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

15 RUSSELL BRIMER, )  
16 )  
17 Plaintiff, )  
18 )  
19 v. )  
20 )  
21 WINE THINGS UNLIMITED; and DOES 1 )  
22 through 150, inclusive. )  
23 Defendants. )  
24 )

ENDORSED  
FILED  
San Francisco County Superior Court  
DEC 1 - 2005  
GORDON PARK-LI, Clerk  
BY: CRISTINA E BAUTISTA, Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

MAY 5 - 2006 9 00 AM

DEPARTMENT 212

05-05-447211  
No. 05-05-447211

COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF

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

25  
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

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 potential  
7 exposure to lead and cadmium present in or on consumer products placed into the stream of  
8 commerce by defendants.

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

13 4. The consumer products containing lead, and for which defendant is responsible, are  
14 martini glasses, wine glasses, goblets and other glassware intended for the consumption of food or  
15 beverages with colored artwork or designs on the exterior including, but not limited to, *Martini*  
16 *Glass* (#67324), *Red Wine Glass* (#67395) and *Harvest Grape Balloon Goblet* (#68303). The  
17 consumer products containing cadmium, and for which defendant is responsible, are goblets and  
18 other glassware intended for the consumption of food or beverages with colored artwork or designs  
19 on the exterior including, but not limited to, *Harvest Grape Balloon Goblet* (#68303). All such  
20 consumer products containing one or more of the LISTED CHEMICALS shall hereafter be referred  
21 to as the "PRODUCTS".  
22

23 5. 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           13.     WINE THINGS manufactures, distributes and/or offers the PRODUCTS for sale or  
2 use in the State of California or implies by its conduct that it manufactures, distributes and/or offers  
3 the PRODUCTS for sale or use in State of California.

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

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

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

13          17.     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          18.     DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons doing  
17 business within the meaning of Health & Safety Code §25249.11.

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

20          20.     At this time, the true names of DOES 1 through 150, inclusive, are unknown to  
21 plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil  
22 Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of the  
23 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          21.     WINE THINGS, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
26 DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to  
27 hereafter as "DEFENDANTS".  
28

1 **VENUE AND JURISDICTION**

2 22. Venue is proper in the San Francisco County Superior Court, pursuant to Code of  
3 Civil Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because  
4 one or 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.

7 23. The California Superior Court has jurisdiction over this action pursuant to  
8 California Constitution Article VI, Section 10, which grants the Superior Court "original  
9 jurisdiction in all causes except those given by statute to other trial courts." The statute under  
10 which this action is brought does not specify any other basis of 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 jurisdiction by California courts  
16 consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65)**

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

21 26. 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 27. 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 28. 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 these PRODUCTS in  
2 violation Health & Safety Code §25249.6, *et seq.*, and that DEFENDANTS' offensive sale of these  
3 PRODUCTS continues to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of  
4 Violation. Plaintiff also alleges and believes that such violations will continue to occur into the  
5 future.

6 29. On September 9, 2005, a "60-Day Notice" of Proposition 65 violations was  
7 provided to public enforcement agencies and to WINE THINGS UNLIMITED stating that  
8 exposures to the LISTED CHEMICALS were occurring in the State of California from the  
9 reasonably foreseeable uses of the PRODUCTS, without the individual users first having been  
10 provided with a "clear and reasonable warning" regarding such exposure.

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

14 31. At all times relevant to this action, the PRODUCTS contained the LISTED  
15 CHEMICALS.

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

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

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

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

27 36. At all times relevant to this action, DEFENDANTS, and each of them, intended that  
28 such exposures to the LISTED CHEMICALS from the reasonably foreseeable use of the

1 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,  
2 distribution and/or sale of PRODUCTS to individuals.

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

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

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

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

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

18 **PRAYER FOR RELIEF**

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

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

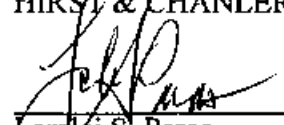
23 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and  
24 permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California,  
25 without providing an identification of the LISTED CHEMICALS in the PRODUCTS as well as  
26 “clear and reasonable warning[s]”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

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

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

2       Dated: November 3<sup>rd</sup>, 2005

3                               Respectfully Submitted,  
4                               HIRST & CHANLER

5                                 
6                               \_\_\_\_\_  
7                               Laralei S. Paras  
8                               Attorneys for Plaintiff  
9                               RUSSELL BRIMER