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JUN 18 2010 - 9:00 AM

DEPARTMENT 212

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

15 RUSSELL BRIMER and
16 ANTHONY E. HELD, Ph.D., P.E.,

17 Plaintiffs,

18 v.

19 CPP INTERNATIONAL LLC, dba
20 CAROLINA PAD & PAPER; and DOES 1
21 through 150, inclusive,

22 Defendants.

Case No. **CGC-10-496043**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiffs RUSSELL BRIMER
3 and ANTHONY E. HELD, Ph.D., P.E., in the public interest of the citizens of the State of
4 California, to enforce the People's right to be informed of the presence of toxic chemicals, di(2-
5 ethylhexyl)phthalate ("DEHP") and lead, found in vinyl laptop tote bags sold in California.

6 2. By this Complaint, plaintiffs seek to remedy defendants' continuing failures to
7 warn California citizens about their exposure to DEHP and lead, present in certain vinyl laptop
8 tote bags that defendants manufacture, distribute and/or offer for sale to consumers throughout the
9 State of California.

10 3. Excessive levels of DEHP and lead are commonly found in vinyl laptop tote bags
11 that defendants manufacture, distribute and/or offer for sale to consumers throughout the State of
12 California.

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

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

23 6. On October 24, 2003, California identified and listed DEHP as a chemical known
24 to cause birth defects and other reproductive harm. DEHP became subject to the warning
25 requirement one year later and was therefore subject to the "clear and reasonable warning"
26 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal.*
27 *Health & Safety Code § 25249.8.*)

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1 14. Defendant CPP manufactures, distributes, and/or offers the PRODUCTS for sale or
2 use in the State of California or implies by its conduct that it manufactures, distributes, and/or
3 offers the PRODUCTS for sale or use in the State of California.

4 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
5 doing business within the meaning of California Health & Safety Code § 25249.11.

6 16. MANUFACTURER DEFENDANTS engage in the process of research, testing,
7 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
8 engage in the process of research, testing, designing, assembling, fabricating and/or
9 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

10 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
11 doing business within the meaning of California Health & Safety Code § 25249.11.

12 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
13 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
14 the State of California.

15 19. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
16 business within the meaning of California Health & Safety Code § 25249.11.

17 20. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
18 of California.

19 21. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
20 unknown to PLAINTIFFS, who therefore sue said defendants by their fictitious name pursuant to
21 Code of Civil Procedure § 474. PLAINTIFFS are informed and believe, and on that basis allege,
22 that each of the fictitiously named defendants is responsible for the acts and occurrences herein
23 alleged. When ascertained, their true names shall be reflected in an amended complaint.

24 22. CPP, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and
25 RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as
26 “DEFENDANTS.”

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1 VENUE AND JURISDICTION

2 23. Venue is proper in the Superior Court in and for the City and County of San
3 Francisco, pursuant to Code of Civil Procedure §§ 394, 395, 395.5, because this Court is a court of
4 competent jurisdiction, because one or more instances of wrongful conduct occurred, and
5 continues to occur, in the City and County of San Francisco and/or because DEFENDANTS
6 conducted, and continue to conduct, business in this County with respect to one or more of the
7 PRODUCTS.

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

12 25. The California Superior Court has jurisdiction over DEFENDANTS based on
13 PLAINTIFFS’ information and good faith belief that each defendant is a person, firm, corporation
14 or association that either is a citizen of the State of California, has sufficient minimum contacts in
15 the State of California, or otherwise purposefully avails itself of the California market.
16 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
17 courts consistent with traditional notions of fair play and substantial justice.

18 FIRST CAUSE OF ACTION

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

20 26. PLAINTIFFS reallege and incorporate by reference, as if fully set forth herein,
21 Paragraphs 1 through 25, inclusive.

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

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

1 29. On July 17, 2009, BRIMER provided a sixty-day notice of violation, together with
2 the requisite certificate of merit, to CPP and various public enforcement agencies stating that as a
3 result of DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of California
4 were being exposed to lead resulting from the reasonably foreseeable uses of the PRODUCTS,
5 without the individual purchasers and users first having been provided with a "clear and
6 reasonable warning" regarding such toxic exposures.

7 30. On August 14, 2009, HELD provided a sixty-day notice of violation, together with
8 the requisite certificate of merit, to CPP and various public enforcement agencies stating that as a
9 result of DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of California
10 were being exposed to DEHP resulting from the reasonably foreseeable uses of the PRODUCTS,
11 without the individual purchasers and users first having been provided with a "clear and
12 reasonable warning" regarding such toxic exposures.

13 31. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
14 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
15 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
16 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
17 DEFENDANTS' receipt of PLAINTIFFS' sixty-day notices of violation. PLAINTIFFS further
18 allege and believe that such violations will continue to occur into the future.

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

22 33. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
23 California by DEFENDANTS contained one or more of the LISTED CHEMICALS above the
24 allowable state limits.

25 34. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
26 distributed, and/or offered for sale or use by DEFENDANTS in California contained one or more
27 of the LISTED CHEMICALS.

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1 35. One or more of the LISTED CHEMICALS was present in the PRODUCTS in such
2 a way as to expose individuals to one or more of the LISTED CHEMICALS through dermal
3 contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

4 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
5 continues to cause consumer exposures to one or more of the LISTED CHEMICALS, as such
6 exposure is defined by 27 CCR § 25602(b).

7 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
8 the PRODUCTS would expose individuals to one or more of the LISTED CHEMICALS through
9 dermal contact and/or ingestion.

10 38. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
11 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
12 participation in the manufacture, distribution and/or offering for sale or use of PRODUCTS to
13 individuals in the State of California.

14 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers and/or other individuals in the State of California who were or who could become
16 exposed to one or more of the LISTED CHEMICALS through dermal contact and/or ingestion
17 during the reasonably foreseeable use of the PRODUCTS.

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

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

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