

ENDORSED
FILED
San Francisco County Superior Court

FEB 15 2006

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CASE MANAGEMENT CONFERENCE SET

JUL 21 2006 - 9 00 AM

Attorneys for Plaintiff
RUSSELL BRIMER

DEPARTMENT 212

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

CGC 06449469

RUSSELL BRIMER,)
)
Plaintiff,)
)
v.)
)
KHAN HING SUPERMARKET; KHAN HING)
TONG, CORPORATION; and DOES 1 through)
150, inclusive,)
)
Defendants.)

No. _____
**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

NATURE OF THE ACTION

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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 is a chemical that is identified within 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 "LISTED CHEMICAL".

12 4. The consumer products containing lead, and for which defendants are responsible,
13 are shot glasses and other ceramic containers intended for the consumption of food or beverages
14 with colored artwork or designs on the exterior. All such consumer products containing the
15 LISTED CHEMICAL shall hereafter be referred to as the "PRODUCTS".

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

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

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 is dedicated
11 to protecting the health of California citizens, including the elimination or reduction of toxic
12 exposures from consumer products, and who brings this action on behalf of the general public
13 pursuant to Health & Safety Code §25249.7.

14 11. Defendant KHAN HING SUPERMARKET ("KHAN HING") is a person doing
15 business within the meaning of Health & Safety Code §25249.11.

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

19 13. Defendant KHAN HING TONG CORPORATION ("KHAN HING CORP.") is a
20 person doing business within the meaning of Health & Safety Code §25249.11.

21 14. KHAN HING CORP. distributes and/or offers the PRODUCTS for sale or use in the
22 State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for
23 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 §25249.11.

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. KHAN HING, KHAN HING CORP., MANUFACTURER DEFENDANTS,
17 DISTRIBUTOR DEFENDANTS, RETAIL DEFENDANTS, and Defendants DOES 1 through 150
18 shall, where appropriate, collectively be referred to hereafter as "DEFENDANTS".

19 **VENUE AND JURISDICTION**

20 23. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
21 Civil Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because
22 one or 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 purchasers and users first having been provided with a “clear and reasonable warning” regarding
2 such exposure.

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

6 32. At all times relevant to this action, the PRODUCTS contained the LISTED
7 CHEMICAL.

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

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

13 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and
14 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
15 22 CCR §12601.

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

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

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

27 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals thus exposed to the LISTED CHEMICAL from the

1 PRODUCTS, without "clear and reasonable warning", have suffered and continue to suffer
2 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

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

10 **PRAYER FOR RELIEF**

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

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

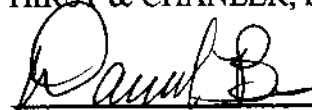
15 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
16 permanently enjoin DEFENDANTS, and each of them, from offering the PRODUCTS for sale or
17 use in California, without providing an identification of each of the LISTED CHEMICALS in the
18 PRODUCTS as well as "clear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

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

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

22 Dated: February 14, 2006

23 Respectfully Submitted,
HIRST & CHANLER, LLP

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25 Daniel Bornstein
26 Attorneys for Plaintiff
27 RUSSELL BRIMER
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