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ENDORSED  
FILED  
ALAMEDA COUNTY  
MAY 13 2005  
CLERK OF THE SUPERIOR COURT  
By SALONIA D. WILLIAMS  
Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF ALAMEDA – HAYWARD BRANCH  
13 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER, )  
16 )  
17 Plaintiff, )  
18 v. )  
19 )  
20 )  
21 )  
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No. **HC05212732**  
**COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF**  
Health & Safety Code §25249

CARLTON CARDS RETAIL, INC.;  
AMERICAN GREETINGS CORPORATION;  
and DOES 1 through 150,  
Defendants.

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

24 **NATURE OF THE ACTION**

25 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,  
26 on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the  
27 presence of and nature of toxic chemicals in consumer goods.  
28

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 present in or on consumer products placed into the stream of commerce by  
4 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 CHEMICAL(S)".

8           4.       The consumer products containing the LISTED CHEMICAL(S), and for which  
9 defendants are responsible, are tea light/votives with colored artwork or designs (containing lead)  
10 on the exterior, including but not limited to, Tea Light/Votive, ATVH-2 (#0 018100 739355),  
11 candle holders with colored artwork or designs (containing lead) on the exterior, including but not  
12 limited to My Moments Collection Candle Holder (#6 61526 15396 2), mugs and other tableware  
13 with colored artwork or designs (containing lead) on the exterior, including but not limited to  
14 "Santa Monica California" Mug (#0 85464 00456 6), and mugs and other tableware with colored  
15 artwork or designs (containing cadmium) on the exterior, including but not limited to "Santa  
16 Monica California" Mug (#0 85464 00456 6). All such consumer products containing the LISTED  
17 CHEMICAL(S) shall hereafter be referred to as the "PRODUCTS".

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

23           6.       Beginning on October 1, 1992, the State of California officially listed lead (and lead  
24 compounds) as a known carcinogen. On February 27, 1987, the State had listed lead as a chemical  
25 known to cause birth defects and other reproductive harm. This chemical became subject to the  
26 warning requirement one year later and was therefore subject to the "clear and reasonable warning"

27 \_\_\_\_\_  
28 <sup>1</sup> Unless specifically noted, all statutory citations refer to California law.

1 requirements of Proposition 65, beginning on October 1, 1993 and February 27, 1988, respectively.  
2 (22 Code of Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

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

9 8. Defendants' failures to provide proper mandatory warnings about exposure to the  
10 LISTED CHEMICAL(S) in conjunction with the sale of the PRODUCTS constitute violations of  
11 Proposition 65 and subject defendants, and each of them, to enjoinder of such conduct as well as  
12 civil penalties for each such violation.

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

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

#### 18 PARTIES

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

23 12. Defendant CARLTON CARDS RETAIL, INC. ("CARLTON CARDS") is a person  
24 doing business within the meaning of Health & Safety Code §25249.11.

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

28 14. Defendant AMERICAN GREETINGS CORPORATION ("AMERICAN

1 GREETINGS”) is a person doing business within the meaning of Health & Safety Code §25249.11.

2 15. AMERICAN GREETINGS manufactures, distributes and/or offers the PRODUCTS  
3 for sale or use in the State of California or implies by its conduct that it manufacture, distributes  
4 and/or offers the PRODUCTS for sale or use in State of California.

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

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

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

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

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

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

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

26 23. CARLTON CARDS, AMERICAN GREETINGS, MANUFACTURER  
27 DEFENDANTS, DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS shall, where  
28 appropriate, collectively be referred to hereafter as "DEFENDANTS".

1 **VENUE AND JURISDICTION**

2 24. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
3 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one or  
4 more instances of wrongful conduct occurred, and continues to occur, in the County of Alameda  
5 and/or because DEFENDANTS conducted, and continue to conduct, business in this County.

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

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

16 **FIRST CAUSE OF ACTION**

17 **(Violation of Proposition 65)**

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

20 28. The citizens of the State of California have expressly stated in the Safe Drinking  
21 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition  
22 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and  
23 other reproductive harm." (Proposition 65, §1(b).)

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

27 30. Based on information and good faith belief, plaintiff alleges that, at all times  
28 relevant to this Complaint, DEFENDANTS have engaged in the sales of these PRODUCTS in

1 violation Health & Safety Code §25249.6, *et seq.*, and that DEFENDANTS' offensive sale of these  
2 PRODUCTS continues to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of  
3 Violation. Plaintiff also alleges and believes that such violations will also continue to occur into  
4 the future.

5 31. Beginning on November 24, 2004, "60-Day Notices" of Proposition 65 violations  
6 were provided to public enforcement agencies and to CARLTON CARDS and AMERICAN  
7 GREETINGS stating that exposures to the LISTED CHEMICAL(S) was occurring in the State of  
8 California from the reasonably foreseeable uses of the PRODUCTS, without the individual users  
9 first having been provided with a "clear and reasonable warning" regarding such exposures.

10 32. On January 3, 2005, Supplemental "60-Day Notices" of Proposition 65 violations  
11 were again provided to public enforcement agencies and to CARLTON CARDS and AMERICAN  
12 GREETINGS stating that exposures to the LISTED CHEMICAL(S) was occurring in the State of  
13 California from the reasonably foreseeable uses of the PRODUCTS, without the individual users  
14 first having been provided with a "clear and reasonable warning" regarding such exposures.

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

18 34. At all times relevant to this action, the PRODUCTS contained the LISTED  
19 CHEMICAL(S).

20 35. At all times relevant to this action, the DEFENDANTS knew or should have known  
21 that the PRODUCTS contained the LISTED CHEMICAL(S).

22 36. At all times relevant to this action, the LISTED CHEMICAL(S) was present in or  
23 on the PRODUCTS in such a way as to be available for transfer or release from the PRODUCTS to  
24 individuals during the reasonably foreseeable use of PRODUCTS.

25 37. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
26 continues to cause an exposure to the LISTED CHEMICAL(S), as such exposure is defined by  
27 22 C.C.R. §12601.

28 38. Based on information and good faith belief, plaintiff alleges that at all times relevant

1 to this action, DEFENDANTS had knowledge that individuals' normal and reasonably foreseeable  
2 use of the PRODUCTS would cause an exposure to the LISTED CHEMICAL(S).

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

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

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

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

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

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

21 **PRAYER FOR RELIEF**

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

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

26 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and  
27 permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California,  
28 without providing an identification of the LISTED CHEMICAL in the PRODUCTS as well as

1 "clear and reasonable warning[s]" as defined by 22 CCR §12601, as plaintiff shall specify in  
2 further application to the Court;

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

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

5  
6 Dated: May 12, 2005

Respectfully Submitted,  
PARAS LAW GROUP

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9 Laralei S. Paras  
Attorneys for Plaintiff  
RUSSELL BRIMER