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ENDORSED
FILED
San Francisco County Superior Court

SEP 09 2005

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Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

10 Attorneys for Plaintiff
RUSSELL BRIMER

MAR 3 2006 9 00 AM

DEPARTMENT 212

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

17 RUSSELL BRIMER,)
18)
19 Plaintiff,)
20 v.)
21 THE FOLAND GROUP; DENNIS FOLAND,)
22 INC.; and DOES 1 through 150, inclusive.)
23 Defendants.)
24)
25)

No. ~~05-445310~~
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 and cadmium are chemicals that are identified in 22 California Code of
10 Regulations ("C.C.R.") §12000 that are known to the State of California to cause birth defects and
11 other reproductive harm. Lead and cadmium shall hereafter be referred to as the "LISTED
12 CHEMICALS".

13 4. The consumer products containing the LISTED CHEMICALS, and for which
14 defendants are responsible, are shot glasses and other glassware intended for the consumption of
15 food or beverages with colored artwork or designs (containing lead or cadmium) on the exterior,
16 including but not limited to, *shot glass, City Shot Glass (Dave And Buster's California)*. All such
17 consumer products containing the LISTED CHEMICALS shall hereafter be referred to as the
18 "PRODUCTS".

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

24 6. On February 27, 1987, the State listed lead as a chemical known to cause birth
25 defects and other reproductive harm. This chemical became subject to the warning requirement
26 one year later and was therefore subject to the "clear and reasonable warning" requirements of
27

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

1 Proposition 65, beginning on February 27, 1988. (22 C.C.R. §12000(b)(c); Health & Safety Code
2 §25249.5 *et seq.*)

3 7. On May 1, 1997, the State had listed cadmium as a chemical known to cause birth
4 defects or other reproductive harm. This chemical became subject to the warning requirement one
5 year later and was therefore subject to the “clear and reasonable warning” requirements of
6 Proposition 65, beginning on October 1, 1988 and May 1, 1998, respectively. (22 Code of
7 Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

8 8. Defendants’ failures to provide proper mandatory warnings about exposure to the
9 LISTED CHEMICALS in conjunction with the sale of the PRODUCTS is a violation of
10 Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for
11 each such violation.

12 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive
13 and permanent injunctive relief to compel defendants to provide purchasers of the PRODUCTS
14 with the appropriate Proposition 65 warning regarding the health hazards of the LISTED
15 CHEMICALS.

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

18
19 **PARTIES**

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

24 12. Defendant THE FOLAND GROUP (“FOLAND GROUP”) is a person doing
25 business within the meaning of Health & Safety Code §25249.11.

26 13. FOLAND GROUP manufactures, distributes and/or offers the PRODUCTS for sale
27 or use in the State of California or implies by its conduct that it manufactures, distributes and/or
28 offers the PRODUCTS for sale or use in the State of California.

1 14. Defendant DENNIS FOLAND, INC. ("FOLAND, INC.") is a person doing business
2 within the meaning of Health & Safety Code §25249.11.

3 15. FOLAND, INC. manufactures, distributes and/or offers the PRODUCTS for sale or
4 use in the State of California or implies by its conduct that it Manufactures, distributes and/or
5 offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

19 21. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
20 of California.

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

26 23. FOLAND GROUP, FOLAND, INC., MANUFACTURER DEFENDANTS,
27 DISTRIBUTOR DEFENDANTS, RETAIL DEFENDANTS, and Defendants DOES 1 through 150
28 shall, where appropriate, collectively be referred to hereafter as "DEFENDANTS".

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2 **VENUE AND JURISDICTION**

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

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

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

18
19 **FIRST CAUSE OF ACTION**

20 **(Violation of Proposition 65)**

21 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
22 Paragraphs 1 through 26, inclusive.

23 28. 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 29. 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 30. 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 the PRODUCTS in
4 violation Health & Safety Code §25249.6, *et seq.*, and that DEFENDANTS’ offensive sale of the
5 PRODUCTS has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice
6 of Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
7 future.

8 31. Beginning on July 25, 2005, “60-Day Notices” of Proposition 65 violations were
9 provided to public enforcement agencies and to FOLAND GROUP and FOLAND, INC. stating
10 that exposures to the LISTED CHEMICALS were occurring in the State of California from the
11 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
12 having been provided with a “clear and reasonable warning” regarding such exposure.

13 32. 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 33. At all times relevant to this action, the PRODUCTS contained the LISTED
17 CHEMICALS.

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

20 35. 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 the PRODUCTS.

23 36. 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 37. Based on information and good faith belief, plaintiff alleges that at all times relevant
27 to this action, DEFENDANTS had knowledge that individuals’ normal and reasonably foreseeable
28 use of the PRODUCTS would cause an exposure to the LISTED CHEMICALS.

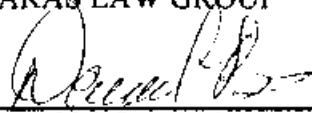
1 PRODUCTS as well as “clear and reasonable warning[s]” as defined by 22 C.C.R. §12601, as
2 plaintiff shall specify in further application to the Court;

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

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

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6 Dated: September 29, 2005

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8 Respectfully Submitted,
9 PARAS LAW GROUP

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12 _____
13 Daniel M. Bornstein
14 Attorneys for Plaintiff
15 RUSSELL BRIMER
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