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ENDORSED
FILED
San Francisco County Superior Court

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CASE MANAGEMENT CONFERENCE SET

MAR 10 2006 - 9 @ AM

10 Attorneys for Plaintiff
11 RUSSELL BRIMER

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 Plaintiff,

19 v.

20 TWO'S COMPANY, INC.; and DOES 1
21 through 150, inclusive.

22 Defendants.
23
24

No. CGC 05 44 56 25

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

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

1 defects and other reproductive harm. This chemical became subject to the warning requirement
2 one year later and was therefore subject to the “clear and reasonable warning” requirements of
3 Proposition 65, beginning on February 27, 1988. (22 CCR §12000(b)(c); Health & Safety Code
4 §25249.5 *et seq.*)

5 7. On May 1, 1997, the State listed cadmium as a chemical known to cause birth
6 defects or other reproductive harm. This chemical became subject to the warning requirement one
7 year later and was therefore subject to the “clear and reasonable warning” requirements of
8 Proposition 65, beginning on May 1, 1998. (22 CCR §12000(b)(c); Health and Safety Code
9 §25249.5 *et seq.*)

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

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

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

20 21 PARTIES

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

26 12. Defendant TWO’S COMPANY, INC. (“TWO’S COMPANY”) is a person doing
27 business within the meaning of Health & Safety Code §25249.11.

28 13. TWO’S COMPANY manufactures, distributes and/or offers the PRODUCTS for

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

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

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

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

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

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

16 19. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
17 of California.

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

23 21. TWO'S COMPANY, MANUFACTURER DEFENDANTS, DISTRIBUTOR
24 DEFENDANTS, RETAIL DEFENDANTS, and Defendants DOES 1 through 150 shall, where
25 appropriate, collectively be referred to hereafter as "DEFENDANTS".

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1 **VENUE AND JURISDICTION**

2 22. 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 23. 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 24. 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
18 **FIRST CAUSE OF ACTION**

19 **(Violation of Proposition 65)**

20 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 24, inclusive.

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

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

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

7 29. Beginning on August 5, 2005, "60-Day Notices" of Proposition 65 violations were
8 provided to public enforcement agencies and to TWO'S COMPANY, INC. stating that exposures
9 to the LISTED CHEMICALS were occurring in the State of California from the reasonably
10 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been
11 provided with a "clear and reasonable warning" regarding such exposure.

12 30. 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 31. At all times relevant to this action, the PRODUCTS contained the LISTED
16 CHEMICALS.

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

19 33. At all times relevant to this action, the LISTED CHEMICALS were 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 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
23 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by
24 22 CCR §12601.

25 35. 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 CHEMICALS.

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

1 such exposures to the LISTED CHEMICALS 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 37. 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 CHEMICALS contained therein.

8 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
9 directly by California voters, individuals thus exposed to the LISTED CHEMICALS 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 39. 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 40. 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.

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20 **PRAYER FOR RELIEF**

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

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

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

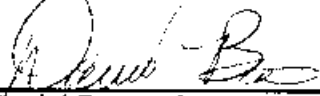
1 plaintiff shall specify in further application to the Court;

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

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

4 Dated: October 11, 2005

5 Respectfully Submitted,
6 PARAS LAW GROUP

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8 Daniel Bornstein
9 Attorneys for Plaintiff
10 RUSSELL BRIMER
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