

ENDORSED
SUMMONS ISSUED
FILED
San Francisco County Superior Court

DEC 13 2005

GORDON PARK-LI, Clerk
BY: _____
Deputy Clerk

DE LA VEGA-NAVARRO, Rossaly

1 Clifford A. Chanler, State Bar No. 135534
2 Daniel Bornstein, State Bar No. 181711
3 Laralei S. Paras, State Bar No. 203319
4 HIRST & CHANLER
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2560

CASE MANAGEMENT CONFERENCE SET

8 Tel: (510) 848-8880
9 Fax: (510) 848-8118

MAY 12 2006 09 AM

DEPARTMENT 212

10 Attorneys for Plaintiff
11 RUSSELL BRIMER

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE CITY AND COUNTY OF SAN FRANCISCO

14 UNLIMITED CIVIL JURISDICTION

15 CGC - 05 - 447593

16 RUSSELL BRIMER,)
17)
18 Plaintiff,)
19)
20 v.)
21)
22 BUSCH ENTERTAINMENT)
23 CORPORATION; SEA WORLD, INC.; and)
24 DOES 1 through 150, inclusive.)
25 Defendants.)
26 _____)

No. _____

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

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

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

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 and 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". The
12 consumer products containing the LISTED CHEMICAL, and for which defendants are responsible,
13 are shot glasses and other glassware intended for the consumption of food or beverages with
14 colored artwork or designs on the exterior including, but not limited to, *Megashot 6Clr Spr*
15 *(#40034300)*, and mugs and other ceramic containers intended for the consumption of food or
16 beverages with colored artwork or designs on the exterior including, but not limited to, *Mug Urban*
17 *Green (#40188698)*. All such consumer products containing the LISTED CHEMICAL shall
18 hereafter be referred to as the "PRODUCTS".

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

24 5. On February 27, 1987, the State listed lead as a chemical known to cause birth
25 defects and other reproductive harm. This chemical became subject to the warning requirement
26 one year later and was therefore subject to the "clear and reasonable warning" requirements of
27

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

1 Proposition 65, beginning on February 27, 1988. (22 CCR §12000(b)(c); Proposition 65)

2 6. 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 7. 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 8. 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 9. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated
14 to protecting the health of California citizens, including the elimination or reduction of toxic
15 exposures from consumer products, and who brings this action on behalf of the general public
16 pursuant to Health & Safety Code §25249.7.

17 10. Defendant BUSCH ENTERTAINMENT CORPORATION ("BUSCH") is a person
18 doing business within the meaning of Health & Safety Code §25249.11.

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

22 12. Defendant SEA WORLD, INC. ("SEA WORLD") is a person doing business within
23 the meaning of Health & Safety Code §25249.11.

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

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

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

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

10 **FIRST CAUSE OF ACTION**

11 **(Violation of Proposition 65)**

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

14 26. The citizens of the State of California have expressly stated in the Safe Drinking
15 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, *et seq.* (“Proposition
16 65”) that they must be informed “about exposures to chemicals that cause cancer, birth defects and
17 other reproductive harm.” (Proposition 65, §1(b).)

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

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

27 29. On September 27, 2005, a “60-Day Notice” of Proposition 65 violations was
28 provided to public enforcement agencies and to BUSCH ENTERTAINMENT CORPORATION

1 and SEA WORLD, INC. stating that exposures to the LISTED CHEMICAL were occurring in the
2 State of California from the reasonably foreseeable uses of the PRODUCTS, without the individual
3 purchasers and users first having been provided with a “clear and reasonable warning” regarding
4 such exposure.

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

8 31. At all times relevant to this action, the PRODUCTS contained the LISTED
9 CHEMICAL.

10 32. At all times relevant to this action, the DEFENDANTS knew or should have known
11 that the PRODUCTS contained the LISTED CHEMICAL.

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

15 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
17 22 CCR §12601.

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

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

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

