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CASE MANAGEMENT CONFERENCE SET BY:

JUL 07 2006 - 9 00 AM

DEPARTMENT 212

ENDORSED
FILED
San Francisco County Superior Court

FEB - 1 2006

GORDON PARK-LI, Clerk
PARAM NATT
Deputy Clerk

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 DOLE PLANTATION; CASTLE & COOKE,)
17 INC.; DOLE FOOD COMPANY, INC.; and)
18 DOES 1 through 150,)

19 Defendants.)

No. GGC - 06 449070

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, *Shot Glass Label Set/4 #2, #363225 (#7 49293 28002 6)*, and mugs and other
10 ceramic containers intended for the consumption of food or beverages with colored artwork or
11 designs (containing lead) on the exterior including, but not limited to, *Coffee Mug S/B Wht/Dec,*
12 *#103563*. All such consumer products containing the LISTED CHEMICALS shall hereafter be
13 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.*¹ (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. Beginning on February 27, 1987, the State had listed lead as a chemical known to
20 cause birth defects and other reproductive harm. This chemical became subject to the warning
21 requirement one year later and was therefore subject to the "clear and reasonable warning"
22 requirements of Proposition 65, beginning on February 27, 1988. (22 Code of Regulations
23 §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

24 7. Defendants' failure to provide proper mandatory warnings about exposure to the
25 LISTED CHEMICALS in conjunction with the sale of the PRODUCTS is a violation of

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

1 Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for
2 each such violation.

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

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

8 PARTIES

9 10. Plaintiff RUSSELL BRJMER is a citizen of the State of California who resides in
10 the County of ALAMEDA and who is dedicated to protecting the health of California citizens,
11 including the elimination or reduction of toxic exposures, and who brings this action on behalf of
12 the general public pursuant to Health & Safety Code §25249.7.

13 11. Defendant DOLE PLANTATION is a person doing business within the meaning of
14 Health & Safety Code §25249.11.

15 12. DOLE PLANTATION distributes and/or offers the PRODUCTS for sale or use in
16 the State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for
17 sale or use in State of California.

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

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

23 15. Defendant DOLE FOOD COMPANY, INC. ("DOLE FOOD") is a person doing
24 business within the meaning of Health & Safety Code § 25249.11.

25 16. DOLE FOOD distributes and/or offers the PRODUCTS for sale or use in the State
26 of California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or
27 use in State of California.

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1 Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this
2 County.

3 26. The California Superior Court has jurisdiction over this action pursuant to
4 California Constitution Article VI, Section 10, which grants the Superior Court "original
5 jurisdiction in all causes except those given by statute to other trial courts." The statute under
6 which this action is brought does not specify any other basis of jurisdiction.

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

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65)**

15 28. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,
16 Paragraphs 1 through 27, inclusive.

17 29. The citizens of the State of California have expressly stated in the Safe Drinking
18 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
19 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
20 other reproductive harm." (Proposition 65, §1(b).)

21 30. Proposition 65 further states that, "No person in the course of doing business shall
22 knowingly and intentionally expose any individual to a chemical known to the state to cause cancer
23 or reproductive toxicity without first giving clear and reasonable warning to such individual...."

24 31. Based on information and good faith belief, plaintiff alleges that, at all times
25 relevant to this Complaint, DEFENDANTS have engaged in the sales of these PRODUCTS in
26 violation Health & Safety Code §25249.6, et seq., and that DEFENDANTS' offensive sale of these
27 PRODUCTS continues to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of

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1 Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
2 future.

3 32. Beginning on November 23, 2005, "60-Day Notices" of Proposition 65 violations
4 containing a Certificate of Merit pursuant to California Health & Safety Code § 25249.7(d)(1)
5 were provided to public enforcement agencies and to DOLE PLANTATION, CASTLE &
6 COOKE, and DOLE FOOD, stating that exposures to the LISTED CHEMICALS were occurring
7 in the State of California from the reasonably foreseeable uses of the PRODUCTS, without the
8 individual purchasers and users first having been provided with a "clear and reasonable warning"
9 regarding such exposure.

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

13 34. At all times relevant to this action, the PRODUCTS contained the LISTED
14 CHEMICALS.

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

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

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

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

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

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

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

7 41. 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 42. 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 43. 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 as set forth hereafter.

17 **PRAYER FOR RELIEF**

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

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

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

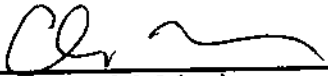
27 3. That the Court grant plaintiff his reasonable attorney's fees and costs of suit; and

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

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Dated: January 27, 2006

Respectfully Submitted,
HIRST & CHANLER, L.L.P.



Christopher M. Martin
Attorneys for Plaintiff
RUSSELL BRIMER