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CASE MANAGEMENT CONFERENCE SET BY: GORDON PARK-LI, Clerk  
PARAM NATT  
Deputy Clerk

JUL 07 2006 - 9 00 AM

DEPARTMENT 212

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

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 C.B.O., INC.; CAMBRIA BICYCLE  
16 OUTFITTER; and DOES 1 through 150,

17 Defendants.  
18

No. CGC - 06 449064

**COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF**

Health & Safety Code §25249

19  
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 pint 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, *Park Pnt-1 Pint Glass, #ACPKPNT1 (#001586000300)*, 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, *Yeti Coffee Mug, #ACTCMB*  
12 *(#001975001100)*. 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. 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 <sup>1</sup> 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 BRIMER 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 C.B.O., INC. ("C.B.O.") is a person doing business within the meaning  
14 of Health & Safety Code §25249.11.

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

18 13. Defendant CAMBRIA BICYCLE OUTFITTER ("CAMBRIA") is a person doing  
19 business within the meaning of Health & Safety Code § 25249.11.

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

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

25 16. 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,

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1 one or more of the PRODUCTS in the State of California or for consumption or use in the State of  
2 California.

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

5 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
6 transport one or more of the PRODUCTS to individuals, businesses or retailers in the State of  
7 California.

8 19. DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons doing  
9 business within the meaning of Health & Safety Code §25249.

10 20. RETAIL DEFENDANTS offer one or more of the PRODUCTS for sale to  
11 individuals in the State of California.

12 21. At this time, the true names of DOES 1 through 150, inclusive, are unknown to  
13 plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil  
14 Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of the  
15 fictitiously named defendants is responsible for the acts and occurrences herein alleged. When  
16 ascertained, their true names shall be reflected in an amended complaint.

17 22. C.B.O., CAMBRIA, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
18 DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to  
19 hereafter as "DEFENDANTS".

### 20 VENUE AND JURISDICTION

21 23. Venue is proper in the San Francisco Superior Court, pursuant to Code of Civil  
22 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one  
23 or more instances of wrongful conduct occurred, and continues to occur, in the County of San  
24 Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this  
25 County.

26 24. The California Superior Court has jurisdiction over this action pursuant to  
27 California Constitution Article VI, Section 10, which grants the Superior Court "original

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1 jurisdiction in all causes except those given by statute to other trial courts." The statute under  
2 which this action is brought does not specify any other basis of jurisdiction.

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

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65)**

11 26. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,  
12 Paragraphs 1 through 25, inclusive.

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

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

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

26 30. Beginning on November 23, 2005, "60-Day Notices" of Proposition 65 violations  
27 containing a Certificate of Merit pursuant to California Health & Safety Code § 25249.7(d)(1)  
28 were provided to public enforcement agencies and to C.B.O. and CAMBRIA stating that exposures

1 to the LISTED CHEMICALS were occurring in the State of California from the reasonably  
2 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been  
3 provided with a "clear and reasonable warning" regarding such exposure.

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

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

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

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

14 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
15 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by  
16 22 C.C.R. §12601.

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

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

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

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1           39.     Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
2 directly by California voters, individuals thus exposed to the LISTED CHEMICALS from the  
3 PRODUCTS, without "clear and reasonable warning", have suffered and continue to suffer  
4 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

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

11    **PRAYER FOR RELIEF**

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

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

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

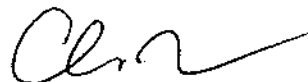
21           3.     That the Court grant plaintiff his reasonable attorney's fees and costs of suit; and

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

23           Dated: January 27, 2006

24    Respectfully Submitted,

25    HIRST & CHANLER, L.L.P.

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27    \_\_\_\_\_  
28    Christopher M. Martin  
  Attorneys for Plaintiff  
  RUSSELL BRIMER