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SAN FRANCISCO COUNTY  
SUPERIOR COURT

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CASE MANAGEMENT CONFERENCE SET

PLAN 1 AUG 19 2005 900AM

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.

19 HUNTER MANUFACTURING GROUP,  
20 INC.; WEST COAST NOVELTY CORP.;  
21 ALBERTSON'S INC.; and DOES 1 through  
22 150,

22 Defendants.

No. CGC-05-439569

COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF

Health & Safety Code §25249

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 collector glass sets, shot glasses, and other glassware with colored  
10 artwork or designs (containing lead) on the exterior, including but not limited to, *Collector Glass*  
11 *Set Four 2 oz. Collector Glasses (#7 37224 39552 9)*. All such consumer products containing the  
12 LISTED CHEMICAL shall hereafter be referred to as the "PRODUCTS".

13           5.       Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health  
14 & Safety Code §25249.5 *et seq.*<sup>1</sup> (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 <sup>1</sup> 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 HUNTER MANUFACTURING GROUP, INC. ("HUNTER") is a  
13 person doing business within the meaning of Health & Safety Code §25249.11.

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

17 13. Defendant WEST COAST NOVELTY CORP. ("WCNC") is a person doing  
18 business within the meaning of Health & Safety Code §25249.11.

19 14. WCNC manufactures, distributes and/or offers the PRODUCTS for sale or use in  
20 the State of California or implies by its conduct that it manufactures, distributes and/or offers the  
21 PRODUCTS for sale or use in State of California.

22 15. Defendant ALBERTSON'S INC. ("ALBERTSON'S") is a person doing business  
23 within the meaning of Health & Safety Code §25249.11.

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

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





1 were provided to public enforcement agencies and to HUNTER, WCNC, and ALBERTSON'S  
2 stating that exposures to the LISTED CHEMICAL was occurring in the State of California from  
3 the reasonably foreseeable uses of the PRODUCTS, without the individual users first having been  
4 provided with a "clear and reasonable warning" regarding such exposures.

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

8 34. At all times relevant to this action, the PRODUCTS contained the LISTED  
9 CHEMICAL.

10 35. At all times relevant to this action, the DEFENDANTS knew or should have known  
11 that the PRODUCTS contained the LISTED CHEMICAL.

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

15 37. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
16 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by  
17 22 C.C.R. §12601.

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

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

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

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

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

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

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

11                                   **PRAYER FOR RELIEF**

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

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

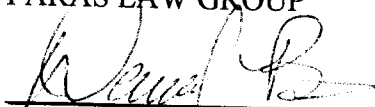
16           2.     That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and  
17 permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California,  
18 without providing an identification of the LISTED CHEMICAL in the PRODUCTS as well as  
19 "clear and reasonable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

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

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

23  
24 Dated: March 14, 2005

25                                   Respectfully Submitted,  
26                                   PARAS LAW GROUP

27                                     
28                                   Daniel M. Bornstein  
Attorneys for Plaintiff  
RUSSELL BRIMER