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**ENDORSED  
FILED**  
*San Francisco County Superior Court*  
**OCT 11 2005**  
**GORDON PARK-LI, Clerk**  
BY: JUN P. PANELO  
Deputy Clerk

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**CASE MANAGEMENT CONFERENCE SET**  
**MAR 10 2006 - 9 @ 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**

RUSSELL BRIMER, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
DIRECT RETAILING, INC.; THE MUSIC )  
STAND; LINDA ANDERSON; and DOES 1 )  
through 150, inclusive. )  
 )  
Defendants. )

No. CGC 05445623  
**COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF**  
*(Health & Safety Code §25249, et seq.)*

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

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 Title 22, California Code of Regulations  
10 ("CCR") §12000 that is known to the State of California to cause birth defects and other  
11 reproductive harm. 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 glass and metal Stained Glass Figurines and Stained Glass Lamps,  
14 including but not limited to, *figurine, Stained Glass Actress Angel #167511* and *lamp, Tiffany*  
15 *Rooster #423054*. All such consumer products containing the LISTED CHEMICAL shall hereafter  
16 be referred to as the "PRODUCTS".

17 5. Additional consumer products containing the LISTED CHEMICAL, and for which  
18 defendants are responsible, are Iced Tea Glasses, Double Old Fashioned Glasses and other  
19 glassware intended for the consumption of food or beverages with colored artwork or designs on  
20 the exterior, including, but not limited to, *glasses, Royal Suits 4 Asst. #402181 (#0 44117 23023 3)*,  
21 and *glass, Music Note Iced Tea Blue #239435 BL*. All such consumer products containing the  
22 LISTED CHEMICAL shall hereafter be referred to as the "PRODUCTS".

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

28 <sup>1</sup> Unless specifically noted, all statutory citations refer to California law.

1           7.      On February 27, 1987, the State listed lead as a chemical known to cause birth  
2 defects and other reproductive harm. This chemical became subject to the warning requirement  
3 one year later and was therefore subject to the “clear and reasonable warning” requirements of  
4 Proposition 65, beginning on February 27, 1988. (22 Code of Regulations §12000(b)(c);  
5 Proposition 65)

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

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

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

16                                   **PARTIES**

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

21          12.     Defendant DIRECT RETAILING, INC. (“DIRECT RETAILING”) is a person  
22 doing business within the meaning of Health & Safety Code §25249.11.

23          13.     DIRECT RETAILING distributes and/or offers the PRODUCTS for sale or use in  
24 the State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for  
25 sale or use in the State of California.

26          14.     Defendant THE MUSIC STAND (“MUSIC STAND”) is a person doing business  
27 within the meaning of Health & Safety Code §25249.11.

28          15.     MUSIC STAND distributes and/or offers the PRODUCTS for sale or use in the

1 State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for  
2 sale or use in the State of California.

3 16. Defendant LINDA ANDERSON ("LINDA ANDERSON") is a person doing  
4 business within the meaning of Health & Safety Code §25249.11.

5 17. LINDA ANDERSON distributes and/or offers the PRODUCTS for sale or use in  
6 the State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for  
7 sale or use in the State of California.

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

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

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

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

19 22. Defendants DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons  
20 doing business within the meaning of Health & Safety Code §25249.11.

21 23. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
22 of California.

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

28 ///

1 25. DIRECT RETAILING, MUSIC STAND, LINDA ANDERSON,  
2 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, RETAIL  
3 DEFENDANTS, and Defendants DOES 1 through 150 shall, where appropriate, collectively be  
4 referred to hereafter as "DEFENDANTS".

5 **VENUE AND JURISDICTION**

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

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

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

21 **FIRST CAUSE OF ACTION**

22 **(Violation of Proposition 65)**

23 29. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
24 Paragraphs 1 through 27, inclusive.

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

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

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

10          33.     Beginning on August 5, 2005, “60-Day Notices” of Proposition 65 violations were  
11 provided to public enforcement agencies and to DIRECT RETAILING, INC., THE MUSIC  
12 STAND and LINDA ANDERSON stating that exposures to the LISTED CHEMICAL were  
13 occurring in the State of California from the reasonably foreseeable uses of the PRODUCTS,  
14 without the individual purchasers and users first having been provided with a “clear and reasonable  
15 warning” regarding such exposure.

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

19          35.     At all times relevant to this action, the PRODUCTS contained the LISTED  
20 CHEMICAL.

21          36.     At all times relevant to this action, the DEFENDANTS knew or should have known  
22 that the PRODUCTS contained the LISTED CHEMICAL.

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

26          38.     The normal and reasonably foreseeable use of the PRODUCTS has caused and  
27 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by  
28 22 CCR §12601.

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

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

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

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

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

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

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

23   **PRAYER FOR RELIEF**

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

- 25           1.     That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties  
26 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation  
27 alleged herein;
- 28           2.     That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and

1 permanently enjoin DEFENDANTS, and each of them, from offering the PRODUCTS for sale or  
2 use in California, without providing an identification of the LISTED CHEMICAL in the  
3 PRODUCTS as well as "clear and reasonable warning[s]" as defined by 22 CCR §12601, as  
4 plaintiff shall specify in further application to the Court;

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

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

7  
8 Dated: October 11, 2005

Respectfully Submitted,  
PARAS LAW GROUP

9  
10 

11 Daniel Bornstein  
Attorneys for Plaintiff  
RUSSELL BRIMER