

1 presence of and nature of toxic chemicals in consumer goods.

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

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

9 4. The consumer products containing the LISTED CHEMICALS, and for which
10 defendants are responsible, are tulip glasses and other glassware with colored artwork or designs
11 (containing lead) on the exterior, including but not limited to, *Tulip Glass 20 oz. 2/Clear/*
12 *(#8499239)* and tulip glasses and other glassware with colored artwork or designs (containing
13 cadmium) on the exterior, including but not limited to, *Tulip Glass 20 oz. 2/Clear/ (#8499239)*.
14 All such consumer products containing the LISTED CHEMICALS shall hereafter be referred to as
15 the "PRODUCTS".

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

21 6. Beginning on October 1, 1992, the State of California officially listed lead (and lead
22 compounds) as a known carcinogen. On February 27, 1987, the State had listed lead as a chemical
23 known to cause birth defects or other reproductive harm. This chemical became subject to the
24 warning requirement one year later and was therefore subject to the "clear and reasonable warning"
25 requirements of Proposition 65, beginning on October 1, 1993 and February 27, 1988, respectively.
26 (22 Code of Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

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

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

3 16. Defendant FOLLETT CORPORATION (“FOLLETT”) is a person doing business
4 within the meaning of Health & Safety Code §25249.11.

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

8 18. Defendant CAL STUDENT STORE (“CAL STUDENT STORE”) is a person doing
9 business within the meaning of Health & Safety Code §25249.11.

10 19. CAL STUDENT STORE distributes and/or offers the PRODUCTS for sale or use
11 in the State of California or implies by its conduct that it distributes and/or offers the PRODUCTS
12 for sale or use in State of California.

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

15 21. MANUFACTURER DEFENDANTS engage in the process of research, testing,
16 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
17 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
18 one or more of the PRODUCTS in the State of California or for consumption or use in the State of
19 California.

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

22 23. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
23 transport one or more of the PRODUCTS to individuals, businesses or retailers in the State of
24 California.

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

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

1 Paragraphs 1 through 30, inclusive.

2 32. The citizens of the State of California have expressly stated in the Safe Drinking
3 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
4 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
5 other reproductive harm." (Proposition 65, §1(b).)

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

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

15 35. Beginning on October 18, 2004, "60-Day Notices" of Proposition 65 violations were
16 provided to public enforcement agencies and to K&M/NORDIC, NORDIC COMPANY,
17 FOLLETT and CAL STUDENT STORE stating that exposures to the LISTED CHEMICALS were
18 occurring in the State of California from the reasonably foreseeable uses of the PRODUCTS,
19 without the individual users first having been provided with a "clear and reasonable warning"
20 regarding such exposure.

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

24 37. At all times relevant to this action, the PRODUCTS contained the LISTED
25 CHEMICALS.

26 38. At all times relevant to this action, the DEFENDANTS knew or should have known
27 that the PRODUCTS contained the LISTED CHEMICALS.

28 39. At all times relevant to this action, the LISTED CHEMICALS were present in or on

1 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to
2 individuals during the reasonably foreseeable use of PRODUCTS.

3 40. The normal and reasonably foreseeable use of the PRODUCTS has caused and
4 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by
5 22 C.C.R. §12601.

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

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

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

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

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

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

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

27 **PRAYER FOR RELIEF**

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

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

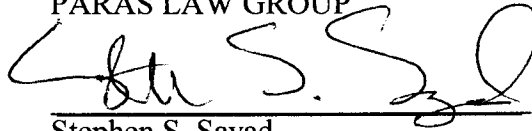
4 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
5 permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California,
6 without providing an identification of the LISTED CHEMICALS in the PRODUCTS as well as
7 "clear and reasonable warning[s]" as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

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

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

11 Dated: December 30, 2004

12 Respectfully Submitted,
13 PARAS LAW GROUP



14 Stephen S. Sayad
15 Attorneys for Plaintiff
16 RUSSELL BRIMER