birth defects or other reproductive harm. This chemical became subject to the
25 warning requirement one year later and was therefore subject to the "clear and reasonable warning"
26 requirements of Proposition 65, beginning on October 1, 1993 and February 27, 1988, respectively.

27
28 ¹ Unless specifically noted, all statutory citations refer to California law.

1 (22 Code of Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

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

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

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

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

17 PARTIES

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

22 12. Defendant BARNES & NOBLE COLLEGE BOOKSTORE, INC. ("BARNES &
23 NOBLE") is a person doing business within the meaning of Health & Safety Code §25249.11.

24 13. BARNES & NOBLE distributes and/or offers the PRODUCTS for sale or use in
25 the State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for
26 sale or use in State of California.

27 14. Defendant SANTA CLARA UNIVERSITY CAMPUS BOOKSTORE ("SCUCB")
28 is a person doing business within the meaning of Health & Safety Code §25249.11.

1 15. SCUCB distributes and/or offers the PRODUCTS for sale or use in the State of
2 California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use
3 in State of California.

4 16. Defendant SANTA CLARA UNIVERSITY (“SANTA CLARA”) is a person doing
5 business within the meaning of Health & Safety Code §25249.11.

6 17. SANTA CLARA distributes and/or offers the PRODUCTS for sale or use in the
7 State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for
8 sale or use in State of California.

9 18. Defendant K&M/NORDIC COMPANY, INC. (“K&M”) is a person doing business
10 within the meaning of Health & Safety Code §25249.11.

11 19. K&M manufactures, distributes and/or offers the PRODUCTS for sale or use in the
12 State of California or implies by its conduct that it manufactures, distributes and/or offers the
13 PRODUCTS for sale or use in State of California.

14 20. Defendant NORDIC COMPANY, INC. (“NORDIC”) is a person doing business
15 within the meaning of Health & Safety Code §25249.11.

16 21. NORDIC manufactures, distributes and/or offers the PRODUCTS for sale or use in
17 the State of California or implies by its conduct that it manufactures, distributes and/or offers the
18 PRODUCTS for sale or use in State of California.

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

21 23. MANUFACTURER DEFENDANTS engage in the process of research, testing,
22 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
23 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
24 one or more of the PRODUCTS in the State of California or for consumption or use in the State of
25 California.

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

28 25. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or

1 transport one or more of the PRODUCTS to individuals, businesses or retailers in the State of
2 California.

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

5 27. RETAIL DEFENDANTS offer one or more of the PRODUCTS for sale to
6 individuals in the State of California.

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

12 29. BARNES & NOBLE, SCUCB, SANTA CLARA, K&M, NORDIC,
13 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS and RETAIL
14 DEFENDANTS shall, where appropriate, collectively be referred to hereafter as
15 "DEFENDANTS".

16 VENUE AND JURISDICTION

17 30. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of Civil
18 Procedure §§394, 395 and 395.5 because this Court is a court of competent jurisdiction, because
19 one or more instances of wrongful conduct occurred, and continues to occur, in the County of Santa
20 Clara and/or because DEFENDANTS conducted, and continue to conduct, business in this County.

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

25 32. The California Superior Court has jurisdiction over DEFENDANTS based on
26 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
27 association that either is a citizen of the State of California, has sufficient minimum contacts in the
28 State of California, or otherwise purposefully avails itself of the California market.

1 DEFENDANTS' purposeful availment renders the exercise of jurisdiction by California courts
2 consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65)**

5 33. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,
6 Paragraphs 1 through 32, inclusive.

7 34. The citizens of the State of California have expressly stated in the Safe Drinking
8 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
9 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
10 other reproductive harm." (Proposition 65, §1(b).)

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

14 36. Based on information and good faith belief, plaintiff alleges that, at all times
15 relevant to this Complaint, DEFENDANTS have engaged in the sales of these PRODUCTS in
16 violation Health & Safety Code §25249.6, et seq., and that DEFENDANTS' offensive sale of these
17 PRODUCTS continues to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of
18 Violation, plaintiff also alleges and believes that such violations will also continue to occur into the
19 future.

20 37. Beginning on October 18, 2004, "60-Day Notices" of Proposition 65 violations were
21 provided to public enforcement agencies and to BARNES & NOBLE, SCUCB, SANTA CLARA,
22 K&M and NORDIC stating that exposures to the LISTED CHEMICALS were occurring in the
23 State of California from the reasonably foreseeable uses of the PRODUCTS, without the individual
24 users first having been provided with a "clear and reasonable warning" regarding such exposure.

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

28 39. At all times relevant to this action, the PRODUCTS contained the LISTED

1 CHEMICALS.

2 40. At all times relevant to this action, the DEFENDANTS knew or should have known
3 that the PRODUCTS contained the LISTED CHEMICALS.

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

7 42. The normal and reasonably foreseeable use of the PRODUCTS has caused and
8 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by
9 22 C.C.R. §12601.

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

13 44. At all times relevant to this action, DEFENDANTS, and each of them, intended that
14 such exposures to the LISTED CHEMICALS from the reasonably foreseeable use of the
15 PRODUCT would occur by their deliberate, non-accidental participation in the manufacture,
16 distribution and/or sale of PRODUCTS to individuals.

17 45. At all times relevant to this action, DEFENDANTS failed to provide a "clear and
18 reasonable warning" of reproductive toxicity (as defined by 22 C.C.R. §12601) to those consumers
19 or other individuals in the State of California who were or could become exposed to the
20 PRODUCTS and the LISTED CHEMICALS contained therein.

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

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

28 48. As a consequence of the above-described acts, Health & Safety Code §25249.7

1 specifically also authorizes the grant of injunctive relief under Proposition 65.

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

3 **PRAYER FOR RELIEF**

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

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

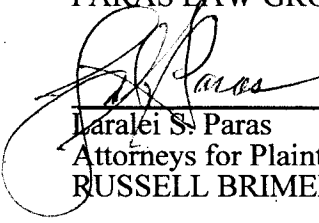
8 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
9 permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California,
10 without providing an identification of the LISTED CHEMICALS in the PRODUCTS as well as
11 "clear and reasonable warning[s]"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

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

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

15 Dated: December 29, 2004

16 Respectfully Submitted,
PARAS LAW GROUP

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19 Paralei S. Paras
20 Attorneys for Plaintiff
21 RUSSELL BRIMER
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