

ENDORSED
FILED
San Francisco County Superior Court

JUN 20 2006

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CASE MANAGEMENT CONFERENCE SET BY:

NOV 17 2006 - 9⁰⁰ AM

Attorneys for Plaintiff
RUSSELL BRIMER

DEPARTMENT 212

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

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12
13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 BACARDI, U.S.A., INC.; and DOES 1 through
17 150, inclusive,

18 Defendants.

No. CGC-06-453355

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

1 one year later and was therefore subject to the “clear and reasonable warning” requirements of
2 Proposition 65, beginning on February 27, 1988. (22 CCR §12000(b)(c); Proposition 65.)

3 6. Defendants’ failures to provide proper mandatory warnings about exposure to the
4 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
5 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
6 violation.

7 7. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive
8 and permanent injunctive relief to compel defendants to provide purchasers of the PRODUCTS
9 with the appropriate Proposition 65 warning regarding the health hazards of the LISTED
10 CHEMICAL.

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

13 **PARTIES**

14 9. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated
15 to protecting the health of California citizens, including the elimination or reduction of toxic
16 exposures from consumer products, and who brings this action on behalf of the general public
17 pursuant to Health & Safety Code §25249.7.

18 10. Defendant BACARDI, U.S.A., INC. (“BACARDI”) is a person doing business
19 within the meaning of Health & Safety Code §25249.11.

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

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

25 13. 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
28 manufacturing, one or more of the PRODUCTS for sale, consumption or use in the State of

1 California.

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

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

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

9 17. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
10 of California.

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

16 19. BACARDI, MANUFACTURER DEFENDANTS, DISTRIBUTOR
17 DEFENDANTS, RETAIL DEFENDANTS, and Defendants DOES 1 through 150 shall, where
18 appropriate, collectively be referred to hereafter as "DEFENDANTS".

19 **VENUE AND JURISDICTION**

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

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

1 PRODUCTS, without the individual purchasers and users first having been provided with a “clear
2 and reasonable warning” regarding such exposure.

3 28. 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 29. At all times relevant to this action, the PRODUCTS contained the LISTED
7 CHEMICAL.

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

10 31. 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 32. 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 22
15 CCR §12601.

16 33. 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 CHEMICAL.

19 34. At all times relevant to this action, DEFENDANTS, and each of them, intended
20 that 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 35. 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
25 or other individuals in the State of California who were or could become exposed to the
26 PRODUCTS and to the LISTED CHEMICAL contained therein.

27 36. 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 37. 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 38. 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 set forth
9 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
13 penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
14 violation 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 LISTED CHEMICAL in the PRODUCTS
18 as well as "clear and reasonable warning[s]" as defined by 22 CCR §12601, as plaintiff shall
19 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.

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24 Dated: June 20, 2006

Respectfully Submitted,
HIRST & CHANLER, LLP

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27 D. Joshua Voorhees
Attorneys for Plaintiff
28 RUSSELL BRIMER