

MAY 17 2006

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RUSSELL BRIMER

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA - HAYWARD BRANCH
11 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 3E TRADING, LLC; and DOES 1 through
16 150, inclusive,

17 Defendants.

No. **HG06 27032 9**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

18
19 RUSSELL BRIMER, by and through his counsel, on behalf of himself, on behalf all others
20 similarly situated and on behalf of the general public, hereby alleges as follows:

21 **NATURE OF THE ACTION**

22 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,
23 on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the
24 presence of and nature of toxic chemicals in consumer goods.

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

1 3. Lead is a chemical that is identified in Title 22, California Code of Regulations
2 (“CCR”) §12000 that is known to the State of California to cause birth defects and other
3 reproductive harm. Lead shall hereafter be referred to as the “LISTED CHEMICAL.” The
4 consumer products containing the LISTED CHEMICAL, and for which defendants are
5 responsible, are shooters and other glassware intended for the consumption of food or beverages
6 with colored artwork or designs on the exterior including, but not limited to, Frosted RH Shooter
7 Set 4, #10045. All such consumer product containing the LISTED CHEMICAL on the exterior
8 shall hereafter be referred to as the “PRODUCTS.”

9 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
10 Health & Safety Code §25249.5 et seq.¹ (hereafter “Proposition 65”), “No person in the course of
11 doing business shall knowingly and intentionally expose any individual to a chemical known to the
12 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
13 such individual....”

14 5. On February 27, 1987, the State listed lead as a chemical known to cause birth
15 defects and other reproductive harm. This chemical became subject to the warning requirement
16 one year later and was therefore subject to the “clear and reasonable warning” requirements of
17 Proposition 65, beginning on February 27, 1988. (22 CCR §12000(b)(c); Proposition 65.)

18 6. Defendants’ failures to provide proper mandatory warnings about exposure to the
19 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
20 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
21 violation.

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

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

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

PARTIES

1
2 9. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated
3 to protecting the health of California citizens, including the elimination or reduction of toxic
4 exposures from consumer products, and who brings this action on behalf of the general public
5 pursuant to Health & Safety Code §25249.7.

6 10. Defendant 3E TRADING, LLC (“3E TRADING”) is a person doing business
7 within the meaning of Health & Safety Code §25249.11.

8 11. 3E TRADING manufactures, distributes and/or offers the PRODUCTS for sale or
9 use in the State of California or implies by its conduct that it manufactures, distributes and/or
10 offers the PRODUCTS for sale or use in the State of California.

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

13 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
14 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
15 engage in the process of research, testing, designing, assembling, fabricating and/or
16 manufacturing, one or more of the PRODUCTS for sale, consumption or use in the State of
17 California.

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

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

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

25 17. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
26 of California.

27 18. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
28 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code

1 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of
2 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When
3 ascertained, their true names shall be reflected in an amended complaint.

4 19. 3E TRADING, MANUFACTURER DEFENDANTS, DISTRIBUTOR
5 DEFENDANTS, RETAIL DEFENDANTS, and Defendants DOES 1 thought 150 shall, where
6 appropriate, collectively be referred to hereafter as “DEFENDANTS”.

7 **VENUE AND JURISDICTION**

8 20. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
9 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one
10 or more instances of wrongful conduct occurred, and continues to occur, in the County of Alameda
11 and/or because DEFENDANTS conducted, and continue to conduct, business in this County with
12 respect to the PRODUCTS.

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

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

23 **FIRST CAUSE OF ACTION**

24 **(Violation of Proposition 65)**

25 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
26 Paragraphs 1 through 22, inclusive.

27 24. The citizens of the State of California have expressly stated in the Safe Drinking
28 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. (“Proposition

1 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
2 other reproductive harm." (Proposition 65, §1(b).)

3 25. Proposition 65 further states that, "No person in the course of doing business shall
4 knowingly and intentionally expose any individual to a chemical known to the state to cause
5 cancer or reproductive toxicity without first giving clear and reasonable warning to such
6 individual...."

7 26. Based on information and good faith belief, plaintiff alleges that, at all times
8 relevant to this Complaint, DEFENDANTS have engaged in the sales of the PRODUCTS in
9 violation Health & Safety Code §25249.6, et seq., and that DEFENDANTS' offensive sale of the
10 PRODUCTS has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice
11 of Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
12 future.

13 27. On September 27, 2005, a "60-Day Notice" of Proposition 65 violations containing
14 a Certificate of Merit pursuant to California Health & Safety Code §25249.7(d)(1) was provided
15 to public enforcement agencies and to 3E TRADING, LLC stating that exposures to LISTED
16 CHEMICAL were occurring in the State of California 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 exposure.

19 28. The appropriate public enforcement agencies have failed to commence and
20 diligently prosecute a cause of action, under Health & Safety Code §25249.6, et seq., against
21 DEFENDANTS based on the claims asserted in Plaintiff's 60-Day Notice.

22 29. At all times relevant to this action, the PRODUCTS contained the LISTED
23 CHEMICAL.

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

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

1 penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
2 violation alleged herein;

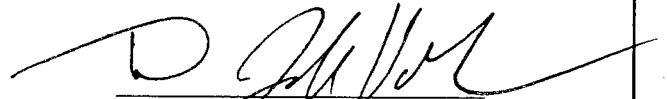
3 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
4 permanently enjoin DEFENDANTS, and each of them, from offering the PRODUCTS for sale or
5 use in California, without providing an identification of LISTED CHEMICAL in the PRODUCTS
6 as well as “clear and reasonable warning[s]” as defined by 22 CCR §12601, as plaintiff shall
7 specify in further application to the Court;

8 3. That the Court grant plaintiff his reasonable attorney’s fees and costs of suit; and

9 4. That the Court grant such other and further relief as may be just and proper.

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12 Dated: May 12, 2006

13 Respectfully Submitted,
14 HIRST & CHANLER, LLP



15 D. Joshua Voorhees
16 Attorneys for Plaintiff
17 RUSSELL BRIMER