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SEP 29 2005

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

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CASE MANAGEMENT CONFERENCE SET

MAR 03 2006 09 30 AM

14 Attorneys for Plaintiff
15 RUSSELL BRIMER

DEPARTMENT 212

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

18 RUSSELL BRIMER,
19 Plaintiff,

v.

20 METROPARK USA, INC.; and DOES 1
21 through 150, inclusive.
22 Defendants.

No. CGC-05-445296

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

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

23
24 RUSSELL BRIMER, by and through his counsel, on behalf of himself, on behalf all others
25 similarly situated and on behalf of the general public, hereby alleges as follows:

NATURE OF THE ACTION

26
27 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,
28 on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

1 presence of and nature of toxic chemicals in consumer goods.

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

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

9 4. The consumer products containing the LISTED CHEMICAL, and for which
10 defendants are responsible, are pint glasses and other glassware intended for the consumption of
11 food or beverages with colored artwork or designs (containing lead) on the exterior, including but
12 not limited to, *Murphy Stout Pint Glass (#0 88888 35136 0)*. All such consumer products
13 containing the LISTED CHEMICAL shall hereafter be referred to as the "PRODUCTS".

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

19 6. On February 27, 1987, the State listed lead as a chemical known to cause birth
20 defects and other reproductive harm. This chemical became subject to the warning requirement
21 one year later and was therefore subject to the "clear and reasonable warning" requirements of
22 Proposition 65, beginning on February 27, 1988. (22 C.C.R. §12000(b)(c); Health & Safety Code
23 §25249.5 *et seq.*)

24 7. Defendants' failures to provide proper mandatory warnings about exposure to the
25 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
26 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
27

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

1 violation.

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

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

8 PARTIES

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

13 11. Defendant METROPARK USA, INC. ("METROPARK") is a person doing
14 business within the meaning of Health & Safety Code §25249.11.

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

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

20 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
21 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
22 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
23 one or more of the PRODUCTS for sale, consumption or use in the State of California.

24 15. Defendants DOES 51-100 (hereafter "DISTRIBUTOR DEFENDANTS") are each
25 persons 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 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65)**

3 24. Plaintiff realleges and incorporates by reference, as if fully 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 the PRODUCTS in
14 violation Health & Safety Code §25249.6, *et seq.*, and that DEFENDANTS’ offensive sale of the
15 PRODUCTS has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice
16 of Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
17 future.

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

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 PRODUCTS to
4 individuals during the reasonably foreseeable use of the 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
13 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,
14 distribution and/or sale of PRODUCTS to individuals in the State of California.

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 also
27 specifically authorizes the grant of injunctive relief under Proposition 65 against DEFENDANTS.

28 Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as

1 set forth hereafter.

2 **PRAYER FOR RELIEF**

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

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

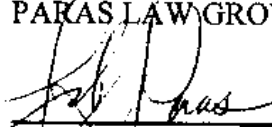
7 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
8 permanently enjoin DEFENDANTS, and each of them, from offering the PRODUCTS for sale or
9 use in California, without providing an identification of the LISTED CHEMICAL in the
10 PRODUCTS as well as "clear and reasonable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

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

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

14 Dated: September 28, 2005

15 Respectfully Submitted,
16 PARAS LAW GROUP

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19 Rafael S. Paras
20 Attorneys for Plaintiff
21 RUSSELL BRIMER
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