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**CONFIRMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

MAY 1 0 2007

John A. Clarke, Executive Officer/Clerk

By \_\_\_\_\_, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
UNLIMITED CIVIL JURISDICTION

BC370910

RUSSELL BRIMER,

Plaintiff,

v.

PRIMAL ELEMENTS, INC.; and DOES 1  
through 150, inclusive,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

*(Cal. Health & Safety Code §25249.6 et seq.)*

**BY FAX  
COPY**

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,  
3 in the public interest of the citizens of the State of California, to enforce the People's right to be  
4 informed of the presence of lead (a toxic chemical) found in certain glass candleholders  
5 manufactured, distributed and/or offered for sale by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn  
7 California citizens about their exposure to lead present in or on glass candle holders that  
8 defendants manufacture and/or offer for sale to consumers throughout the State of California.

9 3. High levels of lead are commonly found in the artwork or designs on the exterior of  
10 the glass candleholders that defendants manufacture and/or off for sale to consumers throughout  
11 the State of California.

12 4 Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
13 California Health & Safety Code §25249.6 *et seq.* (hereafter "Proposition 65"), "No person in the  
14 course of doing business shall knowingly and intentionally expose any individual to a chemical  
15 known to the state to cause cancer or reproductive toxicity without first giving clear and  
16 reasonable warning to such individual..." (*Cal. Health & Safety Code* §25249.6.)

17 5. On February 27, 1987, California identified and listed lead as a chemical known to  
18 cause birth defects and other reproductive harm. Lead became subject to the warning requirement  
19 one year later and was therefore subject to the "clear and reasonable warning" requirements of  
20 Proposition 65, beginning on February 27, 1988. (*22 CCR §12000(c); Cal. Health & Safety Code*  
21 *§25249.8.*) Lead shall hereafter be referred to as the "LISTED CHEMICAL."

22 6. Defendants manufacture, distribute and/or offer for sale glass candleholders with  
23 colored artwork or designs (containing lead) on the exterior including, but not limited to,  
24 *Romanceatini Candle (#6 40986 02446 3)*, which contain excessive levels of the LISTED  
25 CHEMICAL. All such glass candleholders containing the LISTED CHEMICAL shall hereafter be  
26 referred to as the "PRODUCTS."

27 7. Defendants' failure to warn consumers about their exposure to the LISTED  
28 CHEMICAL in conjunction with defendants' sale of the PRODUCTS is a violation of Proposition

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

3 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
4 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
5 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.  
6 (*Cal. Health & Safety Code §25249.7(a).*)

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

9 **PARTIES**

10 10. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated  
11 to protecting the health of California citizens through the elimination or reduction of toxic  
12 exposures from consumer products, and brings this action in the public interest pursuant to  
13 California Health & Safety Code §25249.7.

14 11. Defendant PRIMAL ELEMENTS, INC. ("PRIMAL") is a person doing business  
15 within the meaning of California Health & Safety Code §25249.11.

16 12. PRIMAL manufactures, distributes and/or offers the PRODUCTS for sale or use in  
17 the State of California or implies by its conduct that it manufactures, distributes and/or offers the  
18 PRODUCTS for sale or use in the State of California.

19 13. Defendants DOES 1-50 (hereafter "MANUFACTURER DEFENDANTS") are each  
20 persons doing business within the meaning of California Health & Safety Code §25249.11.

21 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
22 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
23 engage in the process of research, testing, designing, assembling, fabricating and/or  
24 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

25 15. Defendants DOES 51-100 (hereafter "DISTRIBUTOR DEFENDANTS") are each  
26 persons doing business within the meaning of California Health & Safety Code §25249.11.

27 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
28 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in

1 the State of California.

2 17. Defendants DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each  
3 persons doing business within the meaning of California Health & Safety Code §25249.11.

4 18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
5 of California.

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

11 20. PRIMAL, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
12 and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereafter as  
13 "DEFENDANTS".

14 **VENUE AND JURISDICTION**

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

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

24 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
25 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
26 association that either is a citizen of the State of California, has sufficient minimum contacts in the  
27 State of California, or otherwise purposefully avails itself of the California market.  
28 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California

1 courts consistent with traditional notions of fair play and substantial justice.

2 **FIRST CAUSE OF ACTION**

3 **(Violation of Proposition 65)**

4 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
5 Paragraphs 1 through 23, inclusive.

6 25. The citizens of the State of California have expressly stated in the Safe Drinking  
7 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5, *et seq.*  
8 (“Proposition 65”) that they must be informed “about exposures to chemicals that cause cancer,  
9 birth defects and other reproductive harm.” (*Cal. Health & Safety Code §25249.6.*)

10 26. Proposition 65 states, “No person in the course of doing business shall knowingly  
11 and intentionally expose any individual to a chemical known to the state to cause cancer or  
12 reproductive toxicity without first giving clear and reasonable warning to such individual...” (*Id.*)

13 27. On November 7, 2006, a sixty-day notice of violation, together with the requisite  
14 certificate of merit, was provided to PRIMAL and various public enforcement agencies stating that  
15 as a result of PRIMAL’s sale of PRODUCTS, purchasers and users in the State of California were  
16 being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the  
17 PRODUCTS, without the individual purchasers and users first having been provided with a “clear  
18 and reasonable warning” regarding such toxic exposures.

19 28. DEFENDANTS have engaged in manufacture, distribution and/or offering of the  
20 PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and  
21 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
22 violation of California Health & Safety Code §25249.6 has continued to occur beyond PRIMAL’s  
23 receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and believes that such  
24 violations will continue to occur into the future.

25 29. After receipt of the claims asserted in the sixty-day notice of violation, the  
26 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause  
27 of action against PRIMAL under Proposition 65.

28 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in

1 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
2 limits.

3 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
4 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED  
5 CHEMICAL.

6 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
7 to expose individuals to the LISTED CHEMICAL through dermal contact and ingestion during the  
8 reasonably foreseeable use of the PRODUCTS.

9 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
10 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
11 by 22 CCR §12601(b).

12 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
13 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
14 and ingestion.

15 35. DEFENDANTS, and each of them, intended that such exposures to the LISTED  
16 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their  
17 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use  
18 of PRODUCTS to individuals in the State of California.

19 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
20 consumers or other individuals in the State of California who were or who could become exposed  
21 to the LISTED CHEMICAL through dermal contact or ingestion during the reasonably foreseeable  
22 use of the PRODUCTS.

23 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
24 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
25 contact and ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by  
26 DEFENDANTS without “clear and reasonable warning,” have suffered, and continue to suffer,  
27 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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