

MAY 12 2006

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CASE MANAGEMENT CONFERENCE SET

OCT 13 2006 - 9 @ 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

RUSSELL BRIMER,

Plaintiff,

v.

SALLY BEAUTY COMPANY, INC.;
ALBERTO-CULVER COMPANY; and DOES
1 through 150, inclusive,

Defendants.

No.

0606452242

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:

NATURE OF THE ACTION

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

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

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

8 4. The consumer products containing lead, and for which defendants are responsible,
9 are mugs and other ceramic containers intended for the consumption of food or beverages with
10 colored artwork or designs on the exterior including, but not limited to, Holiday Assorted Design
11 Mug, Sally Item #: 354925. All such mugs and other ceramic containers containing the LISTED
12 CHEMICAL in artwork or designs on the exterior shall hereafter be referred to as the
13 "PRODUCTS."

14 5. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health
15 & Safety Code §25249.5 et seq.¹ (hereafter "Proposition 65"), "No person in the course of doing
16 business shall knowingly and intentionally expose any individual to a chemical known to the state to
17 cause cancer or reproductive toxic¹ity without first giving clear and reasonable warning to such
18 individual...."

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

23 7. Defendants' failures to provide proper mandatory warnings about exposure to the
24 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
25 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
26 violation.

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

1 State of California, or otherwise purposefully avails itself of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Proposition 65)**

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

8 27. The citizens of the State of California have expressly stated in the Safe Drinking
9 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
10 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
11 other reproductive harm." (Proposition 65, §1(b).)

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

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

20 30. On February 13, 2006, a "60-Day Notice" of Proposition 65 violations, containing a
21 Certificate of Merit pursuant to California Health & Safety Code §25249.7(d)(1), was provided to
22 public enforcement agencies and to SALLY BEATY COMPANY, INC. and ALBERTO-CULVER
23 COMPANY stating that exposures to the LISTED CHEMICAL were occurring in the State of
24 California from the reasonably foreseeable uses of the PRODUCTS, without the individual
25 purchasers and users first having been provided with a "clear and reasonable warning" regarding
26 such exposure.

27 31. The appropriate public enforcement agencies have failed to commence and diligently
28 prosecute a cause of action, under Health & Safety Code §25249.6, et seq., against DEFENDANTS

1 based on the claims asserted in Plaintiff's 60-Day Notice.

2 32. At all times relevant to this action, the PRODUCTS contained the LISTED
3 CHEMICAL.

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

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

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

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

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

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

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

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

1 per day for each violation.

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

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

6 **PRAYER FOR RELIEF**

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

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

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

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

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

18
19 Dated: May 10, 2006

Respectfully Submitted,

20 HIRST & CHANLER, LLP

21 

22 Laralei S. Paras
23 Attorneys for Plaintiff
24 RUSSELL BRIMER