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LEGAL PROCESS #3

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO
UNLIMITED CIVIL JURISDICTION

084800007

RUSSELL BRIMER,)	No. _____
)	
Plaintiff,)	COMPLAINT FOR CIVIL
)	PENALTIES AND INJUNCTIVE
v.)	RELIEF
)	
WELCOME HOME, LLC; and DOES 1)	
through 150, inclusive.)	(Health & Safety Code §25249, et seq.)
)	
Defendants.)	
_____)	

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:

NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER, on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the presence of and nature of toxic chemicals in consumer goods.

2. This Complaint seeks to remedy defendants' continuing failures to warn the citizens of the State of California about the presence of, the nature of, and such citizens' actual and

1 potential exposure to lead present in or on consumer products placed into the stream of commerce
2 by defendants.

3 3. Lead is a chemical that is identified in Title 22, California Code of Regulations
4 (“CCR”) §12000 that is known to the State of California to cause birth defects and other
5 reproductive harm. Lead shall hereafter be referred to as the “LISTED CHEMICAL”. The
6 consumer products containing the LISTED CHEMICAL, and for which defendants are responsible,
7 are glass rain gauges and other glassware with colored artwork, markings or designs on the exterior
8 including, but not limited to, *Resin Rain Gauge Frog, Item #22320 (#4 00000 41120 0)*. All such
9 consumer products containing the LISTED CHEMICAL shall hereafter be referred to as the
10 “PRODUCTS”.

11 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
12 Health & Safety Code §25249.5 *et seq.*¹ (hereafter “Proposition 65”), “No person in the course of
13 doing business shall knowingly and intentionally expose any individual to a chemical known to the
14 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
15 such individual....”

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

20 6. Defendants’ failures to provide proper mandatory warnings about exposure to the
21 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
22 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
23 violation.

24 7. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive
25 and permanent injunctive relief to compel defendants to provide purchasers of the PRODUCTS
26 with the appropriate Proposition 65 warning regarding the health hazards of the LISTED
27

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

1 CHEMICAL.

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

4 **PARTIES**

5 9. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated
6 to protecting the health of California citizens, including the elimination or reduction of toxic
7 exposures from consumer products, and who brings this action on behalf of the general public
8 pursuant to Health & Safety Code §25249.7.

9 10. Defendant WELCOME HOME, LLC (“WELCOME HOME”) is a person doing
10 business within the meaning of Health & Safety Code §25249.11.

11 11. WELCOME HOME distributes and/or offers the PRODUCTS for sale or use in the
12 State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for
13 sale or use in the State of California.

14 12. Defendants DOES 1-50 (hereafter “MANUFACTURER DEFENDANTS”) are each
15 persons doing business within the meaning of Health & Safety Code §25249.11.

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

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

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

25 16. Defendants DOES 101-150 (hereafter “RETAIL DEFENDANTS”) are each persons
26 doing business within the meaning of Health & Safety Code §25249.11.

27 17. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
28 of California.

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65)**

3 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 22, inclusive.

5 24. The citizens of the State of California have expressly stated in the Safe Drinking
6 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, *et seq.* (“Proposition
7 65”) that they must be informed “about exposures to chemicals that cause cancer, birth defects and
8 other reproductive harm.” (Proposition 65, §1(b).)

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

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

18 27. On September 2, 2005, a “60-Day Notice” of Proposition 65 violations was
19 provided to public enforcement agencies and to WELCOME HOME, LLC stating that exposures to
20 the LISTED CHEMICAL were occurring in the State of California from the reasonably foreseeable
21 uses of the PRODUCTS, without the individual purchasers and users first having been provided
22 with a “clear and reasonable warning” regarding such exposure.

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

26 29. At all times relevant to this action, the PRODUCTS contained the LISTED
27 CHEMICAL.

28 //

1 30. At all times relevant to this action, the DEFENDANTS knew or should have known
2 that the PRODUCTS contained the LISTED CHEMICAL.

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

6 32. The normal and reasonably foreseeable use of the PRODUCTS has caused and
7 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
8 22 CCR §12601.

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

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

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

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

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

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

