

ENCLOSED  
FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURT

2010 DEC -7 AM 1:06

C. \_\_\_\_\_ COURT  
BY: ~~DEAN BRIMMER~~  
DEPUTY CLERK

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

13 RUSSELL BRIMER,  
14 Plaintiff,

15 v.

16 KINOKUNIYA BOOK STORES OF  
17 AMERICA COMPANY LIMITED; and  
18 DOES 1-150, inclusive,  
19 Defendants.

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

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**VIA FAX**

**CASE MANAGEMENT CONFERENCE SET**

**MAY - 6 2011 9<sup>00</sup>AM**

**DEPARTMENT 212**

**NATURE OF THE ACTION**

1  
2           1.     This Complaint is a representative action brought by plaintiff RUSSELL  
3 BRIMER, in the public interest of the citizens of the State of California, to enforce the People’s  
4 right to be informed of the presence of lead, a toxic chemical found in glassware with colored  
5 artwork or designs sold in California.

6           2.     By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to  
7 warn California citizens about their exposure to lead, present on the exterior of certain  
8 glassware with colored artwork or designs that defendants import, manufacture, distribute,  
9 and/or offer for sale to consumers throughout the State of California.

10          3.     High levels of lead are commonly found on the exterior of glassware with colored  
11 artwork or designs that defendants import, manufacture, distribute, and/or offer for sale to  
12 consumers throughout the State of California.

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

18          5.     On February 27, 1987, California identified and listed lead as a chemical known  
19 to cause birth defects and other reproductive harm. Lead became subject to the warning  
20 requirement one year later and was therefore subject to the “clear and reasonable warning”  
21 requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001 (c); Cal.*  
22 *Health & Safety Code § 25249.8.*) Lead shall be referred to hereinafter as the “LISTED  
23 CHEMICAL”.

24          6.     Defendants import, manufacture, distribute, and/or sell glassware with colored  
25 artwork or designs containing excessive levels of the LISTED CHEMICAL including, but not  
26 limited to, the *Drinking Glass, Otogicco, #TG-24690, #4527749246903*. All such glassware  
27 with colored artwork or designs containing the LISTED CHEMICAL shall hereinafter be  
28 referred to as the “PRODUCTS”.



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

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
4 doing business within the meaning of California Health & Safety Code Section 25249.11.

5 16. 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 17. Defendants DOES 101-150 (RETAILER DEFENDANTS) are each persons doing  
9 business within the meaning of California Health & Safety Code Section 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
11 State of California.

12 19. 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  
14 Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis  
15 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
16 herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

17 20. KINOKUNIYA, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
19 referred to hereinafter as “DEFENDANTS”.

20 **VENUE AND JURISDICTION**

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

26 22. The California Superior Court has jurisdiction over this action pursuant to  
27 California Constitution Article VI, Section 10, which grants the Superior Court “original  
28

1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
2 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 - Against All Defendants)**

11 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
12 Paragraphs 1 through 23, inclusive.

13 25. The citizens of the State of California have expressly stated in the Safe Drinking  
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.5,  
15 *et seq.* that they must be informed “about exposures to chemicals that cause cancer, birth defects  
16 and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

21 27. On August 5, 2010, a sixty-day notice of violation, together with the requisite  
22 certificate of merit, was provided to KINOKUNIYA and various public enforcement agencies  
23 stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in  
24 the State of California were being exposed to lead resulting from the reasonably foreseeable  
25 uses of the PRODUCTS, without the individual purchasers and users first having been provided  
26 with a “clear and reasonable warning” regarding such toxic exposures.

27 28. DEFENDANTS have engaged in the importation, manufacture, distribution,  
28 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety

1 Code Section 25249.6, and DEFENDANTS' importation, manufacture, distribution, and/or  
2 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code  
3 Section 25249.6 has continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day  
4 notices of violation. Plaintiff further alleges and believes that such violations will continue to  
5 occur into the future.

6 29. After receipt of the claims asserted in the sixty-day notices of violation, the  
7 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
8 cause of action against DEFENDANTS under Proposition 65.

9 30. The PRODUCTS imported, manufactured, distributed, and/or offered for sale or  
10 use in California by DEFENDANTS contained the LISTED CHEMICAL above the allowable  
11 State limits.

12 31. DEFENDANTS knew or should have known that the PRODUCTS imported,  
13 manufactured, distributed, and/or offered for sale or use by DEFENDANTS in California  
14 contained the LISTED CHEMICAL.

15 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
16 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
17 during the reasonably foreseeable use of the PRODUCTS.

18 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
19 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is  
20 defined by 27 CCR Section 25602(b).

21 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
22 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
23 and/or ingestion.

24 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
25 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
26 accidental participation in the importation, manufacture, distribution, and/or offer for sale or use  
27 of PRODUCTS to individuals in the State of California.  
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