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FILED
ALAMEDA COUNTY
MAR 18 2005

ARTHUR SAMS, Exec. Clerk
By *Santha Cole*

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Clifford A. Chanler, State Bar No. 135534
CHANLER LAW GROUP
71 Elm Street, Suite 8
New Canaan, CT 06840
Tel: (203) 966-9911
Fax: (203) 801-5222

Stephen S. Sayad, State Bar No. 104866
Daniel M. Bornstein, State Bar No. 181711
Laralei S. Paras, State Bar No. 203319
PARAS LAW GROUP
655 Redwood Highway, Suite 216
Mill Valley, CA 94941
Tel: (415) 380-9222
Fax: (415) 380-9223

Attorneys for Plaintiff
RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA – OAKLAND BRANCH
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,)
)
Plaintiff,)
)
v.)
)
MEMORY COMPANY, LLC; and DOES 1)
through 150,)
Defendants.)
)
)
)

No. PG05-203611
**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 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 the "LISTED CHEMICAL".

8 4. The consumer products containing the LISTED CHEMICAL, and for which
9 defendants are responsible, are stained glass lamps, including but not limited to, *Raiders Small Tiff*
10 *Lamp*. All such consumer products containing the LISTED CHEMICAL shall hereafter be referred
11 to as the "PRODUCTS".

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

17 6. Beginning on October 1, 1992, the State of California officially listed lead (and lead
18 compounds) as a known carcinogen. On February 27, 1987, the State had listed lead as a chemical
19 known to cause birth defects and other reproductive harm. The LISTED CHEMICAL became
20 subject to the warning requirement one year later and was therefore subject to the "clear and
21 reasonable warning" requirements of Proposition 65, beginning on October 1, 1993 and February
22 27, 1988, respectively. (22 Code of Regulations §12000(b)(c); Health and Safety Code §25249.5 *et*
23 *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 County of ALAMEDA and who is dedicated to protecting the health of California citizens,
10 including the elimination or reduction of toxic exposures, and brings this action on behalf of the
11 general public pursuant to Health & Safety Code §25249.7.

12 11. Defendant MEMORY COMPANY LLC ("MEMORY CO.") is a person doing
13 business within the meaning of Health & Safety Code §25249.11.

14 12. MEMORY CO. manufactures, distributes and/or offers the PRODUCTS for sale or
15 use in the State of California or implies by its conduct that it manufactures, distributes and/or offers
16 the PRODUCTS for sale or use 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 17. DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons doing
2 business within the meaning of Health & Safety Code §25249.

3 18. RETAIL DEFENDANTS offer one or more of the PRODUCTS for sale to
4 individuals in the State of California.

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

10 20. MEMORY CO, MANUFACTURER DEFENDANTS, DISTRIBUTOR
11 DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
12 hereafter as "DEFENDANTS".

13 **VENUE AND JURISDICTION**

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

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

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

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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 MEMORY CO. 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.

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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 16, 2005

Respectfully Submitted,
PARAS LAW GROUP



Stephen S. Sayad
Attorneys for Plaintiff
RUSSELL BRIMER