

2005 MAR 16 PM 2:14

MARY ANN MORAN

BY: _____
DEPUTY CLERK

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 Daniel M. Bornstein, State Bar No. 181711
9 Laralei S. Paras, State Bar No. 203319
10 PARAS LAW GROUP
11 655 Redwood Highway, Suite 216
12 Mill Valley, CA 94941
13 Tel: (415) 380-9222
14 Fax: (415) 380-9223

15 Attorneys for Plaintiff
16 RUSSELL BRIMER

CASE MANAGEMENT CONFERENCE SET

PLAN 1 AUG 19 2005 9:00 AM

DEPARTMENT 212

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 DONA'S HALLMARK; and DOES 1 through
19 150,

20 Defendants.

No. CGC-05-43936E

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

Health & Safety Code §25249

21
22
23 RUSSELL BRIMER, by and through his counsel, on behalf of himself, on behalf all others
24 similarly situated and on behalf of the general public, hereby alleges as follows:

25 NATURE OF THE ACTION

26 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,
27 on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the
28 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 present in or on consumer products placed into the stream of commerce by
4 defendants.

5 3. Lead is a chemical that is identified within 22 C.C.R. §12000 and that is known to
6 the State of California to cause birth defects and other reproductive harm. Lead shall hereafter be
7 referred to as "LISTED CHEMICAL".

8 4. The consumer products containing the LISTED CHEMICAL, and for which
9 defendants are responsible, are oil bottles and other glassware with colored artwork or designs
10 (containing lead) on the exterior, including but not limited to, *Oil Bottle (#4 47724 01008 1)*. All
11 such consumer products containing the LISTED CHEMICAL shall hereafter be referred to as the
12 "PRODUCTS".

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

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

24 7. Defendants' failure to provide proper mandatory warnings about exposure to the
25 LISTED CHEMICALS in conjunction with the sale of the PRODUCTS constitute violations of
26 Proposition 65 and subjects defendants, and each of them, to enjoinder of such conduct as well as
27

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

1 civil penalties for each such violation.

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

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

7 PARTIES

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

12 11. Defendant DONA'S HALLMARK ("DONA'S") is a person doing business within
13 the meaning of Health & Safety Code §25249.11.

14 12. DONA'S distributes and/or offers the PRODUCTS for sale or use in the State of
15 California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use
16 in State of California.

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

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

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

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

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65)**

3 24. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,
4 Paragraphs 1 through 23, inclusive.

5 25. The citizens of the State of California have expressly stated in the Safe Drinking
6 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
7 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
8 other reproductive harm." (Proposition 65, §1(b).)

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

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

18 28. Beginning on December 17, 2004, "60-Day Notices" of Proposition 65 violations
19 were provided to public enforcement agencies and to DONA'S stating that exposures to the
20 LISTED CHEMICAL was occurring in the State of California from the reasonably foreseeable uses
21 of the PRODUCTS, without the individual users first having been provided with a "clear and
22 reasonable warning" regarding such exposures.

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

26 30. At all times relevant to this action, the PRODUCTS contained the LISTED
27 CHEMICAL.

28 31. At all times relevant to this action, the DEFENDANTS knew or should have known

1 that the PRODUCTS contained the LISTED CHEMICAL.

2 32. At all times relevant to this action, the LISTED CHEMICAL was present in or on
3 the PRODUCTS in such a way as to be available for transfer or release from the PRODUCTS to
4 individuals during the reasonably foreseeable use of PRODUCTS.

5 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
6 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
7 22 C.C.R. §12601.

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

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

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

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

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

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

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

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against defendants as follows:

1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation alleged herein;
2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California, without providing an identification of the LISTED CHEMICAL in the PRODUCTS as well as "clear and reasonable warning[s]" as defined by 22 CCR §12601, as plaintiff shall specify in 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: March 14, 2005

Respectfully Submitted,
PARAS LAW GROUP



Daniel M. Bornstein
Attorneys for Plaintiff
RUSSELL BRIMER