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ENDORSED
FILED
San Francisco County Superior Court

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CASE MANAGEMENT CONFERENCE SET

FEB 17 2006 - 9 @ AM

10 Attorneys for Plaintiff
11 RUSSELL BRIMER

DEPARTMENT 212

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO
15
16 UNLIMITED CIVIL JURISDICTION

17 RUSSELL BRIMER,)
18)
19 Plaintiff,)
20 v.)

No. CCC 05 4 4 4 8 8 1

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

21 VIKING OFFICE PRODUCTS, INC.; OFFICE)
22 DEPOT INC.; and DOES 1 through 150,)
23 inclusive.)
24 Defendants.)

(Health & Safety Code §25249, et seq.)

25 RUSSELL BRIMER, by and through his counsel, on behalf of himself, on behalf all others
26 similarly situated and on behalf of the general public, hereby alleges as follows:

27 NATURE OF THE ACTION

28 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,

1 on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the
2 presence of and nature of toxic chemicals in consumer goods.

3 2. This Complaint seeks to remedy defendants' continuing failures to warn the citizens
4 of the State of California about the presence of, the nature of, and such citizens' actual and
5 potential exposure to lead present in or on consumer products placed into the stream of commerce
6 by defendants.

7 3. Lead is a chemical that is identified in 22 C.C.R. §12000 that is known to the State
8 of California to cause birth defects and other reproductive harm. Lead shall hereafter be referred to
9 as the "LISTED CHEMICAL".

10 4. The consumer products containing the LISTED CHEMICAL, and for which
11 defendants are responsible, are wine glasses and other glassware intended for the consumption of
12 food or beverages with colored artwork or designs (containing lead) on the exterior, including but
13 not limited to, *wine glass, 8-oz. Custom Printed Napa Wine (#Q12-N8764)*. All such consumer
14 products containing the LISTED CHEMICAL 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.*¹ (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. On February 27, 1987, the State listed lead as a chemical known to cause birth
21 defects and other reproductive harm. This chemical became subject to the warning requirement
22 one year later and was therefore subject to the "clear and reasonable warning" requirements of
23 Proposition 65, beginning on February 27, 1988. (22 Code of Regulations §12000(b)(c); Health &
24 Safety Code §25249.5 *et seq.*)

25 7. Defendants' failures to provide proper mandatory warnings about exposure to the
26 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
27

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

1 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
2 violation.

3 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
4 and permanent injunctive relief to compel defendants to provide purchasers of the PRODUCTS
5 with the appropriate Proposition 65 warning regarding the health hazards of the LISTED
6 CHEMICAL.

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

9 PARTIES

10 10. Plaintiff RUSSELL BRIMER is a citizen of the State of California who resides in
11 the County of Alameda and who is dedicated to protecting the health of California citizens,
12 including the elimination or reduction of toxic exposures from consumer products, and who brings
13 this action on behalf of the general public pursuant to Health & Safety Code §25249.7.

14 11. Defendant VIKING OFFICE PRODUCTS, INC. ("VIKING") is a person doing
15 business within the meaning of Health & Safety Code §25249.11.

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

19 13. Defendant OFFICE DEPOT, INC. ("OFFICE DEPOT") is a person doing business
20 within the meaning of Health & Safety Code §25249.11.

21 14. OFFICE DEPOT manufactures, distributes and/or offers the PRODUCTS for sale or
22 use in the State of California or implies by its conduct that it manufactures, distributes and/or offers
23 the PRODUCTS for sale or use in the State of California.

24 15. Defendants DOES 1-50 (hereafter "MANUFACTURER DEFENDANTS") are each
25 persons doing business within the meaning of Health & Safety Code §25249.11.

26 16. MANUFACTURER DEFENDANTS engage in the process of research, testing,
27 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
28 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,

1 one or more of the PRODUCTS for sale, consumption or use in the State of California.

2 17. Defendants DOES 51-100 (hereafter "DISTRIBUTOR DEFENDANTS") are each
3 persons doing business within the meaning of Health & Safety Code §25249.11.

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

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

9 20. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
10 of California.

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

16 22. VIKING, OFFICE DEPOT, MANUFACTURER DEFENDANTS, DISTRIBUTOR
17 DEFENDANTS, RETAIL DEFENDANTS, and Defendants DOES 1 through 150 shall, where
18 appropriate, collectively be referred to hereafter as "DEFENDANTS".

19 **VENUE AND JURISDICTION**

20 23. Venue is proper in the San Francisco Superior Court, pursuant to Code of Civil
21 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one or
22 more instances of wrongful conduct occurred, and continues to occur, in the County of San
23 Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this
24 County with respect to the PRODUCTS.

25 24. The California Superior Court has jurisdiction over this action pursuant to
26 California Constitution Article VI, §10, which grants the Superior Court "original jurisdiction in all
27 causes except those given by statute to other trial courts." The statute under which this action is
28 brought does not specify any other basis of subject matter jurisdiction.

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

7 **FIRST CAUSE OF ACTION**

8 **(Violation of Proposition 65)**

9 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
10 Paragraphs 1 through 25, inclusive.

11 27. The citizens of the State of California have expressly stated in the Safe Drinking
12 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
13 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
14 other reproductive harm." (Proposition 65, §1(b).)

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

18 29. Based on information and good faith belief, plaintiff alleges that, at all times
19 relevant to this Complaint, DEFENDANTS have engaged in the sales of the PRODUCTS in
20 violation Health & Safety Code §25249.6, et seq., and that DEFENDANTS' offensive sale of the
21 PRODUCTS has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice
22 of Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
23 future.

24 30. Beginning on July 8, 2005, "60-Day Notices" of Proposition 65 violations were
25 provided to public enforcement agencies and to VIKING and OFFICE DEPOT stating that
26 exposures to the LISTED CHEMICAL were occurring in the State of California from the
27 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
28 having been provided with a "clear and reasonable warning" regarding such exposure.

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

4 32. At all times relevant to this action, the PRODUCTS contained the LISTED
5 CHEMICAL.

6 33. At all times relevant to this action, the DEFENDANTS knew or should have known
7 that the PRODUCTS contained the LISTED CHEMICAL.

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

11 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and
12 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
13 22 C.C.R. §12601.

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

17 37. At all times relevant to this action, DEFENDANTS, and each of them, intended that
18 such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the
19 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,
20 distribution and/or sale of PRODUCTS to individuals in the State of California.

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

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

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

4 41. As a consequence of the above-described acts, Health & Safety Code §25249.7 also
5 specifically authorizes the grant of injunctive relief under Proposition 65 against DEFENDANTS.

6 Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
7 set forth hereafter.

8 **PRAYER FOR RELIEF**

9 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

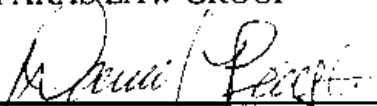
13 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
14 permanently enjoin DEFENDANTS, and each of them, from offering the PRODUCTS for sale or
15 use in California, without providing an identification of the LISTED CHEMICAL in the
16 PRODUCTS as well as "clear and reasonable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

18 3. That the Court grant plaintiff his reasonable attorney's fees and costs of suit; and

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

20 Dated: September 14, 2005

21 Respectfully Submitted,
22 PARAS LAW GROUP

23 
24 Daniel M. Bornstein
25 Attorneys for Plaintiff
26 RUSSELL BRIMER