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FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

JUN 01 2007

GORDON PARK-LI, Clerk
BY: _____
Deputy Clerk

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE CITY AND COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
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13 RUSSELL BRIMER,
14 Plaintiff,
15 v.

16 SOLO CUP COMPANY dba CREATIVE
17 EXPRESSIONS GROUP, INC.; SOLO CUP
18 OPERATING CORPORATION; and DOES 1
through 150, inclusive,
19 Defendants.

Case No. CGC-07-462137

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

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. doing business as Creative Expressions, Inc., offers the PRODUCTS for
21 sale or use in the State of California or implies by its conduct that it manufactures, distributes
22 and/or offers the PRODUCTS for sale or 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.

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1 County with respect to the PRODUCTS.

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

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

12 **FIRST CAUSE OF ACTION**

13 **(Violation of Proposition 65)**

14 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
15 Paragraphs 1 through 25, inclusive.

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

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

23 29. On January 12, 2007, a sixty-day notice of violation, together with the requisite
24 certificate of merit, was provided to SOLO CO., SOLO CORP., and various public enforcement
25 agencies stating that as a result of SOLO CO., and SOLO CORP.’s sale of the PRODUCTS,
26 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL
27 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
28 purchasers and users first having been provided with a “clear and reasonable warning” regarding

1 such toxic exposures.

2 30. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
3 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and
4 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
5 violation of California Health & Safety Code §25249.6 has continued to occur beyond SOLO CO.,
6 and SOLO CORP.'s receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
7 believes that such violations will continue to occur into the future.

8 31. After receipt of the claims asserted in the sixty-day notice of violation, the
9 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
10 of action against SOLO CO., and SOLO CORP. under Proposition 65.

11 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
12 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
13 limits.

14 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
15 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
16 CHEMICAL.

17 34. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
18 to expose individuals to the LISTED CHEMICAL through dermal contact and ingestion during the
19 reasonably foreseeable use of the PRODUCTS.

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

23 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
24 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
25 and ingestion.

26 37. DEFENDANTS, and each of them, intended that such exposures to the LISTED
27 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
28 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use

1 of PRODUCTS to individuals in the State of California.

2 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
3 consumers or other individuals in the State of California who were or who could become exposed
4 to the LISTED CHEMICAL through dermal contact or ingestion during the reasonably foreseeable
5 use of the PRODUCTS.

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

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

14 41. As a consequence of the above-described acts, California Health & Safety Code
15 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
16 DEFENDANTS.

17 42. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
18 set forth hereafter.

19 **PRAYER FOR RELIEF**

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

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

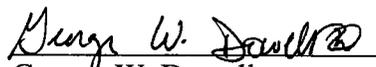
24 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
25 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
26 distributing or offering the PRODUCTS for sale or use in California, without providing “clear and
27 reasonable warnings” as defined by 22 CCR §12601, as to the harms associated with exposures to
28 the LISTED CHEMICAL;

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- 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: June 1, 2007

Respectfully Submitted,
HIRST & CHANLER, LLP


George W. Dowell
Attorneys for Plaintiff
RUSSELL BRIMER