

ENDORSED
FILED
San Francisco County Superior Court

APR 27 2006

GORDON PARK-LI, Clerk

BY: PARAM NATT

Deputy Clerk

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CASE MANAGEMENT CONFERENCE SET

Attorney for Plaintiff
RUSSELL BRIMER

SEP 29 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 Plaintiff,)

14 v.)

15)
16 GREENWOOD RIDGE VINEYARDS; SURF)
17 SUPER MARKET, INC.; and DOES 1 through)
18 150, inclusive,)

Defendants.)

No. 06C-06-451692

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

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

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22
23 RUSSELL BRIMER, by and through his counsel, on behalf of himself, on behalf all others
24 similarly situated and on behalf of the general public, hereby alleges as follows:

25 **NATURE OF THE ACTION**

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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

3. Lead is a chemical that is identified within Title 22, California Code of Regulations ("CCR") §12000 and that is known to the State of California to cause birth defects and other reproductive harm. Lead shall hereafter be referred to as "LISTED CHEMICAL".

4. The consumer products containing lead, and for which defendants are responsible, are wine bottles and other glassware intended for the consumption of food or beverages with colored artwork or designs on the exterior. including, but not limited to, *2003 Anderson Valley Sauvignon Blanc (#7 81547 00003 5)*. All such consumer products containing the LISTED CHEMICAL in wine bottles and other glassware shall hereafter be referred to as the "PRODUCTS."

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

6. On February 27, 1987, the State listed lead as a chemical known to cause birth defects and other reproductive harm. This chemical became subject to the warning requirement one year later and was therefore subject to the "clear and reasonable warning" requirements of Proposition 65, beginning on February 27, 1988. (22 CCR §12000(b)(c); Proposition 65.)

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

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

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

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

6 19. Defendants DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons
7 doing business within the meaning of Health & Safety Code §25249.11.

8 20. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
9 of California.

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

15 22. GREENWOOD, SURF, MANUFACTURER DEFENDANTS, DISTRIBUTOR
16 DEFENDANTS, RETAIL DEFENDANTS, and Defendants DOES 1 through 150 shall, where
17 appropriate, collectively be referred to hereafter as "DEFENDANTS."

18 **VENUE AND JURISDICTION**

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

24 24. The California Superior Court has jurisdiction over this action pursuant to
25 California Constitution Article VI, §10, which grants the Superior Court "original jurisdiction in all
26 causes except those given by statute to other trial courts." The statute under which this action is
27 brought does not specify any other basis of subject matter jurisdiction.

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1 purchasers and users first having been provided with a "clear and reasonable warning" regarding
2 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 Notice.

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

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

10 34. At all times relevant to this action, the LISTED CHEMICAL was 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 the PRODUCTS.

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

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

19 37. At all times relevant to this action, DEFENDANTS, and each of them, intended that
20 such exposures to the LISTED CHEMICAL 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 in the State of California.

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

8 Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
9 set forth hereafter.

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

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

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

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

22 Dated: April 17, 2006

23 Respectfully Submitted,
24 MARTIN LAW GROUP

25 
26 Christopher Martin
27 Attorneys for Plaintiff
28 RUSSELL BRIMER