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ENDORSED
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S. Ulleseit

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

KALTEX NORTH AMERICA, INC.;
REVMAN INTERNATIONAL, INC.; and
DOES 1-150, inclusive,

Defendants.

Case No. 16CV302093

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by Plaintiff Russell Brimer,
3 (“Plaintiff”) in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to the toxic chemical
5 lead found in tumblers with exterior designs.

6 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
8 section 6300 et seq., who purchase, use or handle Defendants’ products, about the risks of
9 exposure to lead found in tumblers with exterior designs manufactured, distributed, and offered
10 for sale or use throughout the State of California. Individuals not covered by California’s
11 Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle
12 Defendants’ products, are referred to hereinafter as “CONSUMERS.”

13 3. Detectable levels of lead are found in and on the tumblers with exterior designs
14 that Defendants manufacture, distribute, and offer for sale to CONSUMERS throughout the
15 State of California.

16 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
17 Health and Safety Code section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of
18 doing business shall knowingly and intentionally expose any individual to a chemical known to
19 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
20 warning to such individual . . .” Health & Safety Code § 25249.6.

21 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
22 lead as a chemical known to cause birth defects (and reproductive harm). Lead became subject
23 to the “clear and reasonable warning” requirements of the act one year later on February 27,
24 1988 Cal. Code Regs. tit. 27 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
26 hazard warnings in California, tumblers with exterior designs that contain lead including, but
27 not limited to the *Laura Ashley Eleanora G/C Tumbler, SKU 197052, #1485333, UPC #8 83893*
28 *27066 4.*

1 7. All such tumblers with exterior designs containing lead are referred to collectively
2 hereinafter as "PRODUCTS."

3 8. Defendants' failure to warn consumers in the State of California of the health
4 hazards associated with exposures to lead in conjunction with Defendants' sales of the
5 PRODUCTS are violations of Proposition 65, and subject Defendants, and each of them, to
6 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
7 § 25249.7(a) & (b)(1).

8 9. For Defendants' violations of Proposition 65, Plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
10 the required warning regarding the health hazards associated with exposures to lead. Health &
11 Safety Code § 25249.7(a).

12 10. Pursuant to Health and Safety Code section 25249.7(b), Plaintiff also seeks civil
13 penalties against Defendants for their violations of Proposition 65.

14 **PARTIES**

15 11. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is
16 dedicated to protecting the health of California citizens through the elimination or reduction of
17 toxic exposures from consumer products. He brings this action in the public interest pursuant to
18 Health and Safety Code section 25249.7(d).

19 12. Defendant KALTEX NORTH AMERICA, INC. ("KALTEX") is a person in the
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

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

25 14. Defendant REVMAN INTERNATIONAL, INC. ("REVMAN") is a person in the
26 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
27 25249.11.

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1 15. REVMAN manufactures, imports, distributes, sells, and/or offers the PRODUCTS
2 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4 16. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
5 person in the course of doing business within the meaning of Health and Safety Code sections
6 25249.6 and 25249.11.

7 17. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
8 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
9 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
10 sale or use in California.

11 18. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
12 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
13 and 25249.11.

14 19. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
15 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
16 retailers for sale or use in the State of California, or each implies by its conduct that it
17 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
18 individuals, businesses, or retailers for sale or use in the State of California.

19 20. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
20 the course of doing business within the meaning of Health and Safety Code sections 25249.6
21 and 25249.11.

22 21. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
23 individuals in the State of California.

24 22. At this time, the true names of defendants DOES 1 through 150, inclusive, are
25 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
26 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
27 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
28 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

1 23. KALTEX, REVMAN, MANUFACTURER DEFENDANTS, DISTRIBUTOR
2 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
3 referred to collectively as the “DEFENDANTS.”

4 **VENUE AND JURISDICTION**

5 24. Venue is proper in the Superior Court for the County of Santa Clara pursuant to
6 Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of
7 competent jurisdiction, because Plaintiff seeks civil penalties against DEFENDANTS, because
8 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
9 and/or because DEFENDANTS conducted, and continue to conduct, business in Santa Clara
10 with respect to the PRODUCTS.

11 25. The California Superior Court has jurisdiction over this action pursuant to
12 California Constitution Article VI, section 10, which grants the Superior Court “original
13 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
14 which this action is brought does not specify any other basis of subject matter jurisdiction.

15 26. The California Superior Court has jurisdiction over DEFENDANTS based on
16 Plaintiff’s information and good-faith belief that DEFENDANTS are each a person, firm,
17 corporation or association that is a citizen of the State of California, has sufficient minimum
18 contacts in the State of California, and/or otherwise purposefully avails itself of the California
19 market. DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
20 California courts consistent with traditional notions of fair play and substantial justice.

21 **FIRST CAUSE OF ACTION**

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

23 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
24 Paragraphs 1 through 26, inclusive.

25 28. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
26 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
27 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
28 harm.”

1 29. Proposition 65 states, “[n]o person in the course of doing business shall
2 knowingly and intentionally expose any individual to a chemical known to the state to cause
3 cancer or reproductive toxicity without first giving clear and reasonable warning to such
4 individual” Health & Safety Code § 25249.6.

5 30. On January 29, 2016, Plaintiff served a sixty-day notice of violation, together
6 with the accompanying certificate of merit, on KALTEX, REVMAN, the California Attorney
7 General, and all other requisite public enforcers alleging that, as a result of DEFENDANTS’
8 sales of the PRODUCTS, consumers in the State of California are being exposed to lead
9 resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers first
10 receiving a “clear and reasonable warning” regarding the harms associated with exposures to
11 lead, as required by Proposition 65.

12 31. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
13 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
14 violations have continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As
15 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
16 will continue in the future.

17 32. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement
18 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
19 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of
20 violation.

21 33. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
22 offer for sale or use in California cause exposures to lead as a result of the reasonably
23 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
24 consumers in California are not exempt from the “clear and reasonable” warning requirements
25 of Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS’ violations of
26 Proposition 65 as a result of their failure to provide warnings to consumers exposed to lead from
27 the PRODUCTS, have continued since as far back as January 29, 2013.

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1 34. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale in California contain lead.

3 35. Lead is present in or on the PRODUCTS in such a way as to expose consumers
4 through dermal contact and/or ingestion during reasonably foreseeable use.

5 36. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
6 continues to cause, consumer exposures to lead, as defined by title 27 of the California Code of
7 Regulations, section 25602(b).

8 37. DEFENDANTS know that the normal and reasonably foreseeable use of the
9 PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

10 38. DEFENDANTS intend that exposures to lead from the reasonably foreseeable use
11 of the PRODUCTS will occur by their deliberate, non-accidental participation in the
12 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
13 consumers in California.

14 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers in California who have been, or who will be, exposed to lead through dermal contact
16 and/or ingestion resulting from their use of the PRODUCTS.

17 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
18 directly by California voters, consumers exposed to lead through dermal contact and/or
19 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear
20 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
21 for which they have no plain, speedy, or adequate remedy at law.

22 41. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
23 above-described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty
24 of \$2,500 per day for each violation.

25 42. As a consequence of the above-described acts, Health and Safety Code
26 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
27 DEFENDANTS.

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PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with exposures to lead;
3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et seq.*;
4. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and
5. That the Court grant such other and further relief as may be just and proper.

Dated: October 31, 2016

Respectfully submitted,
THE CHANLER GROUP

By: 
Warren M. Klein
Attorneys for Plaintiff
RUSSELL BRIMER