

1 Daniel Bornstein, State Bar No. 181711
2 Laralei S. Paras, State Bar No. 203319
3 PARAS LAW GROUP
4 2560 Ninth Street, Suite 214,
Berkeley, CA 94710-2565
Tel: (510) 848-8880
Fax: (510) 848-8118

ENDORSED
FILED
San Francisco County Superior Court

OCT 11 2005

GORDON PARK-LI, Clerk
BY: JULIE P. PANELO
Deputy Clerk

5 Clifford A. Chanler, State Bar No. 135534
6 CHANLER LAW GROUP
7 71 Elm Street, Suite 8
New Canaan, CT 06840
8 Tel: (203) 966-9911
Fax: (203) 801-5222

CASE MANAGEMENT CONFERENCE SET

MAR 10 2006 - 9 00 AM

DEPARTMENT 212

9
10 Attorneys for Plaintiff
11 RUSSELL BRIMER

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE CITY AND COUNTY OF SAN FRANCISCO

15 UNLIMITED CIVIL JURISDICTION

16
17 RUSSELL BRIMER,)

No. CGC 05445621

18)
19 Plaintiff,)

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

20 v.)

21 ANHEUSER-BUSCH, INC.; ANHEUSER-)
22 BUSCH GIFT SHOP; PROMOTIONAL)
23 PRODUCTS GROUP, a division of Anheuser-)
24 Busch, Inc.; and DOES 1 through 150,)
inclusive.)

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

25 Defendants.)

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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 mugs and other ceramic containers intended for the consumption of
14 food or beverages with colored artwork or designs on the exterior, including but not limited to,
15 *mugs, A/E Bistro Mug (#4 15021 68000 9) and BT&GS Funnel Mug (#4 15021 67000 0)*. All such
16 consumer products containing the LISTED CHEMICAL shall hereafter be referred to as the
17 "PRODUCTS".

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

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

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

1 §25249.5 *et seq.*)

2 7. Defendants' failures to provide proper mandatory warnings about exposure to the
3 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
4 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
5 violation.

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

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

12 **PARTIES**

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

17 11. Defendant ANHEUSER-BUSCH INCORPORATED ("ANHEUSER-BUSCH") is a
18 person doing business within the meaning of Health & Safety Code §25249.11.

19 12. ANHEUSER-BUSCH distributes and/or offers the PRODUCTS for sale or use in
20 the State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for
21 sale or use in the State of California.

22 13. Defendant ANHEUSER-BUSCH GIFT SHOP ("GIFT SHOP") is a person doing
23 business within the meaning of Health & Safety Code §25249.11.

24 14. GIFT SHOP distributes and/or offers the PRODUCTS for sale or use in the State of
25 California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use
26 in the State of California.

27 15. Defendant PROMOTIONAL PRODUCTS GROUP, a division of Anheuser-Busch,
28 Inc. ("PROMOTIONAL") is a person doing business within the meaning of Health & Safety Code

1 §25249.11.

2 16. PROMOTIONAL manufactures, distributes and/or offers the PRODUCTS for sale
3 or use in the State of California or implies by its conduct that it manufactures, distributes and/or
4 offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

18 22. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
19 of California.

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

25 24. ANHEUSER-BUSCH, GIFT SHOP, PROMOTIONAL, MANUFACTURER
26 DEFENDANTS, DISTRIBUTOR DEFENDANTS, RETAIL DEFENDANTS, and Defendants
27 DOES 1 through 150 shall, where appropriate, collectively be referred to hereafter as
28 "DEFENDANTS".

1 **VENUE AND JURISDICTION**

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

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

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

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65)**

19 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 27, inclusive.

21 29. The citizens of the State of California have expressly stated in the Safe Drinking
22 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. (“Proposition
23 65”) that they must be informed “about exposures to chemicals that cause cancer, birth defects and
24 other reproductive harm.” (Proposition 65, §1(b).)

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

28 31. Based on information and good faith belief, plaintiff alleges that, at all times

1 relevant to this Complaint, DEFENDANTS have engaged in the sales of the PRODUCTS in
2 violation Health & Safety Code §25249.6, *et seq.*, and that DEFENDANTS' offensive sale of the
3 PRODUCTS has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice
4 of Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
5 future.

6 32. Beginning on August 5, 2005, "60-Day Notices" of Proposition 65 violations were
7 provided to public enforcement agencies and to ANHEUSER-BUSCH, INC., ANHEUSER-
8 BUSCH GIFT SHOP and PROMOTIONAL PRODUCTS GROUP stating that exposures to the
9 LISTED CHEMICAL were occurring in the State of California from the reasonably foreseeable
10 uses of the PRODUCTS, without the individual purchasers and users first having been provided
11 with a "clear and reasonable warning" regarding such exposure.

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

15 34. At all times relevant to this action, the PRODUCTS contained the LISTED
16 CHEMICAL.

17 35. At all times relevant to this action, the DEFENDANTS knew or should have known
18 that the PRODUCTS contained the LISTED CHEMICAL.

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

22 37. The normal and reasonably foreseeable use of the PRODUCTS has caused and
23 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
24 22 CCR §12601.

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

28 39. At all times relevant to this action, DEFENDANTS, and each of them, intended that

1 such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the
2 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,
3 distribution and/or sale of PRODUCTS to individuals in the State of California.

4 40. At all times relevant to this action, DEFENDANTS failed to provide a “clear and
5 reasonable warning” of reproductive toxicity (as defined by 22 CCR §12601) to those consumers or
6 other individuals in the State of California who were or could become exposed to the PRODUCTS
7 and the LISTED CHEMICAL contained therein.

8 41. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
9 directly by California voters, individuals thus exposed to the LISTED CHEMICAL from the
10 PRODUCTS, without “clear and reasonable warning”, have suffered and continue to suffer
11 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

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

19 **PRAYER FOR RELIEF**

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

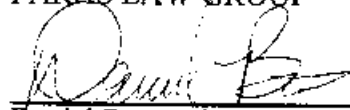
21 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties
22 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation
23 alleged herein;

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

- 1 3. That the Court grant plaintiff his reasonable attorney's fees and costs of suit; and
- 2 4. That the Court grant such other and further relief as may be just and proper.

3
4 Dated: October 11, 2005

Respectfully Submitted,
PARAS LAW GROUP



6 Daniel Bornstein
7 Attorneys for Plaintiff
8 RUSSELL BRIMER