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**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

MAY 10 2006

John A. Clarke, Executive Officer/Clerk  
BY \_\_\_\_\_, Deputy  
Elizabeth Martinez

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE CITY AND COUNTY OF LOS ANGELES  
13 UNLIMITED JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 VALLEY HAN KOOK MARKET; and DOES  
18 1 through 150, inclusive,

19 Defendants.

Case No. \_\_\_\_\_

BC352505

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code §25249, et seq)

20  
21  
22  
23 RUSSELL BRIMER, by and through his counsel, on behalf of himself, on behalf all others  
24 similarly situated and on behalf of the general public, hereby alleges as follows:

25 **NATURE OF THE ACTION**

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

COPY

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 in Title 22, California Code of Regulations  
6 ("CCR") §12000 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." The  
8 consumer products containing the LISTED CHEMICAL, and for which defendants are responsible,  
9 are drinking glasses and other glassware intended for the consumption of food or beverages with  
10 colored artwork or designs on the exterior including, but not limited to, Drinking Glass, Teddy Bear.  
11 All such drinking glasses containing the LISTED CHEMICAL on the exterior surface shall hereafter  
12 be referred to as the "PRODUCTS."

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

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

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

26           7.       For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
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28           <sup>1</sup> Unless specifically noted, all statutory citations refer to California Law.

1 and permanent injunctive relief to compel defendants to provide purchasers of the PRODUCTS with  
2 the appropriate Proposition 65 warning regarding the health hazards of the LISTED CHEMICAL.

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

5 **PARTIES**

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

10 10. Defendant VALLEY HAN KOOK MARKET ("VALLEY HAN") is a person doing  
11 business within the meaning of Health & Safety Code §25249.11.

12 11. VALLEY HAN distributes and/or offers the PRODUCTS for sale or use in the State  
13 of California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or  
14 use in the State of California.

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

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

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

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

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

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1 17. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State of  
2 California.

3 18. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
4 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code  
5 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of  
6 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When  
7 ascertained, their true names shall be reflected in an amended complaint.

8 19. VALLEY HAN, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
9 DEFENDANTS, RETAIL DEFENDANTS, and Defendants DOES 1 through 150 shall, where  
10 appropriate, collectively be referred to hereafter as "DEFENDANTS".

11 **VENUE AND JURISDICTION**

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65)**

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

5 24. The citizens of the State of California have expressly stated in the Safe Drinking  
6 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition  
7 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and  
8 other reproductive harm." (Proposition 65, §1(b).)

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

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

17 27. On February 13, 2006, a "60-Day Notice" of Proposition 65 violations containing a  
18 Certificate of Merit pursuant to California Health & Safety Code §25249.7(d)(1) was provided to  
19 public enforcement agencies and to VALLEY HAN KOOK MARKET stating that exposures to the  
20 LISTED CHEMICAL were occurring in the State of California from the reasonably foreseeable uses  
21 of the PRODUCTS, without the individual purchasers and users first having been provided with a  
22 "clear and reasonable warning" regarding such exposure.

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

26 29. At all times relevant to this action, the PRODUCTS contained the LISTED  
27 CHEMICAL.

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

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

6           32.     The normal and reasonably foreseeable use of the PRODUCTS has caused and  
7 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by 22 CCR  
8 §12601.

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

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

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

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

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

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