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CASE MANAGEMENT CONFERENCE SET

JUL 07 2006 - 9 AM

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RUSSELL BRIMER

DEPARTMENT 212

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

RUSSELL BRIMER,)
)
Plaintiff,)
)
v.)
)
JEFFERSON TRADING CO.; INTERPACIFIC)
TRADING, a subsidiary of Jefferson Trading)
Co.; INPATRA, INC.; and DOES 1 through 150,)
inclusive)
Defendants.)

No. **06C06449155**

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

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

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

1 NATURE OF THE ACTION

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

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

9 3. Lead and cadmium are chemicals that are identified within Title 22, California Code
10 of Regulations ("CCR") §12000 and that are known to the State of California to cause birth defects
11 and other reproductive harm. Lead and cadmium shall hereafter be referred to as "LISTED
12 CHEMICALS".

13 4. The consumer products containing lead and/or cadmium, and for which defendants
14 are responsible, are shot glasses and other glassware intended for the consumption of food or
15 beverages with colored artwork or designs on the exterior including, but not limited to, *Shot Glass*
16 *Tall Logo* (#0000904250). All such consumer products containing one or more of the LISTED
17 CHEMICALS shall hereafter be referred to as the "PRODUCTS".

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

23 6. On February 27, 1987, the State listed lead as a chemical known to cause birth
24 defects and other reproductive harm. This chemical became subject to the warning requirement
25 one year later and was therefore subject to the "clear and reasonable warning" requirements of
26 Proposition 65, beginning on February 27, 1988. (22 CCR §12000(b)(c); Proposition 65.)

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

1 §25249.11.

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

5 16. Defendant INPATRA, INC. ("INPATRA") is a person doing business within the
6 meaning of Health & Safety Code §25249.11.

7 17. INPATRA manufactures, distributes and/or offers the PRODUCTS for sale or use in
8 the State of California or implies by its conduct that it manufactures, distributes and/or offers the
9 PRODUCTS for sale or use in the State of California.

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

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

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

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

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

23 23. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
24 of California.

25 24. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
26 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code
27 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of
28 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When

1 ascertained, their true names shall be reflected in an amended complaint.

2 25. JEFFERSON TRADING, INTERPACIFIC, INPATRA, MANUFACTURER
3 DEFENDANTS, DISTRIBUTOR DEFENDANTS, RETAIL DEFENDANTS, and Defendants
4 DOES 1 through 150 shall, where appropriate, collectively be referred to hereafter as
5 “DEFENDANTS”.

6 **VENUE AND JURISDICTION**

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

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

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

22 **FIRST CAUSE OF ACTION**

23 **(Violation of Proposition 65)**

24 29. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
25 Paragraphs 1 through 28, inclusive.

26 30. The citizens of the State of California have expressly stated in the Safe Drinking
27 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, *et seq.* (“Proposition
28 65”) that they must be informed “about exposures to chemicals that cause cancer, birth defects and

1 other reproductive harm.” (Proposition 65, §1(b).)

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

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

11 33. On November 23, 2005, a “60-Day Notice” of Proposition 65 violations, containing
12 a Certificate of Merit pursuant to California Health & Safety Code §25249.7(d)(1), was provided to
13 public enforcement agencies and to JEFFERSON TRADING CO., INTERPACIFIC TRADING, a
14 subsidiary of Jefferson Trading Co., and INPATRA, INC. stating that exposures to each of the
15 LISTED CHEMICALS were occurring in the State of California from the reasonably foreseeable
16 uses of the PRODUCTS, without the individual purchasers and users first having been provided
17 with a “clear and reasonable warning” regarding such exposure.

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

21 35. At all times relevant to this action, the PRODUCTS contained one or more of the
22 LISTED CHEMICALS.

23 36. At all times relevant to this action, the DEFENDANTS knew or should have known
24 that the PRODUCTS contained one or more of the LISTED CHEMICALS.

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

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1 38. The normal and reasonably foreseeable use of the PRODUCTS has caused and
2 continues to cause an exposure to one or more of the LISTED CHEMICALS, as such exposure is
3 defined by 22 CCR §12601.

4 39. Based on information and good faith belief, plaintiff alleges that at all times relevant
5 to this action, DEFENDANTS had knowledge that individuals' normal and reasonably foreseeable
6 use of the PRODUCTS would cause an exposure to one or more of the LISTED CHEMICALS.

7 40. At all times relevant to this action, DEFENDANTS, and each of them, intended that
8 such exposures to one or more of the LISTED CHEMICALS from the reasonably foreseeable use
9 of the PRODUCTS would occur by their deliberate, non-accidental participation in the
10 manufacture, distribution and/or sale of PRODUCTS to individuals in the State of California.

11 41. At all times relevant to this action, DEFENDANTS failed to provide a "clear and
12 reasonable warning" of reproductive toxicity (as defined by 22 CCR §12601) to those consumers or
13 other individuals in the State of California who were or could become exposed to the PRODUCTS
14 and one or more of the LISTED CHEMICALS contained therein.

15 42. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
16 directly by California voters, individuals thus exposed to any of the LISTED CHEMICALS from
17 the PRODUCTS, without "clear and reasonable warning", have suffered and continue to suffer
18 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

22 44. As a consequence of the above-described acts, Health & Safety Code §25249.7 also
23 specifically authorizes the grant of injunctive relief under Proposition 65 against DEFENDANTS.

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

26 **PRAYER FOR RELIEF**

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

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

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

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

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

11 Dated: February 2, 2006

12 Respectfully Submitted,
HIRST & CHANLER, LLP

13 

14 Daniel Bornstein
15 Attorneys for Plaintiff
RUSSELL BRIMER