

ENDORSED FILED  
JAN 20 05  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA  
S. MERRILL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

Attorneys for Plaintiff  
RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

UNLIMITED CIVIL JURISDICTION

105 CV 034239

RUSSELL BRIMER, )  
)  
Plaintiff, )  
)  
v. )  
)  
STANFORD UNIVERSITY BOOKSTORE; )  
THE STANFORD BOOKSTORE; FOLLETT )  
CORPORATION; and DOES 1 through 150, )  
Defendants. )  
\_\_\_\_\_ )

No. \_\_\_\_\_  
**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,  
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 and 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 and 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 pilsners, shot glasses and other glassware intended to hold  
9 beverages with colored artwork or designs (containing lead) on the exterior, including but not  
10 limited to, *GLS PILSNR 12OZ 2C/CLEAR/(#1184181)*, *CLCTR GLS FLURD*  
11 *BC/CLEAR/(#1184195)*, *MUG 11OZ 2C MSCT/BLACK/(#1175171)*, and pilsners, shot glasses and  
12 other glassware intended to hold beverages with colored artwork or designs (containing cadmium)  
13 on the exterior, including but not limited to, *GLS PILSNR 12OZ 2C/CLEAR/(#1184181)*, *CLCTR*  
14 *GLS FLURD BC/CLEAR/(#1184195)*, *MUG 11OZ 2C MSCT/BLACK/(#1175171)*. All such  
15 consumer products containing the LISTED CHEMICALS shall hereafter be referred to as the  
16 "PRODUCTS".

17 5. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health  
18 & Safety Code §25249.5 *et seq.*<sup>1</sup> (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 and 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 <sup>1</sup> 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 and other reproductive harm. This chemical became subject to the warning  
5 requirement one year later and was therefore subject to the "clear and reasonable warning"  
6 requirements of Proposition 65, beginning on October 1, 1988 and May 1, 1998, respectively. (22  
7 Code of 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 constitute violations of  
10 Proposition 65 and subjects defendants, and each of them, to enjoinder of such conduct as well as  
11 civil penalties for 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 citizen of the State of California who resides in  
19 the City and County of ALAMEDA and who is dedicated to protecting the health of California  
20 citizens, including the elimination or reduction of toxic exposures, and brings this action on behalf  
21 of the general public pursuant to Health & Safety Code §25249.7.

22 12. Defendant STANFORD UNIVERSITY BOOKSTORE ("SUBS") is a person doing  
23 business within the meaning of Health & Safety Code §25249.11.

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

27 14. Defendant THE STANFORD BOOKSTORE ("STANFORD") is a person doing  
28 business within the meaning of Health & Safety Code §25249.11.

1           15.     STANFORD 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 FOLLETT CORPORATION ("FOLLETT") is a person doing business  
5 within the meaning of Health & Safety Code §25249.11.

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

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

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

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

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

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

23           23.     RETAIL DEFENDANTS offer one or more of the PRODUCTS for sale to  
24 individuals in the State of California.

25           24.     At this time, the true names of DOES 1 through 150, inclusive, are unknown to  
26 plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil  
27 Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of the  
28 fictitiously named defendants is responsible for the acts and occurrences herein alleged. When

1 ascertained, their true names shall be reflected in an amended complaint.

2 25. SUBS, STANFORD, FOLLETT, MANUFACTURER DEFENDANTS,  
3 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate,  
4 collectively be referred to hereafter as "DEFENDANTS".

5 **VENUE AND JURISDICTION**

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

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

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

20 **FIRST CAUSE OF ACTION**

21 **(Violation of Proposition 65)**

22 29. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,  
23 Paragraphs 1 through 28, inclusive.

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

28 31. Proposition 65 further states that, "No person in the course of doing business shall

1 knowingly and intentionally expose any individual to a chemical known to the state to cause cancer  
2 or reproductive toxicity without first giving clear and reasonable warning to such individual....”

3 32. Based on information and good faith belief, plaintiff alleges that, at all times  
4 relevant to this Complaint, DEFENDANTS have engaged in the sales of these PRODUCTS in  
5 violation Health & Safety Code §25249.6, *et seq.*, and that DEFENDANTS' offensive sale of these  
6 PRODUCTS continues to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of  
7 Violation. Plaintiff also alleges and believes that such violations will also continue to occur into  
8 the future.

9 33. Beginning on October 18, 2004, "60-Day Notices" of Proposition 65 violations were  
10 provided to public enforcement agencies and to SUBS, STANFORD and FOLLETT stating that  
11 exposures to the LISTED CHEMICALS were occurring in the State of California from the  
12 reasonably foreseeable uses of the PRODUCTS, without the individual users first having been  
13 provided with a "clear and reasonable warning" regarding such exposures.

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

17 35. At all times relevant to this action, the PRODUCTS contained the LISTED  
18 CHEMICALS.

19 36. At all times relevant to this action, the DEFENDANTS knew or should have known  
20 that the PRODUCTS contained the LISTED CHEMICALS.

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

24 38. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
25 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by  
26 22 C.C.R. §12601.

27 39. Based on information and good faith belief, plaintiff alleges that at all times relevant  
28 to this action, DEFENDANTS had knowledge that individuals' normal and reasonably foreseeable

1 use of the PRODUCTS would cause an exposure to the LISTED CHEMICALS.

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

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

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

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

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

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

20 **PRAYER FOR RELIEF**

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

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

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

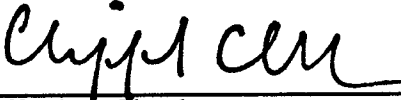
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

further application to the Court;

- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: January 20, 2005

Respectfully Submitted,  
CHANLER LAW GROUP



\_\_\_\_\_  
Clifford A. Chanler  
Attorneys for Plaintiff  
RUSSELL BRIMER