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ENDORSED
FILED
San Francisco County Superior Court

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GORDON PARK-LI, Clerk
BY: PARAM NATT
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

JUL 07 2006 - 9 00 AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,)

13)
14 Plaintiff,)

15 v.)

16 SPACE MEDIA, INC.; SPACEHAB, INC.;)
17 and DOES 1 through 150,)

18 Defendants.)
19)

No. _____

CGC - 06 449084

**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

Health & Safety Code §25249

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

22 **NATURE OF THE ACTION**

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

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

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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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

3 3. Lead is a chemical that is identified within 22 C.C.R. §12000 and that is known to
4 the State of California to cause cancer and birth defects (and other reproductive harm). Lead shall
5 hereafter be referred to as "LISTED CHEMICALS".

6 4. The consumer products containing the LISTED CHEMICALS, and for which
7 defendants are responsible, are shot glasses and other glassware intended for the consumption of
8 food or beverages with colored artwork or designs (containing lead) on the exterior including, but
9 not limited to, *NASA Vector Shot Glass*. All such consumer products containing the LISTED
10 CHEMICALS shall hereafter be referred to as the "PRODUCTS".

11 5. 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 6. Beginning on February 27, 1987, the State had listed lead as a chemical known to
17 cause birth defects and other reproductive harm. This chemical became subject to the warning
18 requirement one year later and was therefore subject to the "clear and reasonable warning"
19 requirements of Proposition 65, beginning on February 27, 1988. (22 Code of Regulations
20 §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

21 7. Defendants' failure to provide proper mandatory warnings about exposure to the
22 LISTED CHEMICALS in conjunction with the sale of the PRODUCTS is a violation of
23 Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for
24 each such violation.

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

1 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
2 having been provided with a "clear and reasonable warning" regarding such exposure.

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

6 32. At all times relevant to this action, the PRODUCTS contained the LISTED
7 CHEMICALS.

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

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

13 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and
14 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by
15 22 C.C.R. §12601.

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

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

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

27 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals thus exposed to the LISTED CHEMICALS from the

1 PRODUCTS, without "clear and reasonable warning," have suffered and continue to suffer
2 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

8 Wherefore, plaintiff prays judgment against DEFENDANTS as set forth hereafter.

9 **PRAYER FOR RELIEF**

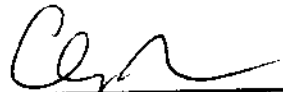
10 Wherefore, plaintiff prays for judgment against defendants as follows:

- 11 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
12 penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
13 violation 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 an identification of the LISTED CHEMICALS in the PRODUCTS as well as
17 "clear and reasonable warning[s]" as defined by 22 CCR §12601, as plaintiff shall specify in
18 further application to the Court;
- 19 3. That the Court grant plaintiff his reasonable attorney's fees and costs of suit; and
20 4. That the Court grant such other and further relief as may be just and proper.

21 Dated: January 27, 2006

Respectfully Submitted,

HIRST & CHANLER, L.L.P.

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26 Christopher M. Martin
27 Attorneys for Plaintiff
28 RUSSELL BRIMER