

1 George W. Dowell, State Bar No. 234759
2 D. Joshua Voorhees, State Bar No. 241436
3 Aparna L. Reddy, State Bar No. 242895
4 HIRST & CHANLER LLP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565
8 Telephone: (510) 848-8866
9 Facsimile: (510) 848-8118

10 Attorneys for Plaintiff
11 RUSSELL BRIMER

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13 RUSSELL BRIMER,
14 Plaintiff,
15 v.
16 SOLO CUP COMPANY; SOLO CUP
17 OPERATING CORPORATION; CREATIVE
18 EXPRESSIONS GROUP, INC.; and DOES 1
19 through 150, inclusive,
20 Defendants.

ENDORSED
FILED
San Francisco County Superior Court

APR - 6 2007

GORDON PARK-LI, Clerk
PARAMNATT

BY: _____ Deputy Clerk

SEP - 7 2007 -9⁰⁰AM

DEPARTMENT 212

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

Case No. CGC-07-462137

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

CASE MANAGEMENT CONFERENCE SET

SEP - 7 2007 -9⁰⁰AM

DEPARTMENT 212

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 mugs an other ceramic
5 containers intended for the consumption of food or beverages with colored artwork or designs on
6 the exterior manufactured and sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to warn
8 California citizens about their exposure to lead present in or on certain mugs an other ceramic
9 containers intended for the consumption of food or beverages with colored artwork or designs on
10 the exterior that defendants manufacture, distribute and/or sell to consumers throughout the State
11 of California.

12 3. High levels of lead are commonly found in the artwork or designs in and/or on
13 mugs and ceramic containers that defendants manufacture, distribute and/or sell to consumers
14 throughout the State of California.

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

20 5. On February 27, 1987, California identified and listed lead as a chemical known to
21 cause birth defects and other reproductive harm. Lead became subject to the warning requirement
22 one year later and was therefore subject to the “clear and reasonable warning” requirements of
23 Proposition 65, beginning on February 27, 1988. (*22 CCR §12000(c); Cal. Health & Safety Code*
24 *§25249.8.*) Lead shall hereafter be referred to as the “LISTED CHEMICAL.”

25 6. Defendants manufacture, distribute and/or sell certain mugs an other ceramic
26 containers intended for the consumption of food or beverages with colored artwork or designs on
27 the exterior including, but not limited to, *Retirement Mug (#0 73526 67020 1)*, which contain
28 excessive levels of the LISTED CHEMICAL a quantity set forth in Health & Safety Code

1 §25249.10(c). All such mugs and other ceramic containers containing the LISTED CHEMICAL
2 shall hereafter be referred to as the “PRODUCTS.”

3 7. Defendants’ failure to warn consumers about their exposure to the LISTED
4 CHEMICAL in conjunction with defendants’ 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 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive
8 and permanent injunctive relief to compel defendants to provide purchasers or users of the
9 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.
10 (*Cal. Health & Safety Code §25249.7(a).*)

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

13 **PARTIES**

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

18 11. Defendant SOLO CUP COMPANY (“SOLO CO.”) is a person doing business
19 within the meaning of California Health & Safety Code §25249.11.

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

23 13. Defendant SOLO CUP OPERATING CORPORATION (“SOLO CORP.”) is a
24 person doing business within the meaning of California Health & Safety Code §25249.11.

25 14. SOLO CORP. manufactures, distributes and/or offers the PRODUCTS for sale or
26 use in the State of California or implies by its conduct that it manufactures, distributes and/or
27 offers the PRODUCTS for sale or use in the State of California.
28

1 15. Defendant CREATIVE EXPRESSIONS, INC. (“CREATIVE”) is a person doing
2 business within the meaning of California Health & Safety Code §25249.11.

3 16. CREATIVE manufactures, distributes and/or offers the PRODUCTS for sale or use
4 in the State of California or implies by its conduct that it manufactures, distributes and/or offers
5 the PRODUCTS for sale or use in the State of California.

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

8 18. MANUFACTURER DEFENDANTS engage in the process of research, testing,
9 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
10 engage in the process of research, testing, designing, assembling, fabricating and/or
11 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

12 19. Defendants DOES 51-100 (hereafter “DISTRIBUTOR DEFENDANTS”) are each
13 persons doing business within the meaning of California Health & Safety Code §25249.11.

14 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
15 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
16 the State of California.

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

19 22. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
20 of California.

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

26 24. SOLO CO., SOLO CORP., CREATIVE, MANUFACTURER DEFENDANTS,
27 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,
28 collectively be referred to hereafter as “DEFENDANTS”.

1 **VENUE AND JURISDICTION**

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

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

11 27. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
13 association that either is a citizen of the State of California, has sufficient minimum contacts in the
14 State of California, or otherwise purposefully avails itself of the California market.
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65)**

19 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 27, inclusive.

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

25 30. Proposition 65 states, “No person in the course of doing business shall knowingly
26 and intentionally expose any individual to a chemical known to the state to cause cancer or
27 reproductive toxicity without first giving clear and reasonable warning to such individual...” (*Id.*)
28

1 31. On January 12, 2007, a sixty-day notice of violation, together with the requisite
2 certificate of merit, was provided to SOLO CO., SOLO CORP., CREATIVE and various public
3 enforcement agencies stating that as a result of SOLO CO., SOLO CORP. and CREATIVE's sale
4 of the PRODUCTS, purchasers and users in the State of California were being exposed to the
5 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without
6 the individual purchasers and users first having been provided with a "clear and reasonable
7 warning" regarding such toxic exposures.

8 31. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
9 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and
10 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
11 violation of California Health & Safety Code §25249.6 has continued to occur beyond SOLO CO.,
12 SOLO CORP. and CREATIVE's receipt of plaintiff's sixty-day notice of violation. Plaintiff
13 further alleges and believes that such violations will continue to occur into the future.

14 32. After receipt of the claims asserted in the sixty-day notice of violation, the
15 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
16 of action against SOLO CO., SOLO CORP. and CREATIVE's under Proposition 65.

17 33. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
18 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
19 limits.

20 34. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
21 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
22 CHEMICAL.

23 35. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
24 to expose individuals to the LISTED CHEMICAL through dermal contact and ingestion during the
25 reasonably foreseeable use of the PRODUCTS.

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

1 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
2 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
3 and ingestion.

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

8 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
9 consumers or other individuals in the State of California who were or who could become exposed
10 to the LISTED CHEMICAL through dermal contact or ingestion during the reasonably foreseeable
11 use of the PRODUCTS.

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

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

20 42. As a consequence of the above-described acts, California Health & Safety Code
21 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
22 DEFENDANTS.

23 43. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
24 set forth hereafter.

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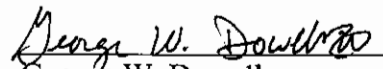
PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to California 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 California Health & Safety Code §25249.7(a), preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing, distributing or offering the PRODUCTS for sale or use in California, without providing “clear and reasonable warnings” as defined by 22 CCR §12601, as to the harms associated with exposures to the LISTED CHEMICAL;
3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
4. That the Court grant such other and further relief as may be just and proper.

Dated: April 2, 2007

Respectfully Submitted,
HIRST & CHANLER, LLP


George W. Dowell
Attorneys for Plaintiff
RUSSELL BRIMER