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SUMMONS ISSUED
ENDORSED
FILED
San Francisco County Superior Court
SEP 20 2005
GORDONPARK-LI, Clerk
BY: _____ Deputy Clerk
DE LA VEGA-NAVARRO, Rossaly

CASE MANAGEMENT CONFERENCE SET

MAR 03 2005 09 30 AM

Attorneys for Plaintiff
RUSSELL BRIMER

DEPARTMENT 212

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

CGC - 05 - 445292

17 RUSSELL BRIMER,)
18)
19 Plaintiff,)
20 v.)
21 NECA; NATIONAL ENTERTAINMENT)
22 COLLECTIBLES ASSOCIATION, INC.; and)
23 DOES 1 through 150, inclusive.)
24 Defendants.)

No. _____
**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**
(Health & Safety Code §25249, et seq.)

25
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 California Code of Regulations ("C.C.R.")
10 §12000 that is known to the State of California to cause birth defects and other reproductive harm.
11 Lead shall hereafter be referred to as the "LISTED CHEMICAL".

12 4. The consumer products containing the LISTED CHEMICAL, and for which
13 defendants are responsible, are wine glasses and other glassware intended for the consumption of
14 food or beverages with colored artwork or designs (containing lead) on the exterior including, but
15 not limited to, the *Crow Wineglass Set* (#787810-000; #6 34482 39654 4). All such consumer
16 products containing the LISTED CHEMICAL 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 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 C.C.R. §12000(b)(c); Health & Safety Code
26 §25249.5 *et seq.*)

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

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

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

10 **FIRST CAUSE OF ACTION**

11 **(Violation of Proposition 65)**

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

14 27. The citizens of the State of California have expressly stated in the Safe Drinking
15 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, *et seq.* (“Proposition
16 65”) that they must be informed “about exposures to chemicals that cause cancer, birth defects and
17 other reproductive harm.” (Proposition 65, §1(b).)

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

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

27 30. Beginning on July 25, 2005, “60-Day Notices” of Proposition 65 violations were
28 provided to public enforcement agencies and to NECA and NECA, INC. stating that exposures to

1 the LISTED CHEMICAL were occurring in the State of California from the reasonably foreseeable
2 uses of the PRODUCTS, without the individual purchasers and users first having been provided
3 with a “clear and reasonable warning” regarding such exposure.

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

7 32. At all times relevant to this action, the PRODUCTS contained the LISTED
8 CHEMICAL.

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

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

14 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and
15 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
16 22 C.C.R. §12601.

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

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

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

28 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted

1 directly by California voters, individuals thus exposed to the LISTED CHEMICAL from the
2 PRODUCTS, without "clear and reasonable warning", have suffered and continue to suffer
3 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

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

11 **PRAYER FOR RELIEF**

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

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


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

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

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

23 Dated: September 29, 2005

24 Respectfully Submitted,
PARAS LAW GROUP

25 
26 Laralei S. Paras
27 Attorneys for Plaintiff
28 RUSSELL BRIMER