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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 IN AND FOR THE COUNTY OF ALAMEDA - HAYWARD  
19 UNLIMITED CIVIL JURISDICTION

20 RUSSELL BRIMER,

21 Plaintiff,

22 v.

23 GEMCO WARE, INC.; LIFETIME HOAN  
24 CORPORATION; LONGS DRUG STORES  
25 CORPORATION; and DOES 1 through 150,

26 Defendants.

27 No.

28 HC 05-203570

**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.

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 18 2005

CLERK OF THE SUPERIOR COURT  
By DEBRA FURTADO  
Deputy

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 dressing shakers and other glassware with colored artwork or  
10 designs (containing lead) on the exterior, including but not limited to, *Gemco Healthy Dressings*  
11 *Measuring Carafe*, #7830 (#0 71525 07830 0), and dressing shakers and other glassware with  
12 colored artwork or designs (containing cadmium) on the exterior, including but not limited to,  
13 *Gemco Healthy Dressings Measuring Carafe*, #7830 (#0 71525 07830 0). All such consumer  
14 products containing the LISTED CHEMICALS shall hereafter be referred to as the "PRODUCTS".

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

20           6.       Beginning on October 1, 1992, the State of California officially listed lead (and lead  
21 compounds) as a known carcinogen. On February 27, 1987, the State had listed lead as a chemical  
22 known to cause birth defects and other reproductive harm. This chemical became subject to the  
23 warning requirement one year later and was therefore subject to the "clear and reasonable warning"  
24 requirements of Proposition 65, beginning on October 1, 1993 and February 27, 1988, respectively.  
25 (22 Code of Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

26           7.       Beginning on October 1, 1987, the State of California officially listed cadmium as a  
27

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

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

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

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

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

#### 15 PARTIES

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

20 12. Defendant GEMCO WARE, INC. ("GEMCO") is a person doing business within  
21 the meaning of Health & Safety Code §25249.11.

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

25 14. Defendant LIFETIME HOAN CORPORATION ("LIFETIME HOAN") is a person  
26 doing business within the meaning of Health & Safety Code §25249.11.

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

1 offers the PRODUCTS for sale or use in State of California.

2 16. Defendant LONGS DRUG STORES CORPORATION ("LONGS") is a person  
3 doing business within the meaning of Health & Safety Code §25249.11.

4 17. LONGS distributes and/or offers the PRODUCTS for sale or use in the State of  
5 California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use  
6 in State of California.

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

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

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

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

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

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

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

28 25. GEMCO, LIFETIME HOAN, LONGS, MANUFACTURER DEFENDANTS,

1 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate,  
2 collectively be referred to hereafter as "DEFENDANTS".

3 **VENUE AND JURISDICTION**

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

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

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

18 **FIRST CAUSE OF ACTION**

19 **(Violation of Proposition 65)**

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

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

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

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

7           33.     Beginning on December 17, 2004, "60-Day Notices" of Proposition 65 violations  
8 were provided to public enforcement agencies and to GEMCO, LIFETIME HOAN and LONGS  
9 stating that exposures to the LISTED CHEMICALS were occurring in the State of California from  
10 the reasonably foreseeable uses of the PRODUCTS, without the individual users first having been  
11 provided with a "clear and reasonable warning" regarding such exposure.

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

15           35.     At all times relevant to this action, the PRODUCTS contained the LISTED  
16 CHEMICALS.

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

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

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

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

28           40.     At all times relevant to this action, DEFENDANTS, and each of them, intended that

1 such exposures to the LISTED CHEMICALS from the reasonably foreseeable use of the  
2 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,  
3 distribution and/or sale of PRODUCTS to individuals.

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

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

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

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

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

18 **PRAYER FOR RELIEF**

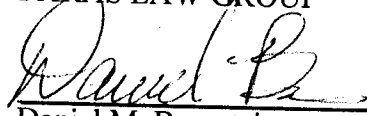
19 Wherefore, plaintiff prays for judgment against defendants as follows:

- 20 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties  
21 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation  
22 alleged herein;
- 23 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and  
24 permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California,  
25 without providing an identification of the LISTED CHEMICALS in the PRODUCTS as well as  
26 "clear and reasonable warning[s]" as defined by 22 CCR §12601, as plaintiff shall specify in  
27 further application to the Court;
- 28 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

1           4.       That the Court grant such other and further relief as may be just and proper.  
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3       Dated: March 8, 2005

Respectfully Submitted,  
PARAS LAW GROUP



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Daniel M. Bornstein  
Attorneys for Plaintiff  
RUSSELL BRIMER

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