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SAN FRANCISCO COUNTY  
SUPERIOR COURT

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CASE MANAGEMENT CONFERENCE SET

PLAN 1 JUL 22 2005 9:00AM

DEPARTMENT 212

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

14 CGC - 05 - 438712

15 RUSSELL BRIMER,  
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Plaintiff,

v.

HOUSE OF BLUES; HOB  
ENTERTAINMENT, INC.; 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.

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 and cadmium present in or on consumer products placed into the stream of  
4 commerce by 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 CHEMICALS".

8           4.       The consumer products containing the LISTED CHEMICALS, and for which  
9 defendants are responsible, are shot glasses and other glassware with colored artwork or designs  
10 (containing lead) on the exterior, including but not limited to, O.C. Clear HOB S, and shot glasses  
11 and other glassware with colored artwork or designs (containing cadmium) on the exterior,  
12 including but not limited to, O.C. Clear HOB S. All such consumer products containing the  
13 LISTED CHEMICALS shall hereafter be referred to as the "PRODUCTS".

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

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

25           7.       Beginning on October 1, 1987, the State of California officially listed cadmium as a  
26 known carcinogen. On May 1, 1997, the State had listed cadmium as a chemical known to cause  
27

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

1 birth defects and other reproductive harm. This chemical became subject to the warning  
2 requirement one year later and was therefore subject to the "clear and reasonable warning"  
3 requirements of Proposition 65, beginning on October 1, 1988 and May 1, 1998, respectively. (22  
4 Code of Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

5 8. Defendants' failure to provide proper mandatory warnings about exposure to the  
6 LISTED CHEMICALS in conjunction with the sale of the PRODUCTS constitute violations of  
7 Proposition 65 and subjects defendants, and each of them, to enjoinder of such conduct as well as  
8 civil penalties for each such violation.

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

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

#### 14 PARTIES

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

19 12. Defendant HOUSE OF BLUES ("HOUSE OF BLUES") is a person doing business  
20 within the meaning of Health & Safety Code §25249.11.

21 13. HOUSE OF BLUES manufactures, distributes and/or offers the PRODUCTS for  
22 sale or use in the State of California or implies by its conduct that it manufactures, distributes  
23 and/or offers the PRODUCTS for sale or use in State of California.

24 14. Defendant HOB ENTERTAINMENT, INC. ("HOB ENTERTAINMENT") is a  
25 person doing business within the meaning of Health & Safety Code §25249.11.

26 15. HOB ENTERTAINMENT manufactures, distributes and/or offers the PRODUCTS  
27 for sale or use in the State of California or implies by its conduct that it manufactures, distributes  
28 and/or offers the PRODUCTS for sale or use in State of California.



1 Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this  
2 County.

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

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

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65)**

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

17 28. The citizens of the State of California have expressly stated in the Safe Drinking  
18 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition  
19 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and  
20 other reproductive harm." (Proposition 65, §1(b).)

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

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

1 the future.

2 31. Beginning on November 24, 2004, "60-Day Notices" of Proposition 65 violations  
3 were provided to public enforcement agencies and to HOUSE OF BLUES and HOB  
4 ENTERTAINMENT stating that exposures to the LISTED CHEMICALS were occurring in the  
5 State of California from the reasonably foreseeable uses of the PRODUCTS, without the individual  
6 users first having been provided with a "clear and reasonable warning" regarding such exposures.

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

10 33. At all times relevant to this action, the PRODUCTS contained the LISTED  
11 CHEMICALS.

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

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

17 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
18 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by  
19 22 C.C.R. §12601.

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

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

27 39. At all times relevant to this action, DEFENDANTS failed to provide a "clear and  
28 reasonable warning" of reproductive toxicity (as defined by 22 C.C.R. §12601) to those consumers

1 or other individuals in the State of California who were or could become exposed to the  
2 PRODUCTS and the LISTED CHEMICALS contained therein.

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

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

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

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

13 **PRAYER FOR RELIEF**

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

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

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

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

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

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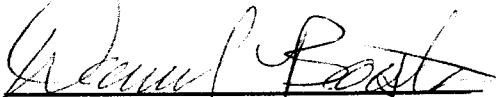
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Dated: February 7, 2005

Respectfully Submitted,  
PARAS LAW GROUP



Daniel M. Bornstein  
Attorneys for Plaintiff  
RUSSELL BRIMER