



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Jan-15-2010 8:36 am

Case Number: CGC-10-496051

Filing Date: Jan-15-2010 8:00

Juke Box: 001 Image: 02733385

COMPLAINT

RUSSELL BRIMER VS. OFFICE DEPOT, INC. et al

001C02733385

Instructions:

Please place this sheet on top of the document to be scanned.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Office Depot, Inc. and DOES 1-600

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Russell Brimer

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
Civic Center Courthouse
400 McAllister Street San Francisco, CA 94102

CASE NUMBER:
(Número del Caso): **CGC-10-496051**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Gregory Sheffer, Chanler Law Group, 835 Fifth Avenue, San Rafael, CA 94901, 415-459-1411

DATE: **JAN 15 2010**
(Fecha)

GORDON PARK-LI Clerk by
(Secretario)

P. NATT Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Gregory M. Sheffer, S.B. No. 173124
Chanler Law Group
835 Fifth Avenue
San Rafael, CA 94901
TELEPHONE NO.: 415-459-1411 FAX NO.: 415-459-1911
ATTORNEY FOR (Name): Plaintiff Russell Brimer

FOR COURT USE ONLY
FILED
San Francisco County Superior Court
JAN 15 2010
GORDON PARK-LI, Clerk
BY: *Param* Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS: 400 McAllister Street
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Civic Center Courthouse

CASE NAME:
Russel Brimer v Office Depot, Inc. et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: CGC-10-496051
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input checked="" type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) |
| Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23) | Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26) | Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20) |
| Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35) | Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38) | Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42) |
| Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): one
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 14, 2010
Gregory M. Sheffer
(TYPE OR PRINT NAME)

[Signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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Gregory M. Sheffer, State Bar No. 173124
CHANLER LAW GROUP
835 Fifth Avenue
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Facsimile: (415) 459-1911

Attorneys for Plaintiff
RUSSELL BRIMER

SUMMONS ISSUED
FILED
San Francisco County Superior Court

JAN 15 2010

GORDON PARKYLL, Clerk
BY: *[Signature]* Deputy Clerk
P. NATT

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

RUSSELL BRIMER,
Plaintiff,

v.

OFFICE DEPOT, INC.; and DOES 1-600,
inclusive,
Defendant.

Case No. CGC - 10 - 496051

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

CASE MANAGEMENT CONFERENCE SET
JUN 18 2010 9⁰⁰ AM
DEPARTMENT 212

NATURE OF THE ACTION

1
2 1. This Complaint is a representative action brought by plaintiff Russell Brimer, in
3 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 vinyl-coated paper fasteners sold in
5 California.

6 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failures to
7 warn California citizens about their exposure to lead present in or on certain vinyl-coated paper
8 fasteners that Defendant manufacture, distribute and/or offer for sale to consumers throughout
9 the State of California.

10 3. Elevated levels of lead are commonly found in and on vinyl-coated paper
11 fasteners that Defendants manufacture, distribute, and/or offer for sale to consumers and
12 businesses throughout the State of 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
17 warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

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

23 6. Lead shall hereinafter be referred to as the “Listed Chemical.”

24 7. Defendant Office Depot Inc. manufactures, distributes, and/or sells vinyl-coated
25 paper fasteners, containing excessive levels of the Listed Chemical, including, but not limited to
26 Color Paper Clips, Item 882-195 and other vinyl coated paper fasteners of different shapes and
27 sizes as well as those sold in different quantity and assortment packages.

1 that either are citizens of the State of California, have sufficient minimum contacts in the State of
2 California, or otherwise purposefully avail themselves of the California market. Defendant's
3 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
4 with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Proposition 65 – Against All Defendants)**

7 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 25, inclusive.

9 27. The citizens of the State of California have expressly stated in the Safe Drinking
10 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*
11 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
12 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

17 29. On August 14, 2009, a sixty-day notice of violation, together with the requisite
18 certificate of merit, was provided to Office Depot and various public enforcement agencies
19 stating that as a result of Office Depot's sales of the products listed above in paragraph 7,
20 purchasers and users in the State of California were being exposed to the Listed Chemical
21 resulting from the reasonably foreseeable uses of the Products, without the individual purchasers
22 and users first having been provided with a “clear and reasonable warning” regarding such toxic
23 exposures; and

24 30. Defendant has engaged in the manufacture, distribution and/or offering of the
25 Products for sale or use in violation of California Health & Safety Code § 25249.6 and
26 Defendant's manufacture, distribution and/or offering of the Products for sale or use in violation
27 of California Health & Safety Code § 25249.6 has continued to occur beyond Defendant' receipt
28

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

3 31. After receipt of the claims asserted in the sixty-day notices of violation, the
4 appropriate public enforcement agencies have failed to commence and diligently prosecute a
5 cause of action against Defendants under Proposition 65.

6 32. The Products manufactured, distributed, and/or offered for sale or use in
7 California by Defendants contained the Listed Chemical above the allowable state limits.

8 33. Defendants knew or should have known that the Products manufactured,
9 distributed, and/or offered for sale or use by Defendant in California contained the Listed
10 Chemical.

11 34. The Listed Chemical was present in or on the Products in such a way as to expose
12 individuals to the Listed Chemical through dermal contact and/or ingestion during the reasonably
13 foreseeable use of the Products.

14 35. The normal and reasonably foreseeable use of the Products has caused and
15 continues to cause consumer exposures to the Listed Chemical, as such exposure is defined by
16 27 CCR § 25602(b).

17 36. Defendants had knowledge that the normal and reasonably foreseeable use of the
18 Products would expose individuals to the Listed Chemical through dermal contact and/or
19 ingestion.

20 37. Defendants, and each of them, intended that such exposures to the Listed
21 Chemical from the reasonably foreseeable use of the Products would occur by their deliberate,
22 non-accidental participation in the manufacture, distribution and/or offer for sale or use of
23 Products to individuals in the State of California.

24 38. Defendants failed to provide a "clear and reasonable warning" to those consumers
25 and/or other individuals in the State of California who were or who could become exposed to the
26 Listed Chemical through dermal contact and/or ingestion during the reasonably foreseeable use
27 of the Products.

28

1 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
2 directly by California voters, individuals exposed to the Listed Chemical through dermal contact
3 and/or ingestion resulting from the reasonably foreseeable use of the Products, sold by
4 Defendants without a “clear and reasonable warning,” have suffered, and continue to suffer,
5 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

9 41. As a consequence of the above-described acts, California Health & Safety Code
10 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendant.

11 42. Wherefore, plaintiff prays for judgment against Defendants, and each of them, as
12 set forth hereinafter.

13 **PRAYER FOR RELIEF**

14 Wherefore, plaintiff prays for judgment against Defendants as follows:

- 15 1. That the Court assess civil penalties against Defendants, and each of them, in the
16 amount of \$2,500 per day for each violation alleged herein (H&S Code § 25249.7(b));
- 17 2. That the Court preliminarily and permanently enjoin Defendants, and each of
18 them, from manufacturing, distributing or offering the Products for sale or use in California,
19 without providing “clear and reasonable warnings” as defined by 27 CCR § 25601, as to the
20 harms associated with exposures to the Listed Chemical (H&S Code § 25249.7(a));
- 21 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
22 4. That the Court grants such other and further relief as may be just and proper.

23 Respectfully Submitted,

24 CHANLER LAW GROUP

24 Dated: January 14, 2010

25
26 By: 

27 Gregory M. Sheffer
28 Attorneys for Plaintiff
RUSSELL BRIMER