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ENDORSED  
FILED  
San Francisco County Superior Court

MAR 29 2006

GORDON PARK-LI, Clerk  
BY: CRISTINA E. BAUTISTA  
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

AUG 25 2006 09 00 AM

DEPARTMENT 212

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

14  
15 RUSSELL BRIMER, )  
16 Plaintiff, )  
17 v. )  
18 DORVINLOR, INC.; and DOES 1 through )  
19 150, inclusive, )  
20 Defendants. )

CGC 06450573  
No. \_\_\_\_\_

COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF

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

21  
22  
23 RUSSELL BRIMER, by and through his counsel, on behalf of himself, on behalf all others  
24 similarly situated and on behalf of the general public, hereby alleges as follows:

25 **NATURE OF THE ACTION**

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

1           2.       This Complaint seeks to remedy defendants' continuing failures to warn the citizens  
2 of the State of California about the presence of, the nature of and such citizens' actual and potential  
3 exposure to lead and cadmium present in or on consumer products placed into the stream of  
4 commerce by defendants.

5           3.       Lead and cadmium are chemicals that are identified within Title 22, California Code  
6 of Regulations ("CCR") §12000 and that are known to the State of California to cause birth defects  
7 and other reproductive harm. Lead and cadmium shall hereafter be referred to as "LISTED  
8 CHEMICALS."

9           4.       The consumer products containing the LISTED CHEMICALS, and for which  
10 defendant is responsible, are goblets and other glassware intended for the of food or beverages  
11 with colored artwork or designs on the exterior including, but not limited to, *Harvest Grape*  
12 *Balloon Goblet* (#68303). All such consumer products containing the LISTED CHEMICALS shall  
13 hereafter be referred to as the "PRODUCTS."

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

19           6.       On February 27, 1987, the State had listed lead as a chemical known to cause birth  
20 defects and other reproductive harm. This chemical became subject to the warning requirement  
21 one year later and was therefore subject to the "clear and reasonable warning" requirements of  
22 Proposition 65, beginning on October 1, 1993 and February 27, 1988, respectively. (22 CCR  
23 §12000(b)(c); Proposition 65)

24           7.       Beginning on October 1, 1987, the State of California officially listed cadmium as a  
25 known carcinogen. On May 1, 1997, the State had listed cadmium as a chemical known to cause  
26 birth defects or other reproductive harm. This chemical became subject to the warning requirement  
27

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

1 one year later and was therefore subject to the "clear and reasonable warning" requirements of  
2 Proposition 65, beginning on October 1, 1988 and May 1, 1998, respectively. (22 CCR  
3 §12000(b)(c); Proposition 65)

4 8. Defendants' failure to provide proper mandatory warnings about exposure to the  
5 LISTED CHEMICALS in conjunction with the sale of the PRODUCTS are violations of  
6 Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for  
7 each such violation.

8 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
9 and permanent injunctive relief to compel defendants to provide users of the PRODUCTS with the  
10 appropriate Proposition 65 warning regarding the hazards of such LISTED CHEMICALS.

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

### 13 PARTIES

14 11. Plaintiff RUSSELL BRIMER is a citizen of the State of California and who is  
15 dedicated to protecting the health of California citizens, including the elimination or reduction of  
16 toxic exposures, and who brings this action on behalf of the general public pursuant to Health &  
17 Safety Code §25249.7.

18 12. Defendant DORVINLOR, INC. ("DORVINLOR") is a person doing business within  
19 the meaning of Health & Safety Code §25249.11.

20 13. DORVINLOR distributes and/or offers the PRODUCTS for sale or use in the State  
21 of California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or  
22 use in State of California.

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

25 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
26 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
27 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,  
28 one or more of the PRODUCTS in the State of California or for or use in the State of California.





1 warning” regarding such exposure.

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

5 31. At all times relevant to this action, the PRODUCTS contained the LISTED  
6 CHEMICALS.

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

9 33. At all times relevant to this action, the LISTED CHEMICALS were present in or on  
10 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to  
11 individuals during the reasonably foreseeable use of PRODUCTS.

12 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
13 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by  
14 22 CCR §12601.

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

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

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

26 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
27 directly by California voters, individuals thus exposed to the LISTED CHEMICALS from the  
28 PRODUCTS, without “clear and reasonable warning”, have suffered and continue to suffer

1 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

5 40. As a consequence of the above-described acts, Health & Safety Code §25249.7 also  
6 specifically authorizes the grant of injunctive relief under Proposition 65.

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

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against defendants as follows:

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

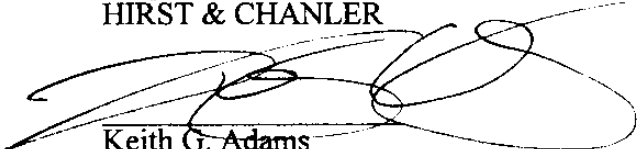
14 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and  
15 permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California,  
16 without providing a "clear and reasonable warning[s]" as defined by 22 CCR §12601, as plaintiff  
17 shall specify in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

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

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

20 Dated: March 21, 2006

21 Respectfully Submitted,  
HIRST & CHANLER

22   
23 Keith G. Adams  
24 Attorneys for Plaintiff  
RUSSELL BRIMER