

SEP 13 2005

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CASE MANAGEMENT CONFERENCE SET

FEB 10 2006 - 9 AM

DEPARTMENT 212

10 Attorneys for Plaintiff
11 RUSSELL BRIMER

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO
15
16 UNLIMITED CIVIL JURISDICTION

17 RUSSELL BRIMER,) No. **CGC 05 4 4 4 8 3 6**
18)
19 Plaintiff,) **COMPLAINT FOR CIVIL**
20 v.) **PENALTIES AND INJUNCTIVE**
21) **RELIEF**
22 KALAN LP; LONGS DRUG STORES)
23 CORPORATION; and DOES 1 through 150,) *(Health & Safety Code §25249, et seq.)*
24 inclusive.)
25 Defendants.)

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

27 **NATURE OF THE ACTION**

28 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,

1 on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the
2 presence of and nature of toxic chemicals in consumer goods.

3 2. This Complaint seeks to remedy defendants' continuing failures to warn the citizens
4 of the State of California about the presence of, the nature of, and such citizens' actual and
5 potential exposure to lead present in or on consumer products placed into the stream of commerce
6 by defendants.

7 3. Lead is a chemical that is identified in 22 C.C.R. §12000 that is known to the State
8 of California to cause birth defects and other reproductive harm. Lead shall hereafter be referred to
9 as the "LISTED CHEMICAL".

10 4. The consumer products containing the LISTED CHEMICAL, and for which
11 defendants are responsible, are shot glasses and other glassware intended for the consumption of
12 food or beverages with colored artwork or designs (containing lead) on the exterior, including but
13 not limited to, *shot glass, "Cheers To 30 Years" (#0 24685 22267 0)*. All such consumer products
14 containing the LISTED CHEMICAL shall hereafter be referred to as the "PRODUCTS".

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

20 6. On February 27, 1987, the State listed lead as a chemical known to cause birth
21 defects and other reproductive harm. This chemical 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 Code of Regulations §12000(b)(c); Health &
24 Safety Code §25249.5 *et seq.*)

25 7. Defendants' failures to provide proper mandatory warnings about exposure to the
26 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
27

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

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 of the PRODUCTS
5 with the appropriate Proposition 65 warning regarding the health hazards of the LISTED
6 CHEMICAL.

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

9 PARTIES

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

14 11. Defendant LONGS DRUG STORES CORPORATION ("LONGS") is a person
15 doing business within the meaning of Health & Safety Code §25249.11.

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

19 13. Defendant KALAN LP ("KALAN") is a person doing business within the meaning
20 of Health & Safety Code §25249.11.

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

24 15. Defendants DOES 1-50 (hereafter "MANUFACTURER DEFENDANTS") are each
25 persons doing business within the meaning of Health & Safety Code §25249.11.

26 16. MANUFACTURER DEFENDANTS engage in the process of research, testing,
27 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
28 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,

1 one or more of the PRODUCTS for sale, consumption or use in the State of California.

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

4 18. 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 19. Defendants DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons
8 doing business within the meaning of Health & Safety Code §25249.

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

11 21. 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 22. LONGS, KALAN, 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 23. Venue is proper in the San Francisco Superior Court, pursuant to Code of Civil
21 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one or
22 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 24. 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 all
27 causes except those given by statute to other trial courts." The statute under which this action is
28 brought does not specify any other basis of subject matter jurisdiction.

1 31. The appropriate public enforcement agencies have failed to commence and
2 diligently prosecute a cause of action, under Health & Safety Code §25249.6, *et seq.*, against
3 DEFENDANTS based on the claims asserted in Plaintiff's 60-Day Notices.

4 32. At all times relevant to this action, the PRODUCTS contained the LISTED
5 CHEMICAL.

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

8 34. At all times relevant to this action, the LISTED CHEMICAL was present in or on
9 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to
10 individuals during the reasonably foreseeable use of the PRODUCTS.

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

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

17 37. At all times relevant to this action, DEFENDANTS, and each of them, intended that
18 such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the
19 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,
20 distribution and/or sale of PRODUCTS to individuals in the State of California.

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

25 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
26 directly by California voters, individuals thus exposed to the LISTED CHEMICAL from the
27 PRODUCTS, without "clear and reasonable warning", have suffered and continue to suffer
28 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

