

ENDORSED
FILED
San Francisco County Superior Court

JAN 30 2006

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CASE MANAGEMENT CONFERENCE SET

7 Attorneys for Plaintiff
8 RUSSELL BRIMER

JUN 30 2006 - 9 00 AM

DEPARTMENT 212

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

17 RUSSELL BRIMER,)

18 Plaintiff)

19 v.)

20 HYLER ENTERPRISES, INC.; THE WHARF'S)
21 GENERAL STORE; and DOES 1 through 150,)
22 *inclusive,*)

Defendants.)

No. CGC · 06 449000

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

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

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:
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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 present in or on consumer products placed into the stream of commerce
8 by defendants.

9 3. Lead is a chemical that is identified in Title 22, California Code of Regulations
10 ("CCR") §12000 and that is known to the State of California to cause birth defects and other
11 reproductive harm. Lead shall hereafter be referred to as the "LISTED CHEMICAL".

12 4. The consumer products containing the LISTED CHEMICAL, and for which
13 defendants are responsible, are wine glasses and other glassware intended for the consumption of
14 food or beverages with colored artwork or designs on the exterior including, but not limited to,
15 *Rocks Glass Circle H, #667282*, and mugs and other ceramic containers intended for the
16 consumption of food or beverages with colored artwork or designs on the exterior including, but
17 not limited to, *Mug/Wharf's General Store, #55676*. All such consumer products containing the
18 LISTED CHEMICAL shall hereafter be referred to as the "PRODUCTS".

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

24 6. On February 27, 1987, the State listed lead as a chemical known to cause birth
25 defects and other reproductive harm. This chemical became subject to the warning requirement
26 one year later and was therefore subject to the "clear and reasonable warning" requirements of
27

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

1 Proposition 65, beginning on February 27, 1988. (22 CCR §12000(b)(c); Proposition 65)

2 7. Defendants' failures to provide proper mandatory warnings about exposure to the
3 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
4 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
5 violation.

6 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
7 and permanent injunctive relief to compel defendants to provide purchasers of the PRODUCTS
8 with the appropriate Proposition 65 warning regarding the health hazards of the LISTED
9 CHEMICAL.

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

12 PARTIES

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

17 11. Defendant HYLER ENTERPRISES, INC. ("HYLER") is a person doing business
18 within the meaning of Health & Safety Code §25249.11.

19 12. HYLER distributes and/or offers the PRODUCTS for sale or use in the State of
20 California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use
21 in the State of California.

22 13. Defendant THE WHARF'S GENERAL STORE ("GENERAL STORE") is a person
23 doing business within the meaning of Health & Safety Code §25249.11.

24 14. GENERAL STORE distributes and/or offers the PRODUCTS for sale or use in the
25 State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for
26 sale or use in the State of California.

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

1 30. On November 23, 2005, a "60-Day Notice" of Proposition 65 violations, containing
2 a Certificate of Merit pursuant to California Health & Safety Code §25249.7(d)(1), was provided to
3 public enforcement agencies and to HYLER ENTERPRISES, INC. and THE WHARF'S
4 GENERAL STORE stating that exposures to the LISTED CHEMICAL were occurring in the State
5 of California from the reasonably foreseeable uses of the PRODUCTS, without the individual
6 purchasers and users first having been provided with a "clear and reasonable warning" regarding
7 such exposure.

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

11 32. At all times relevant to this action, the PRODUCTS contained the LISTED
12 CHEMICAL.

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

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

18 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and
19 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
20 22 CCR §12601.

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

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

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

Dated: January 30, 2006

Respectfully Submitted,
HIRST & CHANLER, LLP



Daniel Bornstein
Attorneys for Plaintiff
RUSSELL BRIMER