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SAN LUIS OBISPO SUPERIOR COURT
BY S. Pope
S. Pope, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

BY FAX

UNLIMITED CIVIL JURISDICTION

CV 060972

RUSSELL BRIMER,)
)
Plaintiff,)
)
v.)
)
C.B.O., INC.; CAMBRIA BICYCLE)
OUTFITTER; and DOES 1 through 150,)
)
Defendants.)

No. _____

**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

Health & Safety Code §25249

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

NATURE OF THE ACTION

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

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

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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 the "LISTED CHEMICAL."

6 4. The consumer products containing the LISTED CHEMICAL, 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 Pint-1 Pint Glass, #ACPKN1 (#001586000300)*, and mugs and other ceramic
10 containers intended for the consumption of food or beverages with colored artwork or designs
11 (containing lead) on the exterior including, but not limited to, *Yeti Coffee Mug, #ACTCMB*
12 *(#001975001100)*. All such consumer products containing the LISTED CHEMICAL shall
13 hereafter be referred to as the "PRODUCTS."

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

19 6. Beginning on February 27, 1987, the State listed lead as a chemical known to cause
20 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 CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of
26 Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for
27

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

1 each such violation.

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

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

7 PARTIES

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

12 11. Defendant C.B.O., INC. (C.B.O.) is a person doing business within the meaning of
13 Health & Safety Code §25249.11.

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

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

19 14. CAMBRIA 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 State of California.

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

24 16. MANUFACTURER DEFENDANTS engage in the process of research, testing,
25 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
26 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
27 one or more of the PRODUCTS in the State of California or for consumption or use in the State of
28 California.

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

6 **FIRST CAUSE OF ACTION**

7 **(Violation of Proposition 65)**

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

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

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

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

23 30. Beginning on November 23, 2005, "60-Day Notices" of Proposition 65 violations
24 containing a Certificate of Merit pursuant to California Health & Safety Code § 25249.7(d)(1) were
25 provided to public enforcement agencies and to C.B.O. and CAMBRIA stating that exposures to
26 the LISTED CHEMICAL were occurring in the State of California from the reasonably foreseeable
27 uses of the PRODUCTS, without the individual purchasers and users first having been provided
28 with a "clear and reasonable warning" regarding such exposure.

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

4 32. At all times relevant to this action, the PRODUCTS contained the LISTED
5 CHEMICAL.

6 33. At all times relevant to this action, the DEFENDANTS knew or should have known
7 that the PRODUCTS contained the LISTED CHEMICAL.

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against defendants as follows:

- 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation alleged herein;
- 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California, without providing an identification of the LISTED CHEMICAL in the PRODUCTS as well as "clear and reasonable warning[s]" as defined by 22 CCR §12601, as plaintiff shall specify in further application to the Court;
- 3. That the Court grant plaintiff his reasonable attorney's fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: November 10, 2006

Respectfully Submitted,

HIRST & CHANLER, LLP



Christopher M. Martin
Attorneys for Plaintiff
RUSSELL BRIMER