

1 Stephen S. Sayad, State Bar No. 104866
2 Daniel M. Bornstein, State Bar No. 181711
3 Laralei S. Paras, State Bar No. 203319
4 PARAS LAW GROUP
5 655 Redwood Highway, Suite 216
6 Mill Valley, CA 94941
7 Tel: (415) 380-9222
8 Fax: (415) 380-9223

6 Christopher M. Martin, State Bar No. 186021
7 MARTIN LAW GROUP
8 23 N. Lincoln, Suite 204
9 Hinsdale, IL 60521
10 Tel: (630) 789-6998
11 Fax: (630) 214-0979

10 Attorneys for Plaintiff
11 RUSSELL BRIMER

CASE MANAGEMENT CONFERENCE SET

PLAN I NOV 10 2005 9:00AM

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE CITY AND COUNTY OF SAN FRANCISCO

14 UNLIMITED CIVIL JURISDICTION

005-447152

16 RUSSELL BRIMER,)
17)
18 Plaintiff,)
19 v.)
20 TOMMY BAHAMA; VIEWPOINT)
21 INTERNATIONAL, INC.; OXFORD)
22 INDUSTRIES INC.; and DOES 1 through 150,)
Defendants.)

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 shot glasses, pint glasses and other glassware intended for the
10 consumption of food or beverages with colored artwork or designs (containing lead) on the
11 exterior, including but not limited to, *New Map Amber Shot (#8 24832 89367 4)* and *New Map*
12 *Amber Pint Glass (#8 24832 89366 7)* and shot glasses, pint glasses and other glassware intended
13 for the consumption of food or beverages with colored artwork or designs (containing cadmium) on
14 the exterior, including but not limited to, *New Map Amber Shot (#8 24832 89367 4)* and *New Map*
15 *Amber Pint Glass (#8 24832 89366 7)*. 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 the PRODUCTS for sale or use in State of California.

2 16. Defendant OXFORD INDUSTRIES INC. ("OXFORD") is a person doing business
3 within the meaning of Health & Safety Code §25249.11.

4 17. OXFORD manufactures, distributes and/or offers the PRODUCTS for sale or use in
5 the State of California or implies by its conduct that it manufactures, distributes and/or offers the
6 PRODUCTS for sale or use 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. TOMMY BAHAMA, VIEWPOINT, OXFORD, MANUFACTURER

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

3 **VENUE AND JURISDICTION**

4 26. Venue is proper in the San Francisco 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 San
7 Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this
8 County.

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

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

19 **FIRST CAUSE OF ACTION**

20 **(Violation of Proposition 65)**

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

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

27 31. Proposition 65 further states that, "No person in the course of doing business shall
28 knowingly and intentionally expose any individual to a chemical known to the state to cause cancer

1 or reproductive toxicity without first giving clear and reasonable warning to such individual....”

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

8 33. Beginning on March 31, 2005, "60-Day Notices" of Proposition 65 violations were
9 provided to public enforcement agencies and to TOMMY BAHAMA, VIEWPOINT and OXFORD
10 stating that exposures to the LISTED CHEMICALS were occurring in the State of California from
11 the reasonably foreseeable uses of the PRODUCTS, without the individual users first having been
12 provided with a "clear and reasonable warning" regarding such exposure.

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

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

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

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

23 38. The normal and reasonably foreseeable use of the PRODUCTS has caused and
24 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by
25 22 C.C.R. §12601.

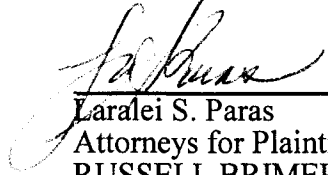
26 39. Based on information and good faith belief, plaintiff alleges, that at all times
27 relevant to this action, DEFENDANTS had knowledge that individuals' normal and reasonably
28 foreseeable use of the PRODUCTS would cause an exposure to the LISTED CHEMICALS.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3. That the Court grant plaintiff his reasonable attorney's fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: June 10, 2005

Respectfully Submitted,
PARAS LAW GROUP



Laralei S. Paras
Attorneys for Plaintiff
RUSSELL BRIMER