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CASE MANAGEMENT CONFERENCE SET

FEB 10 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.

21 VELLA'S LOCKER ROOM, INC.; and DOES)
22 1 through 150, inclusive.)
23 Defendants.)
24)
25)

CGC 05444837
No. _____

**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

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

26 RUSSELL BRIMER, by and through his counsel, on behalf of himself, on behalf all others
27 similarly situated and on behalf of the general public, hereby alleges as follows:
28

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,
3 on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the
4 presence of and nature of toxic chemicals in consumer goods.

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

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

12 4. The consumer products containing the LISTED CHEMICAL, and for which
13 defendants are responsible, are stained glass lamps made with metal (containing lead) intended for
14 use and handling, including but not limited to, *lamps, Stained Glass Lamp, Black/Silver/White*
15 *(#NFL-ORA-500)*. All such consumer products containing the LISTED CHEMICAL shall
16 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 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 February 27, 1988. (22 Code of Regulations §12000(b)(c); Health &
26 Safety Code §25249.5 *et seq.*)

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

1 State of California, or otherwise purposefully avails itself of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Proposition 65)**

6 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 23, inclusive.

8 25. The citizens of the State of California have expressly stated in the Safe Drinking
9 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
10 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
11 other reproductive harm." (Proposition 65, §1(b).)

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

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

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

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

1 30. At all times relevant to this action, the PRODUCTS contained the LISTED
2 CHEMICAL.

3 31. At all times relevant to this action, the DEFENDANTS knew or should have known
4 that the PRODUCTS contained the LISTED CHEMICAL.

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

8 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
9 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
10 22 C.C.R. §12601.

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

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

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

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

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

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

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

5 **PRAYER FOR RELIEF**

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

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

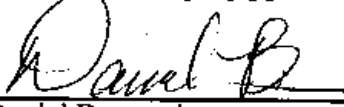
10 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
11 permanently enjoin DEFENDANTS, and each of them, from offering the PRODUCTS for sale or
12 use in California, without providing an identification of the LISTED CHEMICAL in the
13 PRODUCTS as well as "clear and reasonable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

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

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

17
18 Dated: September 13 2005

Respectfully Submitted,
PARAS LAW GROUP

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21 Daniel Bornstein
22 Attorneys for Plaintiff
23 RUSSELL BRIMER
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