

1 Clifford A. Chanler, State Bar No. 135534
2 CHANLER LAW GROUP
3 71 Elm Street, Suite 8
4 New Canaan, CT 06840
5 Tel: (203) 966-9911
6 Fax: (203) 801-5222

7 Stephen S. Sayad, State Bar No. 104866
8 Laralei S. Paras, State Bar No. 203319
9 PARAS LAW GROUP
10 655 Redwood Highway, Suite 216
11 Mill Valley, CA 94941
12 Tel: (415) 380-9222
13 Fax: (415) 380-9223

14 Attorneys for Plaintiff
15 RUSSELL BRIMER

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 IN AND FOR THE COUNTY OF ALAMEDA – OAKLAND BRANCH

18 UNLIMITED CIVIL JURISDICTION

19 RUSSELL BRIMER,)

20 Plaintiff,)

21 v.)

22 THE RAIDER IMAGE, LLC; THE)
23 OAKLAND RAIDERS; and DOES 1 through)
24 150,)

25 Defendants.)

No. 05194720

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 all others
27 similarly situated and on behalf of the general public, hereby alleges as follows:

28 NATURE OF THE ACTION

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

2. This Complaint seeks to remedy defendants' continuing failures to warn the citizens

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

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

7 4. The consumer products containing the LISTED CHEMICALS, and for which
8 defendants are responsible, are *11 oz. Marble Mug (#605001090000) (containing lead)*, *17 oz.*
9 *Mixing Glass (#605001060000) (containing lead)*, and *11 oz. Marble Mug (#605001090000)*
10 *(containing cadmium)*. All such consumer products containing the LISTED CHEMICALS shall
11 hereafter be referred to as the "PRODUCTS".

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

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

23 7. Beginning on October 1, 1987, the State of California officially listed cadmium as a
24 known carcinogen. On May 1, 1997, the State listed cadmium as a chemical known to cause birth
25 defects and other reproductive harm. This chemical became subject to the warning requirement
26 one year later and was therefore subject to the "clear and reasonable warning" requirements of
27

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

1 Proposition 65, beginning on October 1, 1988 and May 1, 1998, respectively. (22 Code of
2 Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

3 8. Defendants' failures to provide proper mandatory warnings about exposure to the
4 LISTED CHEMICALS in conjunction with the sale of the PRODUCTS constitutes violations of
5 Proposition 65 and subject defendants to enjoinder of such conduct as well as civil penalties for
6 each such violation.

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

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

12 PARTIES

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

17 12. Defendant THE RAIDER IMAGE, LLC ("RAIDER IMAGE") is a person doing
18 business within the meaning of Health & Safety Code §25249.11.

19 13. RAIDER IMAGE distributes and/or offers the PRODUCTS for sale or use in the
20 State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for
21 sale or use in State of California.

22 14. Defendant THE OAKLAND RAIDERS ("OAKLAND RAIDERS") is a person
23 doing business in the State of California within the meaning of Health & Safety Code §25249.11.

24 15. OAKLAND RAIDERS 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 the State of California.

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

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

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

10 **FIRST CAUSE OF ACTION**

11 **(Violation of Proposition 65)**

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

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

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

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

27 31. Beginning on October 15, 2004, "60-Day Notices" of Proposition 65 violations were
28 provided to public enforcement agencies and to RAIDER IMAGE and OAKLAND RAIDERS

1 stating that exposures to the LISTED CHEMICALS were occurring in the State of California from
2 the reasonably foreseeable uses of the PRODUCTS, without the individual users first having been
3 provided with a "clear and reasonable warning" regarding such exposure.

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

7 33. At all times relevant to this action, the PRODUCTS contained the LISTED
8 CHEMICALS.

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

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

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

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

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

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

28 40. Contrary to the express policy and statutory prohibition of Proposition 65, enacted

1 directly by California voters, individuals thus exposed to the LISTED CHEMICALS from the
2 PRODUCTS, without "clear and reasonable warning", have suffered and continue to suffer
3 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

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

10 **PRAYER FOR RELIEF**

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

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

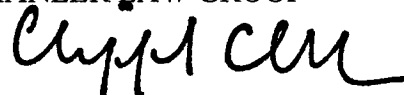
15 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
16 permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California,
17 without providing an identification of the LISTED CHEMICALS in the PRODUCTS as well as
18 "clear and reasonable warning[s]"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

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

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

22 Dated: January 20, 2005

23 Respectfully submitted,
24 CHANLER LAW GROUP

25 

26 Clifford A. Chanler
27 Attorneys for Plaintiff
28 RUSSELL BRIMER