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16 RUSSELL BRIMER

ENDORSED
FILED
San Francisco County Superior Court

JUN 7 2005

GORDON PARK-LI, Clerk
BY: CRISTINA E. BAUTISTA
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

PLAN I NOV 10 2005 9:00AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

05-412150

16 RUSSELL BRIMER,)
17)
18 Plaintiff,)
19)
20 v.)
21)
22 DEPARTMENT 56, INC.; DEPARTMENT 56)
23 RETAIL, INC.; and DOES 1 through 150,)
24)
25 Defendants.)
26)

No. _____

**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 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 goblets and other glassware intended for the consumption of food or
10 beverages with colored artwork or designs (containing lead) on the exterior, including but not
11 limited to, *Winterberry Goblet* (#750057; #501678100000) and *Heart Goblet S/2* (#7 34409 31332
12 3; #56.03846; #0182410000) and goblets and other glassware intended for the consumption of
13 food or beverages with colored artwork or designs (containing cadmium) on the exterior, including
14 but not limited to, *Winterberry Goblet* (#750057; #501678100000) and *Heart Goblet S/2* (#7
15 34409 31332 3; #56.03846; #0182410000). All such consumer products containing the LISTED
16 CHEMICALS shall hereafter be referred to as the "PRODUCTS".

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

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

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

1 PRODUCTS for sale or use in State of California.

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

4 17. MANUFACTURER DEFENDANTS engage in the process of research, testing,
5 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
6 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
7 one or more of the PRODUCTS in the State of California or for consumption or use in the State of
8 California.

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

11 19. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
12 transport one or more of the PRODUCTS to individuals, businesses or retailers in the State of
13 California.

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

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

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

23 23. DEPARTMENT 56, DEPARTMENT 56 RETAIL, MANUFACTURER
24 DEFENDANTS, DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS shall, where
25 appropriate, collectively be referred to hereafter as "DEFENDANTS".

26 **VENUE AND JURISDICTION**

27 24. Venue is proper in the San Francisco Superior Court, pursuant to Code of Civil
28 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one or

1 more instances of wrongful conduct occurred, and continues to occur, in the County of San
2 Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this
3 County.

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

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

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Proposition 65)**

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

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

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

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

1 Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
2 future.

3 31. Beginning on March 31, 2005, "60-Day Notices" of Proposition 65 violations were
4 provided to public enforcement agencies and to DEPARTMENT 56 and DEPARTMENT 56
5 RETAIL stating that exposures to the LISTED CHEMICALS were occurring in the State of
6 California from the reasonably foreseeable uses of the PRODUCTS, without the individual users
7 first having been provided with a "clear and reasonable warning" regarding such exposure.

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

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

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

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

18 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
19 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by
20 22 C.C.R. §12601.

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

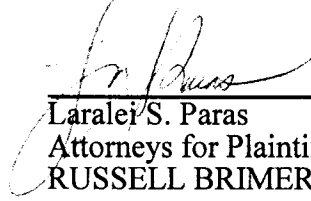
24 38. At all times relevant to this action, DEFENDANTS, and each of them, intended that
25 such exposures to the LISTED CHEMICALS from the reasonably foreseeable use of the
26 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,
27 distribution and/or sale of PRODUCTS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

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Dated: June 16, 2005

Respectfully Submitted,
PARAS LAW GROUP



Laralei S. Paras
Attorneys for Plaintiff
RUSSELL BRIMER