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COUNTY OF STANISLAUS

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

BEST DEAL FOOD COMPANY, INC.; COST
LESS FOOD COMPANY; and DOES 1
through 150, inclusive,

Defendants.

Case No.

612634

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Cal. Health & Safety Code §25249.6 et seq.)

BY FAX

This case has been assigned to Judge DAVID C. VANDER
Department 1, for all purposes including Trial.

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 in the public interest of the citizens of the State of California, to enforce the People's right to be
4 informed of the presence of lead (a toxic chemical) found in certain mugs and other ceramic
5 containers manufactured, distributed and/or sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn
7 California citizens about their exposure to lead present in or on certain mugs and other ceramic
8 containers intended for the consumption of food or beverages with colored artwork or designs on
9 the exterior that defendants manufacture, distribute and/or offer for sale to consumers throughout
10 the State of California.

11 3. High levels of lead are commonly found in and on mugs and other ceramic
12 containers intended for the consumption of food or beverages with colored artwork or designs on
13 the exterior that defendants manufacture, distribute and/or offer for sale to consumers throughout
14 the State of California.

15 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
16 California Health & Safety Code §25249.6 *et seq.* (hereinafter Proposition 65), "No person in the
17 course of doing business shall knowingly and intentionally expose any individual to a chemical
18 known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
19 warning to such individual...." (*Cal. Health & Safety Code §25249.6.*)

20 5. On February 27, 1987, California identified and listed lead as a chemical known to
21 cause birth defects and other reproductive harm. Lead became subject to the warning requirement
22 one year later and was therefore subject to the "clear and reasonable warning" requirements of
23 Proposition 65, beginning on February 27, 1988. (*22 CCR §12000(c); Cal. Health & Safety Code*
24 *§25249.8.*) Lead shall hereinafter be referred to as the "LISTED CHEMICAL."

25 6. Defendants manufacture, distribute, and/or sell mugs and other ceramic containers
26 intended for the consumption of food or beverages with colored artwork or designs on the exterior
27 (containing lead) including, but not limited to, *Yester Year Design Mug*, (#0 70515 23217 3),
28 which contain excessive levels of the LISTED CHEMICAL. All such mugs and other ceramic

1 containers intended for the consumption of food or beverages with colored artwork or designs on
2 the exterior containing the LISTED CHEMICAL shall hereinafter be referred to as the
3 “PRODUCTS.”

4 7. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive
5 and permanent injunctive relief to compel defendants to provide purchasers or users of the
6 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.
7 (*Cal. Health & Safety Code §25249.7(a).*)

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

10 PARTIES

11 9. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated
12 to protecting the health of California citizens through the elimination or reduction of toxic
13 exposures from consumer products, and brings this action in the public interest pursuant to
14 California Health & Safety Code §25249.7.

15 10. Defendant BEST DEAL FOOD COMPANY, INC., (“BEST DEAL”) is a person
16 doing business within the meaning of California Health & Safety Code §25249.11.

17 11. BEST DEAL manufactures, distributes and/or offers the PRODUCTS for sale or
18 use in the State of California or implies by its conduct that it manufactures, distributes and/or
19 offers the PRODUCTS for sale or use in the State of California.

20 12. Defendant COST LESS FOOD COMPANY, (“COST LESS”) is a person doing
21 business within the meaning of California Health & Safety Code §25249.11.

22 13. COST LESS manufactures, distributes and/or offers the PRODUCTS for sale or use
23 in the State of California or implies by its conduct that it manufactures, distributes and/or offers the
24 PRODUCTS for sale or use in the State of California.

25 14. Defendants DOES 1-50 (hereinafter MANUFACTURER DEFENDANTS) are each
26 persons doing business within the meaning of California Health & Safety Code §25249.11.

27 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,
28 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they

1 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
2 one or more of the PRODUCTS for sale or use in the State of California.

3 16. Defendants DOES 51-100 (hereinafter DISTRIBUTOR DEFENDANTS) are each
4 persons doing business within the meaning of California Health & Safety Code §25249.11.

5 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
6 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
7 the State of California.

8 18. Defendants DOES 101-150 (hereinafter RETAIL DEFENDANTS) are each persons
9 doing business within the meaning of California Health & Safety Code §25249.11.

10 19. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
11 of California.

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

17 21. BEST DEAL, COST LESS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAIL DEFENDANTS, shall, where appropriate, collectively be referred
19 to hereinafter as "DEFENDANTS."

20 **VENUE AND JURISDICTION**

21 22. Venue is proper in the Stanislaus County Superior Court, pursuant to Code of Civil
22 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one
23 or more instances of wrongful conduct occurred, and continues to occur, in the County of
24 Stanislaus and/or because DEFENDANTS conducted, and continue to conduct, business in this
25 County with respect to the PRODUCTS.

26 23. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, §10, which grants the Superior Court "original jurisdiction in all
28 causes except those given by statute to other trial courts." The statute under which this action is

1 brought does not specify any other basis of subject matter jurisdiction.

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

8 **FIRST CAUSE OF ACTION**

9 **(Violation of Proposition 65)**

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

12 26. The citizens of the State of California have expressly stated in the Safe Drinking
13 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6, *et seq.*
14 (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer, birth
15 defects and other reproductive harm." (*Cal. Health & Safety Code §25249.6.*)

16 27. Proposition 65 states, "No person in the course of doing business shall knowingly
17 and intentionally expose any individual to a chemical known to the state to cause cancer or
18 reproductive toxicity without first giving clear and reasonable warning to such individual...." (*Id.*)

19 28. On September 15, 2006, a sixty-day notice of violation, together with the requisite
20 certificate of merit, was provided to BEST DEAL, COST LESS and various public enforcement
21 agencies stating that as a result of BEST DEAL and COST LESS' sale of PRODUCTS, purchasers
22 and users in the State of California were being exposed to the LISTED CHEMICAL resulting from
23 the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
24 first having been provided with a "clear and reasonable warning" regarding such toxic exposures.

25 29. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
26 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and
27 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
28 violation of California Health & Safety Code §25249.6 has continued to occur beyond BEST

1 DEAL AND COST LESS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further
2 alleges and believes that such violations will continue to occur into the future.

3 30. After receipt of the claims asserted in the sixty-day notice of violation, the
4 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
5 of action against BEST DEAL or COST LESS under Proposition 65.

6 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
8 limits.

9 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
10 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
11 CHEMICAL.

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

15 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
17 by 22 CCR §12601(b).

18 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
20 and/or ingestion.

21 36. DEFENDANTS, and each of them, intended that such exposures to the LISTED
22 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
23 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use
24 of PRODUCTS to individuals in the State of California.

25 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those
26 consumers and/or other individuals in the State of California who were or who could become
27 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
28 reasonably foreseeable use of the PRODUCTS.

38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without “clear and reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

40. As a consequence of the above-described acts, California Health & Safety Code §25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

41. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as set forth hereinafter.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

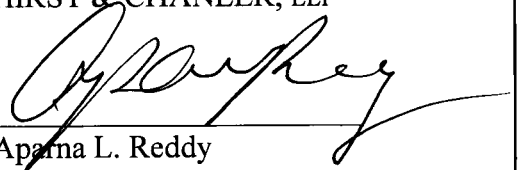
2. That the Court, pursuant to California Health & Safety Code §25249.7(a), preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing, distributing or offering the PRODUCTS for sale or use in California, without providing “clear and reasonable warnings” as defined by 22 CCR §12601, as to the harms associated with exposures to the LISTED CHEMICAL;

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

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

1 Dated: January 29, 2007

Respectfully Submitted,
HIRST & CHANLER, LLP



Aparna L. Reddy
Attorneys for Plaintiff
RUSSELL BRIMER